

## **DIA Acquisition Regulation Supplement and Instruction (DARSI)**

### References:

- (a) DIAI 5000.035, 26 March 2012, Change 1 (canceled)
- (b) Federal Acquisition Regulation (FAR)
- (c) Defense Federal Acquisition Regulation Supplement (DFARS)
- (d) DIAI 5520.001, "Agency Support Agreements," 11 Jul 2014
- (e) DIAI 5400.002, "Freedom of Information Act Program," 9 May 2014
- (f) through (q), see Enclosure 1

### 1. Purpose.

1.1. Replaces Reference (a).

1.2. Implements and supplements References (b) and (c) with acquisition policies and procedures consistent with the mission of DIA.

1.3. Applies to all DIA organizations involved in or supporting procurement activities, including the combatant command directorates for intelligence  elements.

2. Definitions: See section 1002 of Enclosure 2.

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### 3. Responsibilities:

3.1. DR/DIA will establish contracting activities and delegate authority to manage the Agency's contracting functions to heads of such contracting activities. The DR/DIA, as the procurement head for the Agency, will appoint the Component Acquisition Executive (CAE)/Senior Procurement Executive (SPE) to execute this responsibility on his behalf.

3.2. The CAE/SPE will:

3.2.1. Be responsible for oversight and approval of all acquisition matters and ensure the overall contracting activities are performed IAW References (b) and (c).

3.2.2. Provide tailored acquisition policies, processes, procedures, tools, lifecycle oversight and a qualified workforce that acquire quality products and services that satisfy user needs and provide measurable improvements to mission capabilities at a fair and reasonable cost.

3.2.3. Appoint the Head of the Contracting Activity (HCA).

3.3. The HCA will appoint and authorize contracting officers to execute activities associated with entering into, administering and/or terminating contracts and making related determinations and findings.

3.4. Contract specialists will plan and acquire goods and services needed so the Agency can accomplish the mission.

3.5. Contracting officers will:

3.5.1. Enter into and sign contracts on behalf of the Government to the extent of the authority delegated to them.

3.5.2. Ensure that all requirements of law, executive orders, regulations, and all other applicable procedures, including clearances and approvals, have been met before approval.

3.5.3. Ensure performance of all necessary actions for effective contracting, ensure compliance with the terms of the contract, and safeguard the interests of the United States in its contractual relationships.

3.5.4. Designate and authorize, in writing and in accordance with Agency procedures, Contracting Officer's Representatives (COR) on all contracts and orders other than those that are firm-fixed price, and for firm-fixed-price contracts and orders as appropriate, unless the Contracting Officer retains and executes the COR duties.

(b)(3):10 USC 424 3.6. [REDACTED] will execute and administer contracts and obligations on behalf of DIA.

3.7. The Office of the General Council (OGC) will:

3.7.1. Serve as the Designated Agency Ethics Official (DAEO).

3.7.2. Review justifications for other than full and open competition over \$650,000.

3.7.3. Review all procurement actions resulting from or connected with ratifications, litigation and final Contracting Officer decisions, equitable adjustments, settlements, novation and change-of-name agreements, intellectual property rights determinations, procurement integrity violations, mistakes in bids or proposals, late bid or proposal determinations, terminations, protests, appeals, and any deviation from the acquisition regulations.

3.7.4. Review all other contract-related actions above \$5,000,000 (dollar value subject to change) for legal sufficiency.

3.8. The Office of the Inspector General will monitor/audit the actions of the Contracting Office to ensure compliance with Federal, Defense and local regulations.

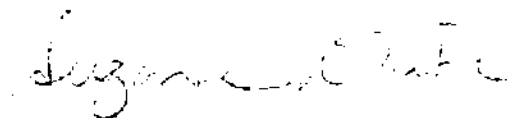
3.9. DIA personnel responsible for acquisition functions will comply with the contents of this Instruction, in addition to the related guidance contained in the resources herein.

4. Procedures:

4.1. The DARSI procedures are contained in Enclosure 2. The paragraph numbering sequence corresponds to those used in References (b) and (c).

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SUZANNE L. WHITE  
Chief of Staff

Enclosures - 3

E1. Additional References

E2. DARSI Procedures

E3. List of Acronyms

Enclosure 1.

## REFERENCES

- (f) Enclosure 9 of DoDI 5000.02, "Acquisition of Services," 8 Dec 2008
- (g) DoDM 8570.01-M, "Information Assurance Workforce Improvement Program," Change 3, 24 Jan 2012
- (h) DoDD 8000.01, "Management of the Department of Defense Information Enterprise," 10 Feb 2009
- (i) DoDM 5220.22-M, "National Industrial Security Program Operating Manual," Change 1, 28 Mar 2013
- (j) DoD 5500.07-R, "Joint Ethics Regulation," Change 7, 11 Nov 2011
- (k) DIAI 7040.006, "Civilian Non-Appropriated Funds and Morale, welfare, and Recreation Activities," 23 November 2012
- (l) Army Regulation 215-4, "Nonappropriated Fund Contracting," 29 July 2008
- (m) Army Regulation 215-7, "Civilian Non-Appropriated Funds and Morale, welfare, and Recreation Activities," 26 January 2001
- (n) DoDM 4400-1, "Department of Defense Priorities and Allocation Manual," 21 February 2002
- (o) DoDM 5220.22-M, Vol 3, "National Industrial Security Program; Procedures for Government Activities Relating to Foreign Ownership, Control, or Influence (FOCI)," 17 Apr 2014
- (p) DoDM 5105.21, Vol 3, "Sensitive Compartmented Information (SCI) Administrative Security Manual: Administration of Personnel Security, Industrial Security, and Special Activities," 19 Oct 2012
- (q) DoDM 5200.01, Vol 3, "DoD Information Security Program: Protection of Classified Information" 19 Mar 2013

Enclosure 2.

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## Resources

Throughout this instruction there will be references made to numerous types (checklists, guides, templates, etc.) of resources (formerly DARSIS References).

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The Resources page on the DIA Acquisition Policy SharePoint site consists of the documents previously known as “DARSIS References” and “Helpful Documents for Contracting Officers.”

The resources documents are organized into the following groups:

- Authority and Responsibilities
- Checklists
- Closeout
- Contracting Officer Warrants
- Guides
- Internal Contract File Review
- Market Research
- Past Performance
- Planning
- Project Codes
- Security
- Templates
- Theater Business Clearance

## PART 1001 FEDERAL ACQUISITION REGULATIONS SYSTEM

### Subpart 1001.3 – Agency Acquisition Regulations

#### 1001.302 - Limitations.

(a) DARSI acquisition regulations will be limited to

(1) Those necessary to implement Federal Acquisition Regulation (FAR) and Defense Federal Acquisition Regulation Supplement (DFARS) policies and procedures within DIA; and

(2) Additional policies, procedures, solicitation provisions, or contract clauses that supplement the FAR and DFARS to satisfy the specific needs of DIA.

(b) The DARSI will not

(1) Unnecessarily repeat, paraphrase, or otherwise restate material contained in the FAR or DFARS; or

(2) Except as required by law or as provided in FAR Subpart 1.4, conflict or be inconsistent with the FAR and DFARS content.

#### 1001.303 - Publication and Codification.

The DARSI, as an issuance under FAR 1.301 (a)(2), will not be published in the *Federal Register*, nor will it be codified under an assigned chapter in Title 48, *Code of Federal Regulations*. However, the DARSI will parallel the FAR and DFARS in format, arrangement, and numbering system. Coverage in the DARSI that implements a specific part, subpart, section, or subsection of the FAR or DFARS will be numbered and titled to correspond to the appropriate FAR or DFARS number and title. Supplementary material for which there is no counterpart in the FAR or DFARS will be codified using chapter, part, subpart, section, or subsection numbers of 90 and up.

#### 1001.304-90 Agency control and compliance procedures.

(a) FAR Subpart 1.302, Limitations, prescribes the use of Agency acquisition regulations in order to satisfy the specific needs of the Agency. Specific guidance as related to changes to the FAR, DFARS, approved Agency guidance, and information disseminated by embedded hyperlinks in the text usually do not require further coordination; however, the

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Acquisition Policy Office has the responsibility to implement all changes within DIA.

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(b) Agency personnel will use the DIA automated procurement system (the Contract Management System (CMS)) to prepare, manage, and administer all pre- and post-award contract-related documents. The CMS Reporting Guide serves as a guide for inputting contract award data into CMS. All contractual actions, except non-appropriated funds procurements, will

be entered into CMS. Requisitions routed and approved in CMS are considered “signed,” therefore no physical signature is necessary. Internal approval documents subject to audit, such as Justifications for other than full and open competition and Determinations and Findings (D&Fs), will have dated physical evidence of required approvals (*e.g.*, signatures, digital signatures, or printouts of e-mails attesting approval). These documents will be retained in hard-copy format in the contract file and also may be retained in electronic form linked to the contract document file. Likewise, contractual documents that will go to an external party, such as a contractor, will include the physical signatures and dates. These documents will be retained in hardcopy format in the contract file, and they also may be retained as electronic files. Requesting organizations will submit requisitions or Military Interdepartmental Purchase Requests (MIPRs) and associated documents through the CMS system. Documents created external to the CMS system will be accepted, only by exception and upon approval, by the Head of the Contracting Activity (HCA).

#### **1001.304-91 Requesting changes to clauses or CMS templates.**

- (a) When a contracting officer determines a recurring requirement exists to use non-standard language affecting approved terms, conditions, provisions or CMS templates, the proposed language will be sent to Acquisition Policy through the HCA for review and approval. Acquisition Policy will coordinate with the Office of the General Counsel (OGC), when deemed necessary. Once approved, Acquisition Policy will update policy and, if required, initiate a change to a template in CMS.
- (b) Prior to inclusion in a solicitation or contractual document, Acquisition Policy also will review and approve modifications of CMS standard clauses on a one-time basis. Contract terms and conditions intended for one-time use will be clearly identified in the contract file.

### **Subpart 1001.4 – Deviations from the FAR**

#### **1001.403 Individual deviations.**

The DIA Senior Procurement Executive (SPE) is designated as the approval authority for requests for individual deviation approval, except those described in DFARS 201.402(1). All requests for deviation approval will be submitted by memorandum to the HCA. The HCA will review and forward to the SPE for approval.

(S-90) Generally, requiring organizations prepare, and contracting offices process, requests for individual deviation approval in accordance with DFARS 201.402(2). For deviations of categories listed in DFARS 201.402(1), the Contracting Officer will prepare a transmittal letter or e-mail for the SPE to sign. Acquisition Policy/Deputy, HCA, and OGC will review requests for individual deviation approval and accompanying transmittal letters or e-mail submissions. The HCA will forward reviewed documents with recommendations to the SPE using the documents provided by the requestor.

#### **1001.404-90 Class deviations.**

Generally, requiring organizations prepare, and contracting officers process, requests for class deviation approval in accordance with DFARS 201.402(2), including transmittal letters or e-mails for the SPE to sign. Acquisition Policy, HCA, and OGC will review requests for class deviation approval and accompanying transmittal letters or e-mail submissions. The HCA will forward reviewed documents with recommendations to the SPE using the documents provided by the requestor.

#### **1001.490 Deviations from this instruction.**

Requiring organizations prepare requests for individual or class deviation approval from this instruction and submit these requests for Contracting Officer review and processing. Acquisition Policy, HCA, and OGC review these requests prior to submittal to the SPE for approval. The HCA will forward reviewed documents with recommendations to the SPE using the documents provided by the requestor.

### **Subpart 1001.6 - Career Development, Contracting Authority, and Responsibilities**

#### **1001.601 General.**

As head of the Agency, the DR has delegated authority to the Component Acquisition Executive, the Senior Procurement Executive (SPE) and the Head of the Contracting Activity (HCA). The SPE manages the Acquisition system of the Agency embodied in the Virginia Contracting Activity (VaCA), DIA's contracting activity.

#### **10201.602 Contracting Officers.**

##### **10201.602-2-90 Contracting Officer's Representative.**

Contracting officers will appoint individuals to perform Contracting Officer's Representative (COR) duties. The COR Deskbook is the single point source of guidance and procedures for the COR program, and it provides the following guidance:

- (1) The definition of the term COR, including roles and responsibilities.
- (2) Qualification requirements, in terms of training, position and experience necessary to be nominated and designated as a COR in DIA.
- (3) The COR training curriculum.
- (4) COR nomination procedures and sample nomination memorandum.
- (5) COR designation procedures and sample Contracting Officer designation letter.
- (6) Procedures for obtaining and maintaining current information in the COR database.
- (7) Supervisory responsibilities of individuals designated as CORs.

- (8) Reference tools and resources.
- (9) Procedures for revocation/replacement of a COR.
- (10) COR file maintenance requirements.

#### **10201.602-2-91 Non-DIA Personnel Serving as Contracting Officer's Representatives.**

On rare occasion, a requirement's owner or unit supervisor may not have the staffing resources to nominate a DIA civilian or military employee to serve as a COR. In this instance, the requirement's owner or supervisor may nominate a non-DIA employee (e.g., a civilian on rotational assignment to DIA or military service liaison). These individuals will comply with DFARS 201.602-2 to qualify to represent the government as a COR. Directorates will ensure DIA interests are protected by implementing the proper safeguards as set forth by the guidance below.

In order to nominate a civilian rotational employee or military service liaison, the following criteria will be met:

- (a) The nominating official (COR supervisor) will write a justification statement to the Contracting Officer stating why it is necessary to nominate a non-DIA employee to serve as a COR and provide the proper documentation of that COR's training history or COR certification status.
- (b) The nomination is subject to approval by the Contracting Officer. The COR designation letter from the Contracting Officer constitutes the approval document for a non-DIA employee and will be maintained in the COR file and Contracting Officer's contract file.
- (c) The nominee will complete all DIA training certification requirements prior to being appointed as a COR.
- (d) The nominee will hold a TS-SCI clearance.
- (e) The sponsoring directorate is responsible for ensuring that the nominated COR's administrative data is recorded in eZHR (e.g., the nominee will be able to provide a social security number to be used in eZHR).
- (f) The requirement's owner or unit supervisor will ensure continuity of oversight in accordance with COR Deskbook, section 8.0.
- (g) The nominated COR will have a rotational tour length of two years minimum.
- (h) Minimum grade requirement: GG-11/E-8/O-3.
- (i) A COR should have no conflict of interest as described in the Ethics Regulations.
- (j) The designated COR will comply with all DIA instructions and directives.

#### **1001.602-3 Ratification of unauthorized commitments.**

(b)(2)(S-90) The HCA will make the final determination whether to ratify an unauthorized commitment after conferring with the Contracting Officer, VaCA division chief/deputy directorate representatives, and the OGC's office.

### **1001.602-3-90 Procedures for ratification of unauthorized commitments.**

Consistent with FAR 1.602-1(b), no ratification of an unauthorized commitment to contractors for supplies or services may be authorized unless the HCA, assisted by the cognizant Contracting Officer, ensures that all requirements of law, executive orders, regulations, and all other applicable procedures, including clearances and approvals, have been met. The government is not necessarily obligated to pay for supplies and/or services resulting from an unauthorized commitment, unless the commitment is ratified. DIA personnel who purported to bind the government through an unauthorized commitment may be held personally liable for all costs incurred.

The cognizant Contracting Officer will advise, in writing, anyone seeking ratification of an unauthorized commitment to utilize the DIA Checklist for Ratification of Unauthorized Commitments to establish the relevant facts and circumstances. The Contracting Officer will use the completed checklist package to document and record the request for ratification and ensure the proper reviews are performed in the process of deciding whether to approve the ratification.

### **1001.603 Selection, appointment, amendment and termination of appointment of Contracting Officers.**

#### **1001.603-1-90 General.**

- (a) It is the policy of the SPE to appoint sufficient numbers of qualified contracting officers to successfully accomplish the mission, taking into consideration the qualifications of the people nominated, their assigned responsibilities, current law and regulation and available resources.
- (b) The HCA is the appointing authority. In the absence of the HCA, the SPE acts as the appointing authority by approving/signing warrants.
- (c) The number of contracting officers will be balanced to allow for efficient operation and to provide for continuity of contracting support.
- (d) Contracting officers will not be directed to take any action that exceeds their delegated authority or is inconsistent with law, regulation, or policy.
- (e) Qualification standards will be maintained for contracting officers in accordance with applicable federal acquisition laws and regulations. Minimum qualifications are the experience, education and training required for a candidate's grade level in accordance with the FAR, DFARS, and pertinent DoD directives, manuals, and instructions.
- (f) Issuance, termination and amendments of certificates of appointment will follow the procedures outlined in the Contracting Officers Warrant System Manual.

#### **1001.690 Legal review.**

- (a) Contracting personnel may seek legal advice and assistance during all phases of the acquisition process, as appropriate to ensure legal sufficiency. However, any required internal reviews (*e.g.* independent Contracting Officer reviews) will be completed prior to the legal review.
- (b) The respective VaCA division chief will make the final determination whether a legal review is needed for urgent DIA requirements and those of the contingency contracting groups affiliated with the Agency, *e.g.*, DoD Inspector General (DoD/IG) and the Directorate for Operations.
- (c) Contracting personnel will obtain specific legal review for:
  - (1) Justifications for other than full and open competition over \$650,000.
  - (2) All contracting actions (including solicitations prior to issuance), except as elsewhere noted, in excess of \$5 million (total amount including all options and anticipated orders).
  - (3) All procurement actions resulting from or connected with ratifications, litigation and final Contracting Officer decisions, equitable adjustments, settlements, novation and change-of-name agreements, intellectual property rights determinations, procurement integrity violations, mistakes in bids or proposals, late bid or proposal determinations, terminations, protests, appeals, and any deviation from the acquisition regulations.
- (d) Contracting personnel should seek timely legal reviews.
- (e) OGC will inform the Contracting Officer in writing of any legal insufficiencies identified and recommend a course of action. The Contracting Officer will take steps to overcome legal sufficiency objections before proceeding with the proposed acquisition. For process integrity, the Contracting Officer will document the file as well as identify to OGC any objections to legal recommendations in sufficient time for the OGC to work with Acquisition Policy to reach consensus. If consensus cannot be reached, and if deemed appropriate, the area of difference may be raised within the OGC and Acquisition Policy chains of command.
- (f) Legal review will also be acquired for any other documentation that is specifically identified by other parts of the FAR, DFARS, Agency policy, or is identified by OGC as pertinent to any legal sufficiency review.

#### **1001.691 Independent Contracting Officer Review (ICR) Process.**

- (a) ICRs will be conducted to ensure contracts are prepared and executed in accordance with the FAR, DFARS, and Agency policy and guidance. The ICR will normally be performed by the VaCA division chief (or by a Contracting Officer within that division) where the contract action to be reviewed is within their warrant authority; however, due to workload and/or the non-availability of resources to perform an ICR, the VaCA division chief may coordinate with another VaCA division chief for the performance of this review.



- (b) An ICR is required for all solicitations and contract actions above the Simplified Acquisition Threshold (SAT) (including options), except incremental funding or deobligation of excess funds.
- (c) The individual performing the review will use the ICR form. This form will be retained in the official contract file.

#### **1001.692 Solicitation/Contract Review Board (SCRB)**

(a) The purpose of the SCRB is to review specific procurement actions to ensure that each proposed procurement action, when properly executed, will comply with established acquisition policies, procedures, and regulations. The SCRB process is a two-step approach consisting of the review of specific contract actions - one prior to the release of the solicitation and the other prior to the signing of the contract by the Contracting Officer. The SCRB process consists of both a full SCRB review process and a limited SCRB review process. The full SCRB review process will be conducted in a formal fashion; whereas, the limited SCRB process may be conducted formally or electronically. Refer to the SCRB guide for more information.

(b) Procurement Actions Subject to Limited SCRB Review:

- 1) All procurement actions between \$5 million and \$25M, including option periods.
- 2) Settlement of claims against the Government greater than \$500,000.
- 3) All proposed contract terminations, claims, and awards made while under protest or litigation.
- 4) Any procurement action, as requested by the HCA.

(c) Procurement Actions Subject to Full SCRB Review:

- 1) All procurement actions over \$25M, including option periods.
- 2) Any procurement action, as requested by the HCA.

#### **1001.693 Internal Contract File Reviews.**

Acquisition Policy will lead internal contract file reviews of the VaCA operating divisions at least once every three years or at more frequent intervals, as requested by the SPE or HCA. Reviews of specific processes or procurement actions may take place at any time. Acquisition Policy will prepare and submit the final report to the HCA and SPE. The final report will include areas for commendation, areas for improvement, findings and rationale, discussion issues and resolution, and recommendations. The final report will be made available to the contracting activity that was reviewed. For more details, see the Internal Contract File Review guidebook.

### **Subpart 1001.7 – Determinations and Findings**

**1001.702-90 General.**

Contracting personnel will refer to Determination and Findings Matrix when a determination and findings (D&F) is required.

**Subpart 1001.90 - Non-appropriated Funds**

The DIA Civilian Welfare Fund (CWF) and Restaurant Fund (RF) operate as civilian Non-Appropriated Fund and Morale, Welfare and Recreation Activities Instrumentalities (NAFI).

DIA non-appropriated fund purchases made on behalf of DIA NAFIs may be made by an authorized DIA Government Purchase Card (GPC) Cardholder designated to make NAF purchases, up to the limits established by the DIA GPC Program Manager. Purchases above such limits will be made by authorized contracting officers acting within the limits of their appointments. The contracting branch chief supporting the Directorate for Mission Services will determine which contracting officers and specialists within the branch will support the DIA NAFIs. The designated DIA contracting officers' certificates of appointment need not expressly state authority to award non-appropriated fund contracts. DIA NAFI contracts will adhere to the policies and procedures set forth in DIAI 7040.006, see Reference (k), Army Regulation 215-4, see Reference (l), Army Regulation 215-7, see Reference (m) and use the contract clauses and solicitation provisions at this NIPRnet website

<http://www.armymwr.org/programs/nafcontracting/default.aspx>.

NAFI procurements do not involve appropriated funds and are not required to be produced and tracked within DIA's designated Contract Management System (Comprizon.Suite<sup>TM</sup>). The terms and conditions set forth at the NIPRnet Army NAF site

(<http://www.armymwr.org/programs/nafcontracting/default.aspx>) are not available in the Comprizon.Suite<sup>TM</sup> clause database. Accordingly, do not use the Comprizon.Suite<sup>TM</sup> to generate NAF contracts.

**Subpart 1001.91 - Acquisition Training**

The Defense Acquisition Workforce Improvement Act (DAWIA) Deskbook provides guidance for acquisition workforce identification, a standardized certification program, and career development of the Agency's Acquisition, Technology and Logistics (AT&L) workforce. Additional guidance regarding the DAWIA Program can be found on the DAWIA website.

**1001.902 Independent Government Cost Estimates.**

Requirements personnel and contracting personnel will refer to the Independent Government Cost Estimate Guide when an Independent Government Cost Estimate (IGCE) is required with the procurement package. DIA policy requires an IGCE be generated for all proposed negotiated acquisitions over the micro-purchase threshold.

**PART 1002 DEFINITIONS OF WORDS AND TERMS**

## **Subpart 1002.1 - Definitions Unique to DIA**

### **1002.101-90 Definitions.**

- (a) Acquisition Executive. Within DIA, the Component Acquisition Executive is the Senior Procurement Executive (SPE).
- (b) Chief Acquisition Officer. Pursuant to 41 U.S.C. 414, each agency will appoint a Chief Acquisition Officer (CAO), who is responsible for the management of the acquisition activities and acquisition programs of the executive agency. Within DIA, this acquisition authority has been delegated to the CFO.
- (c) Chief of the Contracting Office. Within DIA, the Chief of the Contracting Office is any division chief of the VaCA or, if the division chief is absent, the deputy division chief.
- (d) Competition Advocate. Within DIA, the Competition Advocate is the Head of the HCA, the chief of the VaCA.
- (e) Contracting Officer. See FAR 2.101
- (f) Director. Within DIA, the Director is the Head of the Agency
- (g) Head of the Contracting Activity. Within DIA, the HCA is the chief of the VaCA as delegated by the DR.
- (h) Office of the General Counsel (OGC). Within DIA, the OGC provides legal guidance and representation for acquisitions, as required.
- (i) Office of the Inspector General (OIG). Within DIA, the OIG conducts audits, inspections, intelligence oversight and workforce assistance, as applicable to acquisitions.
- (j) Senior Procurement Executive (SPE). As stated in DFARS 202.101, the directors of the defense agencies have been delegated authority to act as the SPE for their respective agencies, except for such actions that by terms of statute, or any delegation, will be exercised by the Under Secretary of Defense (USD (AT&L)). On behalf of the DR, the Deputy Director has delegated to the Component Acquisition Executive the authority to serve as the Agency's SPE for all acquisition matters pertaining to the FAR and DFARS.
- (k) Virginia Contracting Activity (VaCA). DIA conducts its contracting activities under the name of the VaCA.

## **PART 1003 IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST**

### **Subpart 1003.1 - Safeguards**

### **1003.101 Standards of conduct.**

#### **1003.101-90 Requirement to avoid official endorsement of contractors.**

(a) Section 3-209 of DoD 5500.07-R, see Reference (j), the Joint Ethics Regulation (JER) prohibits the endorsement of a non-federal entity, event, product, service, or enterprise - either stated or implied - by DoD or DoD employees in their official capacities. The JER 3-209 further states that titles, positions, or organization names may not be used to suggest official endorsement or preferential treatment of any non-federal entity except those specifically listed in this JER section.

(b) In performing its mission, DIA relies on the support of many government contractors. Agency personnel are reminded that government contractors are non-federal entities; accordingly, endorsement of DIA contractors by DIA or DIA personnel in their official capacities is to be avoided pursuant to JER 3-209. The Federal acquisition system requires integrity, fairness, and openness and provides appropriate risk and reward mechanisms, including contractor performance reporting, for recognizing contractor performance.

The NIPRNET website for the JER is  
[http://www.dod.gov/dodgc/defense\\_ethics/ethics\\_regulation/](http://www.dod.gov/dodgc/defense_ethics/ethics_regulation/).

#### **1003.101-91 Contractor personnel use of message boards.**

DIA provides general discussion boards on the internal communications website to facilitate communication among DIA employees. The use of these online discussion boards is intended solely for DIA civilian and military employees. Contractor personnel are not permitted to use this service. All unauthorized user IDs will be denied the ability to post to these discussion boards. CORs are responsible for ensuring that contractor personnel assigned to their contracts are aware of this policy.

#### **1003.101-92 Contractor personnel training at DIA expense.**

(a) Government funded training will not be provided to contractor employees unless the requiring activity's responsible management official (office chief or above) has previously certified in writing to the Contracting Officer that the necessary factors to qualify for the exception are present. These factors are:

- (1) the training requested is unique to the government;
- (2) only the government can provide the training;
- (3) the training is nothing that is commercially available outside of the government, and
- (4) the desired training is for the contractor employees' adequate performance of the contract.

(b) If one or more of the above criteria determines that government funded training should be provided to contractor employees, the Contracting Officer will make the determination whether to include the training in the initial contract or modify an existing contract with this provision.

#### **1003.104 Procurement integrity.**

##### **1003.104-2 General.**

##### **1003.104-2-90 Procurement Integrity**

(a) Although the Contracting Officer has the primary responsibility for Procurement Integrity, the Procurement Integrity Program Manager provides a neutral, informal, confidential, and independent alternative for employees, managers, and customers to seek assistance in resolving procurement integrity issues. The primary function of the Program Manager is to assist personnel by acting as an independent sounding board to hear concerns about specific procurement integrity issues and to aid in the resolution of the concerns.

(b) The DIA Procurement Integrity Program Manager will act upon complaints and questions about alleged acts, omissions, improprieties, and systemic problems regarding procurement integrity issues within the Program Manager's purview. The Program Manager may conduct inquiries, develop, evaluate, and discuss options available to affected individuals as well as facilitate negotiations and mediating. He may call upon other resources of the organization as needed to assist in resolving procurement integrity issues or concerns.

(c) The DIA Procurement Integrity Program Manager will refer allegations of potential criminal misconduct discovered during the course of an inquiry to the appropriate investigative organization, and take no further action with regard to the potential misconduct. He may assist acquisition personnel in the resolution of procurement integrity issues. The Program Manager will act in a manner that does not jeopardize the reporting individual(s) and, if requested, maintain their anonymity to the extent allowed by applicable laws and regulations and ensure all affected offices and appropriate officials are consulted as part of any resolution process. The Program Manager will inform senior management personnel responsible for oversight, to include the Senior Procurement Executive, as appropriate, of issues raised, actions taken, and proposed or implemented resolutions.

(d) The Program Manager will not interfere with or usurp normal procurement and related authorities or render a decision that purports to bind the Organization, Agency, or Agency personnel. The Program Manager will not take any action or make a recommendation inconsistent with a law, policy, or applicable administrative decision or directly compel or attempt to compel an entity or any person to implement the Program Manager's recommendations. The Program Manager will not participate in the evaluation of proposals, the source selection process, or the adjudication of protests or formal contract disputes.

(e) The DIA Procurement Integrity Program Manager can be found at

(b)(3):10 USC 424

**1003.104-2-91 Ethics training.**

- (a) Ethics training for the acquisition workforce is mandatory, and it can be included as part of their 40 hours of continuing education required each year.
- (b) The DIA OGC is the Designated Agency Ethics Official (DAEO). All questions regarding ethics should be referred to OGC.

**1003.104-4-90 Disclosure, protection, and marking of proprietary and source selection information.**

The Contracting Officer will coordinate with Acquisition Policy and OGC on any release of contractor bid information, proposal information, or source selection information.

**1003.104-5 Disqualification.**

(S-90) An individual who will disqualify themselves pursuant to FAR 3.104-3(c)(1)(ii) will promptly notify the HCA of the need for recusal from the procurement action. Submit this notice to the Contracting Officer, OGC, Source Selection Authority (SSA) (if applicable), and HCA.

**1003.104-7 Violations or possible violations.****1003.104-7-90 Processing violations or possible violations.**

- (a) OGC, as the DIA DAEO, will be provided with all potential violations for review and opinion.
- (b) The Contracting Officer notification to the HCA will include the allegations and the potential impact on procurement actions.

**Subpart 1003.2 - Contractor Gratuities to Government Personnel****1003.203 Reporting suspected violations of the gratuities clause.**

Agency personnel will report suspected violations to the Contracting Officer in the format provided in DFARS 209.406-3. The Contracting Officer, in coordination with OGC, will review the suspected violation and potential impacts on the procurement, review the government's findings, and provide the recommended action to the HCA. The HCA will provide the contractor suspected of violating the clause an opportunity to review the government's findings and present additional facts prior to rendering a decision. The Contracting Officer, in coordination with OGC, may choose to amend the recommended action as a result of the contractor's presentation.

**1003.204 Treatment of violations.**

OGC is designated the official to determine if a violation of the gratuities clause has occurred. The HCA reviews all determinations and is the approval authority for actions to be taken as they are related to procurement matters.

### **Subpart 1003.3 – Reports of Suspected Antitrust Violations**

#### **1003.301 General.**

OGC has overall responsibility for coordination of remedies for fraud and corruption related to procurement activities. Agency personnel will report all suspected antitrust violations impacting procurements to the HCA and SPE.

### **Subpart 1003.4 – Contingent Fees**

#### **1003.405 Misrepresentations or violations of the covenant against contingent fees.**

Government personnel who suspect or have evidence of attempted or actual exercise of improper influence, misrepresentation of a contingent fee arrangement, or other violation of the covenant against contingent fees will report the matter to OGC. A copy of the report is transmitted to the Contracting Officer.

(S-90) The VaCA division chief reviews all procurement related remedies recommended by OGC. The HCA determines the appropriate action.

### **Subpart 1003.5 - Other Improper Business Practices**

#### **1003.502 Subcontractor kickbacks.**

##### **1003.502-2-90 Reporting of subcontractor kickbacks.**

Agency personnel who suspect violations of the Anti-Kickback Act will report this information to OGC and the IG's office in accordance with FAR 3.502.

#### **1003.570 Prohibitions on persons convicted of fraud or other defense contract related felonies.**

##### **1003.570-2-90 Prohibition period.**

The SPE has the authority to grant a waiver in the interest of national security. VaCA personnel will coordinate all waiver requests with Acquisition Policy, IG, and OGC.

### **Subpart 1003.6 – Contracts with Government Employees or Organizations Owned or Controlled by Them**

#### **1003.602-90 Exceptions.**

OGC reviews all requests for exceptions to the policy in FAR Subpart 3.601. The HCA is the approval authority.

### **Subpart 1003.8 – Limitation on the Payment of Funds to Influence Federal Transactions**

#### **1003.804 Policy.**

The Contracting Officer will forward a copy of all contractor disclosures to the Office of Corporate Communications (OCC) for submission to Congress.

#### **1003.806 Processing suspected violations.**

The Contracting Officer will refer suspected violations of the requirements of 31 U.S.C. 1352 to OGC with notification to the IG, HCA, and SPE.

## **PART 1004 ADMINISTRATIVE MATTERS**

### **Subpart 1004.2 – Contract Distribution**

#### **1004.202-90 Agency distribution requirements.**

All contract files should contain a contract distribution checklist, such as the Contract File Checklist, Section D.

#### **1004.203 Taxpayer identification information.**

If a contractual document is created using CMS, the taxpayer identification number is printed by the application.

### **Subpart 1004.4 – Safeguarding Classified Information within Industry**

#### **1004.403 Responsibilities of Contracting Officers.**

(a) Contracting officers will request that a DD Form 254, Contract Security Classification Specification, be submitted with the procurement package by the requiring activity when access to classified information is required by offerors or by a contractor during contract performance. The DD Form 254 will be coordinated with the Office of Security, Security Programs (SEC-1) prior to procurement package submittal.

(b) Prior to the release of the solicitation, contracting officers will ensure that the contract file contains verification from the security office that each offeror to be provided classified information is cleared under Foreign Ownership, Control of Influence (FOCI) in accordance with DoDM 5220.22-M, see Reference (i) and DoDM 5220.22-M, Vol 3, see Reference (o).



(c) Offerors will be advised of security requirements in the solicitation. If there is anticipation of the need for access to classified information, a DD Form 254 will be attached to the solicitation.

(S-90) Contract files for an acquisition that requires contractor generation of, or access to, classified material will contain:

(a) Copies of the original DD Form 254 and all revisions

(b) Verification from the security office that the contractor has been cleared in accordance with DoD Directive 5220.22-M, see Reference (i).

(S-91) For additional guidance, see the Guide for the Preparation of a DD Form 254, DD Form 254 (with instructions), the DIA Security Addendum - Standard, the DIA Security Addendum - SCIF, the SCI Release Form, the Non-SCI Release Form.

#### **1004.404 Solicitation provisions and contract clauses.**

**1004.404(a) - Insert Clause 1052.204-90, CONTRACTOR PERSONNEL CLEARANCES - CONTRACT**, in all solicitations and contracts requiring cleared personnel.

**1004.404(b) Reserved.**

**1004.404(c) Reserved.**

**1004.404(d) - Insert Clause 1052.204-93, PACKAGING AND MARKING OF CLASSIFIED ITEMS**, in all solicitations and contracts in which a contractor is required to deliver classified items.

**1004.404(e) - Insert Clause 1052.204-94, METHOD OF TRANSMISSION**, in all solicitations and contracts in which a contractor is required to deliver top secret items.

**1004.404(f) - Insert Clause 1052.204-95, SECURITY REQUIREMENTS**, in all solicitations and contracts requiring cleared personnel and/or cleared facilities.

**1004.404(g) - Prior to issuing solicitations and contracts with requirements for intelligence support services, contracting officers will consult with the requiring activity to determine if the prospective services have the potential to involve intelligence activities that affect U.S. Persons, and include the clause at 1052.204 96, ACTIVITIES THAT AFFECT U.S. PERSONS**, in all solicitations and contracts for intelligence support services that have the potential to involve intelligence activities that affect U.S. Persons.

**1004.404(h) - Insert Provision 1052.204-97, SECURITY CLEARANCE**, in all solicitations requiring cleared personnel and/or cleared facilities.

**1004.404(i) - Insert clause, 1052.204-98, HANDLING UNCLASSIFIED DoD INFORMATION,** in all solicitations and contracts that do not contain a DD 254 but will allow contractors access to unclassified DoD information.

### **Subpart 1004.6 - Contract Reporting**

#### **1004.606-90 Reporting data.**

For accurate contract reporting, it is critical that CMS accurately reflects the VaCA's procurement workload. In order to achieve this, all contractual actions, except purchase card transactions below the micro-purchase threshold and emergency and contingency purchases, will be entered into CMS. All other purchase card transactions, including those processed by VaCA's card holders, will be processed in CMS.

### **Subpart 1004.8 – Government Contract Files**

#### **1004.802 Contract files.**

##### **1004.802-90 Contract filing system.**

Contract files will be filed and maintained in accordance with the following procedures:

- (1) Active contracts will be filed in the relevant VaCA central contract file location.
- (2) One week after all actions are completed and the contract is ready for close-out, the contract file will be placed in the central contract file location reserved for those contracts that are physically completed and/or inactive.
- (3) A charge-out record, Optional Form 23, will be used whenever a contract file is removed from its primary location.

#### **1004.803 Contents of contract files.**

(S-90) Contracting Officer Log. Contracting officers will maintain a chronological list of the awarding and successor contracting officers with inclusive dates of responsibility for each contract. The names of assigned contract specialists will also be included on the list.

(S-91) Contract Modification Log. A contract modification log is required in all contract files. The purpose of the log is to monitor all modifications, keep a running total of the contract funds, and provide a snapshot of the actions issued against a contract. Refer to the Log Exemplar template.

- (a) Contract modification logs do not need to be completed with individual entries back to contract award unless there are fewer than ten (10) modifications. When the contract has more than ten modifications, entries should be recorded as follows:

Date: Date log is added to the contract file  
 Action: Award through Mod XX  
 Purpose: Adding modification log to contract file  
 Obligated Amount: Amount, if any, of current modification  
 Cumulative Amount: Total of initial award plus all modifications

(S-92) Contract File Checklists. Procurement files in excess of the micro-purchase threshold will contain the appropriate contract file checklist(s) and all documentation will be filed accordingly.

The file checklists are as follows:

- (1) Checklist for Task Orders
- (2) Checklist for Simplified acquisitions
- (3) Checklist for General Services Administration (GSA) Orders
- (4) Checklist for Section A of contract files during the contract pre-solicitation phase, applicable to FAR Parts 12, 14, and 15
- (5) Checklist for Section B of contract files during the evaluation and pre-award phases, applicable to FAR Parts 12, 14, and 15
- (6) Checklist for Section C of contract files for additional documents in support of the contract
- (7) Checklist for Section D of contract files used to document contract and modifications distribution
- (8) Checklist for Section E of contract files for documentation of modifications applicable to FAR Parts 1, 14, 15, 19, 33, and 42
- (9) Checklist for Section F of contract files used for other types of contract vehicles, *i.e.* delivery orders, purchases orders, Blanket Purchase Agreements (BPAs), and commercial items

#### **1004.803-90 Organization and marking of file folders.**

Each file folder will be prominently marked and labeled with the contract number, project name (or supply or service), and the name of the contractor.

#### **1004.804 Closeout of contract files.**

All contracts will be closed out in accordance with the timeframes outlined in FAR Part 4. DIA policy is to initiate closeout procedures as soon as a contract is physically complete or has been terminated.

**1004.804-5 Procedures for closing out contract files.**

(S-90) The COR certifies satisfactory completion of work and receipt and acceptance of all goods and services by completing the COR Contract Completion Statement. The COR consults with the Office of Logistics (LOG) regarding disposition of any accountable property acquired during the performance of the contract. The Contracting Officer verifies and concurs with the COR certification and the property disposition recommendation.

(S-91) All contracts will be closed out in CMS. For further detail, see the Contract Closeout Guide.

**1004.804-90 COR files.**

CORs will establish the COR contract file upon their designation in the contract award document and receipt of the contract. At the time of contract closeout, the COR file will be forwarded to the Contracting Officer for inclusion in the contract record. Detailed information regarding the COR's responsibilities are located in the COR Deskbook.

**Subpart 1004.13 - Personal Identity Verification****1004.1301 Policy.****1004.1301-90 Identification management for contractor personnel.**

All contractors whose contract performance requirements include physical access to government facilities and/or access to government information technology (IT) systems will comply with Agency implementation of the Personal Identity Verification Project, which is based on the National Institute of Standards and Technology Standard FIPS-201 and in response to the Presidential Directive HSPD-12, OMB Notice 201, and FAR Case 2005-15.

**Responsibilities:**

- (a) The Contract Specialist is responsible for incorporating in any applicable solicitation and resulting contract, a requirement for the contractor to comply with the FIPS-201 personnel identification standards. In coordination with Agency security officials, this will be placed as a Special Contract Requirement uniquely developed for the specific contract action or a standardized Agency-wide approach.
- (b) The Contracting Officer will support and oversee the Contract Specialist's efforts and ensure the use of the most recent Agency implementation guidance in each solicitation and contract action.

**Procedures:**

- (a) Security requirements imposed under the contract will comply with Agency implementation

of the Personal Identity Verification Project, National Institute of Standards and Technology Standard FIPS-201, Presidential Directive HSPD-12, OMB Notice 201, and FAR Case 2005-15, as currently implemented by DIA and may subject the contractor to the potential for a system review, a compliance audit or a reporting mechanism to:

- (1) Validate that adequate processes are in place for the identification of its personnel
- (2) Indicate contractor understanding and safeguarding of information required in FIPS-201
- (3) Demonstrate compliance with procedures and authentication and repudiation timeframes for personnel with respect to both physical access to Government facilities and logical access to Government IT systems.

### **Subpart 10204.70 – Uniform Procurement Instrument Identification Numbers**

#### **10204.7000 Scope.**

The policies and procedures prescribed in DFARS 204.70 are mandatory for all DIA procurement actions, except for purchase card transactions.

(S-90) When placing orders against another activity's contract or agreement, DFARS 204.7000 prescribes policies and procedures for assigning numbers to all solicitations, contracts, and related instruments. Basic PII numbers are contained in DFARS 204.7003 and Supplementary PII numbers are contained in DFARS 204.7004. Supplementary PII procedures include, at DFARS 204.7004 (d)(2)(i), a procedure to identify when an office placing the order or call is different from the office identified in the basic PII number. In such cases, the ordering office assigns a four position serial number to the order or call, with the first and second positions of the serial number containing a unique call/order code assigned under DFARS 204.7005. "2X" is the code assigned for VaCA.

(S-91) For contracting actions placed with or through other Government departments or agencies or against contracts placed by such departments or agencies outside of DoD, assign a number consisting of 13 alpha-numeric characters in accordance with the procedures at DFARS 204.7003. Use "F" to indicate the type of instrument in Position 9 and allow Comprizon.Suite™ to generate the serial number of the instrument in Position 10 through 13. Do not insert the "2X" assigned order code in the serial number.

## **PART 1005 PUBLICIZING CONTRACT ACTIONS**

### **Subpart 1005.3 – Synopses of Proposed Contract Awards**

#### **1005.303 Announcement of contract awards.**

The Contracting Officer may determine it is in the government's best interest, from a counterintelligence standpoint, not to disclose publicly the award, or proposed award, of a procurement action if such disclosure would compromise national security. For those

procurements not expressly exempted by FAR Subpart 5.303, but otherwise deemed by the Contracting Officer, in collaboration with the Office of Security as having the potential of compromising national security as described in DARS 10205.303 (S-90), VaCA contracting officers will prepare a Memorandum to the File, and at a minimum, include the following information:

The Defense Intelligence Agency is committed to excellence in defense of the nation. Our mission is to be, "...first in all-source defense intelligence to prevent strategic surprise and deliver a decision advantage to warfighters, defense planners, and policymakers. We deploy globally alongside warfighters and interagency partners to defend America's national security interests." Fulfillment of the mission is heavily reliant upon the procurement of a vast array of goods and services from many commercial entities. This may provide unwanted attention that enables hostile entities worldwide to target DIA vendors and their employees. In addition, many of the products and services DIA acquires are used in connection with or integrated into intelligence collection systems that reside on platforms throughout the world.

It is in the Government's best interest from a counterintelligence and OPSEC standpoint that the award of this procurement action is not publicly disclosed outside this Agency and that such disclosure would compromise national security.

This Memorandum to the File will be retained in the VaCA contract file and a copy will be provided to OCC.

#### **10205.303 Announcement of contract awards.**

(S-90) The following mandatory procedure provides the Head of the Contracting Activity (HCA)/VaCA buying offices and Office of Corporate Communications (OCC) information for preparation of reports in accordance with Federal Acquisition Regulation (FAR) Subpart 5.303 and Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 205.303: Announcement of Contract Awards. Contractual actions pursuant to FAR Subpart 5.303(a)(1) - (3) are exempt from this requirement. However, for those actions that are not exempt and disclosure of the award could have the potential of compromising national security from a counterintelligence or operations security perspective, the information will not be disclosed to outside sources, reference DARS 1005.303 for additional guidance.

(S-91) The Public Announcement and Congressional Notification form will be used for all contractual actions (including modifications to existing contracts) that have a face value, excluding unexercised options, of more than \$6.5 million. Do not report the same contractual action twice. Refer to DFARS Subpart 205.303(a)(i)(A) and (B) for additional guidance regarding the reporting of certain contractual actions.

(a) The requirement owner within the Directorate or Special Office is responsible for ensuring that a security pre-publication review is conducted and for coordinating with the organization's designated Operations Security (OPSEC) Program Manager (PM). A Security Officer Pre-Publication Review Form will be completed and routed through the Directorate/Special Office Special Security Control Security Officer (SSCO) for all information proposed for public release

to ensure compliance with established national and DoD policies, and to determine that it contains no classified, controlled unclassified, or export-controlled information prior to submission to the Contracting Officer. The organization may request advice and assistance from the higher echelon security and OPSEC functional representatives, if desired. The contracting officer will create the Public Announcement and Congressional Notification form which includes the one-paragraph public announcement, block 14).

(b) If it is found to be releasable, then at least 5 business day prior to the anticipated release of the notification to the OCC, the Contracting Officer will prepare the Public Announcement and Congressional Notification form and the Contract Announcement Memorandum.

(c) The Contracting Officer will electronically submit the Public Announcement and Congressional Notification form, Security Officer Pre-Publication Review Form and the Contract Announcement memorandum to the following email address no later than close of business the day before award is to be made:

(b)(3):10 USC  
424

#OCC Contract Notification Team [REDACTED]

(b)(3):10 USC 424

[REDACTED] will review the one paragraph public announcement and Security Officer Pre-Publication Review Form and electronically submit the paragraph to the Assistant Secretary of Defense (Public Affairs) at pa.contracts@osd.mil (unclassified email address) by 1400, Washington, DC LOCAL TIME the day prior to final signature of the contract.

(b)(3):10 USC 424

(b)(3):10 USC 424

[REDACTED] will review [REDACTED] announcement document and determine the members of Congress in whose state or district the contractor is located and in whose state or district the work is to be performed. [REDACTED] will also determine, on a case-by-case basis, if a more formal congressional notification (CN) is required, to provide amplifying information to members of Congress on high-profile issues. OCC will provide the formal CN template if this is the case.

(f) Assistant Secretary of Defense (Public Affairs) will publish the one-paragraph public announcement on [www.defense.gov/contracts](http://www.defense.gov/contracts) (unclassified website) at 1700, Washington, DC LOCAL TIME coinciding with the final signature on the contract. At that time, OCC will notify members of Congress in whose state or district the contractor is located and in whose state or district the work is to be performed via faxed Contract Announcement document.

(g) The original Public Announcement, Security Officer Pre-Publication Review Form and Congressional Notification form will be retained in the VaCA contract file. The one paragraph public announcement, the Contract Announcement document and any necessary supporting documentation will be retained by OCC.

(h) This process is summarized in the Contract Notification Timeline below:

1 (calendar day)	1) Contracting officer will determine if contract exceeds \$6.5M excluding unexercised options. No = No public announcement. 2) Contracting officer will determine if any exceptions at FAR 5.303(a)(1), (2), or (3) apply. Yes = No public announcement
2 (calendar days)	Contracting officer will contact the Office of Security and organizational OPSEC PM/Coordinator to determine if disclosure of the award would compromise national security or sensitivities. Yes = No public announcement and creation of Memorandum to the File (verbiage reflected in DARS 1005.303)
5 (calendar days)	Contracting officer will prepare and electronically submit the Public Announcement and Congressional Notification form, Security Officer Pre-Publication Review Form and the Contract Announcement memorandum to OCC
3 (calendar days)	(b)(3):10 USC 424 [redacted] will review the one-paragraph public announcement and Security Officer Pre-Publication Review Form prior to release. [redacted] will determine the members of Congress in whose state or district the contractor is located and in whose state or district the work is to be performed. (b)(3):10 USC 424
1 (calendar day), NLT 1400 Washington DC LOCAL TIME	(b)(3):10 USC 424 [redacted] will submit the one paragraph public announcement electronically to the OASD(PA) at <a href="mailto:pa.contracts@osd.mil">pa.contracts@osd.mil</a>
	<b>Contract signed</b>
1700 Washington DC LOCAL TIME	OASD(PA) will publish the one paragraph public announcement on <a href="http://www.defense.gov/contracts">www.defense.gov/contracts</a>
1700 Washington DC LOCAL TIME	(b)(3):10 USC 424 [redacted] will notify members of Congress in whose state or district the contractor is located and in whose state or district the work is to be performed via faxed Contract Announcement
*C+XX	(b)(3):10 USC 424 [redacted] will distribute amplifying CNs as deemed necessary/appropriate

\*For a significant Indefinite Delivery Indefinite Quantity (IDIQ) umbrella contract award, a formal congressional notification with amplifying information will also need to be written, in accordance with [redacted]. A formal congressional notification will require greater lead time. If you have questions regarding whether a contract is significant enough to merit a formal congressional notification to DIA's oversight committees, please contact the OCC Deputy for Legislative Management at 202-231-0843.

(b)(3):50 USC 3024(i)



## **PART 1006 COMPETITION REQUIREMENTS**

### **Subpart 1006.3 - Other Than Full and Open Competition**

#### **1006.301-90 Policy.**

For procurements subject to other than full and open competition, see the Guide for the Preparation of the Justification for Other Than Full and Open Competition (JOFOC).

#### **1006.302-2 Unusual and compelling urgency.**

(S-90) The Contracting Officer will obtain the appropriate level of approval orally prior to contract award, and submit the written justification to the approving authority no later than 14 calendar days after award, only if the preparation of the justification and signed approval prior to award would unreasonably delay the acquisition.

#### **1006.303-1-90 Requirements.**

The Contracting Officer will amend the justification and obtain the required approvals when any of the following occur prior to contract award:

- (1) An increase in the dollar amount of the prospective contract beyond the authority of the previous approving official.
- (2) A change in the competitive strategy that reduces competition.
- (3) A change in requirements that affects the basis for the justification.

#### **1006.304 Approval of justification.**

(S-90) The justification prepared pursuant to FAR 6.302, except as otherwise limited (for example, FAR 6.302-7), is processed as follows:

- (1) For proposed procurements less than or equal to \$650,000, the Contracting Officer's written certification will serve as approval and will be maintained in the contract file. A formal JOFOC is not required for proposed procurements less than or equal to the SAT; however, the requiring activity will provide adequate rationale and justification to the Contracting Officer in order for the Contracting Officer to make a concurring written determination for the contract file.
- (2) For proposed procurements more than \$650,000 but less than or equal to \$12.5 million, the Contracting Officer will certify, OGC will review, and the Competition Advocate is the approving authority.
- (3) For proposed procurements more than \$12.5 million but less than or equal to \$85.5 million, the Contracting Officer certifies, OGC reviews, the Competition Advocate

concur, and the HCA is the approving authority. For proposed procurements of \$85.5 million or greater, the Contracting Officer certifies, OGC reviews, the Competition Advocate and the HCA concur, and the SPE is the approving authority. Submit a copy of the approval request package to the Acquisition Policy, for consultation purposes concurrently with submission to the Approval Authority.

(S-91) The requirements officer is required to sign and certify all JOFOCs over the SAT. The supervisor or management of the requirements officer is also required to sign and concur in all JOFOCs over \$650,000. For further detail, see the Guide for the Preparation of the Justification for Other Than Full and Open Competition and/or the JOFOC template.

### **1006.305 Synopsis and JOFOC Posting Requirements**

(a) Except for sole source actions based on the “unusual and compelling urgency” exception (FAR 6.302-2), the synopsis and solicitation for a sole source action will meet the same time and publication requirements described at FAR 5.203 which are applicable to contract actions conducted under full and open competition unless the Contracting Officer determines that one of the exceptions at FAR 5.202 apply. In terms of content, the FAR requires the synopsis include the same information as required in a notice pursuant to full and open competition plus the synopsis will identify the intended source, the reason justifying the lack of competition, and indicate that all responsible sources may submit a capability statement or proposal (FAR 5.207(c)(15) and (16)).

(b) In addition, since the purpose of synopsis “is to enhance the possibility of competition,” GAO decisions indicate the synopsis will (1) provide “accurate description” of the supplies/services, (2) be “clear and concise,” (3) be descriptive enough to allow prospective contractors to make an informed business judgment as to whether to request a copy of the solicitation, and (4) provide prospective alternate sources a meaningful opportunity to demonstrate their ability to provide the supplies/services.

(c) Unless an exception applies, DIA contracting officers and specialists are required to make JOFOCs publically available within 14 days after contract award except, when using urgent and compelling circumstances, the JOFOC will be posted within 30 days after award. In the case of a brand name JOFOC, the justification shall be posted with the RFP or RFQ. The sole exception to this requirement is if “posting the justification would disclose the executive agency’s needs and disclosure of such needs would compromise national security or create other security risks.”

### **1006.306 Additional JOFOC Requirements**

(a) Unless waived by the HCA, DIA contracting officers or specialists are required to use RFIs or Sources Sought notices before soliciting non-competitive acquisitions that cite FAR 6.302-1 - “Only One Responsible Source.”

(b) JOFOCs for follow-on acquisitions will include the prior JOFOCs part of the approval package and, if planned actions to improve competition in the prior JOFOC were not completed, the new JOFOC will be approved one level above the level of approval for the prior JOFOC.

### **Subpart 1006.5 – Competition Advocate**

#### **1006.501 Requirement.**

The DR has delegated authority to the HCA to act as the Agency's Competition Advocate.

#### **1006.502 Duties and responsibilities.**

(S-90) The Agency Competition Advocate will comply with duties and responsibilities stated in FAR 6.502. The Competition Advocate will review and approve Justifications complying with the thresholds at 1006.304.

(S-91) The Agency Competition Advocate will submit an annual competition report to the SPE as outlined in FAR 6.502.

## **PART 1007 ACQUISITION PLANNING**

### **Subpart 1007.1 - Acquisition Planning**

#### **1007.102-90 Policy.**

(a) Some form of acquisition planning is required for all procurements commensurate with the magnitude of the requirement. Acquisition planning is required for all acquisitions except:

- (1) Contracts awarded using the simplified acquisition procedures of FAR Part 13.
- (2) Contract actions where the authority for the JOFOC is 10 U.S.C. 2304(c)(2), unusual and compelling urgency; or 10 U.S.C. 2304(c)(5), authorized or required by statute.
- (3) Contract modifications that are within the contract scope, including the exercise of priced options that were evaluated as part of the original solicitation.
- (4) Individual task or delivery orders under a base DIA task/delivery order contract that already has an approved acquisition plan.

(b) The Head of the Contracting Activity (HCA) has directed, effective immediately, DIA contracting officers and contract specialists, in collaboration with their customers, are required hold a Procurement Planning Conference and complete a Procurement Acquisition Lead Time (PALT) worksheet for all acquisitions.

The Technical Representative or Requirements Owner/Customer shall begin working with the Contracting Officer/Contract Specialist to schedule a "kick-off" Procurement Planning Conference meeting as early as possible in the acquisition process (preferably as soon as possible after the procurement actions have been identified in the Spend Plan). The "kick-off" meeting

will assist in defining each individual's role in the process and provide a realistic timeline for the specific acquisition.

Contracting Officers and Specialists shall use the **Procurement Planning Conference templates** and the **PALT Scheduler Tool**, located in the Acquisition Policy SharePoint Resources library. There is a separate PALT Scheduler Tool template for each type of contract action. The top of the Procurement Planning Template should be completed by the specialist with the relevant information for the procurement action. The PALT Scheduler Tool will calculate the dates for you after you enter the date the award is needed in the "Contract Signed" field at the bottom. The "Actual Dates" column will then be used to track the actual progress of the procurement against the planned dates. The template will calculate the actual number of elapsed days based on the dates actually entered. (Refer to the PALT schedule notes for additional instructions.)

Contracting Officers and Specialists shall prepare the PALT Schedule/Milestone Sheet in collaboration with their Technical Representative and Requirements Owner/Customer. After completion of the Procurement Planning Conference, the Contracting Officer, Technical Representative and Requirements Owner/Customer shall sign the Procurement Plan.

#### **1007.103 Agency-head responsibilities.**

The DIA Competition Advocate ensures compliance with the requirements of FAR 7.103.

#### **1007.104 General procedures.**

The program manager or requirements initiator (may include the COR if this individual has been identified to perform in a pre-award role) initiates and coordinates the acquisition planning team activities and development of the acquisition planning documentation. In addition to the requirements of FAR 7.105, planners will follow the procedures at PGI 207.105.

#### **1007.105 Contents of written acquisition plans.**

(S-90) Milestones for the acquisition cycle. The DIA Procurement Acquisition Lead Time Schedule is reflected in the CMS acquisition planning module. The requiring activity and the Contracting Officer are responsible for coordinating the estimated number of days for the completion of each event of the acquisition cycle. Acquisition planning timelines will include sufficient time for award at least 4 months before expiration of the incumbent contract to allow for resolution of any protest. When not providing for full and open competition, DIA contracting officers and specialists will conduct, when practical, limited competitions rather than limiting consideration to only a single source. At contract award, CMS will reflect the actual number of days for the processing of the acquisition.

#### **1007.105-90 Written acquisition plans.**

In accordance with DFARS 207.103(d)(i)(A), (B), and (C), individual or program contract acquisition plans will be written for acquisitions for development as defined in FAR 35.001

when the total cost of all contracts for the acquisition program is estimated at \$10M or more; for acquisitions for production or services when the estimated contract amount, including options, is equal to or exceeds \$50M or \$25M or more for any fiscal year and any other acquisition considered appropriate by the SPE. A streamlined acquisition planning summary sheet is required for use in requirements greater than \$5M, but not meeting the thresholds identified herein. Furthermore, for letter contracts greater than \$5M, either a streamlined acquisition planning summary sheet or acquisition plan will be prepared within 30 days from contract award. The Guide for the Preparation of Written Acquisition Plans provides additional information, procedures and formats.

The program office prepares acquisition plans, acquisition planning summary sheets, and related documentation, in close coordination with the Contracting Officer.

To summarize:

Streamlined Plan	Required $\geq$ \$5M < \$10M (for R&D)
Streamlined Plan	Required $\geq$ \$5M < \$50M (for Services or Production)
Formal Acquisition Plan	Required for R&D $\geq$ \$10M
Formal Acquisition Plan	Required for Services or Production $\geq$ \$50M (or $\geq$ \$25M in any fiscal year)

#### **1007.105-91 Acquisition plan approval.**

The following are the review and approval thresholds required for written acquisition planning documents:

- (1) For procurements under \$5 million, formal acquisition plans are not required but acquisition planning should be documented to the satisfaction of the acquisition team.
- (2) For requirements greater than \$5 million but less than the thresholds identified in 1007.105-90, the streamlined acquisition plan format may be utilized. The program/project manager, (the chief information officer (CIO) designee, if IT or IT related), the Contracting Officer, and small business office review and concur with the plan. The VaCA division chief or deputy approves the plan.
- (3) For plans meeting the thresholds identified in 1007.105-90, a formal plan is required. The program/project manager (the CIO designee, if IT or IT related, the Contracting Officer, small business office, the Agency Competition Advocate, and the VaCA Division Chief review and concur with the plan. The HCA approves the plan unless it is for "services" over \$250 million, in which case the SPE will approve the plan.

#### **1007.190 Authority to provide DIA facility space to contractors.**

The Office of Logistics (LOG) has overall responsibility for managing the assignment of workspace to the DIA workforce. All statements of work or purchase descriptions that indicate DIA will provide space to a contractor, for any reason, require the prior approval of LOG. Contracting officers will not accept a purchase request package, if the contract work statement, purchase description, or other documentation indicates DIA will provide government space to a contractor without LOG concurrence.

## **PART 1008 REQUIRED SOURCES OF SUPPLIES AND SERVICES**

### **Subpart 1008.4 – Federal Supply Schedules**

#### **1008.405-90 Ordering procedures for federal supply schedules.**

The Contracting Officer will use one of the following sample best value/price reasonableness determination templates for documenting the contract file. The Contracting Officer is the approving official.

- (1) FAR Part 8 Actions > the micro-purchase threshold and  $\leq$  the SAT.
- (2) FAR Part 8 Actions > the SAT.

#### **1008.405-91 Additional ordering procedures for federal supply schedules.**

For additional ordering procedures for federal supply schedules, see **1017.504-90, Ordering Procedures**, and **1017.504-91, Additional Ordering Procedures**.

#### **1008.405-92 Competitive evaluations under GSA schedules.**

If a determination is made to use FAR Subpart 8.4 procedures when ordering off GSA schedules, the appropriate FAR Part 8-Best Value template will be used.

It should be noted that a separate evaluation plan is not required when using these procedures as long as the evaluation procedures and criteria are spelled out in the FAR Part 8-Best Value template.

#### **1008.405-6-90 Limited sources justification and approval.**

A limited sources Justification (refer to the limited sources justification template) is required for actions under the federal supply schedule in excess of the SAT when the competition requirements in FAR 8.405-6 and DFARS 208.405-70 cannot be met.

The approving officials for Justifications under this subpart are the same as those identified in 1006.304.

#### **1008.406 Ordering activity responsibilities.**

**1008.406-1-90 Order placement.**

When complying with the order placement requirements at FAR 8.406.1, the purchase card should be used, to the maximum extent practicable, as a payment mechanism for acquiring goods and services from Federal Supply Schedules (FSS). The purchase cardholder is limited by his or her authority as a Contracting Officer or by the maximum order threshold of the schedule, whichever is less.

**Subpart 1008.6 – Acquisition from Federal Prison Industries (FPI), Inc.****1008.602-90 Policy.**

(a) Section 827 of the FY 2008 National Defense Authorization Act (NDAA) required DoD to publish a list of product categories for which FPI's share of the DoD market is greater than five percent.

(b) Pursuant to the same DPAP memo, contracting officers will procure items on the subject list using competitive (or fair opportunity) procedures in accordance with DFARS 208.602. In conducting such a competition, contracting officers will consider a timely offer from FPI for any of the products on the list. FPI will be included in the process even if a determination has been made to set aside the procurement in accordance with FAR Part 19.

(c) Award will be made in accordance with FAR Subpart 8.602(a)(4). When the FPI item is determined to provide the best value to the government as a result of FPI's response to a competitive solicitation, contracting officers are to follow the ordering procedures at <http://www.unicor.gov>. If FPI does not have a significant market share for a particular product, contracting officers should follow the process outlined in FAR Subpart 8.6.

**PART 1009 CONTRACTOR QUALIFICATIONS****Subpart 1009.1 - Responsible Prospective Contractors****1009.105-2 Determinations and documentation**

(a) DIA contracting officers are required to possess or obtain information sufficient to be satisfied that a prospective contractor meets the responsibility requirements of FAR 9.104. Contracting officers will document decisions of non-responsibility and refer such cases to the Agency Suspending and Debarment Official (SDO) if, pursuant to FAR Subpart 9.4, the basis for the non-responsibility finding supports consideration of suspension or debarment proceedings. For DIA, the SDO is the SPE.

(b) In this regard, for solicitations exceeding the simplified acquisition threshold, contracting officers are required to (i) include the provision at FAR 52.209-5, "Certification Regarding Responsibility Matters," (ii) review the offerors' responses to the provision promptly upon receipt of offers; and (iii) if necessary, request additional information to demonstrate responsibility. Prior to proceeding with award, contracting officers will notify the Agency SDO

if an offeror indicates the existence of a Federal tax delinquency in an amount that exceeds \$3,000, or that results in an indictment, charge, conviction, or civil judgment.

### **Subpart 1009.4 – Debarment, Suspension, and Ineligibility**

#### **1009.403 Definitions**

Pursuant to DFARS 209.403, the SPE is the “suspending and debarring official” (SDO) at DIA.

#### **1009.404-90 Excluded parties list system.**

- (a) Prior to issuance of solicitations and award of contracts the Contracting Officer is responsible for reviewing the Excluded Parties List in the System for Award Management (SAM) to ensure no business is conducted with parties on the list.
- (b) The VaCA division chief ensures that additions to the list are reviewed against open contracts. If DIA has contracts with contractors or their affiliates identified on the list, the Contracting Officer, in coordination with the HCA, Acquisition Policy, and OGC, will determine appropriate action and prepare a report for approval of the SPE with the recommended action.
- (c) When the SPE determines that a compelling reason exists for the Agency to conduct business with a contractor that is debarred or suspended from the procurement, the SPE provides the written determination notice to the GSA Office from Acquisition Policy.

#### **1009.406-1 General**

DIA will follow the suspension and debarment procedures outlined in Appendix H of the DFARS.

#### **1009.406-3 Debarment Procedures**

##### **(a) Investigation and Referral:**

When the Contracting Officer becomes aware of a situation that requires consideration of debarment or suspension for a contractor under FAR 9.4, he/she will coordinate with OGC for possible action. Circumstances that involve possible criminal or fraudulent activities will also be reported to the OIG.

##### **(b) Decision-making process.**

- (1) Contractors proposed for debarment will be afforded an opportunity to submit information and argument in opposition to the proposed debarment.
- (2) Matters in opposition, presented to the SPE, may be presented in person, in writing, through a representative, or through any combination of these methods. If a contractor desires to present matters in person or through a representative, any written matters will be delivered at least five working days in advance of the oral presentation. With the exception



of the foregoing, all matters in opposition will be presented in a single proceeding. Such a proceeding is non-adversarial in nature, although the SPE or any person he or she designates may ask questions of the persons making or assisting in making the presentation. The presentation will be scheduled for a date that is within 10 working days of the date requested by the contractor. The contractor has 30 days from the receipt of the notice of suspension or proposed debarment to submit matters in opposition.

(3) A stenographer or court reporter prepares a verbatim transcript of the oral presentation. A copy is made available to the contractor at his or her request, at cost.

(4) The opportunity to present matters in opposition to debarment includes the right to present matters concerning the duration of debarment.

(5) Within five working days following the submission of matters in opposition, the contractor may submit to the SPE a written statement outlining the material fact or facts, if any, believed to be in dispute.

(c) Fact-finding:

(1) The purpose of fact-finding is to provide the respondent an opportunity to dispute material facts through the submission of oral and written evidence, resolve facts in dispute, and provide the Debarring Official with findings of facts based, as applicable, on adequate evidence or on a preponderance of evidence.

(2) In cases in which fact-finding is deemed necessary, the SPE will determine within 30 working days of the contractor's presentation of matters in opposition whether the presentation has raised a genuine dispute over one or more material facts.

(3) Upon determining that a dispute exists, the SPE establishes a date for a fact-finding hearing that will be held within 45 working days of the date of the contractor's presentation of matters in opposition, unless the contractor requests a later date. The delayed hearing will occur within 60 days of the contractor's presentation of matters in opposition.

(4) While formal rules of evidence do not apply in fact-finding proceedings, certain basic principles are observed.

a. The finder of fact, in advance of the proceedings, is presented with a description of the general nature of the case and the material facts determined to be in dispute.

b. The proceeding before the appointed finder of fact is limited to a resolution of the facts in dispute as determined by the SPE.

c. The burden is on the Government to establish the disputed facts by a preponderance of the evidence.

d. While no subpoena power exists to compel attendance of witnesses, DoD personnel whose testimony is critical to establishing the facts in dispute will testify in person if they are employed in the area in which the fact-finding proceeding takes

place and are otherwise available to testify. If personnel are not available to testify, their sworn statements may be used in lieu of their testimony and are given appropriate weight by the appointed finder of fact. The decision of the appointed finder of fact on the question of availability of witnesses is final. All DIA personnel will attend when the appointed finder of fact desires their testimony.

e. Hearsay evidence may be used and is given appropriate weight by the appointed finder of fact.

f. All witnesses, whether presented by the Government or the contractor, are placed under oath by the appointed finder of fact and are subject to cross-examination.

g. Administrative arrangements, costs, and fees of all witnesses, including DoD employees, desired by the contractor are the contractor's sole responsibility. Permission for DoD personnel to appear and testify will not be unreasonably withheld.

(5) A verbatim transcript of the proceedings is prepared. A copy is made available to the contractor upon request, at cost.

(6) The finder of fact prepares written findings of fact, limited to the facts in dispute, along with his or her decision, within 45 working days of the conclusion of the proceedings. The finder of fact considers the entire record and specifically identifies aggravating and mitigating circumstances. If the SPE is the finder of fact, the findings of fact and decision will be signed and sent to the contractor within 45 days. If the finder of fact is not the SPE, then the SPE will make his or her independent judgment of the findings of fact and make his or her independent decision within five days of the aforesaid 45 days and signs and sends the findings of fact and decision to the contractor. The decision takes effect when signed by the SPE and sent to the contractor.

(7) All time requirements set forth in these proceedings may be shortened or extended by the SPE for reasonable cause.

### **1009.407-3 Suspension Procedures**

The suspension decision-making process is the same as stated for debarment above.

## **Subpart 1009.5 – Organizational and Consultant Conflicts of Interest**

### **1009.501 Definition.**

Organizational conflicts of interest are instances where the ability to render objective decisions may be affected by the services provided, shared management or financial resources, or other situations created by a parent company or other related entities.

### **1009.503-90 Waiver.**

Requests will include sufficient information to justify the waiver and a certification by the requiring activity that the waiver is necessary. Waiver requests are submitted to the Contracting Officer who coordinates with OGC prior to submission to the VaCA division chief for approval by the HCA.

### **1009.505 General Rules.**

#### **1009.505-4-90 Obtaining access to proprietary information.**

- (a) Contracting officers will include the clause 1052.209-96, Protection of Information and Nondisclosure Agreements (NDAs), in all solicitations and contracts under which the contractor's employees may be given access to protected information (defined as information subject to disclosure restrictions) and computer software by DIA, other government agencies, foreign governments, or other contractors while directly supporting DIA. Any modification to the NDA to fit specific circumstances associated with individual contract actions will be submitted for OGC approval prior to use and implementation. The Contracting Officer maintains a copy of all NDAs in the contract file.
- (b) Contracting officers will ensure that a contractor access NDA is completed for each person (including contractor personnel) requiring access to sensitive material in order to
  - (1) Protect privacy act materials or sensitive (but unclassified) materials.
  - (2) Protect proprietary data/trade secrets obtained from third parties.
  - (3) Overcome and avoid organizational conflicts of interests.
  - (4) Protect source selection sensitive information.
  - (5) Protect restricted material.
- (c) Access to contractor data (service contracts). Contractor personnel will not divulge any confidential/proprietary or government source selection sensitive information to any individual or entity without the written consent of the Contracting Officer or his/her designated representative.
- (d) Proprietary information will not be released outside the U.S. Government without express or implied consent of the owner of the proprietary data.

#### **1009.505-5 Solicitation provisions and contract clauses.**

**1009.505-5(a) - Insert Provision 1052.209-93, DISCLOSURE OF INFORMATION - RFP**, in solicitations when the contractor will have access to or will generate unclassified information that may be sensitive and inappropriate for release to the public.

**1009.505-5(b) - Insert Clause 1052.209-94, DISCLOSURE OF INFORMATION - CONTRACT,** in full text in all solicitations and contracts except for commercial items.

**1009.505-5(c) - Insert Clause 1052.209-95, UNAUTHORIZED DISCLOSURE OF GOVERNMENT INFORMATION SYSTEMS,** in all solicitations and contracts in which the contractor will have access to government information systems.

**1009.505-5(d) - Insert Clause 1052.209-96, PROTECTION OF INFORMATION AND NONDISCLOSURE AGREEMENTS,** in all solicitations and contracts in which a contractor will have access to proprietary information or government protected data for which contractor employees will execute a Non-Disclosure Agreement.

#### **1009.506 Procedures.**

##### **1009.506-90 DIA organizational conflict of interest (OCI) handling procedures.**

(a) The Contracting Officer will identify potential OCIs and attempt to mitigate them if at all possible. Per FAR 2.101, OCI means that because of other activities or relationships with other persons, a person is unable, or potentially unable, to render impartial assistance or advice to the government; a person's objectivity in performing the contract work is, or might be, otherwise impaired; or a person has an unfair competitive advantage.

(b) If the Contracting Officer decides that a particular acquisition involves a significant potential OCI, the Contracting Officer will, prior to issuing a solicitation, submit for approval to the VaCA division chief a course of action for resolving the conflict, including a written analysis, including a recommended course of action for avoiding, neutralizing, or mitigating the conflict.

(c) The Contracting Officer will issue the written analysis required at FAR 9.506(b)(1) in the form of a memorandum for the record. The memorandum describes the conflict circumstances, including, but not limited to, a recommended course of action for avoiding, neutralizing, or mitigating the conflict. The memorandum will be approved at a level no lower than the division chief and is included in the official contract file. If the Contracting Officer and division chief determine the potential conflict to be of significant impact to the government, the HCA will approve the memorandum.

(d) Contracting officers will resolve the conflict with the contractor prior to any contract award, consistent with the approved memorandum. For further detail, see the OCI Guide.

#### **1009.507 Solicitation provision and contract clauses.**

##### **1009.507-1 Contract clause.**

##### **1009.507-1-90, Organizational conflict of interest clause.**

Contracting officers will insert Clause **1052.209-97, ORGANIZATIONAL CONFLICT OF INTEREST**, in all solicitations and contracts except for commercial items.

The language of this clause may be modified prior to contract award to better fully describe the conflict, actions taken to resolve the conflict, and results of any negotiations with the contractor. Any changes will be coordinated with OGC.

**1009.507-2 Solicitation provision.**

**1009-507-2-90, Utilization of support contractors by the government.**

Contracting officers will insert Provision **1052.209-98, UTILIZATION OF SUPPORT CONTRACTORS BY THE GOVERNMENT**, in all solicitations that require DIA contractors to serve as advisors for assisting the government during the evaluation of proposals.

**1009.507-3 Contract clause.**

**1009.507-3-90, Exclusion from future Agency contracts clause.**

Contracting officers will insert Clause **1052.209-99, EXCLUSION FROM FUTURE AGENCY CONTRACTS**, in all solicitations and contracts for support services and any other contract when the Contracting Officer has determined that an organizational conflict of interest could occur.

## **PART 1010 MARKET RESEARCH**

### **Subpart 1010.002-90 - Procedures**

Before acquiring supplies or services, the requirements office, in coordination with the VaCA office will conduct market research. For guidance on this subject, see the Market Research guide.

## **PART 1011 DESCRIBING AGENCY NEEDS**

### **Subpart 1011.1 - Selecting and Developing Requirements Documents**

**1011.104-90 Use of brand name or equal purchase descriptions.**

To comply with overarching policy in this area, in describing Agency requirements, DIA acquisition professionals will:

- (1) Ensure the use of brand name specifications is limited to valid situations. For example, consider using a "brand name or equal" specification, making sure to include a description of the salient physical, functional or performance characteristics of the brand name item that an "equal" item will meet to be acceptable. "Brand name or equal" descriptions do not require any justification or documentation in the contract file.

(2) Ensure the decision to use a brand name specification is accompanied by a written justification that fully supports the need to specify a particular brand name, product or feature, as follows:

- a. For procurements subject to FAR Part 6, "Competition Requirements," comply with the justification requirements of FAR 6.303 and 6.304. See FAR 6.302-1(c), "Application for brand name descriptions."
  - b. For FSS orders, comply with FAR 8.405, "Ordering Procedures for Federal Supply Schedules," including as applicable FAR 8.405-6, "Limited Sources Justification and Approval" requirements.
  - c. For procurements above the micro-purchase threshold but under the SAT, the contract file will be documented with the basis for not providing for maximum practicable competition. (See FAR 11.105(a)(2)(ii), 13.106-1 (b)(1), and 13.501(a)). For procurements using simplified acquisition procedures under the test program described in FAR 13.5, prepare a justification in the format at FAR 6.303-2, modified to reflect an acquisition under the authority of the test program for commercial items (Section 4202 of the Clinger-Cohen Act of 1996).
- (3) The approving officials for Justifications under this subpart are the same as those identified for Justifications in 1006.304. Please note that Brand Name justifications will be separate from other types of justifications (i.e., Limited Source).

### **Subpart 1011.2 - Using and Developing Requirements Documents**

#### **10211.274 Item identification and valuation requirements.**

##### **10211.274-2 Policy for unique item identification.**

(S-90) All requiring activities and contracting personnel are required to coordinate, and when applicable, to include the DFARS clause at 252.211-7003, Item Identification and Valuation, in solicitations and contracts that require item identification or valuation or both, in accordance with DFARS 211.274-2 and 211.274-3; or contain the clause at 252.211-7007, Reporting of Government-Furnished Equipment in the DoD Item Unique Identification (IUID) Registry.

(S-91) Exceptions:

- (1) In accordance with DFARS 211.274-2(b), the contractor will not be required to provide DoD unique item identification, if the items, as determined by the D/DIA, are to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack; or a determinations and findings has been executed concluding that it more cost effective for the Government requiring activity to assign, mark, and register the unique item identification after delivery of an item

acquired from a small business concern or a commercial item acquired under FAR Part 12 or Part 8.

(b)(3):10 USC 424

#### **1011.4 Contract clauses.**

##### **1011.404 Contract clauses.**

**1011.404(a)** - Clause **1052.211-91, PERIOD OF PERFORMANCE**, may be inserted in solicitations and contracts when a requirement is time sensitive.

**1011.404(b)** - Clause **1052.211-94, PLACE OF PERFORMANCE**, may be inserted in solicitations and contracts except for commercial items.

**1011.404(c)** - Insert Clause **1052.211-95, ADVANCE NOTICE OF DELIVERY**, in all solicitations and contracts in which the government requires advance notification of delivery.

**1011.404(d)** - Insert Clause **1052.211-96, SHIPPING AND MARKING DELIVERABLES**, in all solicitations and contracts in which deliveries of supplies will be made.

#### **Subpart 1011.5 – Liquidated Damages**

##### **1011.502-90 Procedures.**

The requiring activity determines the liquidated damages rate and provides supporting rationale to the Contracting Officer. The Contracting Officer ensures resulting potential damages are not unreasonable.

#### **Subpart 1011.6 - Priorities and Allocations**

##### **10211.602 General.**

Warranted contracting officers are authorized to sign rated orders. Issuance of rated orders will comply with DoD Directive 4400.01E, "Defense Production Act Programs." The NIPRNet website for this DoD directive is <http://www.dtic.mil/whs/directives/corres/pdf/440001p.pdf>.

##### **1011.603-90 DIA Procedures.**

(a) DIA, as a delegate agency, is authorized by the Department of Commerce, based upon DoD designation, to include priority ratings on contracts and orders placed with U.S. contractors and suppliers in support of approved national defense or energy programs. DIA has authority to rate any contracts and orders based on tactical and operational requirements as [REDACTED]

[REDACTED] (electronics and communications). Contracting officers are

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authorized wide discretion in utilizing ~~these ratings, on a case-by-case basis~~, under the current U.S. defense posture.

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(b)

(c) In coordination with the requiring activity, contracting officers will review the procurement and determine if a priority rating is warranted. If the dollar amount of the order is for less than one-half of the FAR simplified acquisition threshold, use of a priority rating is optional, provided that delivery of the needed items can be obtained in a timely fashion without the use of a priority rating. Each rated order will include the following:

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- (1) The appropriate priority rating
- (2) Required delivery date or dates. Purchase or delivery orders will specify a required delivery date or dates and are considered to be rated as of the date of their receipt by the supplier and not as of the date of the original procurement document.
- (3) The written signature on a manually placed order, or the digital signature or name on an electronically placed order, of an individual authorized to sign rated orders for the person placing the order.
- (4) A statement in each contract or order that reads "this is a rated order certified for national defense use" and you will comply with DoD 4400.1-M, see Reference (n).

## **PART 1012 ACQUISITION OF COMMERCIAL ITEMS**

### **Subpart 1012.2 - Special Requirements for Commercial Items Acquisition**

#### **1012.207 Contract type.**

Pursuant to DFARS 212.207, only the SPE or designee can approve a written determination by the Contracting Officer to utilize a Time-and-Materials (T&M) or Labor-Hour (LH) contract for the acquisition of commercial items. Submit a copy of the approval request package to Acquisition Policy, for consultation purposes concurrently with submission to the approval authority.

#### **1012.209-90 Determination of price reasonableness.**

The Contracting Officer will review, approve, sign, and date price reasonableness determinations for commercial items prior to award.

### **Subpart 1012.3 - Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items**



**1012.302-90 Unique DIA provisions.**

Pursuant to FAR 12.301, the SPE has authorized the use of DIA security provisions in commercial solicitations and contracts when section 10209.190 of the DARS applies.

**Subpart 1012.90 — Innovative Commercial Contracting Techniques****1012.9000 Model Commercial Contracting Strategy.**

DIA contracting activities may use the strategy outlined here when they are seeking breakthrough commercial solutions for meeting DIA requirements. The strategy generally consists of two phases, as follows:

- (1) Phase I, Commercial Area Announcement (CAA).
  - (a) During Phase I, the Contracting Officer issues a CAA, including a statement that explains what the DIA wants to accomplish or what problem the DIA is trying to solve. The statement may be specific or broad, in nature. A relatively specific objective, for example, might be to provide a secure means of controlling vehicle access to a Government installation while minimizing traffic backup. A broader objective might be to reduce operating cost associated with legacy computers. As necessary, the statement should include background information that is helpful to a clear understanding of the objectives, and any additional information that may affect potential solutions.
  - (b) The CAA requests interested firms to respond by outlining, in broad terms, innovative and imaginative ways they believe they could meet the DIA objectives. Information concerning the significant business practices that affect their performance and their relationships with customers, as well as a rough estimate of the price associated with each innovative approach, is also requested. The overarching objective of this phase is to provide the DIA with a clear picture of *"the state of what is possible"* in the commercial marketplace, but not to receive traditional full-blown proposals. The DIA uses the responses to the CAA to make an informed decision concerning the strategy it will pursue to meet its objectives and, if the DIA elects to proceed with a procurement, to structure the solicitation to maximize commercial sector interest and encourage truly innovative and imaginative proposals.
  - (c) The CAA should state clearly that:
    1. It is for informational purposes only.
    2. Responses in any form are not offers.
    3. Issuance of the CAA does not impose any obligation on the DIA or signify a firm commitment to issue a solicitation or a contract.
    4. There are no funds available to pay for the cost of preparing the responses.

- (d) The CAA should encourage responses from all segments of the industry sector, including small businesses, HUBZone small businesses, small disadvantaged businesses, and woman-owned small businesses, and it should encourage responses from firms that may not regularly do business with the Government. For purposes of the Government-wide Point of Entry (GPE) synopsis, enter "R," in Block 1, Action Code, to designate that the type of action addressed by the CAA is "Sources Sought," and enter "COMMERCIAL AREA ANNOUNCEMENT" followed by a brief description of the CAA's subject matter in Block 8, Subject.
- (e) The CAA should be published as early as feasible after a need has been identified and should give interested commercial firms a reasonable period of time to submit responses. In assessing responses to the CAA, DIA activities should consider, to the extent feasible, any responses received after the requested submission date.
- (f) DIA activities should consider holding a "Business Opportunity Day," after publication of the CAA and before responses are received, to review the DIA's objectives and to clarify industry questions.
- (2) *(Phase II: Request for Commercial Offerings.*
- (a) Using information provided by industry in response to the CAA, the Contracting Officer and technical personnel develop a solicitation package. To encourage responses from firms that may not regularly do business with the Government, the solicitation is identified as a Request for Commercial Offerings (RCO). The RCO, consistent with applicable law and regulation, should be provided to all commercial entities that responded to the CAA, as well as to any other commercial concerns that request a copy. Electronic distribution of the RCO is encouraged. The RCO is intended to be built around a FAR Part 12 solicitation and a performance-based Statement of Objectives (SOO). Although the SOO should provide maximum flexibility for contractor creativity in tailoring proposals to satisfy the DIA requirements, it should be written to reflect "what is possible" within the commercial sector, as determined from the responses to the CAA. The RCO should also be written to reflect any customary business practices that the DIA activity became aware of as a result of the CAA. The performance-based SOO should be broadly written to encourage maximum participation and may not disclose any unique approaches that were submitted in response to the CAA or reveal any proprietary aspects of the ideas submitted.
- (b) To the extent required by FAR Part 5, publish a synopsis of the RCO through the GPE. In addition, notice of the RCO may also be published on appropriate web sites. DIA contracting activities should make the RCO available to all parties that responded to the CAA, as well as to any additional potential offerors who respond to the synopsis or other published notice. Electronic distribution of the RCO is encouraged.

(c) The RCO should seek firm-fixed-price proposals that address the offerors' breakthrough strategies and detailed approaches for accomplishing the DIA's objectives, including identification of proprietary aspects of the proposal and small business alliances/partnering arrangements. Consistent with law and regulation, solicitations/contracts may include provisions that permit payment of additional predetermined amounts for performance or delivery that is better than that required by the contract if the payments are based on factors other than the contractor's incurred costs.

(d) The Contracting Officer may use, as appropriate, the streamlined procedure for soliciting offers for commercial items prescribed in FAR 12.603.

(e) Depending on the nature of the requirement or problem that the RCO is intended to address, RCOs may provide for multiple evaluations of proposals over an extended period. This approach is appropriate when the contracting activity anticipates awarding multiple contracts and when there is a reasonable expectation that a passage of time may lead to the identification by commercial entities of additional innovative ways to meet the DIA's requirement. When this multiple evaluation approach is used, the RCO should indicate the date by which proposals should be received in order to be considered during the initial evaluation. Proposals received by that date should be evaluated and initial contract(s) awarded, as appropriate. Also, the RCO should either indicate the date(s) by which subsequent proposals are to be submitted or state that such date(s) are to be established by means of an amendment to the RCO. Offerors who did not submit an offer prior to the initial due date may submit an offer for a subsequent evaluation. Additionally, proposals previously evaluated and not selected should not be re-evaluated during a subsequent evaluation, but any offeror who previously submitted a proposal may submit a new proposal, including a proposal that is based on, or similar to, its previously submitted proposal. Proposals received after the exact due date and time for any specified evaluation period should be handled in accordance with paragraph (f) of the "Instructions to Offerors - Commercial Items" provision at FAR 52.212-1.

(f) The DIA evaluates proposals in accordance with the evaluation scheme set forth in the RCO. Generally, these should provide for a "best value-tradeoff" selection that balances technical and cost aspects of the proposals. Evaluation factors may include such items as: (i) the extent to which the proposed technical approach is likely to achieve or exceed the DIA's objectives, (ii) the extent of small business participation, (iii) the offeror's experience and past performance, and (iv) the price.

## **PART 1013 SIMPLIFIED ACQUISITION PROCEDURES**

### **Subpart 1013.1 – Procedures**

#### **1013.106 Soliciting competition, evaluation of quotations or offers, award and documentation.**

**1013.106-3 Award and documentation.**

The Contracting Officer will use one of the following sample best value/price reasonableness determination templates for documenting the contract file. The Contracting Officer is the approval authority.

- (1) FAR Part 13 actions > the micro-purchase threshold and  $\leq$  the SAT.
- (2) FAR Part 13 (including Test Program) actions > the SAT and  $\leq$  \$6.5 million (\$12 million for acquisitions described in FAR 13.500(e)).

**Subpart 1013.3 – Simplified Acquisition Methods****1013.301-90 Government-wide commercial purchase card.**

(1) The DIA purchase card program is part of the government-wide commercial purchase card program, which was established to streamline federal agency acquisition processes by providing a low-cost efficient vehicle for obtaining goods and services directly from vendors. For guidance on the policies and procedures regarding this program, refer to the “DIA Government Purchase Card Program” located on the GPC SharePoint page at

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(2) In order to be more flexible and better support emergency requirements, each contracting division should appoint a minimum of one government purchase card holder. Potential card holders will comply with all aspects of the GPC policy manual located on the GPC homepage.

**1013.303 Blanket Purchase Agreements (BPAs).****1013.303-1-90 General.**

Contracting personnel will follow the following BPA policies and procedures.

- (a) A Blanket Purchase Agreement (BPA) is a simplified method of filling anticipated repetitive needs for supplies or services by establishing “charge accounts” with qualified sources of supply.
- (b) BPAs should be established for use by an organization responsible for providing supplies for its own operations or for other offices, installations, projects, or functions. Such organizations, for example, may be organized supply points, separate independent or detached field parties, or one-person posts or activities.
- (c) The use of BPAs does not exempt an agency from the responsibility for keeping obligations and expenditures within available funds.
- (d) The VaCA will establish Blanket Purchase Agreements, as specified by FAR 13.303, to the maximum extent practical, when their use will reduce the administrative costs

associated with issuing numerous individual purchase orders. They will be used primarily by authorized BPA callers in the elements being supported and may be used by Contract Specialists/buyers where appropriate.

(c) Contracting Officers will be responsible for ensuring that:

- (1) BPA callers are formally appointed for each BPA executed and to be used by that particular caller.
- (2) They, or selected representatives, will review a sufficient random sample of BPA caller files at least semi-annually to ensure that required procedures are being followed. A memorandum for record will be placed in the BPA file to document this review.
- (3) A review of each BPA is completed at least annually, updating as necessary. A memorandum for record will be placed in each BPA file to document this review.
- (4) BPA callers follow established procedures and formally withdraw the BPA call authority of any caller not following procedures. Prior to any withdrawal, a warning notice will be sent to the caller through his/her cognizant supervisor.
- (5) Calls of \$3,000 and below, where not bought by credit card, will be distributed equitably among BPA companies.
- (6) Calls over \$3,000 but not in excess of \$5,000 will be placed only after solicitation of price quotations from at least three suppliers. Purchases will not be split to avoid the dollar limitation.

(f) Contract Specialists/buyers are responsible for performing the following duties:

- (1) Vendors will be contacted to verify that supplies and services procured using BPA calls are completely delivered and accepted during the month, that billing amounts are correct, and that any discrepancies related thereto have been resolved.
- (2) Once deliveries, acceptances, and billing amounts have been verified, BPA close-out orders will be issued by the end of the first week of the subsequent month to pay for the previous month's completed BPA calls, as listed on each BPA caller's monthly obligation record. If the monthly obligation record is received late, then the delivery order will be issued against the BPA, as soon as possible.
- (3) Each BPA close-out order will be prepared on a DD Form 1155, Order for Supplies or Services, with each DD Form 1155 numbered consecutively beginning with 0001 for the first monthly close-out under a given BPA.

- (4) The Contract Specialist/buyer will sign Block 26 to signify receipt and acceptance.
- (5) A copy of the monthly close-out record and all delivery tickets related to it will be attached to the DD Form 1155.
- (6) For each BPA close-out order, the signature of the appropriate Contracting Officer will be obtained on the DD Form 1155.
- (7) If a Procurement Assistant or Secretary is not available, the Contract Specialist or buyer will distribute the completed DD Form 1155.

(g) The cognizant Contract Specialist will be responsible for:

- (1) Resolving payment problems that develop with the monthly BPA close-out orders that have been issued.
- (2) Maintaining master lists of BPAs in active status. A copy of the BPA master list will be provided to all contracting personnel.
- (3) Distributing of the completed and signed monthly BPA close-out order issued on DD Form 1155.
- (4) Note: If the cognizant Contract Specialist is not available, the above duties will be performed by another Contract Specialist or other assigned personnel, as directed.

(h) BPA callers will be authorized and instructed to:

- (1) Place BPA calls for supplies and/or services specified in the BPA in accordance with the procedures provided with the appointment letter.
- (2) Ensure adequate funds are certified available before placing a call to obtain supplies or services. Record each call on the appropriate forms and maintain a log of each call in the element's bulk fund record.
- (3) Forward the monthly BPA call close-out records to the Procurement Office at a specified time each month.

(i) The Head of the Contracting Activity (HCA) will have overall responsibility for the establishment and administration (including monthly "close-outs") of BPAs. HCA will also maintain a current list of all active BPAs, designated BPA callers, and ensure that BPA training workshops are provided to callers, their supervisors, and other interested parties.

## **Subpart 1013.5 – Test Program for Certain Commercial Items**

### **1013.501 Special documentation requirements.**

(S-90) The approving officials for Justifications under this subpart are the same as those identified in 1006.304.

## **PART 1014 SEALED BIDDING**

### **RESERVED**

## **PART 1015 CONTRACTING BY NEGOTIATION**

### **Subpart 1015.2 - Solicitation and Receipt of Proposals and Information**

#### **1015.201-90 Exchanges with industry before receipt of proposals.**

The focus of encouraging more open communications with industry is to ensure more predictable, reliable and successful contract outcomes. Types of communication between the government and the private sector include industry days, requests for information, and industry comments on draft requests for proposals. This process will ensure high quality source selections and reduce the likelihood of receiving a protest.

(a) It is the Defense Intelligence Agency's VaCA policy to foster productive exchanges of information between DIA and contractors before receipt of proposals in accordance with FAR Subpart 15.201 while carefully protecting the integrity of each specific competitive process. All individuals engaged in such communication will be familiar with, and strictly adhere to the constraints and caveats of FAR 3.104 and good business sense in view of the public trust vested in Agency personnel. There will be strict adherence to proscriptions against providing, or appearing to provide, competitive advantage through any and all early communication processes with industry. Productive exchanges of information enable contractors to better understand DIA's objectives, problems, and constraints and provide superior solutions to Agency needs and objectives, but only if conducted in a strictly impartial, balanced and openly above-board manner.

(b) The Contract Specialist will assist the Contracting Officer in all communications.

(1) The Contracting Officer strictly controls communication with industry beginning prior to the solicitation and through Contract Award.

(c) Any member of the acquisition team who receives communication from prospective bidders should contact the Contracting Officer for advice.

(d) Whenever possible the acquisition team should look at opportunities to conduct one-on-one meetings with potential offerors organized by, and under the guidance of the Contracting Officer. Acquisition team members should not permit the one-on-one

session to become a marketing opportunity but should prepare the invitation to clearly state the session is being conducted as market research and not an invitation to the competition.

(c) Acquisition team members should also look at opportunities such as “draft solicitation for comment” and pre-solicitation conferences/industry briefings to foster communication with industry, but these may not yield the same quality of information that one-on-one meetings do.

(f) Communication with industry is encouraged for fostering industry’s understanding of DIA’s goals but the following should be avoided:

(1) Information prohibited from disclosure by FAR Subpart 24.202 or exempt from release under the Freedom Of Information Act (5 U.S.C. 552);

(2) Trade secrets;

(3) Privileged or confidential manufacturing processes and techniques;

(4) Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information;

(5) The names of individuals providing reference information about an offeror’s past performance; and

(6) Sharing of one company’s solutions or ideas with another company. There will be no leveling of the playing field.

#### **1015.209 Solicitation provisions and contract clauses.**

**1015.209(a)** - Insert Provision **1052.215-90, ALTERNATE BIDS/PROPOSALS**, in all solicitations where an alternate bid/proposal will be entertained by the government.

**1015.209(b)** - Insert Clause **1052.215-91, NOTICE: INCORPORATION OF SECTION K BY REFERENCE**, in all solicitations and contracts except for commercial items.

**1015.209(c)** - Insert Provision **1052.215-92, INQUIRIES**, in all solicitations.

**1015.209(d)** - Insert Provision **1052.215-93, CONTRACTOR PERSONNEL RESUMES AND CLEARANCES - RFP**, in all solicitations requiring resumes for all personnel.

**1015.209(e)** - Insert Provision **1052.215-94, KEY PERSONNEL**, in all solicitations requiring key personnel.

**1015.209(g)** - Insert Provision **1052.215-96, ARRANGEMENTS FOR SITE VISIT**, in all solicitations when a contractor site visit is offered by the government for prospective bidders.



**1015.209(h)** - Insert Clause **1052.215-97, CHANGE IN KEY PERSONNEL**, in all solicitations and contracts requiring key personnel.

### **Subpart 1015.3 - Source Selection**

#### **1015.303 Responsibilities.**

(S-90) The SSA will be at a level that is fully accountable for the results of the decision and knows what factors determine the best value. The Contracting Officer normally serves as the SSA in procurements of less than \$10 million. The VaCA division chief or deputy is designated the SSA for all procurements greater than \$10 million and at or less than \$100 million. The HCA is designated the SSA for all procurements of greater than \$100 million. The HCA may appoint any Agency employee to serve as the SSA; likewise, senior management may choose to participate as an SSA for procurements at any level on a case-by-case basis. The SSA will approve the Source Selection Plan (SSP) (attachment (x)) before the Request for Proposal (RFP) is released.

(S-91) When not serving as the SSA, the Contracting Officer normally serves as a business advisor to the Source Selection Organization (SSO). The Contracting Officer serves as the focal point for inquiries from industry, controls all exchanges with offerors, and executes the contract award. Additionally, small business advisors, technical experts, and nongovernmental sources may serve as SSO advisors. Everyone one assigned to the source selection organization will sign a Source Selection Non-Disclosure Agreement.

(S-92) The DoD Source Selection Procedures provides a source selection framework for competitive acquisitions, including a roadmap through the source selection process from receipt of a proposal through contract award.

#### **1015.305 Proposal evaluation.**

(S-90) When all proposals in response to a solicitation are to be rejected, OGC will review the determination prior to execution of this decision.

#### **1015.305-90 Technical evaluation template for best value procurements.**

In order to standardize evaluation procedures, when conducting competitive source selection, all contracting personnel will use the Technical Evaluation template for Best Value Procurements when conducting best value procurements.

#### **1015.305-91 Technical evaluation template for other than best value procurements.**

The COR will use the prescribed sample format contained in the COR Technical Evaluation Template. The sample format is designed for new contracts awarded using FAR Part 15 procedures alone or in combination with other FAR parts, and should be tailored to suit the particular contract action. Some or the entire format may apply to each procurement, taking into

account dollar values, contract type, and whether it is a new contract, delivery/task order, or modification.

#### **1015.307 Proposal revisions.**

(S-90) When a Contracting Officer determines that it is necessary to obtain additional proposal revisions after the receipt of final proposal revisions, written approval will be requested from the responsible VaCA division chief. When the SSA is other than the Contracting Officer or VaCA division chief, approval by the SSA and HCA is also required. The request will state why additional negotiations and requests for further revisions are required, the alternatives considered, and the impact if approval is not granted.

#### **1015.308 Solicitation Provisions.**

**1015.308(a) - Insert Provision 1052.215-98, BASIS OF AWARD - LOWEST PRICE TECHNICALLY ACCEPTABLE**, in all competitive solicitations where "lowest price technically acceptable" type of best value selection defines the winning contractor.

**1015.308(b) - Insert Provision 1052.215-99, BASIS OF AWARD – BEST VALUE TRADEOFF**, in all competitive solicitations where “best value tradeoff” type of best value source selection defines the winning contractor.

### **Subpart 1015.4 – Contract Pricing**

#### **1015.403-3 Requiring information other than cost or pricing data.**

(S-90) The Contracting Officer prepares a memorandum for the file addressing the information in paragraphs 15.403-3(a)(4)(i)-(iii) for HCA approval. The VaCA division chief reviews the memorandum before submission to the HCA.

#### **1015.404 Solicitation provision.**

#### **1015.406 Documentation.**

#### **1015.406-1-90 Prenegotiation objectives.**

(a) The Contracting Officer will use the prescribed sample format contained in the Pre-Negotiation Objective Memorandum (PNOM) Template – Part 15. The sample format is designed for new contracts awarded using FAR Part 15 procedures alone or in combination with other FAR parts, and should be tailored to suit the particular contract action. Some or the entire format may apply to each procurement, taking into account dollar values, contract type, and whether it is a new contract, delivery/task order, or modification.

(b) The thresholds for the PNOM approvals are as follows:

- ≤ \$10M Contracting Officer

- > \$10M to ≤ \$100M      VaCA division chief or deputy
- > \$100M                      HCA

(c) See DARSİ section 1008.405-90 for documentation requirements for FAR Part 8 actions and DARSİ section 1013.106-3 for FAR Part 13 actions.

#### **1015.406-3 Documenting the negotiation.**

(a) The Contracting Officer will use the prescribed sample format contained in Price Negotiation Memorandum (PNM) Template – Part 15. Some or the entire format may apply to each procurement, depending on dollar values, contract type, and whether it is a new contract, delivery/task order, or modification.

(b) The thresholds for the PNM approvals are as follows:

- ≤ \$10M                      Contracting Officer
- > \$10M to ≤ \$100M      VaCA division chief or deputy
- > \$100M                      HCA

#### **1015.406-3-90 Resolving Contract Audit Recommendations**

(a) This instruction sets forth DIA's policy for resolving disagreements when the Contracting Officer does not include significant audit report recommendations (excluding unsupported costs) from the Defense Contract Audit Agency (DCAA) in establishing his/her pre-negotiation objective. For the purposes of this instruction, a significant disagreement is when the Contracting Officer in the pre-negotiation objective plans to sustain less than 75 percent of the total recommended questioned costs in a DCAA audit report on a contractor proposal valued ≥ \$10 million.

(b) It is essential that DIA contracting officers attempt to resolve significant issues brought to their attention by DCAA audit reports. When significant disagreements occur, the Contracting Officer will discuss the basis of the disagreement with the auditor prior to negotiations. The Contracting Officer will document that discussion, and the basis for disagreement in the pre-negotiation business clearance memorandum and in a written communication to the auditor prior to commencing negotiations, e.g., an email confirming the discussion or a copy of the applicable portion of pre-negotiation objective. DIA management approval (see DARSİ 1015.406-1-90, Prenegotiation objectives) of the pre-negotiation objective confirms that the discussion with DCAA and the basis for disagreement is adequately documented and supported. Once the negotiation objective is approved, the Contracting Officer may proceed with negotiations.

(c) If after the discussion between the Contracting Officer and the DCAA auditor, the contract auditor does not agree with the Contracting Officer, DCAA's management may request that DIA's HCA review the Contracting Officer's decision for all acquisitions ≥ \$10 million to ≤ \$100 million. For all acquisitions > \$100 million, DIA's SPE will be the reviewing official. DCAA's request for DIA's senior management review will occur within three business days after

receiving the Contracting Officer's written communication. The Contracting Officer will document the disposition of DIA's senior management review of disagreements in a memorandum for the contract file.

(d) If the differences cannot ultimately be resolved at DIA's senior management review level, the Director, DCAA, may contact the Director, Defense Procurement and Acquisition Policy (DPAP), to discuss the disagreement. If the DCAA Director believes that DPAP has not adequately addressed the matter, the disagreement may finally be elevated to the Under Secretary of Defense (Acquisition, Technology and Logistics) and the Under Secretary of Defense (Comptroller).

(e) Notwithstanding the above, the DCAA Director may contact DPAP on any disagreement with audit recommendations which he/she believes requires DPAP's attention, (e.g., precedent setting or of high interest to the Department).

(f) It is neither expected nor necessary that the Contracting Officer and the contract auditor agree on every issue. It is expected that Contracting Officer and the auditor will work together, recognizing that it is the Contracting Officer's ultimate responsibility to determine fair and reasonable contract values.

#### **Subpart 1015.5 – Preaward, Award, and Postaward Notifications, Protests, and Mistakes**

##### **1015.505-90 Preaward / Postaward debriefing of offerors.**

(a) Unsuccessful offerors will be notified of the award, debriefed in a timely fashion upon proper written request, and furnished the basis for selection in accordance with current regulatory and statutory guidelines. Debriefings will be conducted in accordance with FAR Subpart 15.5. In accordance with this regulation, the Contracting Officer will provide written notification within 3 days after the date of contract award to each offeror whose proposal was in the competitive range but was not selected for award. Written or oral debriefings will be conducted upon written request from all unsuccessful offerors to include those eliminated from the competition at earlier stages of the evaluation. Successful offerors may also be given debriefings upon proper request. Each debriefing will be conducted by, or under the direction of the Contracting Officer.

(b) The Contract Specialist will make all necessary preparations and arrangements and ensure contract files are documented completely.

(c) The Contracting Officer has responsibility for overall content and conduct of each debriefing. Contracting officers are responsible for:

- (1) Identifying technical personnel (familiar with the rationale for the selection decision and contract award) needed to assist in the debriefing.
- (2) Briefing technical personnel on their roles and responsibilities.

(3) Assisting technical personnel in preparation of the written narrative evaluation report to be used in the debriefing session.

(4) Identifying material not to be disclosed (Freedom of Information Act (FOIA), proprietary or confidential), acts to be discussed; and basis for not awarding, including deficiencies.

(5) Ensuring that the debriefing information given unsuccessful offerors is significant, factual, consistent with the evaluation reports, and is in accordance with current regulatory and statutory guidelines. Debriefings should include:

(i) Review of the solicitation with emphasis on the evaluation factors.

(ii) Discussion of significant weaknesses and strengths in the offeror's proposal, following carefully the evaluation factors contained in the solicitation.

(iii) Overall evaluated cost and technical rating of both the offeror and the winning contractor.

(iv) Questions by offeror.

(v) Comments from offeror on the source selection process, e.g., solicitation, pre-proposal conference, site visits, etc.

(6) Controlling participation of technical personnel in the debriefing conference, ensuring that facts are presented in a fair, objective, and impartial manner.

(7) Documenting the debriefing session so that an accurate and complete record can be placed in the official contract file. A copy of the Memorandum for Record of the debriefing will be provided to the Chief of the VaCA no later than five (5) working days after the debriefing.

(d) The Contracting Officer will rely on the technical team members to help develop the necessary presentation and background. The debriefing team should meet prior to the debriefing to review the solicitation, evaluation process, and the award decision, and to ensure the most accurate information is provided to the offeror. Care will be taken to ensure that all participants know what can and cannot be revealed during the debriefing. Current statutes and regulations covering the release of source selection sensitive and proprietary materials will be strictly adhered to. Debriefings will be confined, as much as possible, to areas in which the offeror could have improved his proposal. The technical member presenting the briefing will follow a carefully prepared outline, based on the technical evaluation report. Specifically, debriefings will not reveal the following:

(1) Trade secrets, or privileged or confidential manufacturing processes or techniques.

- (2) Commercial or financial information that is privileged or confidential, including cost breakdowns, profit, overhead rates, and similar information.

**1015.506-90 Postaward debriefing of offerors.**

(a) For post award debriefings, unsuccessful offerors will be notified of the award, debriefed in a timely fashion upon proper written request, and furnished the basis for selection in accordance with current regulatory and statutory guidelines. Each debriefing will be conducted by, or under the direction of, the Contracting Officer.

(b) For additional guidance, see the Postaward Debriefings template.

**Subpart 1015.6 – Unsolicited Proposals**

**1015.606-90 Agency procedures.**

(a) Acquisition Policy is the Agency point of contact to coordinate the receipt and handling of unsolicited proposals. Agency personnel will forward all unsolicited proposals to Acquisition Policy within seven calendar days from receipt of the proposal.

(b) For additional guidance, see the Unsolicited Proposal Guide.

**1015.606-2-90 Evaluation.**

Acquisition Policy coordinates with the relevant DIA organization based on the proposal's subject area, and performs the initial review of each unsolicited proposal in accordance with FAR 15.606-1. The results of the initial review will determine if the proposal conforms to the FAR requirements for evaluation as an unsolicited proposal, and if so, the organizational support needed to conduct the evaluation. The evaluation of conforming unsolicited proposals will comply with FAR 15.606-2. The DIA organization submits the evaluation findings to Acquisition Policy with further coordination from the VaCA, if necessary. The evaluation will contain a definitive statement, including any supporting documentation, regarding the recommended disposition of the action.

**PART 1016 TYPES OF CONTRACTS**

**Subpart 1016.1 - Selecting Contract Types**

**1016.101 General.**

(S-90) When procurements necessitate the need for a combination of contract types, contracting personnel will include in applicable type of contract for the Contract Line Item Number (CLIN) in the CLIN description. In building the contract schedule for such contracts, use the CMS application's drop-down menu to select the contract type that applies to each CLIN.

**1016.105 Solicitation provisions.**

**1016.105(a)** - Insert Provision **1052.216-90, LEVEL OF EFFORT**, in all level of effort contract solicitations.

**1016.201-90 Firm fixed price contract clause.**

**1016.201-90(a)** - Insert Clause **1052.216-91, FIRM FIXED PRICE**, in all firm fixed price solicitations and contracts.

**1016.207 Firm Fixed Price (FFP) Level of Effort (LOE) term contracts.****1016.207-3 Limitations.**

For approval of FFP/LOE contracts estimated over the SAT, the Chief of the Contracting Office as listed in the FAR is the VaCA division chief or the deputy in the division chief's absence.

(S-90) The approval for the use of a FFP/LOE contract or task order will be documented in a Memorandum for the Record or within the PNOM or the PNM.

**1016.207-90(a)** - Insert Clause **1052.216-92, PRICE ADJUSTMENT - LEVEL OF EFFORT (FIXED PRICE)**, in all firm fixed price level of effort solicitations and contracts.

**1016.307 Cost reimbursement solicitation provisions and contract clauses.**

**1016.307(a)** - Insert Clause **1052.216-93, ESTIMATED COST AND FIXED FEE**, in all cost-plus-fixed-fee solicitations and contracts.

**1016.307(b)** - Insert Clause **1052.216-94, PAYMENT OF FIXED FEE**, in all cost-plus-fixed-fee solicitations and contracts.

**1016.307(c)** - Insert Clause **1052.216-95, ESTIMATED COST AND AWARD FEE**, in all cost-plus-award-fee solicitations and contracts.

**1016.307(e)** - Insert Clause **1052.216-97, FEE ADJUSTMENT - LEVEL OF EFFORT (COST REIMBURSEMENT)**, in all cost reimbursable level-of-effort solicitations and contracts.

**Subpart 1016.4 - Incentive Contracts****1016.401 General.**

A Determination signed by the HCA will be completed for all incentive and award fee contracts, whether fixed price or cost reimbursable, justifying that the use of this type of contract is in the best interest of the Government.

## **Subpart 1016.5 – Indefinite-Delivery Contracts**

### **1016.504 Indefinite-quantity contracts.**

(S-90) The SPE has been delegated authority to make the determination authorized in FAR 16.504(c)(1)(ii)(D) for single source task/delivery order contracts over \$103 million. This determination will be documented in a D&F.

### **1016.505 Ordering.**

(S-90) Agency task order and delivery order ombudsman.

(a) DIA's Task and Delivery Order (T&DO) ombudsman is the Chief, Acquisition Protocol and Audit Readiness. The role of the ombudsman is to review:

- (1) Complaints to ensure vendors are afforded a fair opportunity to be considered for award of task or delivery orders, consistent with the procedures identified in the contract.
- (2) Concerns from any contractor to ensure vendors are afforded an opportunity to have their complaints heard and addressed appropriately.

(b) Complaint process. When the T&DO ombudsman is contacted by a contractor with a complaint, the ombudsman takes the following actions:

- (1) Notifies the HCA of the complaint.
- (2) Investigates and interviews the contractor, Agency personnel, and other contractors, if appropriate, to determine the facts of the complaint.
- (3) Issues the determination on the complaint validity to the contractor. Guidance from OGC and HCA is obtained prior to issuing the determination.
- (4) Provides directions, if the complaint is determined to be valid, to correct the inequity of the instant order or ensure equitable selection in future orders.
- (5) Maintains a log to track individual cases from receipt to disposition. Names are not recorded in the log if the interested parties requests anonymity.

(c) The T&DO ombudsman may request an Acquisition Management Review (AMR) of orders, process, or the contracting office, if warranted. This request will be coordinated with the SPE, HCA and the Acquisition Policy Office.

### **1016.505-90 Competitive Task/Delivery Order Evaluation (Fair Opportunity)**

When placing orders under FAR Subpart 16.505 fair opportunity procedures, DIA ordering offices will develop a task order evaluation plan consistent with the contract's fair opportunity



procedures and the acquisition strategy. To develop such a plan, DIA ordering offices may use the Task Order Evaluation Plan template.

### **1016.505-91 Exceptions to Fair Opportunity for Task and Delivery Orders**

(S-90) If a determination is made to use FAR Subpart 16.505 procedures when competitively ordering off IDIQ contracts, the Justification for Fair Opportunity Exception Template will be used.

The justification prepared pursuant to FAR 16.505 is processed as follows:

- (1) A formal Justification is not required for proposed procurements less than or equal to the SAT; however, the requiring activity will provide adequate rationale and justification to the Contracting Officer in order for the Contracting Officer to make a concurring written determination for the contract file.
- (2) For proposed procurements more than the SAT and less than or equal to \$650,000, the Contracting Officer is the approving authority, consistent with the Contracting Officer's warrant level.
- (3) For proposed procurements more than \$650,000 but less than or equal to \$12.5 million, the Contracting Officer will certify, OGC will review, and the Competition Advocate is the approving authority.
- (4) For proposed procurements more than \$12.5 million but less than or equal to \$85.5 million, the Contracting Officer certifies, OGC reviews, the Competition Advocate concurs, and the HCA is the approving authority.
- (5) For proposed procurements of \$85.5 million or greater, the Contracting Officer certifies, OGC reviews, the Competition Advocate and the HCA concur, and the SPE is the approving authority. Submit a copy of the approval request package to Acquisition Policy, for consultation purposes concurrently with submission to the Approval Authority.

(S-91) The requirements officer is required to sign and certify all JOFOCs over the SAT. The supervisor or management of the requirements officer is also required to sign and concur in all Justifications over \$650,000.

(S-92) Notwithstanding the requirements of FAR 16.505, the Contracting Officer may determine that it is in the government's best interest, from a counterintelligence standpoint, not to publicly disclose the execution of a Justification document if posting the justification would disclose the Agency's needs and disclosure of such needs would compromise national security or create other security risks.

### **1016.506 Contract clauses.**

**1016.506(a)** - Insert Clause **1052.216-98, TASK ORDERS**, in all solicitations and contracts that contain task orders.

**1016.506(b)** - Insert Clause **1052.216-99, FEE ADJUSTMENT - TERM (LEVEL OF EFFORT) TASK ORDERS**, in all level of effort task order solicitations and contracts.

### **Subpart 1016.6 – Time-and-Materials, Labor-Hour, and Letter Contracts**

#### **1016.601 Time-and-Materials contracts.**

(S-90) Prior to issuing a noncommercial T&M or LH contract or order, the Contracting Officer will document in a Determination that no other contract type is suitable. The VaCA division chief may approve the D&F unless the requirement exceeds \$1 million or the period of performance exceeds three years. If the requirement exceeds \$1 million, or the period of performance exceeds three years, this Determination will be approved by the HCA (Contracts that support contingency or peacekeeping operations, or provide humanitarian assistance, disaster relief, or recovery from conventional, nuclear, biological, chemical, or radiological attacks are exempt from this requirement).

For issuing a commercial T&M or LH contracts, see DARSI 10212.207.

#### **1016.602 Labor-hour contracts.**

##### **1016.602-90 Labor mix in time-and-materials / labor-hour contracts or orders.**

Contracting personnel will ensure the agreed labor mix is clear — the labor categories, hourly rates, and quantity of hours purchased.

#### **1016.602-91 Contract clause.**

**1016.602-91(a)** - Insert Clause **1052.216-100, TIME & MATERIAL SUPPLIES/SERVICES AND PRICES**, in all T&M and LH solicitations and contracts.

#### **1016.603 Letter contracts.**

##### **1016.603-2-90 Application.**

Contracting officers will use the Sample Letter Contract Template as the written preliminary contractual instrument that authorizes the contractor to begin work under the contract.

## **PART 1017 SPECIAL CONTRACTING METHODS**

### **Subpart 1017.2 – Options**

#### **1017.202-90 Use of options.**

The Contracting Officer will understand the requirement and decide whether to incorporate options into the contract. It is the responsibility of the Contracting Officer to brief the requiring activity on the use and application of options in the contract and discuss any funding constraints. The briefing will also address the requirements of FAR 17.207, Exercise of Options.

#### **1017.204 Contracts.**

(S-90) The Contracting Officer will submit a written justification to the HCA to obtain approval to exceed the five-year limitation for service and supply contracts whether through the use of options or by extension of the contract term using other authorities (for example, FAR Part 6). The Contracting Officer coordinates the justification with OGC to ensure no other statutes preclude a proposed extension.

#### **1017.207 Exercise of options.**

(S-90) Before exercising an option, the Contracting Officer will execute a Determination that the exercise of the option is in the best interest of the Government. The Contracting Officer will include in this Determination all the information required in FAR 17.207(c).

(S-91) The existence of funding to pay for the option is critically important. For a contract that has not been specifically set-up as an incrementally funded contract, the COR will ensure that the Office of the Chief Financial Officer has provided the exact funding required by the contract in order to exercise the option. Failure to provide the exact funding for an option in a non-incrementally funded contract will prohibit the exercise of the option unless the contract is modified to provide for incremental funding. For cost-reimbursement contracts with incrementally funded options, follow the guidance in FAR 32.705-2(b).

### **Subpart 1017.5 – Interagency Acquisitions Under the Economy Act**

#### **1017.502-90 General.**

DIA Instruction 5520.001, “Agency Support Agreements,” - provide additional guidance on the use of interagency acquisitions to support Agency mission requirements, see Reference (d).

#### **1017.503 Determinations and findings requirements.**

(S-90)(a) The requiring activity prepares a Determination addressing the requirements at FAR 17.503(a) and (b) and includes with the Determination any required supporting documents. Documents include, but are not limited to, a contract work statement, independent cost estimate documentation, or urgency of need justification. For further information, see Guide for the Preparation of the Determination and Findings for Interagency Acquisitions Under the Economy Act and the Economy Act D&F Template.

(b) Authority to approve an Economy Act Determination is:

- (1) The VaCA division chief or deputy, where the servicing agency is required to comply with the FAR in its contracting operations.
- (2) The SPE, if the proposed servicing agency is not required to comply with the FAR in its contracting operations. The Contracting Officer, VaCA division chief, and HCA will review the Determination prior to submission to the SPE. Submit a copy of the approval request package to Acquisition Policy, for consultation purposes concurrently with submission to the Approval Authority.

#### **1017.504-90 Ordering Procedures**

A DoD acquisition official may place an order, make a purchase, or otherwise acquire supplies or services for DoD in excess of the simplified acquisition threshold through a non-DoD agency in any fiscal year only if the head of the non-DoD agency has certified that the non-DoD agency will comply with defense procurement requirements for the fiscal year.

- (1) This limitation will not apply to the acquisition of supplies and services during any fiscal year for which there is in effect a written determination of the Under Secretary of Defense for Acquisition, Technology and Logistics, that it is necessary in the interest of DoD to acquire supplies and services through the non-DoD agency during the fiscal year. A written determination with respect to a non-DoD agency will apply to any category of acquisitions through the non-DoD agency that is specified in the determination.
- (2) Non-DoD agency certifications and additional information are available on the NIPRnet at [http://www.acq.osd.mil/dpap/cpic/cp/interagency\\_acquisition.html](http://www.acq.osd.mil/dpap/cpic/cp/interagency_acquisition.html).

#### **1017.504-91 Additional Ordering Procedures**

(a) For all VaCA orders of supplies and/or services above the simplified acquisition threshold issued against non-DoD contracts, including FSSs, FSS BPAs, and Government-Wide Acquisition Contracts, the order file will contain sufficient documentation to reflect the Contracting Officer's written determination, with support from the Requiring Activity and Financial Management as required, that:

- (1) The order is in the best interest of DIA (Consider such factors as satisfying customer requirements, cost effectiveness and price, delivery schedule, non-availability of a suitable contract within DoD, contract administration, small business opportunities, and any other factors as applicable);
- (2) The supplies and services (*i.e.*, work to be performed) are within the scope of the basic contract;
- (3) Funding is available and appropriate for the acquisition; and
- (4) Any terms, conditions and/or requirements unique to DoD or DIA are incorporated into the order to comply with applicable statutes, regulations and directives (*e.g.*, the

requirement that the items listed in DFARS 225.7002-1 and procured with DoD funds be of domestic origin, unique identification requirements, etc.).

- (b) The documentation of the above need not be in the format of a formal D&F.

#### **1017.505 Payment.**

(S-90) When assessing the cost of obtaining supplies or services through an interagency agreement, DIA will consider any administrative fees charged by the servicing agency as part of the total cost of the order. The administrative cost of providing the supplies or services by traditional DIA contracting procedures are compared to the total cost through a servicing agency in order to determine price.

### **Subpart 10217.74 - Undefined Contract Actions**

#### **10217.7403-90 Policy.**

- (a) All contract actions will be priced (including options) and definitive at the time of issuance. Contracts and modifications that are not fully priced and definitive will not be issued, except under the specific circumstances permitted by regulation for the issuance of Undefined Contract Actions (UCAs).
- (b) In compliance with the semi-annual DPAP reporting requirement, all UCAs with an estimated value of more than \$5 million will be reported on 31 October and 30 April of each calendar year. (This includes both outstanding and definitized actions meeting this threshold.) Acquisition Policy will coordinate with the VaCA division chiefs and the HCA to obtain the necessary information to complete the report.

#### **10217.7404-1-90 Authorization.**

- (a) The request to issue a UCA exceeding the simplified acquisition threshold will be prepared in the form of a Business Clearance Memorandum by the requiring activity, signed by a flag officer or SES, and routed to the VaCA division chief responsible for the contract action. This memorandum will provide sufficient documentation supporting the use of a UCA to satisfy the requirement, including any associated risks, such as those affecting cost or schedule performance. If the request is not acceptable, the VaCA division chief or the designated Contracting Officer will immediately contact the requiring activity for resolution any outstanding issues.
- (b) The VaCA division chief will review the business clearance memorandum to issue a UCA, prior to forwarding the document to the HCA for approval.
- (c) Contracting officers will use the Sample Letter Contract Template to create the contractual instrument that authorizes the contractor to begin immediately manufacturing supplies or performing services.

**10217.7404-2-90 Price ceiling.**

UCAs will include a Not-To-Exceed (NTE) price. The NTE price is based on a proposal from the contractor and it should be received prior to entering into a UCA. The price can be estimated, but will be followed-up later with a detailed proposal.

**10217.7404-3-90 Definitization schedule.**

Contracting officers will track the progress and provide the current status (including the date when the action is estimated to be definitized in relation to the definitization schedule) of each UCA to the VaCA division chief at the end of each month. Within 3 workdays, the VaCA division chief will provide a consolidated report to the HCA. Any action that is in jeopardy of not being definitized according to the definitization schedule, and therefore, not meeting the planned milestones, will be highlighted for immediate remedial action.

**10217.7404-4-90 Limitations on obligations.**

Contracting officers should avoid obligating the maximum permissible funding at the time of UCA award. Contracting officers should assess the contractor's spend plan for the undefinitized period, and obligate only funds in an amount consistent with the contractor's requirements for the undefinitized period.

**10217.7404-5-90 Exceptions.**

The initial definitization schedule may not exceed 180 days. However, for those actions identified in DFARS Subparts 217.7404-5(a) and (b), when a UCA cannot be definitized within the initial definitization schedule, a schedule extension request will be coordinated through the VaCA division chief, for approval by the HCA. The request will be submitted no later than 60 days prior to the original definitization completion date. The extension request will provide justification for the request, identify a new definitization schedule, and the impact to the mission if the extension is not approved.

**10217.7404-6-90 Allowable profit.**

When negotiating profit or fee, it is appropriate to apply the contract risk factor for cost reimbursement contracts to the actual cost of performance prior to definitization (DD Form 1547, Record of Weighted Guidelines Application - Block 24 - Contract Type Risk). Contracting officers will follow the guidance at DFARS 215.404-71-3(d)(2) that indicates, when costs have been incurred prior to definitization, generally the contract type risk should be regarded to be in the low end of the designated range. If substantial portions of the cost have already been incurred prior to definitization, the Contracting Officer may assign a value as low as zero percent, regardless of contract type. Contracting officers will document the risk assessment in the contract file.

**Subpart 10217.78 - Contracts or Delivery Orders Issued by a Non-DoD Agency**

**10217.7802 Policy.**

See DIAI 5520.001, “Agency Support Agreements,” Reference (d) for additional guidance.

**PART 1018 – EMERGENCY ACQUISITIONS (No DARS Text)****PART 1019 SMALL BUSINESS PROGRAMS****Subpart 1019.7 The Small Business Subcontracting Program****1019.705-1-90 General Support of the program.**

- (a) Each acquisition valued at \$650,000 or greater with subcontracting opportunities is required to have an approved small business subcontracting plan. FAR clause 52.219-9, Small Business Subcontracting Plan (DEVIATION), and DFARS clause 252.219-7003, Small Business Subcontracting Plan (DoD Contracts) (DEVIATION), are required to be included in all such solicitations and resultant contracts.
- (b) These clauses impose a deliverable requirement of Subcontracting Reports for Individual Contracts (SF 294) that measures a contractor’s progress against the goals contained in their small business subcontracting plan.
- (c) Pursuant to FAR 15.304(c) and DFARS 215.304(c), the small business subcontracting plan shall be an evaluation factor in contracts with subcontracting opportunities. When constructing the SSP, Contracting officers will:
  - (1) Establish the relative ranking of the small business subcontracting plan that will provide the maximum practicable opportunity for small concerns to participate in the acquisition consistent with efficient contract performance.
  - (2) Seek input from the Office of Small Business Programs (OSBP) when setting the relative ranking of the small business subcontracting plan.
  - (3) Establish minimum thresholds of *Good*, *Acceptable*, and *Unacceptable* when evaluating proposed subcontracting goals.
- (d) Contracting officers will obtain approval of the subcontracting plan at least one level above the Contracting Officer if proposed small disadvantaged business goals are less than 5% of the subcontracted amount.
- (e) Contracting officers will send copies of small business plan proposals and submitted SF 294s to the designated staff in the OSBP for review and comment.
- (f) Contracting officers will review their existing contracts to determine whether they require use of the clauses at FAR 52.219-9, Small Business Subcontracting Plan (DEVIATION), and

DFARS 252.219-7003, Small Business Subcontracting Plan (DoD Contracts) (DEVIATION), and take the appropriate steps to bring these contracts into compliance.

(g) The designated staff in the OSBP will review and evaluate each subcontracting plan against mandatory requirements delineated in FAR 19.704 and within the clauses at FAR 52.219-9, Small Business Subcontracting Plan (DEVIATION), and DFARS 252.219-7003, Small Business Subcontracting Plan (DoD Contracts) (DEVIATION).

(h) Upon conclusion of the subcontracting plan review, the OSBP will send the results of the evaluation, to the Contracting Officer or other designated representative.

(i) Contracting officers will also send copies of the approved small business subcontracting plans, signed by the Contracting Officer and the prime contractor, to the designated staff in the OSBP.

(j) GSA schedules should have approved subcontracting plans by GSA at the time of award. They may be Commercial/Master or Individual Plans. The plans should be forwarded to the Contracting Officer at the time of award.

(k) Contracting officers are responsible for monitoring the contractor's adherence to the subcontracting plan.

(l) As stated in 15 U.S.C. 637(d)(8), any contractor or subcontractor failing to comply in good faith with the requirements of the subcontracting plan is in material breach of its contract. Further, 15 U.S.C. 637(d)(4)(f) directs that a contractor's failure to make a good faith effort to comply with the requirements of the subcontracting plan will result in the imposition of liquidated damages. Contracting officers will follow the procedures outlined in FAR 19.705-7 in determining whether liquidated damages are appropriate and if so, in what amount.

(m) The OSBP will keep records of all evaluated subcontracting plans and submitted SF 294s. The OSBP will conduct semi-annual reviews of the SF 294 against its respective subcontracting plan's goals.

#### **10219.708-90 Contract Clauses**

(a) The Office of the Under Secretary of Defense (Acquisition, Technology and Logistics) Memorandum dated 9 Oct 09; Subject: Waiver of Reporting Subcontract Achievement using the Electronic Subcontracting Reporting System (eSRS), established a DIA class deviation from utilizing the eSRS for the submission of individual subcontracting reports, for security reasons. Accordingly, a class deviation has been approved which allows contractors to submit SF 294s directly to the contracting agency without utilizing eSRS.

(b) Accordingly, contracting officers will use FAR clause 52.219-9, Small Business Subcontracting Plan (DEVIATION), in all DIA contracts, in lieu of FAR Clause 52.219-9 Small Business Plan, whenever this FAR clause is prescribed. Likewise, contracting officers will use DFARS clause, 252.219-7003 Small Business Subcontracting Plan (DoD Contracts)



(DEVIATION), in all DIA contracts, in lieu of the DFARS clause 252.219-7003, Small Business Subcontracting Plan (DoD Contracts), whenever this DFARS clause is prescribed.

(c) DIA does not participate in DoD's small business test program. Therefore, contracting officers will not use the DFARS clause 252.219-7004, Small Business Subcontracting Program (Test Program), or the DFARS clause 252.219-7004, Small Business Subcontracting Program (Test Program) (DEVIATION), in contracts.

(d) When contractors are required to submit the required SF 294 to the Contracting Officer, the Contracting Officer will maintain the original in the contract file and forward, within three workdays, a copy to the OSBP for review, coordination, and compilation.

#### **PART 1020 – RESERVED (No DARS Text)**

#### **PART 1021 – RESERED (No DARS Text)**

### **PART 1022 APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS**

#### **Subpart 1022.1 – Basic Labor Policies**

##### **1022.101 Labor relations.**

##### **1022.101-1-90 General.**

Contracting officers will coordinate all actions involving contract labor issues with the labor advisor. In accordance with 1022.1001-90, Definitions, the HCA acts as the Agency's labor advisor.

##### **1022.103 Overtime.**

##### **1022.103-4 Approvals.**

The Contracting Officer is the designated official for approving overtime premium pay at government expense. All approvals will be written and documented in the contract file.

#### **Subpart 1022.4 – Labor Standards for Contracts Involving Construction**

##### **1022.406 Administration and enforcement.**

##### **1022.406-8 Investigations.**

(S-90) Before initiating an investigation, the Contracting Officer will promptly notify the labor advisor and OGC. A plan of action is developed jointly by the Contracting Officer, the labor advisor, and OGC in accordance with DFARS 222.406-8. The investigator's report, prepared in accordance with DFARS PGI 222.406-8(a)(iii), is submitted to the Contracting Officer for review and development of the Contracting Officer's report.

(S-91) Contracting Officer's report. The Contracting Officer's report will be reviewed by OGC, and then forwarded through the Agency labor advisor to the SPE.

#### **Subpart 1022.10 - Service Contract Act of 1965, as Amended**

##### **1022.1001-90 Definitions.**

The HCA acts as the Agency's labor advisor.

#### **Subpart 1022.15 – Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor**

##### **1022.1503 Procedures for acquiring end products on the list of products requiring contractor certification as to forced or indentured child labor.**

(S-90) The Contracting Officer will refer any suspicion of use of forced or indentured child labor to OGC and notify the SPE, HCA, Acquisition Policy, and the OIG at the same time.

### **PART 1023 ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE**

#### **Subpart 1023.2 - Energy and Water Efficiency and Renewable Energy**

##### **1023.202-90 Policy.**

(a) In 2004, DoD established the Green Procurement Program (GPP) to enhance and sustain mission readiness through cost effective acquisitions that achieve compliance with federally-mandated "green" procurement preference programs by reducing resource consumption and solid and hazardous waste generation. The Defense Acquisition University (DAU) has developed an online "green" procurement course, CLC 046 – Green Procurement. All acquisition personnel are required to take this short (two hours or less) online course and become familiar with "green" purchasing requirements. The CLC 046 continuous learning course is found on the unclassified DAU iCatalog website.

### **PART 1024 PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION**

#### **Subpart 1024.1 – Protection of Individual Privacy**

##### **1024.101-90 Definitions.**

Personally Identifiable Information (PII) is defined as any information which can be used to distinguish or trace an individual's identity, such as name, social security number, biometric records, etc., alone, or when combined with other personal or identifying information which is

linked or linkable to a specific individual, such as date of birth, mother's maiden name, etc. A "system of records on individuals," as defined in the statute and implementing regulations, means a group of any records under the control of the Agency from which information is retrieved by the name of the individual or some identifying number, symbol, or other identifying particular assigned to the individual.

#### **1024.103-90 Procedures.**

Requiring activities will clearly identify in purchase request documentation whether the proposed acquisition is for the design, development, maintenance or operation of a system of records subject to the privacy act. If the privacy act is determined to apply, individuals responsible for the specification or contract work statement will ensure the specification or contract work statement appropriately identifies the system of records and references DIA Instruction 5400.001, "DIA Privacy Act Program," as applicable.

### **Subpart 1024.2 – Freedom of Information Act**

#### **1024.203-90 Policy.**

DIA Instruction 5400.002, see Reference (e), provides specific Agency guidance in responding to requests for information from the general public. All FOIA requests will be submitted to the Office of Facilities and Services - Records Management & Information Services Division at the following address:

Defense Intelligence Agency  
200 MacDill Blvd  
ATTN: FAC-2A (FOIA)  
Washington, DC 20340-5100

## **PART 1025 FOREIGN ACQUISITION**

### **Subpart 1025.3 – Contracts Performed Outside the United States**

#### **1025.301-2-90 Theater Management Requirements.**

(a) Contracting officers will follow DFARS Procedures, Guidance, and Information (PGI) 225-74 when awarding and administering contracts requiring contractor performance outside the United States. Ensure that the solicitation and contract include any applicable host country and designated operational area performance considerations, and incorporate theater specific contract management requirements such as requirements pertaining to authorized government support and tracking of contractor personnel. In addition, solicitations and contracts will contain appropriate instructions on defense base act insurance requirements.

(b) For contingency contracting requirements, contracting officers and requiring activities will follow the procedures, guidance and information contained on the website at <http://www.acq.osd.mil/dpap/pacc/cc/index.html>, and the related website at [http://www.acq.osd.mil/dpap/pacc/cc/areas\\_of\\_responsibility.html](http://www.acq.osd.mil/dpap/pacc/cc/areas_of_responsibility.html) which is organized by

combatant command Area of Responsibility (AOR). Contracting officers and requiring activities will ensure solicitations and contracts address requirements unique to the particular combatant commander's AOR.

(c) However, DIA has obtained a waiver from the requirement to submit theater business clearances (TBC) for approval to U.S. Central Command's (CENTCOM) Joint Theater Support Contracting Command (C-JTSCC) as well an exemption from delegating contract administration to C-JTSCC on the related DIA contracts. This waiver is predicated on DIA remaining compliant with CENTCOM mandatory provisions and clauses as well as compliance with the Synchronized Pre-Deployment and Operational Tracker (SPOT) requirements in the CENTCOM AOR.

(d) Additionally, the memo requires that DIA maintain a log of contracts awarded with performance in TBC-mandated countries (Afghanistan and Iraq) that captures data for possible future C-JTSCC reporting. Accordingly, for all new contract actions awarded for performance in Afghanistan or Iraq, DIA contracting officers and specialists are required to input and update the TBC Log spreadsheet located on the Acquisition Policy SharePoint site, Resources link.

#### **1025.301-4-90 Contract clauses.**

(a) Contracting officers will refer to DFARS 225.74, Defense Contractors Outside the U.S, and insert the required clauses in solicitations and contracts. In particular, DFARS clause 252.225-7040, "Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States," will be included in solicitations and contracts that authorize contractor personnel to accompany U.S. Armed Forces deployed outside the United States in:

- (1) Contingency operations;
- (2) Humanitarian or peacekeeping operations; or
- (3) Other military operations or military exercises, when designated by the combatant commander.

(b) When using the clause at DFARS 252.225-7040, ensure contractor and government oversight personnel understand and comply with the requirement to use the Synchronized Predeployment and Operational Tracker (SPOT).

(c) Contracting officers will insert the clause "Contractor Personnel in United States Central Command Area of Responsibility (Class Deviation 2013-O0015)," in solicitations and contracts that:

- (1) Are equal to or greater than \$100,000 and for which the period of performance is equal to or greater than 30 days; and
- (2) Will require contractor personnel to perform in the United States Central Command (USCENTCOM) AOR, unless all such personnel:

- a. Are authorized to accompany U.S. Armed Forces; and
- b. Will be covered by the clause at DFARS 252.225-7040, Contractor Personnel Authorized to Accompany the U.S. Armed Forces

(b)(3):10 USC 424

(d) When using the clause “Contractor Personnel in United States Central Command Area of Responsibility (Class Deviation 2013-O0015),” ensure contractor and government oversight personnel understand and comply with the requirement to use [redacted] Note: [redacted]

(b)(3):10 USC 424

(e) If a contract requires performance in the USCENTCOM AOR, but some personnel performing the contract are authorized to accompany the U.S. Armed Forces and other personnel performing the contract are not authorized to accompany the U.S. Armed Forces, the Contracting Officer will include in the solicitation and contract both the clause at DFARS 252.225-7040 and the clause provided by Class Deviation 2013-O0015. Paragraph (b)(1) of each clause limits the applicability of the clause to the appropriate personnel.

## **Subpart 1025.74 – Defense Contractors Outside the United States**

### **10225.7401-90 - Contractor Travel**

Contractor or subcontractor employees traveling outside the continental United States (OCONUS) on official DIA business will comply with DIA travel policies. Contracting officers will include the Clause 1052.231-93, Travel and Per Diem, in all solicitation and contracts that may require contractors to travel OCONUS.

(a) It is the Defense Intelligence Agency’s Virginia Contracting Activity’s policy to provide ready access to information necessary to facilitate efficient and effective performance of contractual requirements. Accordingly, all contracts, orders, and contractual agreements that require performance in, or travel to, a foreign country will provide the performing contractors access to clear direction regarding the government’s and contractor(s) respective obligations with respect to travel and travel constraints, security requirements, applicability of Status of Forces Agreement(s) (SOFA), if any, and other legal or administrative requirements affecting performance of the specific contract requirements.

(1) The Contract Specialist is responsible for coordinating the required information among the PR’s originating directorate, Agency security officials, legal counsel, the COR, and other Agency resources and implementing the contractor’s access to information.

(2) The Contracting Officer (CO) will use the input of cognizant Agency officials to determine the means of contractually providing access to information and ensure its contractual implementation.

(3) The Contracting Officer’s Representative (COR) is responsible for keeping abreast of any changes in travel requirements/constraints that may impact contract performance and

assisting the CO to ensure timely notice to contractor personnel.

(b) Information required by the contractor may be enumerated within the contract in the form of a special contract requirement or may be provided to the contractor via a designated access process, especially in cases where volatile situations are likely to change rapidly during contract performance. Such process may involve real time contact via the Contracting Officer's Representative, a designated Agency security official, or other responsible Agency official authorized to provide the required information.

## **PART 1026 – OTHER SOCIOECONOMIC PROGRAMS (No DARSI Text)**

### **PART 1027 PATENTS, DATA AND COPYRIGHTS**

#### **Subpart 1027.2 – Patents and Copyrights**

##### **1027.201 Patent and copyright infringement liability.**

##### **1027.201-2 Contract clauses.**

The SPE is authorized to exempt U.S. patents from the patent indemnity clause. The request for approval is prepared jointly by the COR and the Contracting Officer with concurrence from OGC. The request will explain why an exemption to the patent indemnity clause is in the government's best interest. The request is forwarded through the VaCA division chief, via the HCA, to the SPE for approval.

##### **1027.202 Royalties.**

##### **1027.202-1 Reporting of royalties.**

OGC has cognizance of patent matters.

#### **Subpart 1027.3 – Patent Rights Under Government Contracts**

##### **1027.304 Procedures.**

##### **1027.304-4 Appeals.**

The contracting activity will refer any appeal to OGC for coordination. OGC conducts fact-finding and prepares the final determination for the Contracting Officer.

#### **Subpart 10227.70 – Infringement Claims, Licenses, and Assignments**

##### **10227.7006 Investigation and administrative disposition of claims.**

(S-90) Agency personnel will refer to OGC any direct or indirect charge or threat of patent, trademark, or copyright infringement received by any contracting activity. OGC will process the claim and prepare a final determination for the Contracting Officer.

### **Subpart 10227.71 – Rights in Technical Data**

#### **10227.7102-90 Commercial items, components, or processes.**

Requirements for delivering technical data related to standard commercial items, components, or processes should be kept to the absolute minimum consistent with the purpose for which the items are being procured. Normally for commercial items, a vendor's manual for installation, operations, or maintenance and repair or form, fit, and function data are adequate.

#### **10227.7103 Noncommercial items or processes.**

##### **10227.7103-5-90 Government rights.**

The Contracting Officer will consult with OGC prior to executing any license agreement, standard or negotiated.

### **Subpart 10227.72 – Rights in Computer Software and Computer Software Documentation**

#### **10227.7203 Noncommercial computer software and noncommercial computer software documentation.**

##### **10227.7203-5 Government rights.**

The Contracting Officer will consult with OGC prior to executing any license agreement, standard or negotiated.

### **Subpart 10227.90 - Activities that Affect U.S. Persons**

Contracting officers will incorporate Clause 1052.204-96, Activities that Affect U.S. Persons into of solicitations and contracts for goods and services to be procured from academic institutions and contracts with commercial concerns, excluding routine approved activities such as rentals and maintenance, unless a written determination is obtained from DR that sponsorship will be concealed.

### **PART 1028 – BONDS AND INSURANCE (No DARS Text)**

### **PART 1029 – TAXES (No DARS Text)**

### **PART 1030 – COST ACCOUNTING STANDARDS ADMINISTRATION (No DARS Text)**

### **PART 1031 CONTRACT COST PRINCIPLES AND PROCEDURES**

## **Subpart 1031.2 - Contracts with Commercial Organizations**

### **1031.204-1-92 Unscheduled government closures.**

Except as noted in the contract, contractor personnel will not be paid for unscheduled federal holidays, Inauguration Day, or when Government facilities are closed. However, in those instances where support may be necessary for the continuity of Agency operations, the contractor will obtain the authority from their Contracting Officer's Representative to work without interruption. All questions or concerns regarding contractor employee pay compensation issues related to these situations will be referred to company management.

#### **(a) Cost-Reimbursement Contracts (including Cost Plus Fixed Fee-Level of Effort).**

(1) In a cost-reimbursement contract, the Government agrees to reimburse the contractor for its reasonable business expenses that are allowable and allocable. The general policy is that a contractor will charge all costs consistent with its disclosed accounting practices and in compliance with the Federal Acquisition Regulation (FAR) and the Cost Accounting Standards (CAS) (see FAR 30.101). Costs associated with unscheduled Government closures are almost always treated as indirect costs forming a part of the business overhead and distributed among contracts or sales of the contractor on a suitable percentage basis. Thus, to the extent that a contractor pays its employees for the unscheduled closure consistent with its established company policies, and charges those costs as indirect costs in accordance with its disclosure statement, the Government will likely reimburse those costs indirectly. In other words, costs for unscheduled closures may be subject to reimbursement under cost-reimbursement contracts, but will most likely be reimbursed only as indirect costs.

(2) The contractor will also maintain consistency in its accounting practices. For example, if the contractor's accounting practice is to charge unscheduled closures as indirect costs, then the contractor will continue to charge such costs as indirect. Or, if the contractor's company policy is not to pay employees for snow days at all, then the contractor may not change that practice to pay the employees. Contracting officers should look for consistency in the contractor's practices when it comes to allocating costs as direct or indirect. If the contractor allocates costs as direct in one set of circumstances, it should not then allocate costs as indirect the next time, in the same or similar circumstances.

(3) Agency contracting personnel and CORs are reminded that they will not advise contractors to charge costs for unscheduled closures or early releases in any particular manner. Too often, contractors quote Government employees as the cause of charging practices that may not be proper in their particular circumstances. On-site contractor personnel will contact their respective home offices to determine their firms' respective policies on charging contracts during unscheduled closures.

#### **(b) Fixed-Price Contracts.**



(1) In a fixed-price contract, the Government agrees to pay a fixed price, leaving the risk of increased cost to the contractor. Unless there is specific language in the contract that indicates that the Government will pay the increased costs for unscheduled Government closures, the contractor assumes the risk for these costs. When questions arise, on-site contractor personnel will contact their respective firms for specific guidance.

(2) Unusually severe weather generally entitles a contractor to an excusable delay (a time extension) only, not a price adjustment. To receive an excusable delay, the contractor will establish not only that the weather was unusually severe but that the weather had an adverse effect on the contractor's timely performance. The Default Clause at FAR 52.249-8 (Fixed-Price Supply and Service) and the Excusable Delay Clause at FAR 52.249-14, set out a list of excusable delays, which includes unusually severe weather.

(i) In the instance of unusually severe weather, a contractor will show that the severe weather was not foreseeable, i.e., the weather was abnormal in comparison to the weather of past years for the same location and time of year. Thus, a contractor will most likely be able to establish that the weather was unusually severe; however, this decision is fact-specific and will be decided on a case-by-case basis by the Contracting Officer. To the extent that the contractor claims the true cause of the delay was not the weather but the Government's decision to close because of the weather, the analysis remains essentially the same. Acts of the Government in its contractual capacity or in its sovereign capacity also provide grounds for excusable delay.

(ii) In addition to showing that the weather was unusually severe, the contractor will also show that the weather had an adverse impact on the contractor's ability to perform. For example, although the contractor could not perform on-site in Agency spaces, the contractor may have been able to perform at its home office. The contractor may, however, be entitled to recover its costs under the Changes Clause if the Government insists on timely delivery. Thus, absent the Government's insistence of timely delivery or some other provision in the contract entitling the contractor to payment, the contractor assumes the risk for those costs.

(c) Time-and-Materials Contracts.

(1) A time-and-materials (T&M) contract is a hybrid of both the fixed-price and cost-reimbursement type contracts. The "time" component of a T&M contract is on a loaded fixed-rate basis. That is, the labor rate includes wages, overhead, general and administrative expenses, and profit. Thus, costs associated with Government closings are included by the contractor in the loaded labor rate. The "materials" component of a T&M contract is on a cost-reimbursement basis.

(2) In a T&M contract, the contractor is entitled to receive payment (see FAR 52.232-7) for the "direct labor hours performed." To the extent that the contractor does not perform work, it may not bill for direct labor hours. The expenses associated with Government closings are indirect costs, which should be included in the loaded labor rate and recovered over the life of the contract. Thus, in a T&M contract the risk of underestimating these indirect costs is assumed by the contractor. No adjustments should be made to the contract to account for these expenses.

**1031.204-1-92(a)** - Insert Clause **1052.231-92, Hours of Operation and Holiday Schedule**, in all solicitations and contracts in which contractors will be working onsite in government facilities.

**1031.205 Selected costs.**

**1031.205-14-90 Entertainment costs.**

Compensation paid to contractor employees to attend DIA sponsored social events or entertainment functions are a company responsibility. Contractor employees who attend these social events or entertainment functions are prohibited from charging time (or any other associated costs) to the contract.

**1031.205-18-90 Unallowability of proposal costs.**

**1031.205-18-90(a)** - Insert Provision **1052.231-90, UNALLOWABILITY OF PROPOSAL COSTS**, in all solicitations wherein the government gives notice to the contractor that it will not pay proposal costs for its efforts in direct costs.

**1031.205-32-91 Pre-contract costs.**

**1031.205-32-91(a)** - Insert Clause **1052.231-91, PRE-CONTRACT COSTS**, in all solicitations and contracts in which pre-contract cost is recognized by the government.

**1031.205-44-90 Training and education costs.**

(a) Government funded training will not be provided to contractor employees unless the requiring activity's responsible management official has previously certified in writing to the Contracting Officer that the necessary factors to qualify for the exception are present. Specifically, the responsible management official of the requesting requiring activity will affirmatively certify:

- (1) the desired training is unique to the government,
- (2) only the government can provide the training,
- (3) the training is not commercially available outside of the government, and

(4) the desired training is absolutely essential to the contractor employees' adequate performance of the contract requirements.

(b) The Contracting Officer will make the determination whether to modify the contract to permit such training.

#### **1031.205-46 Travel costs.**

#### **1031.205-46-90 Contract clause.**

**1031.205-46-90(a)** - Insert Clause **1052.231-93, TRAVEL AND PER DIEM**, in all reimbursable solicitations and contracts requiring contractors to travel on behalf of the government.

### **PART 1032 CONTRACT FINANCING**

#### **1032.006 Reduction or suspension of contract payments upon finding of fraud.**

##### **1032.006-1 General.**

The SPE is delegated all "agency head" responsibilities delineated in FAR 32.006.

##### **1032.006-2 Definition.**

The remedy coordination official is the DIA IG.

##### **1032.006-3 Responsibilities.**

(S-90) When there is substantial evidence that the contractor's request for advance, partial, or progress payments is or appears fraudulent, the Contracting Officer will immediately notify the SPE, HCA, IG, and OGC.

##### **1032.006-5 Reporting.**

The DIA HCA will prepare and submit the annual report required by DFARS 232.006-5.

### **Subpart 1032.2 – Commercial Item Purchase Financing**

#### **1032.202 General.**

##### **1032.202-1 Policy.**

(S-90) The Contracting Officer will coordinate unusual contract financing provisions within CFO, the Defense Contract Management Agency (DCMA) Administrative Contracting Officer (if DCMA will be administering the contract) and OGC prior to submission to the HCA for approval.

**1032.205 Procedures for offeror-proposed commercial contract financing.**

(S-90) The Contracting Officer should coordinate the evaluation of offeror-proposed financing terms with the DCAA to determine which offer is in the government's best interest.

**1032.206-90 Contract invoicing instructions and mandatory use of NSA paying office.**

All new contracts and purchase orders issued by VaCA will use the National Security Agency (NSA) paying office electronic invoice submittal procedures, with the exception of those contracts requiring review of paper invoices and supporting documentation by Government entities outside of DIA or NSA.

**1032.206-91 Contract clauses.**

**1032.206-91(a)** - For all contract vehicles whose invoices are paid from the NSA payment office, insert Clause **1052.232-90, INVOICE PROCEDURES AND PAYMENT – FIXED PRICE CONTRACTS**, in all fixed price solicitations and contracts (without cost reimbursable CLINs) when only a softcopy invoice is required to be submitted to the Government.

**1032.206-91(b)** - For all contract vehicles whose invoices are paid from the NSA payment office, insert Alternate I of Clause **1052.232-90, INVOICE PROCEDURES AND PAYMENT – FIXED PRICE CONTRACTS**, in all fixed price solicitations and contracts (without cost reimbursable CLINs) when both a softcopy invoice and a hardcopy invoice are required to be submitted to the Government.

**1032.206-91(c)** - For all contract vehicles whose invoices are paid from the NSA payment office, insert Clause **1052.232-91, INVOICE PROCEDURES AND PAYMENT - COST REIMBURSABLE CONTRACTS**, in all cost reimbursable solicitations and contracts, including T&M, LH, and FFP-LOE (or those with cost reimbursable CLINs) when only a softcopy invoice is required to be submitted.

**1032.206-91(d)** – For all contract vehicles whose invoices are paid from the NSA payment office, insert Alternate I of Clause **1052.232-91, INVOICE PROCEDURES AND PAYMENT - COST REIMBURSABLE CONTRACTS**, in all cost reimbursable solicitations and contracts, including T&M, LH, and FFP-LOE (or actions with cost reimbursable CLINs) when both a softcopy invoice and a hardcopy invoice are required to be submitted.

**Subpart 1032.4 – Advance Payments for Non-Commercial Items****1032.402 General.**

Prior to providing advance payments, the Contracting Officer will obtain approval from the HCA.

**1032.409 Contracting Officer action.**

**1032.409-1 Recommendation for approval.**

The Contracting Officer will prepare the request for advance payments, including the information at FAR 32.409-1, and coordinate the request through the VaCA division chief, and CFO, prior to submission to the HCA.

**1032.409-2 Recommendation for disapproval.**

The Contracting Officer will prepare the required documentation, including information at FAR 32.409-2, and coordinate the request through the VaCA division chief, prior to submission to the HCA.

**Subpart 1032.6 – Contract Debts****10232.670 Transfer of responsibility for debt collection.**

(S-90) Contracting officers will coordinate with CFO regarding debt collection for overpayments or erroneous payments made to a contractor. Contractor payments for overpayments will be submitted to CFO. Repayments will indicate the contract number and the line items related to the repayment. The Contracting Officer will prepare a DD Form 1131 (Cash Collection Voucher) to document the repayment. The original is submitted to CFO and a copy will be filed in the contract file.

**10232.671 Bankruptcy reporting.**

(S-90) Contracting officers will coordinate with CFO and OGC on the receipt of any claims in bankruptcy, insolvency, or in proceedings for reorganization or arrangement.

**Subpart 1032.7 - Contract Funding****1032.705 Solicitation provisions and contract clauses.**

**1032.705(a)** - Insert Provision **1052.232-92, SUBJECT TO INCREMENTAL FUNDING**, in all solicitations when an incrementally funded contract is contemplated.

**1032.705(b)** - Insert Clause **1052.232-93, SEGREGATION OF COST**, in all solicitations and contracts where the government needs to segregate funding and cost by contract line item.

**1032.705(c)** - Insert Clause **1052.232-94, SEGREGATION OF COST - ALT I**, in all solicitations and contracts where the government needs to segregate funding and cost by individual delivery order.

**1032.705(d)** - Insert Clause **1052.232-95, ALLOCATION OF CONTRACT COSTS - AWARD**, in all solicitations and contracts that are funded from multiple sources.

**1032.705(e)** - Insert Clause **1052.232-96, INCREMENTAL FUNDING**, in all incrementally funded solicitations and contracts.

## **PART 1033 PROTESTS, DISPUTES, AND APPEALS**

### **Subpart 1033.1 – Protests**

#### **1033.102 General.**

##### **1033.102-90 Agency coordination.**

Immediately upon receipt of a protest, the Contracting Officer will notify the VaCA division chief and furnish a copy of the protest document to the HCA and OGC. A notification of the receipt of the protest is sent to the SPE.

##### **1033.102-91 DPAP coordination.**

The USD(AT&L) Memorandum, Improving Communications During Competitive Source Selections dated 8 Jan 2008, requires the Director, DPAP, to be briefed on any protest of a competitively awarded major defense acquisition program or of an acquisition for services valued at \$1 billion or more, within 10 days from the filing of a protest. This briefing will be conducted by the SPE or his/her designee.

#### **1033.103 Protests to the Agency.**

(S-90) Sustained Protests. If the protest is found to have merit, the protest decision is developed by the Contracting Officer, in coordination with OGC and the VaCA division chief, within 15 working days from receipt of the protest. The HCA will approve the decision prior to issuance by the Contracting Officer. The Contracting Officer provides a copy of the final decision to OGC and the SPE.

(S-91) Denied Protests. If the protest is found not to have merit and the decision is to deny the protest, the Contracting Officer will prepare a letter to the protester stating that the protest is being denied and the reason(s) for denial. The protest decision will be coordinated with OGC and the VaCA division chief within 15 working days from receipt of the protest. The HCA approves the decision prior to issuance of the letter by the Contracting Officer. The Contracting Officer provides a copy of the final decision to OGC and the SPE.

(S-92) The HCA will approve the justification or determination required by FAR 33.103(f) prior to contract award. The Contracting Officer prepares the justification or determination and coordinates with the VaCA division chief and OGC, prior to HCA approval. A notification is sent to the SPE.

#### **1033.104 Protests to GAO.**

(S-90) Upon notice that a protest has been filed with the Government Accountability Office (GAO), the Contracting Officer, in conjunction with the COR, will prepare a report in accordance with FAR 33.104(a)(3). The report will include a OGC legal opinion addressing, as a minimum, the legal sufficiency of the Contracting Officer's findings, actions, and recommendations. Within 21 workdays of telephonic notice of a protest to GAO or within 14 days if the express option is requested, forward the report to the HCA for concurrence. Within the prescribed timeframe for submission of the Agency response to GAO, the Contracting Officer makes sufficient copies of the report and submits one copy to:

- (1) GAO (original);
- (2) Protester;
- (3) SPE; and
- (4) OGC.

(a) Protests before award. If the Agency decides to award the contract in spite of the protest, the Contracting Officer prepares the written finding in coordination with the VACA division chief and OGC, prior to HCA approval.

(b) Protests after award. If the Agency decides to authorize contract performance in spite of the protest, the Contracting Officer prepares the written finding in coordination with the VaCA division chief and OGC, prior to HCA approval.

(c) Notice to GAO. If the Agency has not fully implemented GAO's recommendations, the Contracting Officer prepares a report to GAO in coordination with the VaCA division chief and OGC, prior to HCA approval.

### **Subpart 1033.2 – Disputes and Appeals**

#### **1033.209-90 Suspected fraudulent claims.**

The Contracting Officer will immediately report suspected fraudulent claims to the IG and OGC, with a notification to the VaCA division chief, HCA and SPE. The Contracting Officer will include the following information:

- (1) Contract number.
- (2) Contractor name.
- (3) Type of contractor and dollar amount.
- (4) Issues in dispute.
- (5) Amount of claim.
- (6) Anticipated disposition.
- (7) Suspected false or fraudulent claims.
- (8) Milestones for resolution.

## **PART 1034 – NO FAR/DFARS SUPPLEMENT**

### **PART 1035 – RESEARCH AND DEVELOPMENT CONTRACTING**

#### **Subpart 10235.010 - Scientific and Technical Reports**

##### **10235.010-90 Use of Defense Technical Information Center (DTIC) for review of contractor Independent Research and Development (IR&D) information.**

DIA personnel are required to consider the work and accomplishment of contractor IR&D activities before executing DoD funded R&D efforts pursuant to DoD policy (DoD Directive 3204.1). Refer to the DTIC Certification template.

Information about contractor IR&D activities is available to DIA personnel through the Defense Technical Information Center (DTIC) database on the internet. The Defense Technical Information Center (DTIC) is a component of the DoD Scientific and Technical Information Program, and the central facility within DoD for the collection, storage, and secondary distribution of R&D program planning summaries, including contractors' IR&D activities.

DIA personnel can access the contractor IR&D data directly through the DTIC website after registering online at <http://www.dtic.mil>. Alternatively, requisitioners can use the Agency's John T. Hughes Library which has the capability for real-time searches of this database.

For all DoD R&D projects and studies, other than scientific and technical intelligence acquired under the DoD National Intelligence Program (NIP), requisitioners will query DTIC to determine whether a proposed research effort does not duplicate either a completed or ongoing contractor IR&D project. DoD R&D projects funded with NIP funding are exempt from this requirement.

Requisitioners will then certify to one of the above two conditions and include the corresponding written statement with the procurement package.

In addition, at the time of acceptance of the procurement package by the contracting office, the Contracting Officer will make a determination as to whether the results of the R&D effort will be posted to DTIC at the completion of the effort pursuant to DFARS Part 235.010. Normally, only open and unclassified information would be released. However, the Contracting Officer may determine that it is in the government's best interest from a counter-intelligence standpoint not to disclose the contract data if such disclosure would compromise national security. This determination will be reflected in the file.

## **PART 1036 CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS**

#### **Subpart 1036.2 – Special Aspects of Contracting for Construction**

##### **10236.201 Evaluation of contractor performance.**



(S-90) The COR will act as the evaluating official in completing the DD Form 2626, Performance Evaluation (Construction). The COR will seek input from the relevant Contracting Officer when completing the DD Form 2626.

#### **1036.206 Liquidated damages.**

See Subpart 1011.5 - Liquidated Damages.

### **Subpart 1036.6 - Architect-Engineer Services**

#### **1036.602 Selection of firms for architect-engineer contracts.**

##### **1036.602-1 Selection criteria.**

(S-90) In accordance with technical guidance as specified in DFARS 236.102(2)(ii) if delegated to DIA, the designated official for approval of design competition is the Chief, FAC Facility Engineering office. This authority may be further delegated.

##### **1036.602-2 Evaluation boards.**

(S-90) The evaluation board is chaired by the Chief, FAC Facility Engineering office. This authority may be further delegated.

##### **1036.602-4 Selection authority.**

(S-90) The designated selection authority for any contracting action being competed is the Deputy Director, FAC or their designee.

##### **1036.602-5-90 Short selection process for contracts not to exceed the simplified acquisition threshold.**

The evaluation board will use the procedures in FAR 36.602-5(b) for the selection of architect-engineer contractors to perform work under contracts not expected to exceed the simplified acquisition threshold. Under this procedure, the designations of the chairperson of the evaluation board and the selection authority are the same as those identified in 1036.602-2 and 1036.602-4, respectively.

#### **1036.603 Collecting data on and appraising firms' qualifications.**

(S-90) The FAC Facility Engineering office and the Contracting Officer are responsible for the collection, classification, and maintenance of data relative to the qualifications of architect-engineer firms.

#### **1036.604 Performance evaluation.**

(a) The COR acts as the evaluating official in completing DD Form 2631 Performance Evaluation (Architect-Engineer) for each contract exceeding \$30,000. The COR will seek input from the Contracting Officer when completing DD Form 2631.

(b) The reviewing official is the Chief, FAC Facility Engineering office.

(c) A copy of each fully completed performance evaluation is provided to the Chief, FAC Facility Engineering office for the consolidated file of architect-engineer evaluations.

#### **1036.606 Negotiations.**

(S-90) Documentation of price reasonableness will be reviewed, approved, signed, and dated by the Contracting Officer.

### **PART 1037 SERVICE CONTRACTING**

#### **Subpart 1037.1 – Service Contracts - General**

##### **1037.102-90 Policy.**

(a) For step by step guidance on all aspects of the acquisition of services, see the DoD Guidebook for the Acquisition of Services.

(b) Contractors who have TOP SECRET/SCI access may have unescorted access to a Government facility and may be permitted to work alone inside the facility without the requirement of the presence of a U.S. Government employed representative provided all proprietary information (PROPIN) is secured to preclude unfettered contractor access to this material. This restriction applies to Government-owned, contractor-operated (GOCO) facilities as well, see Reference (p).

(c) All service contracts and task orders over the SAT require a Quality Assurance Surveillance Plan (QASP). Refer to the following templates:

- For a performance based QASP template
- For a nonperformance based QASP template

##### **1037.103 Contracting Officer responsibility.**

(S-90) A determination of personal/non-personal services will be completed by the requiring activity and provided as part of all requirement packages for services. The Services Contract Questionnaire assists the Contracting Officer in making the determination of the type of services to be provided. The questionnaire is filed with the Contracting Officer's determination.

##### **10237.104 Personal services contracts.**

Authorization for personal service contracts for expert and consultant services will be supported by a Determination, in accordance with FAR 1.7 and include a determination considering the factors at DFARS 237.104(b)(i)(B). A D&F will be approved prior to solicitation for expert and consultant personal services. Approval level thresholds are the same as those delineated for the approval of acquisition plans as listed in Subpart 1007.105-91. OGC review is required.

**1037.110 Solicitation provisions and contract clauses.**

**1037.110(a) - Insert Clause 1052.237-90 REQUIRED CONTRACTOR INFORMATION FOR DIA'S HUMAN CAPITAL MANAGEMENT SYSTEM (EZHR)** in all solicitations and contracts in which contractors will be working onsite in government facilities.

**1037.110(b) - Insert Clause 1052.237-91 ACQUISITION OF HARDWARE UNDER SERVICE CONTRACTS** in all task order solicitations and task orders for services.

**1037.110(c) Reserved.**

**10237.170 Approval of contracts and task orders for services.**

**10237.170-2 Approval requirements.**

For all non-performance based service contracts and task orders at or below \$25 million, the approving authority is the VaCA division chief or deputy.

For all non-performance based service contracts and task orders above \$25 million, but less than or equal to \$85.5 million, the approving authority is the HCA.

For all non-performance based service contracts and task orders above \$85.5 million, the approving authority is the SPE.

(S-90) The approval for all non-performance based service contracts and task orders will be documented in a Memo for the Record (or within the PNOM or PNM).

**Subpart 1037.5 - Management Oversight of Service Contracts**

**1037.503 Agency-head responsibilities.**

(a) The following chart shows the approval level authorities for service contracts at DIA:

Table 1 – Acquisition of Services Categories

TYPE OF SERVICE & APPROVAL THRESHOLD	APPROVAL AUTHORITY
<p><b>Services Category III</b> All &gt;SAT to &lt;\$10M</p> <p><b>Services Category II</b> All \$10M to \$25M</p> <p>&amp;</p> <p>All &gt;\$25M to &lt;\$250M (unless Note 2 applies)</p> <p><b>Services Category I</b> All &gt;\$250M to ≤\$500M</p> <p>&amp;</p> <p>Non IT &gt;\$500M to ≤\$1B</p> <p>IT &gt;\$500M to ≤\$1B (See Note 3)</p> <p>All &gt;\$1B (See Note 3)</p> <p>Non IT Special Interest, as designated by USD(AT&amp;L)</p> <p>IT Special Interest, as designated by ASD(NII)/DoD CIO</p>	<p>VaCA div. chief/deputy</p> <p>VaCA div. chief/deputy</p> <p>HCA (unless Note 2 applies)</p> <p>SPE</p> <p>SPE</p> <p>ASD(NII)/DoD CIO or as designated</p> <p>OUSD(AT&amp;L)/DPAP</p> <p>USD(AT&amp;L)</p> <p>ASD(NII)/DoD CIO or as designated</p>

**Notes:**

1. Related task orders within an ordering vehicle will be viewed as one effort for the purpose of determining the appropriate thresholds.
2. If the contract or task order is not performance based, the acquisition of services expected to exceed \$85.5 million will require approval of the SPE (DFARS 237.170).
3. If the proposed acquisition includes both hardware and services, and the estimated value of the services portion exceeds the values set forth in DoDI 5000.02 at Enclosure 9, paragraphs 5.b.(1) or 5.b.(3), the notification requirements of those paragraphs will apply.
4. Decision authorities will review and approve all contracts and task orders >SAT, issued by a non-DoD agency on behalf of the Agency (DFARS 217.78 and 237.170).

(b) More comprehensive, detailed guidance on the acquisition of services is available in Enclosure 9 of DoDI 5000.02, "Acquisition of Services," see Reference (f), which provides: overview, applicability, responsibilities, acquisition of services planning, review and approval, independent management (peer) reviews, data collection, compliance with title 40/Clinger-Cohen Act, and definitions.

(c) The approval for all service contracts and task orders for this section will be documented in a Memorandum for the Record or within the PNOM or the PNM.

#### **1037.504-90 Contracting officials' responsibilities.**

Contracting officers will include the Clause 1052.209-96 Protection of Information and Nondisclosure Agreements in all solicitations and contracts when contractor employees will have access to DIA facilities, access to classified systems or access to information on other contracts or contractors.

### **Subpart 1037.6 – Performance-Based Acquisition**

#### **1037.601-90 General.**

(a) Agencies are required to use performance-based acquisition methods, to the maximum extent practicable, for the acquisition of services, including those acquired under supply contracts, except architect-engineering services, construction, utility services, and services incidental to supply purchases. As noted in DARS 10237.170-2, Approval requirements, approval (at a level commensurate with the value of the procurement action) is required for any non-performance based service contract or task order.

(b) DIA does not prescribe specific formats for preparing work statements, although some possible formats are provided, Statement of Work (SOW) Format, SOO Format and Performance Work Statement (PWS) Format for user consideration to mix/match content elements to suit a specific requirement. By not mandating a specific format, DIA provides PMs/Acquisition Management Teams the maximum flexibility to address their specific requirement using a format and content that best matches and describes their unique requirements. Requirements owners should discuss work statement formats and content approaches with the Contracting Officer as early as possible in the acquisition planning phase. Regardless of which document is used and what specific format is followed, these documents have the single purpose of describing the Agency's needs to industry.

### **PART 1038 – FEDERAL SUPPLY SCHEDULE CONTRACTING (No DARS Text)**

### **PART 1039 ACQUISITION OF INFORMATION TECHNOLOGY**

#### **Subpart 1039.1 - General**

#### **10239.101-90 Policy.**

(a) DoD Directive 8000.01, "Management of DoD Information Resources and Information Technology," see Reference (h), requires DoD components to establish an information resources management program. As part of its role as the Agency's functional manager for IT, all proposed acquisitions for IT will be coordinated with the Chief Information Officer (CIO) (or its designee).

**1039.107 Contract clauses.**

**1039.107(a)** - Insert Clause **1052.239-90, SOFTWARE WARRANTY**, in solicitations and contracts as appropriate when software is provided and the contractor is required to warrant that the software provided does not contain any malicious code, program, or other internal components (e.g. computer virus) which could damage, destroy, or alter software, firmware, or hardware.

**Subpart 10239.71 - Security and Privacy for Computer Systems****10239.7102-3-90 Information assurance contractor training and certification.**

(a) DIA requiring activities and Contracting officers will follow information assurance requirements for all acquisitions that require contractor personnel to access DoD information systems or which involve information assurance functional services for DoD information systems. This policy includes relevant DIA requirements administered by another agency, such as under an Interagency Agreement.

(b) In planning such acquisitions, the requiring activity will identify to the Contracting Officer:

(1) a list of information assurance functional responsibilities by category (*e.g.*, technical or management) and level (*e.g.*, computing environment, network environment, or enclave) and

(2) the applicable information assurance training and certification requirements. After contract award, the requiring activity is responsible for ensuring that the certifications and certification status of all contractor personnel performing information assurance functions, as described in DoD 8570.01-M, see Reference (g), is in compliance with the manual and are identified, documented, and tracked. The assigned COR will document the current information assurance certification status of contractor personnel by category and level as required by DoD directives. In lieu of using the Defense Eligibility Enrollment Reporting System (DEERS) directly for this purpose, DIA CORs will insert the information into the eZHR application pursuant to DIA's Information Assurance (IA) instructions. The DIA IA office will coordinate DIA's reporting of contractor certification and training to the DoD CIO as required. CORs should consult with DIA IA and review their existing contracts to determine if the subject requirements are appropriate to the effort and whether the requirements should be added by contract modification. Any request for a contract modification should be coordinated through the Contracting Officer.

**Subpart 1039.2 – Electronic and Information Technology****1039.201 Scope of subpart.****1039.201-90 Section 508 compliance.**

All electronic and IT (EIT) requirements developed, maintained, procured or used after 21 June 2001 will fully comply with Section 508 of the Rehabilitation Act to ensure the EIT is accessible

to people with disabilities. Therefore, requiring activities will perform market research to ensure Section 508 compliance for all EIT requirements. Market research information will be incorporated into the purchase request package.

### **1039.203 Applicability.**

(S-90) The Section 508 FAR exception determinations will be written by the requiring activity and submitted to the Contracting Officer for file documentation.

(S-91) Task or delivery orders require compliance unless an exception exists and is documented by the program office or requiring activity.

(S-92) The requiring activity provides to the Contracting Officer a written non-availability determination for commercial items that do not meet EIT requirements. This determination will include a description of the market research performed and indicate which standards cannot be met.

### **1039.204 Exceptions.**

(S-90) The requiring activity forwards all requests and approvals for exception to Section 508 compliance to the Contracting Officer. The contract file will include all documentation regarding Section 508 compliance and waivers. No solicitation, task or delivery order, purchase order, or purchase card order will be executed without receiving approval documentation.

## **Subpart 10239.73 – Requirements for Information Relating to Supply Chain Risk**

### **10239.7301 Supply Chain Risk Management (SCRM) assessments of DIA acquisitions.**

(a) DIA will establish, as part of the acquisition process, a supply chain risk management program that identifies mission-critical products, materials, and services requiring a supply chain risk assessment; conduct risk assessments and implement risk mitigation practices. The SCRM PMO is responsible for implementation of this program at DIA. The detailed “*DIA Supply Chain Risk Management (SCRM) Process*” (11 Feb 2015) is located on the Acquisition Policy Resources site. This process applies to all acquisitions of Information and Communications Technology (ICT) products. This includes services acquisitions that require ICT products to be delivered to DIA, and other high impact acquisitions as may be identified by the DIA SCRM PMO.

DIA contracting personnel will take the following actions when acquiring ICT products:

(b) For DIA supply contracts, prior to contract award, ensure the prospective contractor is either the original equipment manufacturer (OEM) or the OEM’s authorized reseller. To determine whether a prospective contractor is an authorized reseller, check with the OEM or the Supply Chain Risk Management (SCRM) Program Management Office (PMO). Many OEMs maintain their official business partner listings on the OEMs’ public internet sites.

(c) For DIA services contracts which prospectively allow the contractor to purchase ICT products for use on a DIA contract (i.e., as contractor acquired Government property), ensure the contractor purchases ICT products only from OEMs and OEM-authorized resellers. Include the clause at Federal Acquisition Regulation (FAR) 52.244-2, Subcontracts, with paragraph (d) filled in to identify that Government review and approval is required for any and all ICT purchases. In approving such purchases, ensure that the clause is also flowed down to sub-tier contractors.

(d) Invoke the clause at Department of Defense FAR Supplement (DFARS) 252.204-7000, Disclosure of Information, to prohibit contractors from disclosing unclassified contract information pertaining to DIA's use of ICT products (including, for example, listing DIA as a customer on their websites, advertising, etc.), unless granted an exception by the Contracting Officer in coordination with the DIA SCRM PMO.

(e) Periodically remind contracting officer's representatives (CORs) and other DIA personnel involved in receiving and accepting ICT products that carefully inspecting such items upon receipt assists DIA's SCRM efforts in preventing non-conforming items or items of dubious origin from being used and installed in DIA systems.

(f) Insert provisions at 252.239.7017, Notice of Supply Chain Risk, in all solicitations, including solicitations using FAR part 12 procedures for the acquisition of commercial items, that involve the development or delivery of any information technology whether acquired as a service or as a supply.

(g) Insert clause at 252.239.7018, Supply Chain Risk, in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that involve the development or delivery of any information technology whether acquired as a service or as a supply.

(h) Contractor Counterfeit Electronic Part Detection and Avoidance System except as provided below, use clause at 252.246-7007, Contractor Counterfeit Electronic Part Detection and Avoidance System, in solicitations and contracts when procuring -

- (1) Electronic parts
- (2) End items, components, parts, or assemblies containing electronic parts; or
- (3) Services where the contractor will supply electronic parts or components, parts, or assemblies containing electronic parts as part of the service.

Do not use this clause in solicitations and contracts that are set-aside for small business. Do not apply this clause unless the Contractor is subject to the Cost Accounting Standards under 41 U.S.C. Chapter 15, as implemented in regulations found at 46 CFR 9903.201-1.

(i) Consider requirement to submit a SCRM plan as port of technical proposal. The SCRM plan shall describe the offeror's approach to SCRM and demonstrate how the offeror's approach will reduce and mitigate supply chain risks. The DIA SCRM PMO can assist requirement officers in the development of plan requirements as well as evaluation criteria.



(j) Further guidance on Agency SCRM practices will be available in DIA Supply Chain Risk Management (SCRM) Guide for Acquisition and Contracting to Address Supply Chain Risk.

**PART 1040 – RESERVED (No DARSI Text)**

**PART 1041 – RESERVED (No DARSI Text)**

**PART 1042 CONTRACT ADMINISTRATION AND AUDIT SERVICES**

**Subpart 1042.2 – Contract Administration Services**

**10242.202-90 Assignment of contract administration.**

(S-90) The decision to assign a contract for administration by the DCMA will be done on a case by case basis, taking into consideration the services available from DCMA, the anticipated level of support required, the sensitivity and classification of the procurement, and the resources available in-house. The Office of Federal Procurement Policy has found several weaknesses in contract administration practices at various agencies. The primary reason is that contracting officials often allocate more time to awarding contracts rather than administering existing contracts. Since new procurement will always have priority with the VaCA, it may be preferable to delegate post award activities. Otherwise, problems will arise in contractor performance, cost overruns, and delays in receiving goods and services. Several other deficiencies have been noted such as unclear roles and responsibilities of the COR, excessive backlog in contract closeout and incurred costs audits, improperly trained officials performing contract oversight, unclear statements of work that hinder contractor performance, and inadequate guidance on voucher processing and contract closeout.

(a) Simplified Acquisition actions will be administered by VaCA.

(b) Orders against a Blanket Purchase Agreement (BPA), or Indefinite Delivery/Indefinite Quantity (IDIQ) contract will be executed and administered by VaCA.

(c) Regardless of the assignment of Contract Administration functions to DCMA or retention by VaCA, it is Agency policy that paying office responsibility will be assigned to the National Security Agency, Ft. George Meade, MD (NSA) in lieu of the DoD-wide normal practice to use the Defense Finance and Accounting Service (DFAS). For a contract assigned to DCMA, the CO will, in coordination with cognizant Financial Executive (FE) officials, ensure that payment processing procedures normally handled automatically between DCMA and DFAS will be adequately covered during the performance of a DCMA-administered/NSA-paid contract.

(S-91) Responsibilities:

(a) Contract Specialist will prepare initial COR Appointment Letters for Contracting Officer signature after ensuring that Agency personnel selected as CORs have received all necessary training prior to the assumption of their duties. Information is available from the AE COR

database. The Contract Specialist will always prepare all necessary documentation and coordinate activities necessary to enable resolution of issues, concerns and formal protests occurring prior to award. A protest received prior to award forbids award until the issue is resolved.

(b) Contracting Officer will determine contract administration functions to be retained or delegated to DCMA. Where DCMA is assigned administrative duties, the Contracting Officer will maintain coordination with the Administrative Contracting Officer (ACO), and ensure the performance by the appropriate DIA organization of those functions not delegated. The Contracting Officer, in consultation with Legal Counsel, will actively oversee and assist the Contract Specialist in all aspects of the contract administration process.

(c) Contracting Officer's Representative (COR) will monitor performance and/or deliveries, and take whatever corrective action necessary to ensure compliance with all provisions of the Agency's contracts. The COR will monitor contractual performance, inspect, and accept deliverables, and forward Receiving Reports, or other evidence of acceptance to the designated payment offices. It is imperative that the COR stay in close communication with the Contracting Officer, relaying any information that may affect contractual commitments and requirements.

(S-92) Procedures:

(a) Upon receipt of an adequate Procurement Request (PR) from the Customer, a decision will be made as to whether Contract Administration functions will be retained by the VaCA or will be delegated to DCMA. Contracts or orders below the Simplified Acquisition threshold will be administered in-house.

(b) Upon award of a contract that will not be delegated to DCMA (i.e., Contract Administration retained by VaCA), the Contract Specialist will prepare a Virginia Contracting Activity Contract Administration Profile Sheet Standard Document summarizing all salient information necessary to properly monitor and manage contractor performance.

(c) The Contract Specialist and Contracting Officer will resolve issues related to contractor payment, including issues involving a disagreement over the amount or timing of contractor reimbursement, on those contracts managed in-house.

(1) Upon notice from a vendor, the person receiving the complaint will notify the Contract Specialist responsible for administering the contract in question.

(2) The Contract Specialist will contact the disbursing office and the COR to determine why the vendor has not been paid. Once the reason for delay has been determined, the Contract Specialist will inform the contractor and the COR accordingly, indicating what information or corrective action is necessary, and providing names, addresses, and telephone numbers of other parties to be contacted.

(3) The Contract Specialist will endeavor to reply within 24 hours from the receipt of a verbal inquiry; acknowledge by letter any written inquiry within five working days from

the date of its receipt within the cognizant contracting office; and, perform any follow-up efforts necessary to resolve the problem.

(d) Whether a contract action is delegated to DCMA or not, the VaCA will ensure that the following Contract Administration functions are performed (via DCMA or directly by VaCA).

Note: This list is not all inclusive.

- Recoup idle funds.
- Administer warranties.
- Settle post-award claims and disputes.
- Resolve protests filed on other than source selection issues.
- Terminate contracts for default or convenience.
- Close-out completed contracts.
- Resolve defective pricing actions.
- Participate in program reviews for selected high visibility or problem acquisitions. Administer definitized actions arising from contracts subject to the issuance of Task Orders, and Basic Ordering Agreements (BOA) (See FAR Subpart 16.7, (Agreements)).
- Establish and maintain a contract administration data base within VaCA to track:
  - Workload by Contract Specialist;
  - Closeout actions; and,
  - Contract deliveries or performance status.

### **Subpart 1042.3 - Contract Administration Office Functions**

#### **1042.302-90 Notifying contractor personnel during emergencies.**

(a) In the event that a practice telephone alert or other emergency notification of contractor personnel is required, the responsible DIA program office will contact the assigned COR. If this individual is not available, the contractor's Point of Contact (POC) will be notified. This notification will include specific instructions as to whether this alert is a practice one, an actual emergency, or an activation of the DIA Mission Contingency Plan (MCP). The contractor's POC will activate their own internal notification system to identify the whereabouts and status of affected employees. The contractor's POC also will give reports to the DIA POC who initiated the notification. The reports will give a status of those affected has been verified and any specific instructions regarding their returning to work, movement to alternate locations, etc., have been communicated. Note: If the government requires the contractor to perform at a time or place that deviates from the scope of the contract, a modification to the contract will be necessary; the COR will contact the Contracting Officer or the Virginia Contracting Activity (VaCA) division chief to initiate this change.

(b) Unless stated herein, under no circumstances are DIA government personnel authorized to contact individual contractor employees directly to provide direction during emergencies. The program office and the COR will be cognizant of any pre-established alternative work sites for contractor personnel. If it is determined that the services of the contractor are necessary during an actual emergency that may prompt the activation of the DIA MCP, and the contract does not

contain specific language permitting them to relocate to alternative work sites, the program office will immediately contact the Contracting Officer. Only a warranted contracting officer can direct a contractor to alter their work location or initiate other changes outside the scope of the contract.

(c) The program office will identify all contracts requiring the use of alternate work sites and review the contract to determine if a modification is needed to identify this requirement. The program office will develop and maintain an emergency contact list by contract. This list will include complete contact information for the contractor (primary and alternate), program office (primary and alternate), COR, Contracting Officer and the VaCA division chief. All responsible parties will provide the program office with any changes promptly. The program office will distribute updated copies of the contact list as changes are made. Program offices, CORs, Contracting officers and the VaCA division chiefs will have this information with them both at work and at home in the event they will conduct such notifications in times of emergency.

#### **1042.302-91 Contract clauses.**

**1042.302-91(a) - Insert Clause 1052.242-90, CONTRACTOR CONTRACT ADMINISTRATOR(S)**, in all solicitations and contracts.

**1042.302-91(b) - Insert Clause 1052.242-91, CONTRACTING OFFICER'S REPRESENTATIVE**, in all solicitations and contracts requiring a COR.

**1042.302-91(c) - Insert Clause 1052.242-92, PURCHASING OFFICER REPRESENTATIVES**, in all solicitations and contracts.

**1042.302-91(d) - Insert Clause 1052.242-93, LIMITATION OF AUTHORITY**, in all solicitations and contracts.

### **Subpart 1042.5 - Post-award Orientation**

#### **1042.503 Post-award conferences.**

##### **1042.503-1 Post-award conference arrangements.**

When contract administration is retained by DIA, the Contracting Officer will arrange the conference.

##### **1042.503-2 Post-award conference procedure.**

(S-90) The Contracting Officer, or contract specialist if so delegated, is the chairperson for post-award conferences. Prior to conducting a post-award conference, the chairperson will meet with all appropriate government representatives to plan and discuss the conference agenda.

### **Subpart 1042.7 - Indirect Cost Rates**

**1042.709-6 Contract clause.**

**1042.709-6(a)** - Insert Clause **1052.242-94, DOWNWARD ADJUSTMENT OF RATES**, in all solicitations and contracts in which forward negotiated rates have not been negotiated by the government.

**Subpart 1042.15 – Contractor Performance Information****1042.1501 General.****1042.1501-90 Recognizing contractor performance.**

(a) To ensure the integrity and standing of the parties under government contracts, DIA employees will refrain from any conduct that might impute an employer-employee relationship to what is properly a government-independent contractor relationship. There are various programs available to government supervisors for motivating, rewarding, and recognizing government employees. Inappropriately applying government recognition programs to contractors can adversely affect the integrity and nature of a contract (*e.g.*, creating the appearance of a personal services contract). Such actions also can give rise to misunderstandings and disputes concerning a contractor's past performance assessment, violate statutes or regulations pertaining to use of government appropriations or government standards of conduct, or give the appearance of impropriety.

(b) DIA dealings with contractors in the workplace will adhere to the terms of the applicable contracts and the relevant statutes and regulations that govern use of government appropriations or standards of conduct. While effective government oversight of contractor performance is required under any contract, it remains the responsibility of the contractor to manage and supervise its own employees. Accordingly, the contractor's management (not the government) bears the supervisory responsibility for recognition, reward, professional development, and discipline of its own employees.

(c) DIA employees who interact with DIA contractors will not issue awards to contractors without coordinating in advance with the Contracting Officer and obtaining guidance from OGC. Before nominating a contractor for recognition, DIA employees should consider the following criteria. First, contractor personnel can never be given monetary awards. Second, to grant an honorary award to a contractor, such as a letter or certificate of commendation, the nominating individual will be able to articulate how the contractor has performed substantially above the express or implied terms and conditions of the contract. (Simply participating as a team member performing contract requirements is not sufficient to provide an award; implied in every contract is the duty to cooperate as a "team.") Third, if using a letter of commendation, the letter will be addressed to the individual contractor's company recommending the individual for recognition, rather than to the individual directly.

(d) All personnel involved in overseeing a contractor's performance are encouraged to provide meaningful feedback to the COR and the Contracting Officer for their consideration in assessing and reporting contractor performance under the contract.

**1042.1503-90 Procedures.**

The Guide to Contractor Performance Information and the CPE Template provide provides specific procedures and guidance on the collection and use of past performance information.

**PART 1043 CONTRACT MODIFICATIONS****Subpart 1043.1 – General****1043.101-90 Definitions.**

The “Effective date” (Block 3 of the SF 30, Amendment of Solicitation/Modification of Contract) may read, “SEE BLOCK 16C.”

**1043.102 Policy.****1043.102-90 Contract modification log.**

A contract modification log is required in all contract files. The purpose of the log is to monitor all modifications, keep a running total of the contract funding, as well as, provide a snapshot of the actions issued against a contract. For additional guidance, see DARS1 1004.803 and the Log Exemplar template.

**PART 1044 – SUBCONTRACTING POLICIES AND PROCEDURES (No DARS1 Text)****PART 1045 GOVERNMENT PROPERTY****Subpart 1045.1 – General****1045.102 Policy.**

(S-90) If the government provides Government Furnished Property (GFP) to contractors, in addition to being documented in the contract, it will be documented in the PNOM or PNM.

**1045.102-90 Contractor acquired property.**

Another category of GFP is Contractor Acquired Property (CAP), that consists of property to be acquired or otherwise provided by the contractor for performing a contract and to which the government has title. Once the government takes title to the property, it becomes CAP/GFP for the balance of the contract performance period and GFP for any follow-on contracts, if left in the contractor’s possession. However, it is DIA’s policy that no CAP is to be acquired under any DIA contract, particularly a services contract, unless it is identified as a separately deliverable contract line item or its acquisition by the contractor for delivery to the government has been specifically authorized, in advance and in writing, by the Contracting Officer.

**1045.104-90 COR property accountability responsibilities.**

The responsibilities associated with the DIA COR function are located in the COR Deskbook.

**1045.105 Contractor's property management system compliance.**

(S-90) When the contract administration functions are retained at DIA and government property is provided under the contract, the contract file will contain a copy of the property administrator's (*i.e.*, DCMA or LOG) approval of the contractor's compliance with contractual requirements. The contract file will contain documentation of any noncompliance of the contractor's property control system and efforts taken to correct deficiencies.

**1045.107 Contract clauses.**

**1045.107(a)** - Insert Clause **1052.245-90, GOVERNMENT FURNISHED PROPERTY**, in all solicitations and contracts in which the government furnishes property to the contractor.

**1045.107(b)** - Insert Clause **1052.245-91, GOVERNMENT FURNISHED DATA**, in all solicitations and contracts in which the government furnishes data to the contractor.

**PART 1046 – QUALITY ASSURANCE****Subpart 1046.3 - Contract Clauses****1046.3-90 Contract clauses.**

**1046.3-90(a)** - Insert Clause **1052.246-90, PACKAGING AND MARKING**, in all solicitations and contracts in which a contractor is required to deliver supplies.

**PART 1047 - TRANSPORTATION (No DARS Text)****PART 1048 - VALUE ENGINEERING (No DARS Text)****PART 1049 - TERMINATION OF CONTRACTS****Subpart 1049.4 - Termination for Default****10249.470-90 Reporting of termination for default.**

(a) Prior to the issuance of a termination for default, regardless of contract dollar value, the Contracting Officer will coordinate with their VaCA division chief, and receive concurrence from the following parties:

- (1) Requiring Activity;
- (2) OGC;

- (3) Director, Small Business Program (only if the contract was awarded to other than a large business);
- (4) Competition Advocate;
- (5) HCA; and
- (6) the SPE (if the contract dollar value exceeds \$10 million).

(b) Within four workdays after issuing the contract termination, the Contracting Officer will prepare a memorandum for HCA or the SPE (if the contract dollar value exceeds \$10 million) signature, with the required termination information outlined in PGI 249.7001.

Congressional notification is required for any termination involving a reduction in employment of 100 or more contractor employees. Proposed terminations will be cleared through DIA's Corporate Communication Office before release of the termination notice, or any information on the proposed termination, to the contractor. Follow the procedures at PGI 249.7001 for congressional notification and release of information.

See DoD Class Deviation 2011-O0002, Congressional Notification on Significant Contract Terminations, issued on October 8, 2010. The class deviation eliminates the congressional notification requirement for firms performing in Iraq or Afghanistan if the firm is not incorporated in the United States. This deviation is effective until incorporated in the DFARS or rescinded.

## **PART 1050 - EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT**

### **Subpart 1050.1 – Extraordinary Contractual Actions**

#### **1050.102 Delegation of and limitations on exercise of authority.**

##### **1050.102-2-90 Contract adjustment boards.**

The Contract Adjustment Board will be chaired by the HCA. Other board members will include the affected VaCA division chief, the Contracting Officer, and two representatives from the requiring activity.

##### **10250.103 Contract adjustments.**

##### **10250.103-5 Processing cases.**

The Contracting Officer will prepare the preliminary and final records for submission to the HCA.

## **PART 1051 - USE OF GOVERNMENT SOURCES BY CONTRACTORS (No DARSI Text)**



## **PART 1052 - SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

### **Subpart 1052.1 – Instructions for Using Provisions and Clauses**

#### **1052.101 Using Part 52.**

#### **(S-90) FAR, DFARS and Agency clause and provision roadmaps.**

DIA contract specialists and contracting officers will use the DIA FAR/DFARS/Agency Clause Matrix and Provision Roadmaps in conjunction with the matrix at FAR 52.301. Contract specialists and contracting officers will review the FAR and DFARS in conjunction with using the roadmaps. The DIA roadmaps are not to be used exclusively when developing a solicitation or contract.

### **Subpart 1052.2 – Text of Provisions and Clauses**

#### **1052.204-90 Contractor personnel clearances – contract.**

As prescribed in **1004.404(a)**, insert the following clause:

#### **CONTRACTOR PERSONNEL CLEARANCES – CONTRACT (DEC 2008)**

(a) It will be the responsibility of the contractor to optimize the use of currently cleared personnel in completing the requirements of this contract. In the event that the contractor requires additional personnel clearances, any delays incurred in the contract progress and/or schedule as a result of the time required to clear such personnel will be the contractor's responsibility. Under no circumstances will the government recognize a claim for an equitable adjustment in the contract price and/or schedule as a result of any delay due to the failure to have properly cleared personnel.

(b) It is understood that the contractor will provide personnel as suitable replacements on a best efforts basis.

*(End of Clause)*

#### **1052.204-91 Reserved.**

#### **1052.204-92 Reserved.**

#### **1052.204-93 Packaging and marking of classified items.**

As prescribed in **1004.404(d)**, insert the following clause:

#### **PACKAGING AND MARKING OF CLASSIFIED ITEMS (AUG 2010)**

(a) Classified information to be transmitted outside of a facility will be enclosed in opaque inner and outer covers. The inner cover will be a sealed wrapper or envelope plainly marked with the assigned classification and addresses of both sender and addressee. The outer cover will be sealed and addressed with no identification of the classification of its contents. A receipt will

be attached to or enclosed in the inner cover, except that CONFIDENTIAL information will require a receipt only if the sender deems it necessary. The receipt will identify the sender, the addressee and the document, but will contain no classified information. It will be signed by the recipient and returned to the sender.

(b) A suspense system will be established to track transmitted documents until a signed copy of the receipt is returned.

(c) When the material is of a size, weight, or nature that precludes the use of envelopes, the materials used for packaging will be of such strength and durability to ensure the necessary protection while the material is in transit. (See DoDM 5220.22-M, Chapter 5, Reference (i)).

*(End of Clause)*

#### **1052.204-94 Method of transmission.**

As prescribed in **1004.404(e)**, insert the following clause:

#### **METHOD OF TRANSMISSION (DEC 2008)**

TOP SECRET material may be transmitted by:

- (1) A specifically designated person cleared for access to and including TOP SECRET (Military, U.S. Civilian employee, or a responsible employee designated by the contractor), should have their clearance verified and have an authorization form or letter for transporting classified material. The contractor's employee will not carry classified material across international boundaries;
- (2) Defense Courier Service (DCS) using a contractor assigned DCS account number. Under no circumstances will TOP SECRET material be transmitted through the U.S. or company mail channels. (See DoDM 5220.22-M, Chapter 5, Reference (i)).

*(End of Clause)*

#### **1052.204-95 Security requirements.**

As prescribed in **1004.404(f)**, insert the following clause:

#### **SECURITY REQUIREMENTS (DEC 2008)**

- a. The contractor will maintain and administer a security program in accordance with Industrial Security Manual DoD 5220.22-M, see Reference (i). Copies of these documents are available for review by contacting the Contracting Officer.
- b. Loss or suspension of required security clearance as set forth on the DD Form 254, "Contract Security Classification Specifications," would result in contractor's inability to perform in accordance with the terms and conditions of this contract. As a result of this failure to perform, the contractor is subject to default under the appropriate termination clause herein.
- c. The government reserves the right to direct any contractor employee to be removed from performance, direct or indirect, whenever there is probable cause to believe, on the basis of all facts available, that such action is warranted in the interest of national security, whether or not

the cause is deemed of sufficient severity to warrant action to terminate the contractor's or individual's security clearance. The government also reserves the right to direct any contractor employee to be removed from performance, direct or indirect, for the period of time necessary to conduct any investigation of alleged misconduct which may in the opinion of the Contracting Officer jeopardize the security of the project.

d. Military security requirements in the performance of this contract will be maintained in accordance with the DD Form 254 listed in Section J. The highest classification involved in the performance of this contract is \_\_\_\_\_. This contract document is unclassified.

e. The contractor will not use any electrical information processing equipment in his possession for the purpose of processing or transmitting classified information under this contract without the written permission of the Contracting Officer.

*(End of Clause)*

#### **1052.204-96 Activities that affect U.S. persons.**

As prescribed in **1004.404(g)**, insert the following clause:

#### **ACTIVITIES THAT AFFECT U.S. PERSONS (JUN 2013)**

This contract is sponsored by the Defense Intelligence Agency. All work and services to be performed hereunder will be in strict compliance with U.S. Person protection procedures contained in DoD Directive 5240.01, and other applicable guidance. The contractor will ensure that all contractor employees receive annual intelligence oversight training.

*(End of Clause)*

#### **1052.204-97 Security clearance.**

As prescribed in **1004.404(h)**, insert the following provision:

#### **SECURITY CLEARANCE (DEC 2008)**

a. In order to be considered for contract award, at the time of submission of a bid or offer, the contractor will be able to certify that they currently are or would be eligible for a security clearance consistent with the requirements of the DD Form 254 authorizing access to, and for safeguarding classified information up to and including \_\_\_\_\_.

b.(1) Facilities Clearances - is defined as an administrative determination that the facility is eligible, from a security viewpoint for access to classified information of the same or higher security category at the level of clearance required. Personnel required to be cleared in connection with the facility clearance are specified in DoD 5220.22-M, see Reference (i).

(2) Storage - is defined as adequate containers to store classified material when not in use in accordance with the requirements set forth in DoD 5220.22-M, "Industrial Security Manual," see Reference (i).

c. The contractor will furnish with his offer sufficient information to verify the existence of required clearances:

FACILITY:      Level of Clearance: \_\_\_\_\_  
                          Location: \_\_\_\_\_  
                          CAGE Code: \_\_\_\_\_  
                          Issuing Office: \_\_\_\_\_  
                          Date of Clearance: \_\_\_\_\_  
                          Interim Clearance: \_\_\_\_\_  
                          Final Clearance: \_\_\_\_\_  
 STORAGE      Level of Clearance: \_\_\_\_\_

d. The contractor will indicate in the space provided the number of personnel to be assigned to contract performance for each category of labor and the level of security clearance required. (Use additional pages as necessary.)

NUMBER OF PERSONNEL	LABOR CATEGORY	LEVEL OF SECURITY CLEARANCE
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

The contractor ( ) will ( ) will not require additional personnel security clearances to fulfill any contractual obligation hereunder. Any request for personnel security clearance will be addressed to DIA and processed through the Contracting Officer's Representative for certification of need. The request will contain the contract number and labor category.

*(End of Provision)*

#### **1052.204-98 Handling Unclassified DoD Information**

As prescribed in **1004.404(i)**, insert the following clause:

#### **1052.204-98 HANDLING UNCLASSIFIED DoD INFORMATION (JAN 2013)**

All unclassified DoD information in the possession or control of non-DoD entities on non-DoD information systems will minimally be safeguarded as follows:

1. Contractors will not process unclassified DoD information on publically available computers (e.g., those available for use by the general public in kiosks or hotel business centers).
2. Contractors will protect unclassified DoD information by at least one physical or electronic barrier (e.g., locked container or room, logical authentication or logon procedure) when not under direct individual control of an authorized user.

3. At a minimum, contractors will overwrite media that have been used to process unclassified DoD information before external release or disposal.
4. Contractors will encrypt all information that has been identified as Controlled Unclassified Information (CUI) when it is stored on mobile computing devices such as laptops and personal digital assistants, compact disks, or authorized removable storage media such as thumb drives and compact disks, using the best encryption technology available to the contractor. **(For Official Use Only (FOUO) is considered Controlled Unclassified Information (CUI).)**
5. Contractors will limit transfer of unclassified DoD information to subcontractors or teaming partners with a need to know and obtain a commitment from them to protect the information they receive to at least the same level of protection as that specified in the contract or other written agreement.
6. Contractors will transmit e-mail, text messages, and similar communications containing unclassified DoD information using technology and processes that provide the best level of privacy available, given facilities, conditions, and environment. Examples of recommended technologies or processes include closed networks, virtual private networks, public key-enabled encryption, and transport layer security (TLS).
7. Contractors will encrypt organizational wireless connections and use encrypted wireless connections where available when traveling. If encrypted wireless is not available, encrypt document files (e.g., spreadsheet and word processing files), using at least application-provided password protected level encryption.
8. Contractors will transmit voice and fax transmissions only when there is a reasonable assurance that access is limited to authorized recipients.
9. Contractors will not post unclassified DoD information to website pages that are publicly available or have access limited only by domain or Internet protocol restriction. Such information may be posted to website pages that control access by user identification and password, user certificates, or other technical means and provide protection via use of TLS or other equivalent technologies during transmission. Access control may be provided by the intranet (vice the website itself or the application it hosts).
10. Contractors will flow down the above requirements to all affected subcontractors.

*(End of Clause)*

**1052.209-90 Reserved.**

**1052.209-91 Reserved.**

**1052.209-92 Reserved.**

**1052.209-93 Disclosure of information – Request For Proposal (RFP).**

As prescribed in **1009.505-5(a)**, insert the following provision:

**DISCLOSURE OF INFORMATION – RFP (DEC 2008)**

- (a) The recipient organization of the Request For Proposal (RFP) will not, unless authorized elsewhere in the RFP, disclose any information concerning the request or its sponsorship to anyone other than those offerors and employees of the recipient organization who require the information in order to prepare and submit a proposal or a response.
- (b) The recipient organization may obtain necessary subcontracting and purchasing data from prospective vendors or subcontractors, provided that sponsorship of this RFP is not disclosed; and, where required, the appropriate security regulations are observed.
- (c) Any disclosure, other than that described in paragraphs “a.” and “b.” above, considered necessary by the recipient organization may be made only with the written consent of the Contracting Officer.

*(End of Provision)*

**1052.209-94 Disclosure of information – contract.**

As prescribed in **1009.505-5(b)**, insert the following clause:

**DISCLOSURE OF INFORMATION – CONTRACT (DEC 2008)**

- (a) DFARS 252.204-7000 and this clause will govern any disclosure of information regarding this contract. In using information authorized by this clause, the contractor (i) will not disclose any information concerning the sponsorship of this contract, or (ii) the nature of the government's interest in and application of this subject matter of this contract unless this type of information is expressly allowed to be disclosed by paragraph “b” and/or “c” below, or by written approval of the Contracting Officer.
- (b) The information listed below may be disclosed in proposals to United States Government agencies in response to requests for past performance assessments. When this information is completed at time of contract award, the document will be marked "FOR OFFICIAL USE ONLY." If any of the information that follows changes in your disclosure, the Contracting Officer will be notified in writing of the change.

- (1) Contract Number: *(complete at award)* \_\_\_\_\_
- (2) Contract Type: *(complete at award)* \_\_\_\_\_
- (3) Award Date: *(complete at award)* \_\_\_\_\_
- (4) Government Contracting Activity: \_\_\_\_\_
- (5) Original Contract Value: *(complete at award)* \_\_\_\_\_
- (6) Current or Completed Contract Value: \_\_\_\_\_  
*(contractor may update)* \_\_\_\_\_
- (7) Period of Performance: From: *(complete at award)* \_\_\_\_\_  
To: *(contractor may update)* \_\_\_\_\_

- (8) Competitive/Noncompetitive/Follow-on  
(*circle, underline or highlight appropriate description*)
- (9) Program Title: (complete at award) \_\_\_\_\_
- (10) Contract Effort Description (*unclassified - as provided in the solicitation package and completed as part of the award document*)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
- (11) Place of Performance: (*complete at award*) \_\_\_\_\_
- (12) Points of Contact/Phone Number: \_\_\_\_\_
- (13) Contracting Officer: \_\_\_\_\_  
(*complete at award - contractor may update*)
- (14) Program Manager: \_\_\_\_\_  
(*complete at award - contractor may update*)

(c) For additional disclosures which require specific prior approval by the Contracting Officer, once authorization to use any specific information has been approved by the Contracting Officer, the contractor is authorized to reuse such specific information without obtaining additional authorization from the Contracting Officer. The contractor will maintain a log of the additional uses and submit a copy of the log to the Contracting Officer when each additional disclosure is made.

(*End of Clause*)

#### **1052.209-95 Unauthorized disclosure of government information systems.**

As prescribed in **1009.505-5(c)**, insert the following clause:

#### **UNAUTHORIZED DISCLOSURE OF GOVERNMENT INFORMATION SYSTEMS (DEC 2008)**

(a) The contractor is strictly prohibited from disclosing any data derived from government information systems. This prohibition applies equally to extracts or summaries of such data, and includes oral, written or electronic media disclosures. The subject data include, but are not limited to, financial databases, program budget information databases, procurement information databases, and other informational databases. In limited circumstances, the Contracting Officer may authorize the contractor's disclosure of such information when disclosure is necessary to the successful completion of the contract. The contractor's unauthorized disclosure of government information systems data could result in the disqualification, debarment, or suspension of the contractor. Such an unauthorized disclosure may also constitute a criminal violation of the fraud or information disclosure provisions of title 18 of the United States Code (U.S.C.). In addition, the unauthorized disclosure of information related to national defense may constitute a violation of the "espionage" provisions of Title 18 of the U.S.C., sections 793, 794, and/or 798, or Title 50 of the U.S.C., section 783.

- (b) The contractor will provide the Contracting Officer's Representative (COR) with a list of applicable employees prior to personnel gaining access to any information system(s).
- (c) Information systems are defined as any telecommunications and/or computer-related equipment or interconnected system or subsystems of equipment used in the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmitting, or receiving of voice and/or data, and includes software, firmware, and hardware.

*(End of Clause)*

#### **1052.209-96 Protection of information and nondisclosure agreements**

As prescribed in **1009.505-5(d)**, insert the following clause:

#### **PROTECTION OF INFORMATION AND NONDISCLOSURE AGREEMENTS (MAR 2010)**

- (a) Definitions. As used in this clause only:
  - (1) Protected information and computer software. Unless specifically excluded by paragraph (2), all information and computer software, in any form or media, that in the course of performing work under this contract are disclosed to the contractor, its subcontractors, or their employees, or to which those persons otherwise are given access to, by (i) DIA, (ii) other agencies, (iii) foreign governments or (iv) other contractors while directly supporting DIA, which is accompanied by written legends identifying use or disclosure restrictions or disclosed under circumstances that the contractor knows are subject to use or disclosure restrictions established in writing by the government.
  - (2) Protected information and computer software does not include information that:
    - (i) Has been released to the general public through no action of the undersigned in breach of this agreement or through no action of any other party in breach of any other obligation of confidentiality owing to the government or the owner of the protected information or computer software.
    - (ii) Has been lawfully obtained by the recipient outside the course of the performance of this contract.
    - (iii) Has been properly licensed or provided directly by the owner (or other authorized source) of the information or computer software to the recipient to the extent so licensed or provided.
    - (iv) Has been owned by the recipient or was developed independently of the disclosure hereunder.
    - (v) Has been used or disclosed by the recipient in response to an order of a court or administrative body of competent jurisdiction to the extent permitted by that authority.
    - (vi) Was disclosed to the recipient by the government who has explicitly authorized the recipient to use or disclose the information for another purpose, to the extent so authorized.



(b) Use and disclosure restrictions. The contractor will use and disclose protected information and computer software only as necessary for the performance of the requirements of this contract. Protected information and computer software may not be used or disclosed for any other purpose, including bid or proposal preparation or business marketing, without the written approval of the Contracting Officer. Furthermore, unless otherwise directed by the Contracting Officer, the contractor will comply with all restrictions set forth in any legends, licenses or instructions provided to the contractor or accompanying protected information and computer software or other written directives of the government known to the contractor. The use and disclosure obligations imposed by this paragraph will expire as follows:

(1) There will be no expiration date for the following protected information and computer software:

- (i) Technical data or computer software containing limited rights, restricted rights, government purpose rights, special license rights, or unlimited rights legends;
- (ii) Information or software marked limited distribution (LIMDIS);
- (iii) Information or software marked source selection information;
- (iv) Contract proposal information marked pursuant to FAR 52.215-1(e) limiting its use for proposal evaluation purposes only;
- (v) Information and computer software marked contractor proprietary or a similar legend;
- (vi) Data known by the contractor to be protected by the privacy act; and
- (vii) Information and software marked For Official Use Only (FOUO).

(2) For other information or software accompanied at time of disclosure by a written legend identifying use or disclosure restriction time periods, the expiration date will be as stated in or derived from the legend.

(3) For all other protected information and computer software, the expiration date will be three years from the date the information or software is first disclosed to the contractor.

(c) Unauthorized use or disclosure. The contractor will immediately notify the Contracting Officer of any unauthorized use or disclosure known by the contractor of protected information and computer software in violation of the obligations contained in this clause.

(d) Disposition. At the conclusion of performance of work under this contract, the contractor will immediately return to the government all protected information and computer software in its possession. Furthermore, if an employee of the contractor who has access to protected information and computer software is terminated or reassigned and thus is no longer performing work under this contract, the contractor will immediately return all protected information and computer software in the employee's possession. Moreover, if a contractor's employee is dedicated to support a specific DIA office or directorate or DIA program under this contract, but is subsequently reassigned to support another DIA office or directorate or DIA program under this contract, the contractor will immediately return all "protected information or computer software" in the employee's possession previously furnished by the prior DIA office or directorate or DIA program. In lieu of returning protected information and computer software, the Contracting Officer or Contracting Officer's representative may authorize the destruction of

the information or the transfer of the information to another employee of the contractor working under the contract. Finally, this clause will not be interpreted as preventing the contractor from retaining records required by statutes or other clauses of this contract, such as FAR 52.215-2, Audit and Records—Negotiations.

(e) Third party beneficiaries. This clause is executed for the benefit of the government and the owners of protected information and computer software. The government and the owners of protected information and computer software (and their delegates, successors and assignees) are third party beneficiaries of the above obligations who may have additional legal rights not specified in this clause.

(f) Duration. The above obligations imposed by this clause will survive the termination or completion of this contract.

(g) Classified information. This clause is in addition to and in no manner abrogates requirements, obligations or remedies regarding the protection of classified information and does not supersede the requirements of any laws, regulations, other directives or nondisclosure agreements regarding classified information.

(h) Other restrictions. This agreement does not abrogate any other obligations currently placed upon the contractor or which may be imposed upon the contractor in the future by the government or other persons; or remedies afforded those persons regarding those obligations.

(i) Nondisclosure agreements. The contractor will require and ensure each of its employees who may receive or be given access to protected information and computer software signs the nondisclosure agreement attached at Section J of this contract prior to the employee performing work under this contract covered by the nondisclosure agreement. The contractor will provide the Contracting Officer copies of those agreements at no additional cost to the government. The contractor will maintain copies of signed nondisclosure agreements for a period of at least three years after final payment under this contract.

(j) The contractor will include the substance of this clause in all subcontracts under this contract in which subcontractors may be disclosed or granted access to protected information and computer software.

*(End of Clause)*

#### **1052.209-97 Organizational conflict of interest.**

As prescribed in **1009.507-1-90**, insert the following clause:

#### **ORGANIZATIONAL CONFLICT OF INTEREST (DEC 2008)**

(a) The offeror warrants, to the best of its knowledge and belief, that (1) there are no relevant facts that could give rise to organizational conflicts of interest, as defined in FAR 9.5; or (2) the offeror has disclosed all relevant information regarding any actual or potential organizational conflicts of interest. Offerors are encouraged to inform the Contracting Officer of any potential conflicts of interest, including those involving contracts with other foreign or domestic government organizations, before preparing their proposals to determine whether the government will require mitigation of those conflicts. If the successful offeror was aware, or should have been aware, of an organizational conflict of interest before award of this contract and did not

fully disclose that conflict to the Contracting Officer, the government may terminate the contract for default.

(b) If during contract performance the contractor discovers an organizational conflict of interest involving this contract, the contractor agrees to make an immediate and full disclosure in writing to the Contracting Officer. Such notification will include a description of the action the contractor and/or subcontractor has taken or proposes to take to avoid, neutralize, or mitigate the conflict. The contractor will continue contract performance until notified by the Contracting Officer of any contrary actions to be taken. The government may terminate this contract for its convenience if it deems such termination to be in the best interest of the government.

(c) The contractor will inform the Contracting Officer of any activities, efforts, or actions planned, entered into, or on-going by the contractor or any other corporate entity of the contractor, at the prime or sub-contract level, involving the review of information or providing any advice, assistance, or support to foreign or domestic government agencies, entities, or units outside of DIA which may result in a perceived or actual organizational conflict of interest with any known DIA activity. The contractor will provide detailed information to the Contracting Officer as to the specifics of the situation immediately upon its recognition. Based on the severity of the conflict, the Contracting Officer may direct the contractor to take certain actions, revise current work effort, or restrict the contractor's future participation in DIA contracts as may be necessary to appropriately neutralize, mitigate, or avoid the organizational conflict of interest.

(d) If necessary to mitigate organizational conflict of interest concerns, or when directed to do so by the Contracting Officer, the contractor will submit an organizational conflict of interest mitigation plan for approval. The plan will describe how the contractor will mitigate, neutralize, or avoid potential and/or actual conflicts of interest or unfair competitive advantages. After approval of the mitigation plan, the contractor will conduct a yearly self-assessment and submit an annual certification of compliance with the terms of the plan signed by a corporate official at the level of Vice President or above. The contractor will submit a revised mitigation plan for approval whenever corporate, contractual, or personnel changes create or appear to create new organizational conflict of interest concerns, or when directed to do so by the Contracting Officer.

(e) The contractor will insert a clause containing all the requirements of this clause in all subcontracts for work similar to the services provided by the prime contractor.

(f) Before this contract is modified to add new work or to significantly increase the period of performance, the contractor agrees to submit an organizational conflict of interest disclosure or representation if requested by the government.

(g) The contractor will allow the government to review the contractor's compliance with these provisions or require such self-assessments or additional certifications as the government deems appropriate.

*(End of Clause)*

#### **1052.209-98 Utilization of support contractors by the government.**

As prescribed in **1009-507-2-90**, insert the following provision:

#### **UTILIZATION OF SUPPORT CONTRACTORS BY THE GOVERNMENT (FEB 2009)**

- (a) Offerors are advised that non-government employees will serve as advisors for assisting the government during evaluation of proposals. The government will authorize these persons access only to those portions of the proposal data and limit discussions only for the purpose of providing technical advice on specialized matters or particular issues. They will be expressly prohibited from scoring, ranking, or recommending the selection of a source.
- (b) The government is responsible for proper safeguards to ensure proposal evaluation objectivity. In this regard, the government exclusively retains all source selection decision authority and supporting decision responsibilities. Moreover, all participants in the proposal review process with access to source selection sensitive information are required to execute a government nondisclosure agreement.
- (c) Government support contractors who may be involved in review of proposals submitted in response to this solicitation are identified as follows:

*(insert all support contractors' (including subcontractors') names, addresses, POC's and telephone numbers.)*

- (d) Offerors who submit proposals in response to this solicitation do so with the express understanding that government support contractors serving as advisors in the proposal review process may have access to the offerors' proposal information, as described above. Offerors requiring nondisclosure agreements with any government support contractor are not relieved of solicitation submission time requirements, nor is the government required to provide additional time to offerors requiring their own bilateral nondisclosure agreements with any government support contractor.
- (e) Offerors requiring nondisclosure agreements with any government support contractor will:
  - (1) Inform the Contracting Officer of the offeror's requirement;
  - (2) Contact the government support contractor and negotiate the necessary terms and conditions and obtain the contractor's written agreement;
  - (3) Provide a signed copy of each such nondisclosure agreement executed to the Contracting Officer with their proposal submission; and
  - (4) Indicate in the proposal that the support contractor(s) may utilize the offeror's proprietary data in evaluating the offeror's proposal.
- (f) The offeror will notify their prospective subcontractors who are submitting proprietary information that the above government support contractors may require similar access to this information. Any such subcontractors may execute agreements directly with the above government support contractors or may authorize an offeror to permit such access on such reasonable terms as the subcontractor may provide. For each such subcontractor agreement executed, offerors will provide a copy of such agreements with their proposal, and will indicate in the proposal that the government support contractor(s) may utilize subcontractor proprietary data in evaluating the subcontractor's proposal for this acquisition.

*(End of Provision)*

## **1052.209-99 EXCLUSION FROM FUTURE AGENCY CONTRACTS**

As prescribed in **1009.507-3-90**, insert the following clause:

### **EXCLUSION FROM FUTURE AGENCY CONTRACTS (MAR 2010)**

- (a) Work under this contract may provide the Contractor with access to advance information about future government procurements, which information is not generally available to other persons or firms. In addition, the work may involve the definition of requirements for, or the preparation of specifications for, various systems, equipment, hardware, and/or software, where:
- (1) The contractor's objectivity in performing the work may be impaired by its other business activities;
  - (2) The nature of the work to be performed may result in unfair competitive advantage to the contractor in future government procurements; or
  - (3) The contractor's ability to perform work required under future government contracts in an objective manner may be impaired by its performance of work under this contract.
- (b) In order to prevent a potential bias, unfair competitive advantage, or other potential conflict of interest, the contractor will be subject to the following restrictions:
- (1) The contractor will be excluded from competition for, or award of any government contracts as to which, in the course of performance of this contract, the contractor, or any of its individual employees, has received advance procurement information before such information has been made generally available to other persons or firms.
  - (2) The contractor will be excluded from competition for, or award of any government contract for which the contractor actually assists in the development of the specifications, or statements of work.
  - (3) The contractor will be excluded from competition for, or award of any government contract which calls for the evaluation of system requirements, system definitions, or other products developed by the contractor under this contract.
  - (4) The contractor will be excluded from competition for, or award of any government contract which calls for the construction or fabrications of any system, equipment, hardware, and/or software for which the contractor participated in the development of requirements or definitions pursuant to this contract.
- (c) This clause will not exclude the contractor from performing work under any amendment or modification to this contract or from competing for award for any future contract for work that is the same or similar to work performed under this contract.
- (d) The term "contractor" as used in this clause, included any person, firm, or corporation which has a majority or controlling interest in the contractor or in any parent corporation thereof, any person, firm, or corporation in or as to which the contractor (or any parent or subsidiary corporation thereof) has a majority or controlling interest. The term also includes the corporate officers of the contractor, those of any corporation which has a majority or controlling interest in the contractor, and those of any corporation in which the contractor (or any parent or subsidiary corporation thereof) has a majority or controlling interest.
- (e) The Agency may, in its sole discretion, waive any provisions of this clause if deemed in the best interest of the government. The exclusions of contained in this clause will apply for the duration of this contract and for three (3) years after completion and acceptance of all work performed hereunder.

(f) If any provision of this clause excludes the contractor from competition for, or award of any contract, the contractor will not be permitted to serve as a subcontractor, at any tier, on such contract.

(g) This clause will be incorporated into any subcontracts awarded under this contract unless the Contracting Officer determines otherwise.

*(End of Clause)*

**1052.211-91 Period of performance.**

As prescribed in **1011.404(b)**, insert the following clause:

**PERIOD OF PERFORMANCE (DEC 2008)**

The period of performance of this contract is from \_\_\_\_\_ to \_\_\_\_\_.

*(End of Clause)*

**1052.211-94 Place of performance.**

As prescribed in **1011.404(e)**, insert the following clause:

**PLACE OF PERFORMANCE (DEC 2008)**

The work under this contract will be performed at: \_\_\_\_\_.

*(End of Clause)*

**1052.211-95 Advance notice of delivery.**

As prescribed in **1011.404(f)**, insert the following clause:

**ADVANCE NOTICE OF DELIVERY (DEC 2008)**

The contractor will notify the individual listed below of the date shipment is to be made from the contractor's facilities, and the anticipated date of arrival at the installation site. This information will be provided by telephone prior to arrival of the shipment at government facilities.

NAME: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_

*(End of Clause)*

**1052.211-96 Shipping and Marking Deliverables.**

As prescribed in **1011.404(g)**, insert the following clause:

**SHIPPING AND MARKING DELIVERABLES (JUL 2014)**

For all shipments of packaged materiel to the Government, which includes either Depot or Direct Vendor Delivery (DDVD) shipments, both DoD linear and two-dimensional (2D) bar code markings are required on Military shipping labels in accordance with MIL-STD-129P, dated 19 September 2007, or commercially acceptable equivalent.

Subject 2D bar coding will be in accordance with ISO/IEC 15434 (MHIA MH10.8.2) and DoD 4500.9-R. Linear (Code 39) bar coding will be in accordance with ISO/IEC 16388.

For sensitive electronic devices, special marking, packaging, labeling and handling instructions will be applied IAW MIL-STD-129P, or commercial equivalent. An electrostatic discharge sensitivity identifier will be plainly marked. Items will be protectively wrapped against Electro-Magnetic Interference (EMI), IAW MIL-STD-2073D (Appendix J), or commercially acceptable equivalent.

**The Bar-Code and Shipping Label will contain the following information on the shipping label:**

- Name, phone number and location (building and room number) of the ultimate customer
- Caller or Company Representative
- Phone number
- Shipment information (type materiel, including hazardous information)
- Contract number (used by warehouse receiving, verifying what was ordered was actually received)
- National Stock Number (NSN)
- Piece number and total pieces (Box 1 of 2)
- Gross weight and cubic dimensions
- Transportation Control Number (TCN)

**Packing List/Invoice/Shipping Documents**

- A packing list, invoice or shipping document will accompany or be included in all shipments, which is required for both interior and exterior packaging.
- The packing documentation will include the following:
  - Complete "mark-for" or "ship to" information including requisition or order number
  - Contract number
  - Contract Line Item Number (CLIN)
  - National Stock Number (NSN), if applicable
  - Part number or item number, if NSN is not available
  - Identify any hazardous material (include Materiel Safety Data Sheet)
  - Quantity
  - Unit of Issue

*(End of Clause)*

**1052.215-90 Alternate bids/proposals.**

As prescribed in **1015.209(a)**, insert the following provision:

**ALTERNATE BIDS/PROPOSALS (DEC 2008)**

Contractors may submit more than one bid/proposal in response to this solicitation, provided each bid/proposal meets all requirements specified herein. If alternate bids/proposals are submitted, they will be clearly labeled and identified on the cover page of each separate document. Each bid/proposal will be a complete offer in and of itself.

*(End of Provision)*

**1052.215-91 Notice: incorporation of Section K by reference.**

As prescribed in **1015.209(b)**, insert the following clause:

**NOTICE: INCORPORATION OF SECTION K BY REFERENCE (DEC 2008)**

In accordance with FAR 15.204-1(b), Part IV of the Uniform Contract Format will not be physically included in the contract, but Section K, Representations, Certifications, and Other Statements of Offerors (as completed by the contractor) will be deemed incorporated by reference in the contract.

*(End of Clause)*

**1052.215-92 Inquiries.**

As prescribed in **1015.209(c)**, insert the following provision:

**INQUIRIES (DEC 2008)**

Information concerning the status of an offeror's proposal and/or progress of the proposal evaluations will be requested only from the Contracting Officer.

*(End of Provision)*

**1052.215-93 Contractor personnel resumes and clearances – RFP.**

As prescribed in **1015.209(d)**, insert the following provision:

**CONTRACTOR PERSONNEL RESUMES AND CLEARANCES – RFP (DEC 2008)**

The contractor will submit, as part of their proposal, a brief resume on any individual(s) they propose to utilize in performance of the contract. Resumes will include, but need not be limited to, the individuals' name, position or job title, previous experience, educational background and present clearance status. (See DD Form 254 for personnel and facilities security requirements). In the event the contractor ceases to furnish the services of any individual named under the contract, they will immediately notify the Contracting Officer and the Contracting Officer's representative. Additionally, the contractor will submit the name, qualifications, background and



clearances of the newly designated individual. This individual will be acceptable to the government as a suitable replacement.

*(End of Provision)*

**1052.215-94 Key personnel.**

As prescribed in **1015.209(e)**, insert the following provision:

**KEY PERSONNEL (DEC 2008)**

The contractor will list individuals who are the key personnel to be assigned to this contract (Use additional sheets if necessary.):

NAME	TITLE	PHONE NUMBER
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

*(End of Provision)*

**1052.215-96 Arrangements for site visit.**

As prescribed in **1015.209(g)**, insert the following provision:

**ARRANGEMENTS FOR SITE VISIT (DEC 2008)**

To make arrangements for the site visit, the offeror will contact:

Point of Contact \_\_\_\_\_  
 Telephone Number \_\_\_\_\_

*(End of Provision)*

**1052.215-97 Change in key personnel.**

As prescribed in **1015.209(h)**, insert the following clause:

**CHANGE IN KEY PERSONNEL (DEC 2008)**

The contractor will notify the Contracting Officer prior to making any change in the individuals listed below as key personnel assigned to this contract. The contractor will demonstrate that the qualifications of the prospective personnel are equal to, or better than the qualifications of the personnel being replaced.

*[List the key personnel here]*

*(End of Clause)*

**1052.215-98 Basis of award - lowest price technically acceptable.**

As prescribed in **1015.308(a)**, insert the following provision:

**BASIS OF AWARD - LOWEST PRICE TECHNICALLY ACCEPTABLE (DEC 2008)**

Award will be made to the responsible offeror whose proposal represents the best value to the government on the basis of the lowest evaluated price of proposals meeting or exceeding the acceptability standards for non-cost factors. The government intends to make award based on initial offers without discussions. Accordingly, it is contemplated that proposed revisions will not be requested. Each initial offer should be submitted on the most favorable terms.

*(End of Provision)*

**1052.215-99 Basis of award – best value tradeoff.**

As prescribed in **1015.308(b)**, insert the following provision:

**BASIS OF AWARD – BEST VALUE TRADEOFF (MAR 2009)**

(1) The government will select the best overall offer(s) based on an integrated assessment of the evaluation factors listed elsewhere in Section M. Contracts that will be awarded to offerors represent the best value to the government, based upon cost and non-cost factors. This effort will include an evaluation of the strengths, weaknesses, risks, deficiencies, and omissions associated with each stated evaluation factor. This may result in award(s) to higher-priced offerors when a proposal represents the best value to the government. However, the government will not make an award at a significantly higher overall cost to the government to achieve only slightly superior technical capability. The government will make this assessment through a trade-off analysis and other analytic means involving the evaluation of superior technical capability (*e.g.*, benefits clearly attributable to increased productivity, probability of successful contract performance, ability to control cost, maintain schedule, and/or unique and innovative approaches to the work effort) versus the added cost. Overall cost to the government may become the ultimate determining factor for award of the resultant contracts as proposals become more equal based on the non-cost factors.

(2) The government reserves the right to evaluate proposals and award contracts without discussions with the offerors, except clarifications as described in FAR 15.306(a). Evaluations may be based on the offeror's initial proposal. Therefore, the initial proposal should contain the offeror's most advantageous proposal from a technical and cost standpoint. If a competitive range is established, the government may limit the number of proposals to the greatest number which will permit an efficient competition among the most highly-rated proposals.

(3) When conducting the evaluation, the government may use data included by offerors in their proposals, as well as past performance information obtained from other sources. The offeror is responsible for ensuring that the data they submit is thorough, accurate, and complete in addressing all solicitation requirements.

*(End of Provision)*

**1052.216-90 Level of effort.**

As prescribed in **1016.105(a)**, insert the following provision:

**LEVEL OF EFFORT (DEC 2008)**

The level of effort shown in Section B is a government estimate of man-hours required to perform the effort specified herein. The estimate is advisory only and will not be cause for restricting what the offeror believes to be a meritorious technical proposal.

*(End of Clause)*

**1052.216-91 Firm fixed price.**

As prescribed in **1016.201-90(a)**, insert the following clause:

**FIRM FIXED PRICE (DEC 2008)**

The total firm fixed price of this contract is \$\_\_\_\_\_.

*(End of Clause)*

**1052.216-92 Price adjustment - level of effort (fixed price).**

As prescribed in **1016.207-90(a)**, insert the following clause:

**PRICE ADJUSTMENT - LEVEL OF EFFORT (FIXED PRICE) (APR 2010)**

(a) This is a Firm Fixed Price Level-of-Effort Term Contract as identified in FAR 16.207. The total price for full performance hereunder is \$\_\_\_\_\_.

(b) The Contractor will expend its best effort towards accomplishing the work outlined in the clause entitled "Scope of Contract". The level-of-effort required for total performance under this contract is a minimum of \_\_\_\_\_ direct labor hours and a maximum of \_\_\_\_\_ direct labor hours.

(c) The estimated composition of the total direct labor hours under this contract is as follows:

<u>Direct Labor Category</u>	<u>Direct Labor Hours</u>
------------------------------	---------------------------

Total Direct Labor Hours =

*NOTE: The Contracting Officer will include all relevant contract direct labor categories and direct labor hours from the prime contractor and the subcontractor(s).]*

(d) The Contractor will continually evaluate the total level-of-effort required and recommend to the Government changes thereto that are considered beneficial in attaining the overall objectives of this contract. In controlling the utilization of direct labor hours, the Contractor will

promptly notify the Contracting Officer, in writing, when there is an indication that premature exhaustion of the total direct labor hours is predicted.

(e) It is understood and agreed that the rate of direct labor hours per month may fluctuate in pursuit of the technical objective; however, such fluctuations will be controlled to avoid an exhaustion of the total direct labor hours of effort before the expiration of the term of the contract.

(f) It is further agreed that the Contractor may submit written requests for acceleration of the average hourly rate of effort that will result in the utilization of the total direct labor hours set forth above prior to the expiration date of this contract. If the contractor's request is approved by the Contracting Officer, the accelerated performance will be without increase in contract price and the transaction formalized by modification to this contract.

(g) On or about the completion date of this contract, the Contractor will submit to the Contracting Officer a brief certified statement supported by a breakdown, by direct labor category, of the direct labor hours actually expended in the performance of this contract.

(h) The Firm Fixed Price (FFP) for performance under this contract is predicated upon the Contractor furnishing at least the minimum Level-of-Effort (LOE) but up to and including the maximum LOE specified. In the event the minimum LOE is not provided as specified, the Contracting Officer will either require the Contractor to continue to perform work under the contract until the minimum LOE has been provided (if consistent with appropriations law) or make an equitable downward adjustment in contract price in accordance with the following formula:

$$\text{Price Reduction} = \text{FFP (in dollars)} \times (\text{Target LOE} - \text{Expended LOE})$$

---

Target LOE

(i) "Price Reduction" computed by the above formula is the dollar amount by which the contract price will be reduced. "FFP" in the above formula means the fixed price specified in the contract. "LOE" in the above formula means "level of effort". "Target" in the formula means the minimum level of effort considered acceptable by the Government. Any amount less than the minimum LOE will trigger the use of the formula to adjust the price.

*(End of Clause)*

#### **1052.216-93 Estimated cost and fixed fee.**

As prescribed in **1016.307(a)**, insert the following clause:

#### **ESTIMATED COST AND FIXED FEE (DEC 2008)**

The estimated cost of this contract is \$\_\_\_\_\_ exclusive of the fixed fee of \$\_\_\_\_\_. The total estimated cost and fixed fee is \$\_\_\_\_\_.

*(End of Clause)*

#### **1052.216-94 Payment of fixed fee.**

As prescribed in **1016.307(b)**, insert the following clause:

#### **PAYMENT OF FIXED FEE (DEC 2008)**

The fixed fee will be paid in monthly installments based upon the percentage of the completion of work as determined by the Contracting Officer.

*(End of Clause)*

#### **1052.216-95 Estimated cost and award fee.**

As prescribed in **1016.307(c)**, insert the following clause:

#### **ESTIMATED COST AND AWARD FEE (DEC 2008)**

The estimated cost of this contract is \$\_\_\_\_\_. The maximum available award fee, excluding base fee, if any is \$\_\_\_\_\_. The base fee is \$\_\_\_\_\_. Total estimated cost, base fee, and maximum award fee are \$\_\_\_\_\_.

*(End of Clause)*

#### **1052.216-97 Fee adjustment - level of effort (cost reimbursement).**

As prescribed in **1016.307(e)**, insert the following clause:

#### **FEE ADJUSTMENT - LEVEL OF EFFORT (COST REIMBURSEMENT) (DEC 2008)**

The balance of the fixed fee withheld pursuant to the contract clause entitled "FIXED FEE" will be payable at the expiration of the period of performance of this contract upon certification by the contractor that he has expended the level of effort specified in performing the work called for herein. The contractor will submit to the Contracting Officer: (1) a breakdown of the category and number of man-hours for each category expended in the performance of the contract, (2) a certification stating that the total number of man-hours specified within the contract schedule has been expended. Deviations below the level of effort will be subject to the approval of the Contracting Officer, and after approval the fee may be adjusted proportionately. The above break-down in certification in an original and three copies, will be submitted upon completion of work and services required under Section B.

*(End of Clause)*

#### **1052.216-98 Task orders.**

As prescribed in **1016.506(a)**, insert the following clause:

### **TASK ORDERS (DEC 2008)**

- (a) This is a cost-plus-fixed-fee contract for the provision of services specified and effective for the period stated in the Schedule.
- (b) All work performed under this contract will be accomplished in accordance with task orders issued by the Contracting Officer and will be based on one or more government requirements as stated in Sections B and C. Each task order will be deemed to incorporate the terms and conditions of this contract and will include a description of the precise effort to be expended, the delivery date required and an estimated cost to the government of the work to be performed.
- (c) Notwithstanding any provision of this contract to the contrary and notwithstanding any language of the task orders issued hereunder, the estimated cost of this contract, and, if this contract is incrementally funded, the funds allowed for the performance thereof, will not be increased or deemed to be increased, except by written modification of the contract indicating the new contract estimated cost and, if the contract is incrementally funded, the new amount allotted to the contract.
- (d) Specific tasks to be accomplished within the scope of this contract will be authorized by the Contracting Officer by issuance of a serially numbered task order after receiving labor hour, material and cost estimates from the contractor. It is essential that a close working relationship exist between the contractor and the Contracting Officer's Representative (COR) that will permit projects to be requested of the contractor, proposed upon by the contractor and authorized by the Contracting Officer within a period of 10 working days or less.
- (e) The COR does not have the authority to authorize tasks outside the scope of work nor any task or task approach which would require funds beyond those specifically available under this contract.
- (f) Data will be furnished in accordance with the Contract Data Requirements List (DD Form 1423) as specified in each task order.
- (g) Any task order issued during the contract's effective period and not completed within that period will be completed by the contractor within the time specified in the order. The contract will 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. The contractor will not be required to perform work and services under any task order for a period in excess of six months after expiration of the contract.

*(End of Clause)*

### **1052.216-99 Fee adjustment - term (level of effort) task orders.**

As prescribed in **1016.506(b)**, insert the following clause:

### **FEE ADJUSTMENT - TERM (LEVEL OF EFFORT) TASK ORDERS (Sep 2013)**

The balance of the fixed fee withheld pursuant to the contract clause entitled "Fixed Fee" will be released at the expiration of the period of performance for any level of effort task order placed under the contract upon certification by the contractor that he/she has expended the level of effort specified in performing the work called for in the task order. The contractor will submit to the ordering officer: (1) a breakdown of the category and number of man-hours for each category expended in the performance of the task order, and (2) a certification stating to what extent the total number of man-hours specified within the task order schedule have been expended. Deviations below the level of effort will be subject to the approval of the ordering officer, and after approval, the fee may be adjusted proportionately. The above breakdown and certification will be submitted in the original and three copies upon completion of work and services required in Section B of each individual task order.

*(End of Clause)*

#### **1052.216-100 Time & material supplies/services and prices.**

As prescribed in **1016.602-91(a)**, insert the following clause:

##### **TIME & MATERIAL SUPPLIES/SERVICES AND PRICES (AUG 2010)**

<u>Labor Categories</u>	<u>Estimated Labor Hours</u>	<u>Labor Rate</u>	<u>Total Amount</u>
[Insert listing of labor categories]	[Insert estimated hours required]	\$ _____	\$ _____
Material		(Not-To-Exceed) \$ _____	
ODC		(Not-To-Exceed) \$ _____	
Ceiling Price:			\$ _____

*(End of Clause)*

#### **1052.231-90 Unallowability of proposal costs.**

As prescribed in **1031.205-1-90(a)**, insert the following provision:

##### **UNALLOWABILITY OF PROPOSAL COSTS (DEC 2008)**

The government will not recognize as a direct cost to this acquisition, the costs incurred by the contractor in the preparation of its proposal.

*(End of Provision)*

#### **1052.231-91 Pre-contract costs.**

As prescribed in **1031.205-1-91(a)**, insert the following clause:

##### **PRE-CONTRACT COSTS (DEC 2008)**

In accordance with Federal Acquisition Regulation (FAR) 31.205-32, it is understood and agreed between the parties that the costs incurred between \_\_\_\_\_ and the date of award of this

contract will be allowable in an amount not to exceed a total of \$\_\_\_\_\_, to the extent that they would have been allowable had they been incurred after award of contract. The amount of pre-contract costs is included in the estimated cost of the contract.

*(End of Clause)*

**1052.231-92 Hours of operation and holiday schedule.**

As prescribed in **1031.204-1-92(a)**, insert the following clause:

**HOURS OF OPERATION AND HOLIDAY SCHEDULE (JUN 2014)**

(a) For services to be performed on-site at the government's location, the contractor will provide such services to the agreed work schedule, which will fall within the government's normal hours of operations, which are Monday through Friday, 0630 through 1800 (local time), and support the core hours of operation 0830-1500 (local time.) Any contractor personnel designated as supporting essential operations may be expected to work hours outside of normal hours of operations.

(b) The government hereby provides notification that government personnel observe the following days as federal holidays:

- New Year's Day
- Martin Luther King's Birthday
- President's Day
- Memorial Day
- Independence Day
- Any other day designated by federal law, executive order or presidential proclamation.
- Labor Day
- Columbus Day
- Veterans' Day
- Thanksgiving Day
- Christmas Day

(c) When any holiday specified above falls on a Saturday, the preceding Friday will be observed. When any such holiday falls on a Sunday, the following Monday will be observed. Observances of such days by government personnel will not be cause for additional period of performance or entitlement to compensation except as set forth in the contract. If the contractor's personnel work on a holiday, no form of holiday or other premium compensation will be reimbursed either as a direct or indirect cost, other than their normal compensation for the time worked.

(d) The government may close a government facility (or individual offices therein) for all or a portion of a business day as a result of—

- (1) Granting administrative leave to non-essential government employees (*e.g.* unanticipated holiday);
- (2) Inclement weather;
- (3) Failure of Congress to appropriate operational funds; or
- (4) Any other reason.



- (e) When a DIA facility is closed down, contractor personnel providing essential contractor services, as identified in their contract in accordance with DFARS 252.237-7023 or other terms and conditions, will be prepared to report and continue providing such services, as directed by the Contracting Officer's Representative (COR) and/or the Contracting Officer. Contractor personnel not providing essential contractor services will not report to the facility.
- (f) Contractor personnel already present at the facility, that are not performing essential contractor services, will be dismissed and leave the facility as directed by the DIA Facility Site Manager, Contracting Officer's Representative (COR) and/or the Contracting Officer.
- (g) During shutdowns, other than those resulting from a lack of funding, contractor personnel not performing essential contractor services may work from an Agency authorized alternate work location(s), if approved by the Contracting Officer (or their designee), or take leave in accordance with the Contractor's policies.
- (h) When Federal employees working in an DIA facility are excused in bulk from work for whatever reason (including early release), but the DIA facility is not closed, contractor personnel working in the facility will continue working unless otherwise directed by the Contracting Officer.
- (i) It is the Contractor's responsibility to pre-determine and disclose its charging practices, which will be in accordance with the FAR and applicable CAS requirements. Contractors will follow their disclosed charging practices during the contract period of performance, and will not follow any verbal directions to the contrary. The Contracting Officer will make the determination of cost allowability for time lost due to facility closure in accordance with the FAR, applicable Cost Accounting Standards, and the Contractor's established accounting policies. Those contractor personnel who take leave will not direct charge the non-working hours to the Contract.

*(End of Clause)*

#### **1052.231-93 Travel and per diem.**

As prescribed in **1031.205-46-90(a)**, insert the following clause:

#### **TRAVEL AND PER DIEM (DEC 2008)**

Travel costs will be allowed to the extent that they are reasonable and allocable and determined to be allowable under Federal Acquisition Regulation (FAR) 31.205-46. Travel by air will be reimbursed at the actual cost incurred and will not exceed the lowest customary standard coach, or equivalent fare offered during normal business hours. Airfares above the standard airfare may be allowable if the conditions of FAR 31.205-46(d) are documented and justified. As prescribed in FAR 31.205-46(a), travel costs for lodging, meals, and incidental expenses are limited to the maximum per diem rates in effect at the time of travel set forth in the Federal Travel Regulation (FTR); the Joint Travel Regulations, Volume 2, DoD Civilian Personnel, Appendix A; or the Standardized Regulations (Government Civilians, Foreign Areas), Section 925, "Maximum Travel Per Diem Allowances for Foreign Areas." The per diem allowance will not be allowed

when the period of official travel is 10 hours or less during the same calendar day. Travel by privately owned vehicle will be reimbursed at the current GSA approved mileage rate. Current travel policy and per diem rates may be obtained at the following Internet site:  
<http://perdiem.hqda.pentagon.mil/perdiem/>.

*(End of Clause)*

## **1052.232-90 Invoicing Procedures and Payment – Fixed Price Contracts.**

As prescribed in **1032.206-91(a)**, insert the following clause:

### **1052.232-90 INVOICING PROCEDURES AND PAYMENT – FIXED PRICE CONTRACTS**

**(MAR 2014)**

(a) Invoices will be submitted through the electronic invoicing internet website using the procedures described at: [http://www.nsa.gov/business/programs/electronic\\_invoicing.shtml](http://www.nsa.gov/business/programs/electronic_invoicing.shtml), unless otherwise authorized. Access to the electronic invoicing website requires an External Certificate Authority/Interim External Certificate Authority (ECA/IECA) PKI certificate. Information on purchasing an ECA/IECA certificate is available on the internet at: <http://iase.disa.mil/pki/eca/index.html>. Contact the electronic commerce office at (410) 854-5445 if you need additional information. After obtaining the ECA/IECA certificate, contact the electronic commerce office to obtain an account if one currently does not exist.

(b) At a minimum, invoices will contain the following.

- (1) Name and address of the contractor.
- (2) Invoice date and invoice number.
- (3) Contract number for supplies delivered or services performed (if award is a delivery or job order, ensure entire contract number - basic award and order number - is included).
- (4) Description, quantities and prices will be described exactly as shown on the contract, including (i) Contract Line Item Number (CLIN), (ii) Sub-Line Item Number (SLIN) **(Where no SLIN applies, specify “00” for the SLIN number.)**, and (iii) Accounting Classification Reference Number (ACRN). (NOTE: An invoice not properly allocated to include all three of these numbers will be an improper invoice under the Prompt Payment Act and automatically rejected by the paying office.)
- (5) Name of the contractor’s official (and address) to whom payment is to be sent, if other than Electronic Funds Transfer (EFT) is authorized.
- (6) Shipping/payment terms (e.g., date of shipment, address, discount for prompt payment).
- (7) Name, title, phone number and mailing address of person to be notified in the event of a defective invoice.
- (8) Taxpayer Identification Number (TIN), EFT banking information, and Data Universal Numbering System (DUNS) number.

- (9) COR's name.
- (10) Any other information or documentation required by the contract.
- (c) The contractor is authorized to invoice \_\_\_\_\_(*insert, as appropriate: "monthly," "bi-weekly", etc.*)
- (d) The COR is required to review and approve invoices as part of the payment process. When invoicing electronically, the identified COR will automatically receive notification of a pending invoice.
- (e) Questions regarding payment will be directed to the Finance and Accounting Office at (443) 654-3700.

*(End of Clause)*

Alternate I (Feb 2014). As prescribed in **1032.206-91(b)**, substitute the following paragraphs (a) and (d) for paragraphs (a) and (d) of the basic clause:

(a) Invoices will be submitted through the electronic invoicing internet website using the procedures described at: [http://www.nsa.gov/business/programs/electronic\\_invoicing.shtml](http://www.nsa.gov/business/programs/electronic_invoicing.shtml), unless otherwise authorized. Access to the electronic invoicing website requires an External Certificate Authority/Interim External Certificate Authority (ECA/IECA) PKI certificate. Information on purchasing an ECA/IECA certificate is available on the internet at: <http://iase.disa.mil/pki/eca/index.html>. Contact the electronic commerce office at (410) 854-5445 if you need additional information. After obtaining the ECA/IECA certificate, contact the electronic commerce office to obtain an account if one currently does not exist.

(2) The government requires a "hard copy" of an invoice be submitted, concurrently with your electronic invoice, to the following addressee(s):

- *(Insert Contracting Officer's Representative (COR's) and/or Contracting Officer's (CO's) name, telephone number, internal mailing address, and email address)*
- *(Insert the respective Defense Contract Audit Agency (DCAA) Field Detachment Branch Office and/or Defense Contract Management Agency (DCMA) office and applicable address).*

(d) The COR is required to review and approve invoices as part of the payment process. When invoicing electronically, the identified COR will automatically receive notification of a pending invoice. Since a concurrent hardcopy invoicing has been authorized, prominently mark all transmittals or envelopes that contain invoice copies "DUPLICATE INVOICE ENCLOSED" for COR in order to ensure timely payment.

*(End of Clause)*

#### **1052.232-91 Invoicing Procedures and Payment – Cost Reimbursable Contracts.**

As prescribed in **1032.206-91(c)**, insert the following clause:

## 1052.232-91 INVOICING PROCEDURES AND PAYMENT - COST REIMBURSABLE CONTRACTS (MAR 2014)

- (a) Invoices will be submitted through the electronic invoicing internet website using the procedures described at: [http://www.nsa.gov/business/programs/electronic\\_invoicing.shtml](http://www.nsa.gov/business/programs/electronic_invoicing.shtml), unless otherwise authorized. Access to the electronic invoicing website requires an External Certificate Authority/Interim External Certificate Authority (ECA/IECA) PKI certificate. Information on purchasing an ECA/IECA certificate is available on the internet at: <http://iase.disa.mil/pki/eca/index.html>. Contact the electronic commerce office at (410) 854-5445 if you need additional information. After obtaining the ECA/IECA certificate, contact the electronic commerce office to obtain an account if one currently does not exist.
- (b) At a minimum, invoices will contain the following.
- (1) Name and address of the contractor.
  - (2) Invoice date and invoice number.
  - (3) Contract number for supplies delivered or services performed (if award is a delivery or job order, ensure entire contract number - basic award and order number - is included).
  - (4) Description, quantities and prices will be described exactly as shown on the contract, including (i) Contract Line Item Number (CLIN), (ii) Sub-Line Item Number (SLIN) **(Where no SLIN applies, specify "00" for the SLIN number.)**, and (iii) Accounting Classification Reference Number (ACRN). (NOTE: An invoice not properly allocated to include all three of these numbers will be an improper invoice under the Prompt Payment Act and automatically rejected by the paying office.)
  - (5) Name of the contractor's official (and address) to whom payment is to be sent, if other than Electronic Funds Transfer (EFT) is authorized.
  - (6) Shipping/payment terms (*e.g.*, date of shipment, address, discount for prompt payment).
  - (7) Name, title, phone number and mailing address of person to be notified in the event of a defective invoice.
  - (8) Taxpayer Identification Number (TIN), EFT banking information, and Data Universal Numbering System (DUNS) number.
  - (9) COR's name.
  - (10) Any other information or documentation required by the contract.
- (c) The contractor is authorized to invoice \_\_\_\_\_ (*insert, as appropriate: "monthly," "bi-weekly", etc.*)
- (d) All electronic invoices will be reviewed and approved by the appropriate **Defense Contract Audit Agency (DCAA) Field Detachment Branch Office prior to payment by the Accounts Payable organization:** Questions regarding the identity of the appropriate DCAA Field Detachment office will be directed to the Finance and Accounting Office at (443) 654-3700.

(e) Any invoice not properly routed through and approved by the cognizant DCAA Field Detachment Branch Office will be considered an improper invoice under the Prompt Payment Act. The DCAA Field Detachment Branch Office will automatically receive notification of a pending electronic invoice. When an invoice is approved, the responsible Field Detachment auditor will mark the invoice approved and forward it to the disbursement office for payment. When an invoice is disapproved, the Field Detachment auditor will mark the invoice disapproved and state within the invoice comments section what the contractor will do to correct the invoice.

(f) The COR is required to review and approve invoices as part of the payment process. When invoicing electronically, the identified COR will automatically receive notification of a pending invoice

(g) Payment approvals under cost reimbursement type contracts, including time and materials/labor hour contracts are considered provisional invoice approvals until DCAA or other cognizant government audit authority has determined the costs and fees under the contract are valid and allowable. If you need auditing assistance, please call the DCAA Central Field Detachment office at 703 227-9056 or 703 227-9045.

(h) Questions regarding payment will be directed to the Finance and Accounting Office at (443) 654-3700.

*(End of Clause)*

Alternate I (Feb 2014). As prescribed in **1032.206-91(d)**, substitute the following paragraphs (a) and (f) for paragraphs (a) and (f) of the basic clause:

(a) Invoices will be submitted through the electronic invoicing internet website using the procedures described at: [http://www.nsa.gov/business/programs/electronic\\_invoicing.shtml](http://www.nsa.gov/business/programs/electronic_invoicing.shtml), unless otherwise authorized. Access to the electronic invoicing website requires an External Certificate Authority/Interim External Certificate Authority (ECA/IECA) PKI certificate. Information on purchasing an ECA/IECA certificate is available on the internet at: <http://iase.disa.mil/pki/eca/index.html>. Contact the electronic commerce office at (410) 854-5445 if you need additional information. After obtaining the ECA/IECA certificate, contact the electronic commerce office to obtain an account if one currently does not exist.

(2) The government requires a "hard copy" of an invoice be submitted, concurrently with your electronic invoice, to the following addressee(s):

- *(Insert Contracting Officer's Representative (COR) and/or Contracting Officer's (CO) name, telephone number, internal mailing address, and email address)*
- *(Insert the appropriate Defense Contract Audit Agency (DCAA) Field Detachment Branch Office and/or Defense Contract Management Agency (DCMA) office and applicable address).*

(f) The COR is required to review and approve invoices as part of the payment process. When invoicing electronically, the identified COR will automatically receive notification of a pending invoice. Since concurrent hardcopy invoicing has been authorized, prominently mark all

transmittals or envelopes that contain invoice copies "DUPLICATE INVOICE ENCLOSED" for COR in order to ensure timely payment.

*(End of Clause)*

**1052.232-92 Subject to incremental funding.**

As prescribed in **1032.705(a)**, insert the following provision:

**SUBJECT TO INCREMENTAL FUNDING (DEC 2008)**

This proposed procurement is subject to incremental funding. Accordingly, in addition to cost data called for in this solicitation, you are to submit an estimated amount for each month of performance with fee, if any, prorated. This monthly cost incurrence data will be in the following general format:

Month No. 1    \$ \_\_\_\_\_

Month No. 2    \$ \_\_\_\_\_, etc. through final month of performance.

*(End of Provision)*

**1052.232-93 Segregation of cost.**

As prescribed in **1032.705(b)**, insert the following clause:

**SEGREGATION OF COST (DEC 2008)**

The clauses under Section I, entitled, "ALLOWABLE COST, AND PAYMENT" and "FIXED FEE" are in full force and effect individually to \_\_\_\_\_ of the program as set forth under Section B. The contractor will be required to keep all expenses arising under \_\_\_\_\_ completely segregated. In such event, the government will not be obligated to reimburse the contractor for costs and fixed fee incurred in excess of the amount shown under each \_\_\_\_\_. In the event the government does not elect to authorize the contractor to proceed to the next \_\_\_\_\_ this contract will be terminated for the convenience of the government, pursuant to the contract clause, entitled "TERMINATION COST-REIMBURSEMENT".

*(End of Clause)*

**Segregation of cost – Alt I.**

As prescribed in **1032.705(c)**, insert the following clause:

**SEGREGATION OF COST –ALT I (DEC 2008)**

The clauses under Section I, entitled "ALLOWABLE COST AND PAYMENT" and "FIXED FEE" are in full force and effect individually for each delivery order. The contractor will be required to keep all expenses arising under each delivery order completely segregated.

*(End of Clause)*

**1052.232-95 Allocation of contract costs.**

As prescribed in **1032.705(d)**, insert the following clause:

**ALLOCATION OF CONTRACT COSTS (DEC 2008)**

Because this contract is supported by two or more fund citations, all requests for progress payments and invoices submitted for payment will allocate costs based on the tasks defined in the Schedule. An invoice not properly allocated will be considered an improper invoice under the prompt payment act. For cost-reimbursement type contracts requiring a Contract Fund Status Report (CFSR), the contractor will provide a summary sheet with the billing (rather than submitting a copy of the CFSR), using the data from the current period CFSRs to identify each Accounting Classification Reference Number (ACRN) and cost for the current period. The total of the summary sheet should equate to the total amount of the contractor's billing. Below is a model for the contractor's use in accomplishing cost allocation.

<u>ITEM</u>	<u>SUPPLIES/SERVICES</u>	<u>QTY</u>	<u>UNIT PRICE</u>	<u>AMOUNT</u>
_____	_____	_____	\$ _____	\$ _____
ACRN: AA				
_____	_____	_____	\$ _____	\$ _____
ACRN: AB				
TOTAL				\$ _____
INVOICED AMOUNT BY ACRN:				
ACRN AA: _____				
ACRN AB: _____				

*(End of Clause)*

**1052.232-96 Incremental funding.**

As prescribed in **1032.705(e)**, insert the following clause:

**INCREMENTAL FUNDING (DEC 2008)**

This contract will be subject to incremental funding with \$ \_\_\_\_\_ presently made available for performance under this contract. It is estimated that the funds presently available are sufficient to permit the contractor's performance through \_\_\_\_\_. Except in accordance with the clauses "TERMINATION" and "LIMITATION OF FUNDS", no legal liability on the part of the government for payment of any money in excess of \$ \_\_\_\_\_ will arise unless and until additional funds are made available by the Contracting Officer through a modification to this contract.

*(End of Clause)*

**1052.237-90 Required contractor information for DIA's Human Capital Management System (eZHR)**

As prescribed in **1037.110(a)**, insert the following clause:

**REQUIRED CONTRACTOR INFORMATION FOR DIA'S HUMAN CAPITAL  
MANAGEMENT SYSTEM (EZHR) (DEC 2008)**

The contractor will ensure that all contractor personnel will accurately enter and maintain required administrative information in DIA's official human capital management system (*i.e.*, eZHR). Information maintained in eZHR is protected by the Privacy Act of 1974. DIA will use this information to facilitate enterprise management and operations (*e.g.*, authenticate security and systems access, issue identification cards, compile total force metrics, and electronically maintain administrative information in other DIA and/or Intelligence Community business systems). Contractor personnel are required to update their eZHR records within 72 hours after an event occurs that requires a record update. The Contracting Officer or the Contracting Officer's Representative will provide a copy of the appropriate guidance to the contractor upon award.

*(End of Clause)*

**1052.237-91 Acquisition of hardware under service contracts.**

As prescribed in **1037.110(b)**, insert the following clause:

**ACQUISITION OF HARDWARE UNDER SERVICE CONTRACTS (DEC 2008)**

“IMPORTANT: The purpose of this task order is for the acquisition of services. The vendor is hereby notified that NO supplies (hardware, firmware, and/or software) of any kind may be purchased by the contractor on behalf of the government, or by the contractor for their use and later transfer to the government, via this task order UNLESS this task order has a contract line item number specifically identifying those supplies being acquired. The contractor may not be reimbursed for ANY supplies acquired under a services contract unless a specific line item for those supplies appears in the contract. No government representative, other than the Contracting Officer, has the authority to alter or change this notice. Any alteration or change WILL be accomplished via the issuance of a modification to this task order.”

*(End of Clause)*

**1052.237-92 Reserved.**

**1052.239-90 Software warranty.**

As prescribed in **1039.107(a)**, insert the following clause:

**SOFTWARE WARRANTY (DEC 2008)**

The contractor warrants that, to the best of its knowledge and belief, software provided under this contract does not contain any malicious code, program, or other internal component (*e.g.*, computer virus) which could damage, destroy, or alter software, firmware, or hardware or which could reveal any data or other information accessed through or processed by the software.



Further, the contractor will immediately inform the Contracting Officer upon reasonable suspicion that any software provided hereunder may cause the harm described above.

*(End of Clause)*

**1052.242-90 Contractor contract administrator(s).**

As prescribed in **1042.302-91(a)**, insert the following clause:

**CONTRACTOR CONTRACT ADMINISTRATOR(S) (DEC 2008)**

Designate below the person(s) whom the government may contact for prompt action on matters pertaining to administration of the contract.

- (a) NAME: \_\_\_\_\_
- (b) TITLE: \_\_\_\_\_
- (c) TELEPHONE NUMBER: \_\_\_\_\_

*(End of Clause)*

**1052.242-91 Contracting Officer's representative.**

As prescribed in **1042.302-91(b)**, insert the following clause:

**CONTRACTING OFFICER'S REPRESENTATIVE (DEC 2008)**

- (a) The following person is designated as the Contracting Officer's Representative (COR):

- (1) NAME: \_\_\_\_\_
- (2) TITLE: \_\_\_\_\_
- (3) TELEPHONE NUMBER: \_\_\_\_\_

- (b) For guidance from the COR to the contractor to be valid, it will:

- (1) be consistent with the Statement of Work in this contract;
- (2) not constitute new assignment of work or change the expressed terms, conditions, or specifications incorporated in this contract;
- (3) not constitute a basis for an extension to the period of performance or contract delivery schedule; and
- (4) not constitute a basis for an increase in any contract line item number quantities or in the total contract value.

*(End of Clause)*

**1052.242-92 Purchasing officer representatives.**

As prescribed in **1042.302-91(c)**, insert the following clause:

**PURCHASING OFFICER REPRESENTATIVES (DEC 2008)**

- (a) Contracting Officer: \_\_\_\_\_
- (b) Office Symbol: \_\_\_\_\_
- (c) Telephone (1) Commercial: \_\_\_\_\_
- (2) DSN: \_\_\_\_\_
- (d) Contract Specialist: \_\_\_\_\_
- (e) Office Symbol: \_\_\_\_\_
- (f) Telephone (1) Commercial: \_\_\_\_\_
- (2) DSN: \_\_\_\_\_
- (g) Technical Point of Contact: \_\_\_\_\_
- (h) Office Symbol: \_\_\_\_\_
- (i) Telephone (1) Commercial: \_\_\_\_\_
- (2) DSN: \_\_\_\_\_

*(End of Clause)*

#### **1052.242-93 Limitation of authority.**

As prescribed in **1042.302-91(d)**, insert the following clause:

#### **LIMITATION OF AUTHORITY (DEC 2008)**

(a) No person in the government, other than a Contracting Officer, has the authority to provide direction to the contractor that alters the contractor's obligations or changes this contract in any way. If any person representing the government, other than the Contracting Officer, attempts to alter contract obligations, change the contract specifications and/or statement of work or tells the contractor to perform some effort, that the contractor believes to be outside the scope of this contract, the contractor will immediately notify the Contracting Officer. Contractor personnel will not comply with any order or direction that they believe to be outside the scope of this contract, unless the order or direction is issued by a Contracting Officer.

(b) Only the Contracting Officer, or his duly authorized successor, is authorized to take action on behalf of the U.S. Government, which results in changes in the terms of the contract, including deviations from specifications, details, delivery schedules and costs. Any changes in the unit price, total contract prices, quantity, quality, or delivery schedule will be approved by the Contracting Officer. The contractor should never proceed with any proposed work changes without written authority or direct instructions from the Contracting Officer; otherwise you risk not being reimbursed. The authority to change the contract provisions rests solely with the Contracting Officer.

*(End of Clause)*

#### **1052.242-94 Downward adjustment of rates.**

As prescribed in **1042.709-6(a)**, insert the following clause:

**DOWNWARD ADJUSTMENT OF RATES (DEC 2008)**

The contract prices set forth in Section B of this contract are based on rates not yet finalized by negotiations between the government and the contractor. The government therefore reserves the right to make a downward adjustment in labor rates and indirect rates as a result of any negotiated forward pricing rate agreement between the government and the contractor effective on or before \_\_\_\_\_.

*(End of Clause)*

**1052.245-90 Government furnished property.**

As prescribed in **1045.107(a)**, insert the following clause:

**GOVERNMENT FURNISHED PROPERTY (DEC 2008)**

(a) Pursuant to the contract clause entitled "Government Furnished Property" the government will furnish the property indicated hereinafter to the contractor within \_\_\_\_ days after contract award for use in connection with the performance of the requirements set forth herein and for a period not to exceed the effective period of this contract (including any subsequent extension) F.O.B. contractor's place of performance.

(b) Upon completion or termination of this contract, unless sooner requested by the government, the contractor will return to the government all such physically deliverable property or equipment, as well as any contractor acquired property which may accrue to the government under contractual terms, provided such property has not been previously incorporated into any contractual line items as a part hereof, tested to destruction, or otherwise expended or rendered valueless as a result of performance.

(c) The government will furnish: \_\_\_\_\_.

*(End of Clause)*

**1052.245-91 Government furnished data.**

As prescribed in **1045.107(b)**, insert the following clause:

**GOVERNMENT FURNISHED DATA (DEC 2008)**

(a) The data identified below to be provided the contractor will be made available within \_\_\_\_ days from the date of award and will be returned \_\_\_\_ days from performance completion.

(b) The data identified to be made available for on-site review will be made available upon request to the Contracting Officer's Representative (COR) provided the requestor has adequate identification, evidence of appropriate security clearance and evidence of authorization (contract).

(c) Any data required and not listed will be made available only upon written authority of the COR.

(d) Data to be provided: \_\_\_\_\_

*(End of Clause)*

**1052.246-90 Packaging and marking.**

As prescribed in **1046.3-90(a)**, insert the following clause:

**PACKAGING AND MARKING (DEC 2008)**

Unless otherwise specified, all items delivered under this contract will be preserved, packaged, and marked in accordance with normal commercial practices to meet the requirements of the carrier and ensure safe delivery at destination.

*(End of Clause)*

**PART 1053 – FORMS (No DARSI Text)**

Enclosure 3.

## LIST OF ACRONYMS

ACAT	Acquisition Category
ACO	Administrative Contracting Officer
ACRN	Accounting Classification Reference Number
AMR	Acquisition Management Review
AO	Approving Official
AOR	Area of Responsibility
BOA	Basic Ordering Agreement
BPA	Blanket Purchase Agreement
CAE	Component Acquisition Executive
CAO	Chief Acquisition Officer
CAP	Contractor Acquired Property
CFO	Chief Financial Officer
CI	Counter-Intelligence
CIO	Chief Information Officer
CLIN	Contract Line Item Number
CMS	Contract Management System
COR	Contracting Officer's Representative
DAEO	Designated Agency Ethics Official
DAU	Defense Acquisition University
DCAA	Defense Contract Audit Agency
DCMA	Defense Contract Management Agency
D&F	Determination and Findings
DFARS	Defense Federal Acquisition Regulation Supplement
DIA	Defense Intelligence Agency
DPAP	Director, Defense Procurement & Acquisition Policy
DR	Director, Defense Intelligence Agency
EPLS	Excluded Party List System
EVM	Earned Value Management
FAR	Federal Acquisition Regulation
FE	Financial Executive
FOCI	Foreign Ownership, Control, or Influence
FOIA	Freedom of Information Act
FSS	Federal Supply Schedule
GAO	Government Accountability Office

GFP	Government Furnished Property
GPC	Government Purchase Card
GPP	Green Procurement Program
GWAC	Government-Wide Acquisition Contract
HCA	Head of Contracting Activity
IC	Intelligence Community
ICR	Independent Contracting Officer Review
IDIQ	Indefinite Delivery Indefinite Quantity
IG	Inspector General
IGCE	Independent Government Cost Estimate
IT	Information Technology
IUID	Item Unique Identification
JOFOC	Justification for Other Than Full and Open Competition
LOA	Letter of Authorization
LOG	Office of Logistics
MDA	Milestone Decision Authority
MIPR	Military Interdepartmental Purchase Request
NDA	Non-Disclosure Agreement
OCC	Office of Corporate Communications
OCI	Organizational Conflict of Interest
OCONUS	Outside Continental United States
ODNI	Office of the Director of National Intelligence
OFPP	Office of Federal Procurement Policy
OGC	Office of the General Counsel
OPSEC	Operations Security
PBA	Performance-Based Acquisition
PGI	Procedures, Guidance and Information
PM	Program Manager
POC	Point of Contact
PPI	Past Performance Information
PR	Purchase Request
PWS	Performance Work Statement
RFP	Request for Proposal
RFQ	Request for Quotation
SAF	Subject to Availability of Funding
SAM	System for Award Management
SAT	Simplified Acquisition Threshold
SCIF	Sensitive Compartmented Information Facility
SCRB	Solicitation/Contract Review Board
SCRM	Supply Chain Risk Management

SDO	Suspending and Debarring Official
SLIN	Subline Item Number
SOO	Statement of Objectives
SOW	Statement of Work
SPE	Senior Procurement Executive
SPOT	Synchronized Pre-Deployment and Operational Tracker
SSA	Source Selection Authority
SSO	Source Selection Official
UCA	Un definitized Contract Action
USCENTCOM	United States Central Command
VaCA	Virginia Contracting Activity