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March 8, 2017

File No.: FY 2017-0137

This is in response to your Freedom of Information Act (FOIA) request dated February 24, 2017. You requested a digital/electronic copy of the Transportation Acquisition Manual (TAM).

A search within the Office of the Senior Procurement Executive (SPE) of the Office of the Secretary of Transportation (OST) located the document you requested, and it is being released to you in full.

For further assistance, please see contact information at the top of the page.

Sincerely,

KATHLEEN M RAY

Digitally signed by KATHLEEN M RAY
DN: c=US, o=U.S. Government, ou=DOT
Headquarters, ou=OSTHQ, cn=KATHLEEN M RAY
Date: 2017.03.08 09:56:34 -05'00'

Kathy Ray
Departmental FOIA Officer

Enclosure

TRANSPORTATION ACQUISITION MANUAL (TAM)



October 1, 2015

Foreword

The Department of Transportation Acquisition Manual (TAM) is published by the Senior Procurement Executive (SPE) under the authority of the Federal Acquisition Regulations (FAR), specifically FAR 1.301(a)(2). It is non-regulatory in nature and provides uniform procedures guidance for the internal operation of acquiring supplies and services within the Department of Transportation (DOT). The scope of this document includes, but is not limited to, delegations of authority, assignment of responsibilities, work-flow procedures, internal reporting requirements, and all other procurement procedures that facilitate the processing of DOT acquisitions. The arrangement of this edition corresponds to the FAR. Furthermore, it shares the same numbering system and naming convention as the FAR and TAR for cross-referencing. TAM applies to all acquisitions of supplies and services involving the obligation of appropriated funds. Each Operating Administration (OA) is *required* to use the TAM to ensure adherence to Transportation specific policy. The TAM *is not* a stand-alone document *it is a companion guide to the TAR* (currently undergoing revisions) and *must* be used in conjunction with the FAR and TAR to ensure adherence to all DOT policy and federal procurement policy.

The second edition of the TAM is issued on July 1, 2015, with an effective date of October 1, 2015, except for the requirements outlined in the Department of Transportation Acquisition Workforce Career Development program which are effective immediately. The TAM includes: table of contents for each FAR part and subpart; DOT record of notices to record updates; new and or updated appendices; examples; checklists; relevant internet links and websites throughout the document; reporting requirement to keep you informed and on schedule of the statutory requirements and suspense dates; a quick reference guide of helpful links both external and internal documents; and links to all standard forms.

Willie Smith
Senior Procurement Executive

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SUBCHAPTER 1201.1—PURPOSE, AUTHORITY, ISSUANCE

1201.101 Purpose.

The Department of Transportation Acquisition Manual (TAM) is issued by the Senior Procurement Executive (SPE). It establishes for the Department of Transportation (DOT) *uniform internal operating acquisition procedures*, which implement or supplement the [Federal Acquisition Regulation \(FAR\)](#) and the [Transportation Acquisition Regulation \(TAR\)](#), other agency regulations and statutory requirements.

1201.102 Statement of guiding principles for the Federal Acquisition System.

- (a) To ensure compliance with the Federal Acquisition Regulation (FAR) and create a system that delivers best value products or services to the customer.
- (b) To partake in a modernized and well-integrated procurement process throughout DOT that facilitates the timely and cost-effective acquisition of goods or services through contract award. This mission is founded on processes, procedures and practices that ensure quality, transparency, information integrity, and customer service. It is reliant on the professional ability to evaluate, determine, document and record the most effective means of procuring goods and services, in addition to measuring performance.
- (c) The Senior Procurement Executive (SPE) is responsible for finding the best business solutions to accomplish DOT's mission. The SPE is responsible for the management direction of the procurement system of the executive agency, including implementation of the unique procurement policies, regulations, and standards of the executive agency. All participants of the Department's system are responsible for working together as a team, and should be empowered to make

decisions within their area of responsibility in order to achieve DOT's procurement mission and vision.

1201.102-2 Performance standards.

DOT's performance standards are based on the premise that all aspects of an acquisition are to be structured around the purpose of the work to be performed. Furthermore, such standards are designed to ensure that contractors are given the freedom to determine how best to meet the Government's performance objectives; that appropriate performance quality levels are achieved; and that payment is made only for services that meet these levels. DOT's performance standards (outputs) shall include such elements as "what, when, where, how many, and how well" the work is to be performed. Performance standards shall be described in every contract Statement of Work (SOW) or Performance Work Statement (PWS) when appropriate to ensure quality and cost-effective procurement of goods or services.

1201.103 Authority.

The TAM is issued pursuant to [DOT Order 4200.18 series](#), Establishment of a Transportation Acquisition Manual.

1201.104 Applicability.

Unless excluded by FAR, TAR, or TAM Operating Administration's shall follow this manual unless rescinded by the SPE. The Federal Aviation Administration, having its own unique statutory authority, is exempt from this manual.

1201.105 Issuance.

1201.105-170 Publication of TAM.

This manual can be downloaded at <http://one10.dot.gov/office/ost/ospe/SitePages/Home.aspx>.

1201.105-270 Arrangement of TAM.

(b) *Numbering.* (1) This manual conforms to the arrangement and numbering system prescribed by the numbering illustrations at [FAR 1.105-2\(b\)](#) and applicable to this manual. TAM addresses the specific paragraphs for which supplementation or implementation applies. For example, this paragraph supplements [FAR 1.105-](#)

2(b)(1); therefore, the FAR corresponding paragraph in TAM is 1201.105-270, paragraphs (b) and (1).

(2) TAM coverage is identified by the prefix "12" and followed by the complete TAM cite which may be as specific as the paragraph level (e.g., 1201.105-3(a)).

(3) Coverage in the TAM that supplements the FAR will use chapter, subchapter, section and subsection numbers ending in "70" through "89" (e.g., 1201.105-270).

(4) Coverage in the TAM, other than that identified with a "70" or higher number, that implements the FAR or TAR will use the identical number sequence and caption of the FAR or TAR segment being implemented which may be down to the paragraph level (e.g., 1201.602-3(a)).

(c) *References and citations.* This manual may be referred to as the Transportation Acquisition Manual or the TAM. Cross references to the FAR or TAR in this manual will be cited by "FAR" or "TAR" followed by its numbered cite. A number not prefixed by the acronym FAR, TAR or TAM will automatically be the TAM. For example, 1201.603-3 automatically refers to the TAM even though the acronym "TAM" is not specified. As an electronic document, the TAM contains many links (identified by blue print) to the word or term referenced in the text.

1201.105-3 Copies.

(a) The TAM is issued and is available via the internet at <http://one10.dot.gov/office/ost/ospe/SitePages/Home.aspx>.

1201.106-70 OMB Approval under the Paperwork Reduction Act.

Prior to obligating funds and entering into a contract for information collection activities, from 10 or more members of the public, the contracting officer shall obtain a clearance and approval from OMB. The OMB Form 83-1, Paperwork Reduction Act Submission

<http://www.whitehouse.gov/sites/default/files/omb/inforeg/83i-fill.pdf>, shall be used to request OMB's review and approval. Operating Administration (OAs) Paperwork Clearance Officers are available to assist in preparing the information collection justification for the OMB Form 83-1. Agency Paperwork Reduction Act officers can be viewed at <http://our.dot.gov/team/prs/SitePages/Home.aspx> or visit Office of the DOT Chief Information Office.

(a) *Data collection under proposed contracts.* OMB Form 83-I, must be forwarded to the Office of the Chief Information Officer (CIO), for processing to OMB. Early coordination with Paperwork Clearance Officers and the Office of the Associate CIO for IT Policy and Oversight prior to release of the solicitation should prevent delays caused by the requirement to obtain OMB approval.

(b) *Data collection under TAR Supplements.* An OMB Form 83-I, along with the calculations used to derive the numbers shown on the OMB Form 83-I, shall be forwarded to the SPE along with the proposed TAR Supplement coverage (TAM 1201.304) for coordination with the Office of the Associate CIO for IT Policy Oversight.

SUBCHAPTER 1201.2—ADMINISTRATION

1201.201-1 The two councils.

(b)(1) DOT will provide a representative member to the Civilian Agency Acquisition Council (CAAC). This representing member, or alternate, shall adhere to his or her responsibilities as outlined in FAR 1.201-1 and as further guided by CAAC Regulatory Authorization instruction. The member, or alternate, shall be a senior procurement professional with substantial experience in Federal procurement.

The SPE shall select a DOT representative to the CAAC in any number of methods: nomination, request for volunteers, appointment, or any other method that has been deemed appropriate by the SPE. Minimum criteria for selection must be based on [FAR 1.201-1\(a\)\(2\)](#).

1201.202-70 Departmental compliance with the FAR, TAR, and TAM.

Personnel with questions regarding the FAR, TAR, and TAM should forward questions to M61AcquisitionPolicy@dot.gov.

SUBCHAPTER 1201.3—AGENCY ACQUISITION REGULATIONS

1201.301 Policy.

(a)(1) *Delegations of FAR procurement authority.* The following is applicable with respect to delegations of procurement authority within the DOT:

(i) *Agency head delegations.* There are certain (FAR) 48 C.F.R. functions which are non-delegable and reserved by the Secretary, while there are other functions that can be delegated. All reserved and delegated functions (either to the Office of the Secretary (OST) or the OAs) to one or more individuals is reflected in the applicable chapters of this manual usually by the words “is non-delegable,” “is authorized” or “is the individual authorized.”

(A) For those functions that are delegated, the chapters indicate the lowest organizational level for performance of that function. The delegated levels reflected in this manual may be changed to an equivalent or higher level by the Assistant Secretary for Administration, or other responsible OST official for OST assigned functions, or by the Head of the Operating Administration (HOA) for OA assigned functions. For example, the HOA may change the “debaring official” in TAM 1209.403 from the HCA to the higher HOA level.

Any changes by the HOA to the delegated levels reflected in this manual must be in writing and stored in a centralized location within the OA. A copy of the delegation must be submitted to the SPE upon request.

(B) Lower organizational levels for FAR and TAR agency head functions must be authorized by the SPE (who will coordinate with other OST officials as deemed appropriate).

(ii) *Head of the Contracting Activity (HCA) functions.* There are certain (FAR) 48 C.F.R. functions which are non-delegable and reserved for the HCA or equivalent organizational level; these reserved functions are reflected in the applicable chapter of this manual. For delegable functions, compliance with the level reflected in the applicable chapter of this manual or the TAR is required unless otherwise authorized by the HCA.

(A) Notwithstanding the above, the HOA or designee at an organizational level equal to or above the HCA may retain both delegable and non-delegable functions assigned to the HCA.

(B) Approved HCA functional delegations which are different from those specified in this manual shall be in writing and stored in a centralized location within the OA. A copy of the delegation shall be submitted to the SPE within 30 days of issuance.

(iii) Any other authorities of this manual besides those mentioned in TAM 1201.301(a) (1) (i), or (ii) may be authorized to a higher level at the OA-level than that which is stipulated in this manual, unless specified otherwise. Any authorities assigned or re-delegated pursuant to this paragraph shall be in writing and stored in a centralized location within the OA. A copy of the assignment/re-delegation shall be submitted to the SPE upon request.

1201.301-70 Amendment of the TAM.

(a) TAM changes may be the result of suggestions by DOT personnel, other Government agencies, or the public. Proposed changes to this manual, along with rationale for the change, must be submitted to the Office of the Senior Procurement Executive by addressing the change to M61AcquisitionPolicy@dot.gov.

Changes to the TAM shall address the following:

(1) *Problem*: Succinctly state the issue(s) requiring a TAM change.

(2) *Recommendation*: Identify the recommended change by using the current language and adding to it or lining through the words to be deleted and inserting proposed language in brackets.

(3) *Discussion*: Explain why the change is necessary and how it will solve the problem. Address any cost or administrative impact on Government activities, offerors, and contractors. Provide any other helpful information and documents such as statutes, legal decisions, regulations, reports, etc.

(4) *Point of Contact*: Name and phone number of a person who can answer questions regarding the recommendation.

(b) Updates to the TAM will be summarized in a TAM NOTE published via the internet at <http://one10.dot.gov/office/ost/ospe/SitePages/Home.aspx>. When the TAM NOTE is issued, the electronic TAM is simultaneously updated to incorporate the changes.

(c) The TAM is maintained by OSPE in electronic form. Maintenance of the TAM will be made through the TAR/TAM change process.

(1) *TAM Chapters*. This manual contains internal DOT acquisition procedures within chapters that supplement or implement FAR and TAR. Chapters are normally coordinated through the TAR/TAM change process prior to issuance.

(2) TAM Notices.

(i) TAM Chapters will be amended by issuance of a TAM Notice (also referred to as a TAM NOTE);

(ii) TAM Notices are: (A) used to disseminate information that is relevant to the TAM; and (B) normally integrated into the TAM. TAM Notices may occasionally contain new material that must be issued quickly without going through the TAR/TAM change process before their release. However, simultaneously with or subsequent to their issuance, these TAM NOTES will be disseminated for comment.

(3) *TAM Appendices, Attachments, and Exhibits*. Appendices to the TAM or a specific Chapter may be used to provide supplementary material not suitable for insertion in the TAM issuance itself (e.g., tables, other agency issuances). Appendices may contain attachments with or without exhibits. Attachment(s) supplement the appendix, and exhibit(s) supplement the attachment.

1201.301-71 Effective date.

Unless otherwise stated, the following applies--

(a) Statements in TAM NOTES to the effect that the material therein is "effective upon receipt," "upon a specified date," or that changes set forth in the document are "to be used upon receipt," mean that any new or revised procedures or forms shall be used from that point forward when issuing solicitations, contracts, or modifications. It also means the TAM NOTE is effective immediately upon issuance by the SPE.

(b) If solicitations are already in process (or negotiations are complete) when the TAM NOTE is received, the new procedures or forms need not be used if it is determined by the Chief of the Contracting Office (COCO) that it would not be in the best interest of the Government.

1201.301-72 TAM NOTE numbering.

TAM NOTES will be numbered consecutively on a fiscal year basis beginning with number "01" prefixed by the last two digits of the fiscal year.

1201.301-73 TAR/TAM change process.

(a) *General.* The Strategic Acquisition Council (SAC) is an integral part of the TAR/TAM change process. Changes to this manual or the TAR that effect more than one OA are made through coordination with the SAC and other applicable DOT offices.

(b) *Process.* The TAR/TAM change process involves the formulation of policies and procedures through a comment process. The OSPE uses various methods (e.g., electronic media, hard copy, and discussions) to solicit and resolve comments on proposed TAM revisions.

(1) The SAC is responsible for--

(i) Reviewing proposed TAM changes and providing comments to the SPE or SPE's staff, or recommending solutions to the SPE on acquisition issues;

(ii) Recommending policies and procedures to the SPE for consideration; and

(2) The OSPE is responsible for—

(i) Formulating and distributing proposed changes;

(ii) Soliciting comments from the SAC and other interested and affected DOT offices; and

(iii) Reviewing and resolving all comments or forwarding them to the SAC for resolution.

1201.304 Agency control and compliance procedures.

(a) DOT's goal is to ensure the TAR and TAM is consistent with the FAR. Due to the lead-time necessary to implement FAR changes, conflict or inconsistency may temporarily exist. In those cases, the FAR takes precedent over the TAR and TAM. Both the TAR and the TAM are under the direct oversight and control of the Department of Transportation's Office of the Senior Procurement Executive

(OSPE), which is responsible for evaluation, review, and issuance of all Department-wide acquisition regulations and guidance.

(b) *OA acquisition regulations.* DOT shall control the proliferation of acquisition regulations and any revisions thereto by using an internal TAR Chapter 12 change process that involves input from DOT elements, including OA representatives on the SAC. The OA member shall represent their OA's viewpoint, along with Department-wide considerations, in reaching a decision on TAR Chapter 12 changes. OA-unique regulations will not be processed through the TAR/TAM change process, but shall be reviewed by OA legal counsel and DOT rulemaking process before submission to the OSPE for review and approval. (See TAR 1252.101 for additional instructions pertaining to provisions and clauses).

OA acquisition regulations shall:

- (1) Be incorporated into the TAR as a supplemental regulation;
- (2) Be coordinated in accordance with OA internal procedures (including review by legal counsel with evidence of such a review) to ensure compliance with FAR 1.301 and DOT's rule-making process before submission to the SPE;
- (3) Be submitted to the SPE for review and approval by a transmittal letter signed by an official with a rank no lower than an Associate Administrator or equivalent, before proceeding to the public comment process at the initial stages of the regulatory process; include a Paperwork Reduction Act (see TAM 1201.404(a)(2)) and Regulatory Flexibility Act analysis, as appropriate; and a justification supporting the need for the regulation;
- (4) Be integrated within the TAR and be available via the internet at <http://www.transportation.gov/administrations/assistant-secretary-administration/transportation-acquisition-regulation-tar>; and
- (5) Pertain only to that OA.

(c) *OA acquisition procedures.* OA acquisition procedures shall:

- (1) Contain no material which unnecessarily repeats, paraphrases, or is inconsistent with the contents of the FAR, TAR, and this manual;

(2) Be consistent with the policies and procedures of the FAR, TAR, this manual, and other Departmental guidance and follow the format, arrangement, and numbering system specified in TAM 1201.105-270 and TAM 1201.301-70 to the extent practicable; and

(3) Be reviewed, as deemed appropriate, in accordance with internal operating procedures and the following:

(i) Ensure OA procedures are available electronically and that the OSPE is provided access to the website. However, if OA procedures are not available electronically, then the OAs shall advise the OSPE in writing (by topic) of its intent to promulgate acquisition guidance implementing or supplementing this manual. OAs will be advised of any procedures that are to be provided to the OSPE for review.

(ii) The HCA is responsible for ensuring that OA contracting offices limit their promulgation of acquisition procedures and, if procedures are necessary, to ensure they comply with paragraphs (1) and (2) of this section.

SUBCHAPTER 1201.4—DEVIATIONS FROM FAR, TAR AND TAM

1201.403 Individual deviations.

Requests for individual deviations from the FAR, TAR, and this manual can be granted. Except in cases when authority has been otherwise assigned by [FAR 1.405](#) regarding requests for deviations from Treaty requirements, by statute (e.g., most Cost Accounting Standard (CAS) deviations must be granted by the CAS Board) or by this manual—the HCA, or a designee with a rank no lower than that of a Senior Executive Service (SES), is authorized to approve individual deviations to this manual.

All deviation requests shall:

(a) Be coordinated with legal counsel with evidence of coordination;

(b) Cite the specific part of the FAR, TAR, or this manual from which a deviation is required;

(c) Set forth the nature of the deviation(s); and

(d) State the reasons for the action requested.

1201.404 Class deviations.

(a) The SPE is the individual authorized to grant class deviations unless 1.405(e) is applicable. Requests for class deviations to the FAR, TAR, and this manual shall be endorsed by the HCA or designee no lower than the SES before submitting the request to the SPE for approval. Requests submitted shall include the same type of information as required for individual deviations in TAM 1201.403.

(2) Deviations to the FAR, TAR, and this manual shall be transmitted to the SPE after review and approval of the manager of the office requesting the change (e.g., COCO). Those FAR recommended changes determined appropriate by the SPE will be forwarded by OSPE to the Civilian Agency Acquisition Council in accordance with (FAR) 1.404.

SUBCHAPTER 1201.6 CAREER DEVELOPMENT, CONTRACTING AUTHORITY AND RESPONSIBILITIES

1201.601 General.

The HOA is authorized to establish contracting activities and delegate broad authority to manage the agency's contracting functions to heads of such contracting activities (HCA). Additionally, within the Office of the Secretary, the Assistant Secretary for Research and Technology is authorized to establish contracting activities and delegate broad authority to manage the Office of Research and Technology's contracting activities and delegate broad authority to manage the Office of Research and Technology's contracting functions to HCAs. Within the meaning of departmental procurement, including the FAR, TAR and TAM, the Assistant Secretary for Research and Technology, and her/his designees, will be responsible for activities, functions and delegations the same as those of an HOA/OA and wherever there is a reference to OA or HOA in the TAR, TAM or Departmental procurement policy it will include the Office of Research and Technology and the Assistant Secretary for Research and Technology, respectively. Establishing a new contracting activity must be coordinated with DOT's SPE. The Secretary, Deputy Secretary, Assistant Secretary for Administration (OST), SPE, HOAs and HCAs shall be considered contracting officers within DOT by virtue of their positions; no Certificate of Appointment (see TAM 1201.603-3) is required. All other DOT contracting officers shall be selected and appointed under TAM 1201.603.

1201.602 Contracting officers.

1201.602-2 Responsibilities.

(a) Contracting officers may only delegate their responsibilities to an authorized representative(s) such as a Bankcard recipient or a COR. Any delegation of responsibility must be in writing to specified individuals (by name, not position) and clearly enumerate the delegated responsibilities and any limitations attached thereto.

(3) See U.S. Department of Transportation Contracting Officer's Representative (COR) Training Standards specified in the [DOT Acquisition Workforce Career Development Program](#) revised July 1, 2015 for training and experience standards.

The Clinger-Cohen Act, P.L. 104-106, and the Office of Federal Procurement Policy, Policy Letter 05-01, direct the implementation of mandatory training, education, and experience requirements for entry and accession in the acquisition career field. The [Department of Transportation Acquisition Workforce Career Development Program](#) (revised July 2015) establishes procedures for the implementation of these requirements and other career development efforts. This document is issued under the authority of TAM 1201.103 as a supplement to TAM Chapter 1201, and is available via the internet.

1201.602-3 Ratification of unauthorized commitments.

(a) *Definitions.*

(1) "Ratifying official" means the official who may authorize a contract award, purchase order, or other procurement instrument providing for the ratification of an unauthorized commitment.

(2) "Unauthorized commitment", as defined in [FAR 1.602-3](#), includes, but is not limited to, any action by a person other than the contracting officer that results in: (i) continued performance by a contractor beyond the expiration date or the price established by the procurement instrument; or (ii) the commencement of performance of work in advance of issuance of a formal procurement instrument properly executed by a duly authorized contracting officer.

(b) *Policy.*

(2) The HCA maintains the authority to ratify an unauthorized commitment unless re-delegated to an organizational level no lower than the COCO in accordance with [FAR 1.602-3\(b\)\(3\)](#).

(c) *Limitations.*

(7) The following procedures shall be used for ratification of an unauthorized commitment:

(i) The individual who is responsible for actions that result in an unauthorized commitment must provide the following information to the ratifying official:

(A) A description of the circumstances that resulted in an unauthorized commitment;

(B) The reasons why normal procurement procedures were not followed;

(C) A description of the *bona fide* Government requirement that made the commitment necessary;

(D) The benefit(s) received by the Government;

(E) The dollar value of the commitment and whether the costs were reasonable in relation to the contractor's effort, the hours expended, the services or supplies received, type of labor used, and other costs, as appropriate;

(F) The basis for selecting the contractor and identify other sources considered, if any;

(G) Status of performance;

(H) Any other pertinent facts regarding the circumstances that resulted in an unauthorized commitment;

(I) Any invoices, receiving report, or other documentary evidence related to this transaction;

(J) The signature, following the above information, of the individual responsible for the unauthorized commitment certifying that the information provided is accurate;

(K) Any recommendations regarding corrective action that will preclude the situation from recurring; signed by the responsible individual's Division Director (or equivalent); and

(L) A complete procurement request, [Form DOT F 4200.1](#), Procurement Request, that includes a certification stating that the purchase request funds for the ratifying action were available at the time the unauthorized commitment occurred as well as the time the unauthorized commitment is ratified.

(ii) If the individual responsible for the unauthorized commitment is not available, the office to which the responsible individual was assigned shall provide the information described in paragraph (i) above with the name (vice signature) of the individual responsible for the unauthorized commitment.

(iii) A written contract, as defined under [FAR. 2.101](#), is not required to confirm the ratification of an unauthorized commitment. The contracting officer shall decide if a contract or other written means would be appropriate for a particular situation on a case-by-case basis. Factors such as furnishing Government property, promise of product delivery, dispute over invoiced prices, etc., are to be considered when determining whether or not a contract is appropriate.

(A) Before ratification of an action, a letter requesting payment or an invoice from the contractor who provided the supply or service must be received.

(B) The complete ratification file shall be submitted for legal review before it is submitted to the ratifying official in accordance with 1201.602-3(c)(7). Secretarial offices shall submit the file to the Office of the General Counsel; OAs shall submit the file to their respective Chief Counsels.

(C) The ratifying official shall determine whether ratification is appropriate based on a complete file containing all the ratification documentation requirements of paragraph (TAM 1201.602-3 (c)(7)(i)).

(D) A memorandum signed by the contracting officer that approves the invoice shall be sent to the finance office along with the invoice. The original certified DOT F 4200.1, Procurement Request, (covering the total amount of the invoice), a

copy of the ratifying official's ratification, and the document confirming the ratification (see paragraph (iii) of this section), shall be attached to the memorandum.

(E) A copy of the memorandum, Form DOT F 4200.1, invoice, and original ratification documentation shall be retained in the contract office file.

(F) A letter explaining the disposition of the unauthorized commitment shall be sent to the contractor by the contracting officer if payment will not be made.

(iv) Each contracting office shall establish a file to ensure those actions for which ratification was requested can be identified and the documentation listed in (A) through (G) of this paragraph (iv) can be located. The contracting office shall establish appropriate administrative, technical and physical safeguards to insure the security and confidentiality of these files. Each ratification request must be retained for 6 years and 3 months after final payment or after the ratifying official determines that the action will not be ratified. The file pertaining to a ratification action must contain the following:

(A) The name of the individual responsible for the unauthorized commitment and the name of the office to which he or she was assigned;

(B) A brief description of the commitment, the amount of the action, and a written determination, with supporting documentation, that either the request should not be ratified or that the ratified price is fair and reasonable;

(C) The name of the firm or person to whom the commitment was made (if not in the ratification document);

(D) The date the commitment was either ratified (if not in the ratification document) or not ratified;

(E) A copy of the ratification document as applicable;

(F) Evidence of legal counsel concurrence with any ratification that is 10 percent or more of the simplified acquisition threshold; and

(G) Any disciplinary action taken or an explanation as to why none was considered necessary.

(d) *Nonratifiable commitments.* If an unauthorized commitment is disapproved for ratification, the contracting officer shall promptly notify the individual responsible for the unauthorized commitment, in writing, stating the reasons for disapproval and recommending the individual obtain legal advice. The contracting officer must also advise the employee that the Government will not pay for the nonratifiable commitment. The responsible individual may be held personally liable for the full amount of the unauthorized commitment. If the unauthorized commitment involves the Purchase Card or payment has already been made via the U.S. Bank program, the Government may bill the responsible employee or take other reimbursement action.

1201.603 Selection, appointment, and termination of appointment for contracting officers.

1201.603-1 General.

The Secretary, Deputy Secretary, Assistant Secretary for Administration (OST), Senior Procurement Executive, HOAs and HCAs shall be considered contracting officers within DOT by virtue of their positions. No certification or Certificate of Appointment is necessary. All other DOT contracting officers shall be selected and appointed under the requirements of this policy, unless otherwise exempted.

1201.603-2 Selection.

Personnel shall be selected as contracting officers using the guidance under the [Acquisition Workforce Career Development Program](#) issued as a supplement to TAM Chapter 1201 and available via the M-60 SharePoint site.

1201-603-3 Appointment.

(a) The delegation of contracting authority is by formal contracting officer appointments under a Certificate of Appointment, SF 1402. All SF 1402 Certificates of Appointment shall be issued and managed through FAITAS. Specific information regarding the use of the FAITAS to issue and manage the SF 1402 is available in the Acquisition Workforce Career Development Program.

(b) FAITAS is the official system of record for the issuance of Certificates of Appointment, SF 1402. The appointing authority in each OA shall ensure FAITAS is properly maintained and accurately reflects all contracting officer warrants

issued. OA's shall retain historical records covering the appointment of contracting officers prior to the implementation of FAITAS warrant module until December 30, 2017.

1201.603-4 Termination.

The appointing authority (see TAM 1201.603-1) may terminate the appointment of a contracting officer at any time by giving a written notice stating the reasons for, and the effective date of, the termination. Such terminations shall also be recorded in FAITAS.

1201.604 Contracting Officer's Representative (COR)

Electronic files are permissible if authorized by the OA.

1201.604-70 Contracting Officer Representative Selection, Limitation, and Termination of Contracting Officers Representative

The DOT policy on selection, limitation, and termination of Contracting Officer Representative is addressed in the [DOT Acquisition Workforce Career Development program](#).

1201.670 Responsibility of other Government personnel.

(a) Responsibility for the decision of what to buy and when to buy rests mainly with program and certain staff offices. Responsibility for determining how to buy, the conduct of the buying process, and execution of the contract rests with the contracting officer.

(b) Program personnel, using the contracting process to accomplish their programs, must support the contracting officer by ensuring that:

- (1) Requirements are clearly defined and specified;
- (2) Competitive sources are solicited, evaluated, and selected;
- (3) Quality standards are prescribed and met;
- (4) Performance or delivery is timely;

(5) Prices, estimated costs, and fees are reasonable; and

(6) Files are documented to substantiate the judgments, decisions, and actions taken.

1201.671 DOT's procurement performance assessment role.

The performance of DOT contracting activities shall be assessed regularly to determine how they are performing their fiduciary responsibility and if they are achieving the primary goal of the acquisition system—to deliver best value products and services on a timely basis to meet the needs of the transportation systems.

SUBCHAPTER 1201.7 DETERMINATIONS AND FINDINGS

1201.704 Content.

The format and content requirements for determinations and findings (D&Fs) are further specified in the associated subject text of this manual. The contracting officer is responsible for preparing D&Fs, and requirements and technical personnel are responsible for the accuracy and adequacy of the supporting factual information, which shall be furnished to the contracting officer.

CHAPTER 1202-- DEFINITIONS OF WORDS AND TERMS

SUBCHAPTER 1202.1—DEFINITIONS

1202.101 Definitions

1202.270 Listing of acronyms and office symbols used in TAM

Appendix A Department of Transportation Heads of the Contract Activities

Appendix B Department of Transportation Chief Acquisition Officers

SUBCHAPTER 1202.1—DEFINITIONS

1202.1 Definitions.

"Agency Head for Departmental Procurement" means the individual who has been delegated authority to carry out the duties and responsibilities of agency head for DOT procurement within the meaning of the Federal Acquisition Regulation unless otherwise reserved for the Secretary. The Assistant Secretary for Administration has been delegated this authority and further re-delegated it to the Senior Procurement Executive.

"Chief Acquisition Officer" or Departmental CAO" means the Deputy Secretary. The Deputy Secretary has redelegated the roles and responsibilities to the Senior Procurement Executive under 49 CFR 322a.

"Operating Administration (OA) Chief Acquisition Officer (CAO)" means the designated individual for the OA who is at the Senior Executive Service level and

(a) Monitors cost, schedule and performance of major acquisition programs.

(b) Designates members of the OA's acquisition workforce and ensures they possess the necessary competencies, training and certifications.

(c) Monitors and assesses acquisition activities and programs of the OA.

- (d) Ensures requirements are consistent with government mandates.
- (e) Facilitates collaboration among users, program and contracting officials.
- (f) Implements acquisition strategies such as performance based acquisition, strategic sourcing.
- (g) Assesses compliance with acquisition rules and regulations.
- (h) Advises OA leadership on appropriate business strategies to accomplish mission.
- (i) Reports as required to the Departmental CAO.

"Deputy Chief Acquisition Officer" means the Assistant Secretary for Administration who has delegated the authority to carry out the Chief Acquisition Officer functions to the Senior Procurement Executive.

"Contracting officer" means, in addition to the definition in TAR 1202.1, the individual authorized by virtue of their position (see TAM 1201.601) or by appointment (see TAM 1201.603-3) to perform the functions assigned by this manual.

"Strategic Acquisition Council (SAC)" is an advisory body comprised of the Senior Procurement Executive and the Heads of the Contracting Activity or a senior procurement official from each OA.

1202.270 Listing of acronyms used in TAM.

Table of Common Acronyms	
Acronym	Term
APL	Acquisition Policy Letter
APP	Affirmative Procurement Program
CAO	Chief Acquisition Officer
CFR	Code of Federal Regulations
CO	Contracting Officer

COCO	Chief of Contracting Office
COR	Contracting Officer's Representative
CPARS	Contractor Performance Assessment Reporting System
CPG	Comprehensive Procurement Guideline
EO	Executive Order
EPA	Environmental Protection Agency
FAITAS	Federal Acquisition Institute Training Application System
FAPIIS	Federal Awardee Performance and Integrity Information System
FAR	Federal Acquisition Regulation
FEE	Federal Environmental Executive
FR	Federal Register
FY	Fiscal Year (October 1 through September 30)
GPO	Government Printing Office
GPP	Green Procurement Plan
GSA	General Service Administration
IAE	Integrated Acquisition Environment
MOA	Memorandum of Agreement
OA	Operating Administration
OFPP	Office of Federal Procurement Policy
OMB	Office of Management and Budget
OSPE	Office of the Senior Procurement Executive
PO	Project Officer
PR	Procurement Request
PPIRS	Past Performance Information Retrieval System
RCRA	Resource Conservation and Recovery Act
SPE	Senior Procurement Executive
TAM	Transportation Acquisition Manual

Appendix A

Department of Transportation
Heads of the Contract Activities

Mode	Head of Contracting Activity
OST	Senior Procurement Executive
FHWA	Executive Director
FMCSA	Associate Administrator, Office of Administration
FRA	Associate Administrator, Office of Financial Management and Administration
FTA	Associate Administrator for Administration
MARAD	Associate Administrator for Administration
NHTSA	Associate Administrator, Planning Administrative, and Financial Management
PHMSA	Chief Financial Officer
SLSDC	Contracting Officer
OST-R	Exexutive Director

Appendix B

Department of Transportation
Chief Acquisition Officers

Mode	Name and Title	Routing Symbol
OST	Secretary for Administration	M-1
OST-R	Associate Administrator for Administration and CIO	RTAD-10
OST	Assistant Secretary for Budget and Programs CFO	B-1
OIG	Assistant Inspector General for Administration	M-1
FAA	Assistant Administrator for Financial Services	ABA-1

FAA	Assistant Administration for Human Resources Management	AHR-1
FHWA	Associate Administrator for Administration	HAD
FRA	Associate Administrator for Administration / Financial Management	RAD-1
NHTSA	Associate Administrator Administration / Financial Management	NPO-330
FTA	Associate Administrator for Administration	TAD-1
SLSDC	Director, Financial Management and Administration CFO	
MARAD	Associate Administrator for Administration	MAR-300
FMCSA	Associate Administrator for Administration / CFO	MC-M
PHMSA	Associate Administrator for Administration	PHA-1

CHAPTER 1203 – IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

SUBCHAPTER 1203.1—SAFEGUARDS

1203.101	Standards of conduct
1203.101-3	Agency regulations
1203.104	Procurement integrity
1203.104-1	Definitions
1203.104-4	Disclosure, Protection and Marking of Contractor Bid or Proposal Information and Source Selection Information
1203.104-5	Disqualification
1203.104-570	Information Security
1203.104-7	Violations or Possible Violations

SUBCHAPTER 1203.2—CONTRACTOR GRATUITIES TO GOVERNMENT PERSONNEL

1203.203	Reporting suspected violations of the gratuities clause
1203.204-1	Treatment of Violations

SUBCHAPTER 1203.3—REPORTS OF SUSPECTED ANTITRUST VIOLATIONS

1203.303	Reporting suspected antitrust violations
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SUBCHAPTER 1203.4—CONTINGENCY FEES

1203.405	Misrepresentation of the Covenant Against Contingent Fees
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SUBCHAPTER 1203.6—CONTRACT WITH GOVERNMENT EMPLOYEES OR ORGANIZATIONS

1203.602	Exceptions
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SUBCHAPTER 1203.7—VOIDING AND RESCINDING CONTRACTS

1203.700	Scope
1203.701	Purpose
1203.703	Authority

1203.704 Policy
1203.705 Procedures

SUBCHAPTER 1203.8—LIMITATIONS ON THE PAYMENT OF FUNDS TO INFLUENCE FEDERAL TRANSACTIONS

1203.804 Policy
1203.806 Processing suspected violations

SUBCHAPTER 1203.9—WHISTLEBLOWER PROTECTIONS FOR CONTRACTOR EMPLOYEES

1203.905 Procedures for investigating complaints
1203.906 Remedies
1203.907 Whistleblower Protections Under the American Recovery
and Reinvestment Act of 2009
1203.907-2 Policy
1203.907-3 Procedures for filing complaint
1203.907-6 Remedies and enforcement authority
1203.907-7 Contract Clause
1203.908 Pilot program for enhancement of contractor employee
whistleblower protections
1203.908-6 Statutory remedies
1203.908-7 Enforcement of orders

SUBCHAPTER 1203.10—CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT

1203.1003 Requirements

SUBCHAPTER 1203.11—PREVENTING PERSONAL CONFLICTS OF INTEREST FOR CONTRACTOR EMPLOYEES PERFORMING ACQUISITION FUNCTION

1203.1103 Procedures
1203.1105 Violations

SUBCHAPTER 1203.1—SAFEGUARDS

1203.101 Standards of conduct.

1203.101-3 Agency regulations.

The DOT supplemental Standards of Conduct are issued at 5 CFR Part 6001 and can be found at: <http://www.dot.gov/ethics>.

1203.104 Procurement integrity.

1203.104-1 Definitions.

Designated Agency Ethics Official (DAEO) for DOT is the Deputy General Counsel Deputy Designated Agency Ethics Officials (Deputy DAEO) for the Operating Administrations (OAs) are the Chief Counsels or designees.

Source Selection Information Disclosure Official. The individual authorized to determine whether the disclosure of information marked as "SOURCE SELECTION INFORMATION" would jeopardize the integrity or successful completion of the acquisition to which the information relates is the contracting officer.

1203.104-4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(a) The contracting officer is the individual authorized to determine whether contractor bid or proposal information or source selection information may be disclosed.

(1) The following persons may access contractor bid or proposal information and source selection information to accomplish their responsibilities in a procurement action without specific authorization from the contracting officer:

(i) Requirements generators, including agency representatives, program and technical experts who develop statements of work, specifications or similar documents;

(ii) Contracting personnel supporting the contracting officer;

- (iii) Personnel serving on technical evaluation boards or source selection evaluation panels;
- (iv) Supervisors in the contracting officer's chain of command;
- (v) Clerical and administrative personnel of the contracting activity responsible for the procurement;
- (vi) Small Business Technical Advisors;
- (vii) Small Business Administration (SBA) personnel who review determinations not to set-aside acquisitions, determine the small business status of offerors under [FAR 19.302](#), process applications for Certificates of Competency under [FAR 19.6](#), review subcontracting plans, or award contracts under the 8(a) program;
- (viii) Personnel who support the contracting officer in making contractor responsibility determinations;
- (ix) Contract auditors in the Office of Inspector General and Regional Inspector General's offices;
- (x) Department of Labor (DOL) personnel who process pre-award EEO clearances under [FAR 22.805](#);
- (xi) Attorneys in the Office of General Counsel and Regional Counsel's offices; and
- (xii) Personnel involved in contract approval.

(2) The Senior Procurement Executive (SPE) may authorize additional classes of persons' access to contractor bid or proposal information or source selection information.

(3) The contracting officer may authorize access to contractor bid or proposal information or source selection information if necessary to conduct the procurement. Such access will be limited to information necessary to fulfill duties and responsibilities.

(b) Procedures for marking and protecting information. Any individual who prepares, makes, or controls contractor bid or proposal information and source selection information must:

(1) Use Form DOT F 4220.36, Cover Page Source Selection Information, for a document that must be marked in accordance with [FAR 3.104](#).

(2) Use Form DOT F 4220.36, Cover Page Proprietary Information, to notify the recipient that the information or portions thereof is proprietary information related to the conduct of a Federal agency procurement;

(3) Provide physical security for documents in the office environment during, and after, duty hours.

(4) Secure interoffice mailing of documents by using opaque envelopes, “double wrapping” with more than one envelope, and sealing envelopes securely.

(5) Maintain strict control over oral communications about the acquisition, including their location.

1203.104-5 Disqualification.

(c)(2) Resumption of participation in a procurement. The HCA’s authority to determine resumption of participation in procurement under [FAR 3.104-5\(c\)\(2\)](#) is delegated to the Chief of the Contracting Office (COCO). The COCO may authorize an agency official to resume participation in a procurement after complying with the requirements of [FAR 3.104-5\(c\)\(2\)](#).

1203.104-570 Information security.

Each contracting office and individual having access to contractor bid or proposal information, source selection information, or other sensitive procurement information shall take the steps necessary to ensure that the integrity of the procurement process is not compromised by the unauthorized disclosure of this information. Responsible employees and officials must pay particular attention to visitors, contract file security, data security, and transmission of sensitive procurement information. Contracting officials that are telecommuting are to be especially cautious. When telecommuting, contracting officials must be aware of the type of information they are transporting, have a need for relocating this information, and are able to safeguard any procurement sensitive

information. Such remote uses of procurement sensitive information must be accompanied with an established standard of self-discipline and initiative that ensures secure use of the information. OAs may provide for additional safeguards as deemed necessary.

1203.104-7 Violations or possible violations.

(a)(1) The COCO is the reviewing official for processing violations [FAR 3.104-7 \(a\)](#). If a contracting officer, other than the COCO, receives or obtains information of a violation or possible violation of subsection 27(a), (b), (c), or (d) of the OFPP Act, he or she must follow determination procedures in accordance with [FAR 3.104-7 \(a\)](#). However, the contracting officer must promptly forward any determination made—"no impact" or otherwise—to the COCO for review and concurrence. The COCO's review and processing of a violation or possible violation must follow [FAR 3.104-7\(a\)\(1\)\(i-ii\)](#). The content of a determination is as follows:

(i) Statement of determination signed and dated by contracting officer, if applicable;

(ii) Collection of information and evidentiary support;

(ii) Statement of evaluation signed and dated by the COCO; and

(iii) Recommended action signed and dated by the COCO.

(2) If it is determined that the violation or possible violation impacts the procurement, the COCO will promptly advise withholding of award and forward the information and documentation to the Head of the Contracting Activity (HCA) to take appropriate actions as outlined by FAR 3.104-7(d).

(b)(5) The HOA is the individual authorized to determine that the contractor, or someone acting for the contractor, has engaged in conduct constituting an offense punishable under subsection 27(e) of the Procurement Integrity Act, as amended (41 U.S.C. 423), for the purpose of voiding or rescinding the contract. The HOA will make any such final determination in writing.

(c) If the HCA believes that a violation has occurred and the information should be disclosed to a criminal investigative agency (e.g., the Department of Justice), or that there may be a possible violation and an investigation should be conducted,

the HCA will obtain guidance from legal counsel and the OIG prior to taking any action. Secretarial Offices shall consult the Office of the General Counsel; and the OAs shall consult their Chief Counsels. Subsequent instruction or delegation of action by the HCA should be guided by [FAR 3.104-7\(d\)](#). In the case where a contract has already been awarded, the HCA may direct a contracting officer to void or rescind the contract with respect to which the HOA has made his or her determination as authorized under [FAR 3.104-7\(d\)\(2\)\(ii\)\(B\)](#).

(d) The HOA is authorized to make determinations under [FAR 3.104-7\(d\)\(2\)\(ii\)\(B\)](#).

(e) The HCA shall, in writing, justify his or her recommendation or instruction for administration or contractual remedy, demonstrating action commensurate with the severity and effect of the violation.

(f) The contracting officer shall prepare a memorandum of the facts and circumstances to support the HCA's determination under [FAR 3.104-7\(f\)](#). If the HCA determines that urgent and compelling circumstances exist, the HCA may authorize contract award after notifying the HOA.

SUBCHAPTER 1203.2– CONTRACTOR GRATUITIES TO GOVERNMENT PERSONNEL

1203.203 Reporting suspected violations of the Gratuities clause.

(b) Employees must report immediately a suspected violation of the Gratuities clause to each of the following:

(1) The contracting officer (or the COCO, if the contracting officer is suspected of the violation);

(2) Assistant Inspector General for Investigations or the Regional Special Agent in Charge; and

(3) Deputy Standards of Conduct Counselor.

(b) The report must describe the circumstances under which the Gratuities clause has been violated and include all pertinent documents. The contracting officer (or COCO) shall obtain from the person reporting the violation—and any witnesses to the violation—the following information:

- (1) The date, time, and place of the suspected violation;
 - (2) The name and title (if known) of the individual(s) involved in the violation; and
 - (3) The details of the violation (e.g., the gratuity offered or intended) to obtain a contract or favorable treatment under a contract.
- (c) The contracting officer (or COCO) should request that the person reporting the violation and witnesses (if any) sign and date the information, certifying that the information furnished is true and correct.
- (d) The COCO shall report suspected violations to the Office of the Inspector General (OIG), with a copy to General Counsel and the OA's Chief Counsel.
- (e) The OIG will investigate and, if appropriate, forward a report and recommendation to the Department of Justice, the Senior Procurement Executive (SPE), and the Office of the General Counsel.

1203.204 Treatment of violations.

(a) Before taking any action against a contractor, the HCA is authorized to determine whether a Gratuities clause violation has occurred. If the HCA was personally and substantially involved in the procurement, Government legal counsel advice should be sought to determine if a substitute for the HCA should be designated. The HCA, or designee, shall take the following actions:

- (1) Coordinate with legal counsel;
 - (2) Initiate proceedings under [FAR 3.204\(a\)](#) by notifying the contractor that DOT is considering action against the contractor for a violation of the Gratuities clause. Notice is sent by a certified letter to the last known address of the party, its counsel, or agent for service of process. In the case of a business, notice is sent to any partner, principal officer, director, owner or co-owner; and
 - (3) Presume receipt if no return receipt is received within 10 calendar days after mailing the notice.
- (b) The contractor has 30 calendar days to exercise its rights under [FAR 3.204\(b\)](#), unless the HCA, or designee, grants an extension.

(1) If there is a dispute of fact material to making a determination, the HCA, or designee, may refer the matter to a fact-finding official, designated by the OA Suspension and Debarment Official, in accordance with TAR 1209.403. Referrals for fact-finding are not made in cases arising from a conviction or indictment as defined in [FAR 9.403](#). If a referral is made, the fact-finding official takes all the following actions:

(i) Give the contractor an opportunity to dispute material facts relating to the determinations under [FAR 3.204\(a\)\(1\) and \(2\)](#);

(ii) Conduct proceedings under rules consistent with [FAR 3.204\(b\)](#);

(iii) Schedule a hearing within 20 calendar days of receipt of the referral. The contractor or DOT may request an extension for good cause; and

(iv) Deliver to the HCA, or designee, written findings of fact (together with a transcription of the proceedings, if made) within 20 calendar days after the hearing record closes. The findings must resolve any material disputes of fact by a preponderance of the evidence.

(v) The HCA, or designee, may reject the findings of the fact-finding official only if the findings are clearly erroneous or arbitrary and capricious. Such determination shall be made in writing.

(vi) In cases arising from conviction or indictment, or in which there are no disputes of material fact, the HCA, or designee, conducts the hearing required by [FAR 3.204\(b\)](#).

(vii) If the Gratuities clause was violated, the contractor may present evidence of mitigating factors to the HCA, or designee, in accordance with [FAR 3.204\(b\)](#) either orally or in writing, consistent with a schedule the HCA, or designee, establishes.

(c) The HCA, or designee, exercises the Government's rights under [FAR 3.204\(c\)](#) only after considering mitigating factors.

SUBCHAPTER 1203.3—REPORTS OF SUSPECTED ANTITRUST VIOLATIONS

1203.303 Reporting suspected antitrust violations.

(b) The contracting officer will report evidence of suspected antitrust violations in acquisitions to the Assistant Inspector General for Investigations or the Regional Special Agent in Charge. When appropriate, the Office of Inspector General will investigate and prepare a report and recommendation to the Attorney General and to the Senior Procurement Executive for suspension or debarment consideration. Guidance regarding the identification of sufficiently questionable practices can be found under [FAR 3.303\(c\)](#) and reports should be completed in accordance with [FAR 3.303](#).

SUBCHAPTER--1203.4--CONTINGENT FEES

1203.405 Misrepresentations or violations of the covenant against contingent fees.

(a) Reports must be in writing.

(b) The COCO shall consult with legal counsel and the OIG to determine a course of action.

(b)(4) Any proposed referral to the Department of Justice shall first be submitted to the SPE.

SUBCHAPTER 1203.6--CONTRACTS WITH GOVERNMENT EMPLOYEES OR ORGANIZATIONS OWNED OR CONTROLLED BY THEM

1203.602 Exceptions.

The HCA is authorized to grant an exception to the policy in [FAR. 3.601](#). This authority cannot be redelegated.

SUBCHAPTER 1203.7—VOIDING AND RESCINDING CONTRACTS

1203.700 Scope of subpart.

(a)(2) The HOA is authorized to make determinations in accordance with FAR 3.700(a)(2).

1203.701 Purpose.

(a)(2) The HOA is authorized to make determinations in accordance with [FAR 3.700\(a\)\(2\)](#).

1203.703 Authority.

(a) The HCA is authorized to declare void and rescind contracts and other transactions listed in P.L. 87-849 (18 U.S.C. 218).

(b)(2) The HOA is authorized to make determinations in accordance with FAR 3.700(b).

1203.704 Policy.

(a) The HCA is authorized to declare void and rescind contracts and to recover the amounts expended and property transferred by the agency where there is a final conviction for any violation of 18 U.S.C. 201-224. Prior to voiding or rescinding a contract or other transaction enumerated in 18 U.S.C. 218, the HCA shall provide written notification to the HOA.

(c) The HOA is authorized to make the determinations under [FAR 3.704\(c\)](#).

1203.705 Procedures.

(a) *Reporting.* The HCA is authorized to receive reports required by [FAR 3.705\(a\)](#). Prior to notifying the Department of Justice the HCA shall notify the HOA in writing.

(b) *Decision.* The HCA will carry out the functions of [FAR 3.705\(b\)](#). Prior to voiding or rescinding a contract, the HCA shall notify the HOA in writing.

(c) *Decision-Making Process.* Prior to taking the actions under [FAR 3.705](#) concerning voiding or rescinding a contract, the contracting officer shall ensure that the file fully supports the proposed action. The opinion of legal counsel also shall be sought to ensure that all requirements of [FAR 3.705](#) have been met.

(c)(4) The HCA is authorized to issue the written decision under [FAR 3.705\(c\)\(4\)](#).

(e) *Final agency decision.* The HCA is authorized to make a final decision under [FAR 3.705\(e\)](#).

SUBCHAPTER 1203.8--LIMITATION ON THE PAYMENT OF FUNDS TO INFLUENCE FEDERAL TRANSACTIONS

1203.804 Policy.

(b) Contracting officers shall forward a copy of all contractor disclosures to the official designated in accordance with OA procedures.

1203.806 Processing suspected violations.

Contracting officers shall report suspected violations of the requirements of 31 U.S.C. 1352 to the DOT Assistant Inspector General for Investigations, 1200 New Jersey Avenue, SE Washington, DC, 20590.

SUBCHAPTER 1203.9--WHISTLEBLOWER PROTECTIONS FOR CONTRACTOR EMPLOYEES.

1203.905 Procedures for investigating complaints.

(b) The HCA is delegated the responsibilities at [FAR 3.905](#).

(c) The HCA is the official required to comply with [FAR 3.905\(c\)](#).

(d) The HCA is authorized to grant extensions under [FAR 3.905\(d\)](#).

(e) The HCA is authorized to request additional investigative work under [FAR 3.905\(e\)](#).

1203.906 Remedies.

(a) The HCA is authorized to make determinations and take actions under [FAR 3.906\(a\)](#).

(b) The HCA is authorized to take actions under [FAR 3.906\(b\)](#).

1203.907 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009

1203.907-2 Policy.

The HCA is designated as “head of a Federal agency” for the purposes of [FAR 3.907-2](#).

1203.907-3 Procedures for filing complaints.

(c) Contracting officers who receive a complaint of reprisal of the type described in [FAR 3.907-2](#) shall forward it to the DOT Office of the Inspector General and notify and coordinate with:

(i) The Operating Administration HCA and legal counsel;

(ii) If the complaint of reprisal applies to an order placed under another agency’s contract, the contracting officer for the servicing agency contract.

1203.907-6 Remedies and enforcement authority.

The HCA is delegated the head of agency authorities identified in [FAR 3.907-6](#).

1203.907-7 Contract Clause.

Provide a notice in covered solicitations and contracts that the Recovery Accountability and Transparency Board has a poster available at <http://www.recovery.gov/arra/Contact/ReportFraud/Documents/Whistleblower%20Poster.pdf> which the contractor may use to meet the posting requirements of FAR 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009.

1203.908 Pilot Program for enhancement of contractor employee whistleblower protections.

1203.908-6 Statutory remedies.

The HCA is delegated the head of agency authorities identified in [FAR 3.908-6](#).

1203.908-7 Enforcement of orders.

The HCA is delegated the head of agency authorities identified in [FAR 3.908-7](#).

SUBCHAPTER 1203.10—CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT

1203.1003 Requirements.

(a) *Contractor requirements.*

(3) “Significant overpayment” is not limited to dollar value alone and depends on the circumstances of the overpayments as well as the amount. Because contractors are required by the Payment clauses to report and return overpayments of any amount, it is within the discretion of the suspending or debarring official to determine whether an overpayment is significant when determining whether suspension or debarment would be the appropriate outcome for failure to report such overpayment.

(b) Upon notification or discovery of an overpayment in excess of \$10,000 or 10% of the total contract value, whichever is less and whether or not an account receivable is established for the overpayment; all overpayments involving a serious hazard to health, safety, or operational readiness; or in any other circumstances the contracting officer determines to be suspicious, the contracting officer shall:

(a) Notify and coordinate with the Operating Administration HCA and legal counsel, and

(b) Notify the Office of Inspector General.

(iii) The contracting officer’s notification must include the following information:

(A) Contractor name;

(B) Contractor DUNS;

(C) Contract number;

(D) Order number (if applicable);

(E) Invoice number;

(F) Invoice amount

(G) Amount of overpayment;

(H) Whether there were previous over payments on this contract;

(I) Invoice date;

(J) Invoice approval date;

(K) Payment date;

(L) COR or program point of contact;

(M) Source of the notification (contractor, payment review, recovery audit, COR or other team member, etc.) and date;

(N) Whether the overpayment will be recovered through offset to the existing contract or other available payments and;

(O) Other relevant facts about the circumstances of the overpayment, including any discrepancies between the goods and services received and the invoice and corrective actions taken to prevent similar overpayments.

(b) *Notification of possible contractor violation.*

(2) Agency procedures.

(i) Upon receipt of a written notification received from the contractor under the clause at FAR 52.203-13, other notification provided by the contractor in compliance with [FAR 3.1003](#), or notification from another Federal agency to which the contractor has made a disclosure, the contracting officer shall notify and coordinate with:

(A) The DOT Office of Inspector General;

(B) The OA HCA and legal counsel;

(C) If the violation applies to additional DOT contracts, the HCA responsible for those contracts; and

(D) If the violation applies to an order placed under another agency's contract, the contracting officer for the servicing agency contract.

(ii) Access to information obtained pursuant to the disclosure shall be limited to authorized persons and treated as For Official Use Only. In addition, any DOT employee with access to information obtained pursuant to a disclosure, to the extent permitted by law and regulation, shall safeguard and treat the information as confidential where the information has been marked "confidential" or "proprietary" by the contractor.

(iii) Actions taken pursuant to a disclosure of credible evidence of a violation will vary based on the circumstances of each case. After investigation or review, DOT may determine that the contractor has adequately addressed the violation and no further action is necessary, or consider the full range of contractual and administrative remedies available, up to and including debarment or suspension, as well as civil and criminal penalties. DOT officials should consider the severity of the violation and mitigating circumstances described in [FAR 9.406-1\(a\)](#) in assessing the contractor's present responsibility and, as merited, determining the appropriate remedy.

(iv) Knowing failure to disclose. If the contracting officer learns of a knowing failure by a contractor to disclose credible evidence of a covered violation or a significant overpayment, the contracting officer shall notify and coordinate with:

(A) The DOT Office of Inspector General;

(B) The OA HCA and legal counsel;

(C) If the violation applies to additional DOT contracts, the HCA responsible for those contracts; and

(D) If the violation applies to an order placed under another agency's contract, the contracting officer for the servicing agency contract.

(c) Fraud Hotline Poster.

(1) Office of Inspector General (OIG) maintains a Hotline to facilitate the reporting of allegations of fraud, waste, abuse, or mismanagement in U.S. Department of Transportation (DOT) programs or operations. For additional information visit <https://www.oig.dot.gov/investigations/fraud-awareness-posters>.

SUBCHAPTER 1203.11—PREVENTING PERSONAL CONFLICTS OF INTEREST FOR CONTRACTOR EMPLOYEES PERFORMING ACQUISITION FUNCTIONS

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(b)(3) OAs shall consult their Chief Counsels.

1203.1105 Violations.

OAs shall consult their Chief Counsels.

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SUBCHAPTER 1204.1—CONTRACT EXECUTION

1204.101 Contracting officer's signature.

Only warranted contracting officers shall sign contracts on behalf of the DOT.

SUBCHAPTER 1204.2—CONTRACT DISTRIBUTION

1204.202-70 Agency distribution requirements.

(a) In addition to the distribution requirements of [FAR 4.201](#), the contracting officer shall distribute one executed copy of awards to the following:

(1) The Operating Administration's (OA) property management office or property administrator when Government property is furnished to the contractor or when acquiring personal property as that term is defined in [FAR. 45.101](#);

(2) The requiring office; and

(3) The recipient of the supplies or services (including construction).

(b) The copy specified in TAM 1204.202-70(a)(1) is necessary to enable the recording and control of Government property, as required by DOT Order 2700.12 series, Financial Management Control of Property, and DOT 2700.8 series, Accounting Principles and Standards, by the finance office.

(c) The recipient (see paragraph (a)(3) of this section) shall provide the contracting officer or designee with a written acknowledgement of receipt and acceptance of the supplies or services (including construction).

1204.203 Taxpayer identification information.

(a) and (b) The contracting officer may use any means to provide the contractor's taxpayer identification number (TIN) to the payment office as long as the TIN is protected from public disclosure. Disclosure within the OA shall be limited to Government personnel who have a need to know the TIN.

SUBCHAPTER 1204.4--SAFEGUARDING CLASSIFIED INFORMATION WITHIN INDUSTRY

1204.403 Responsibilities of contracting officers.

(a) *Presolicitation phase.* DOT is covered by the National Industrial Security Program (NISP) when a classified acquisition as defined under FAR 2.101 is proposed. The contracting officer in coordination with the requiring office/project manager and DOT Office of Security or the OA cognizant Security Office are responsible for determining whether access to classified information will be required during contract performance by a contractor or any of its employees. Results of any determination must be discussed in the Acquisition Plan. When classified information is required by the contractor during contract performance, contracting officers shall adhere to the following rules and regulations:

- (1) Executive Order 12829, National Industrial Security Program (NISP);
- (2) [National Industrial Security Program Operating Manual \(NISPOM\)](#);
- (3) [DOT Order 1640.4 series, Classified Information Management and](#)
- (4) FAR 4.4.

(b) *Solicitation phase.* Contracting officers shall ensure that classified acquisitions are conducted as required by the NISP. All contracting offices shall comply with the requirements of DOT Order 1640.4 series and any OA implementing

procedures. Contracting officers should contact the DOT Office of Security for assistance in the preparation of the contract security specifications.

(1) If the proposed acquisition is unclassified but the contractor will require access to privileged or sensitive information or have unrestricted access to DOT facilities, contracting officers shall contact the DOT Office of Security for assistance.

(2) Contracting officers for the FHWA shall contact their responsible security office for guidance.

(c) Award phase. Contracting officers shall ensure that DD Form 254, including solicitation or contract number and required classified guidance, is forwarded to their cognizant Security

Office prior to the release of classified information (DD 254 may be need to be prepared and included in the contract although no DD 254 was required for the solicitation).

(d) Contract Administration. The requiring office/project manager, the contracting officer, Contracting Officer's Representative (COR), security officials and the contractor are responsible for effective contract administration to include revisions of the DD 254 due to contract modifications during performance and contract closeout.

1204.470 Security requirement for contractor access to unclassified facilities, IT resources, and sensitive information.

(a) The following DOT Order 1351.37, Departmental Cybersecurity policy and the companion supplement, "Departmental Cybersecurity Compendium" apply to acquisitions that require recurring contractor employee access to DOT facilities or contractor employees access to sensitive but unclassified information or IT resources.

(1) DOT Number, Information Technology (IT) Systems Security,

(2) Safeguarding Sensitive But Unclassified (For Official Use Only) Information

(3) Security Education, Training and Awareness Program

(4) Is there a DOT Instruction Handbook for Personnel Suitability and Security Program?

See also Contract Requirements—Homeland Security Presidential Directive 12 (HSPD-12) dated June 22, 2010, DOT Acquisition Policy, [Contractors Personnel Security and Agency Access, dated November 9, 2011](#), Homeland Security Presidential Directive (HSPD-12), OMB M-05-24 and FIPS Publication 201 and DOT Order 1630.3B, Personnel Security Management and 1681.2 Department of Transportation Homeland Security Presidential Directive 12 (HSPD-12) Personal Identity Verification (PIV) Card Program and cybersecurity requirements <http://our.dot.gov/team/dot.it/SitePages/ciop.aspx>.

1204.470-1 Responsibilities.

(a) The requiring office is responsible for determining if contractors', employees access to unclassified Government facilities, IT resources, or sensitive but unclassified information will be required during contract performance. The DOT Headquarter or Operating Administration Security Offices shall assist requiring and contracting offices with identifying the risk level, suitability requirements and other access matters relating to sensitive but unclassified information and recurring access of contractor employees to Government facilities, information systems, security items or products. All procurements that require contractor employees to have access to DOT facilities, sensitive information and/or resources shall be coordinated with the DOT Headquarters Office of Security prior to release of the solicitation. Contracting officers and requiring officials shall coordinate the requirement for access investigations with the cognizant Security Office.

(b) In addition to incorporating the clause as required by TAR 1253.239-70, Security requirements for unclassified information technology resources, contracting officers are responsible for ensuring that solicitations, contracts, and orders identify the documentation contractor employees must complete for determining contractor suitability.

1204.470-2 Access to sensitive but unclassified information.

(a) Contractor personnel who will require access to sensitive but unclassified information as part of contract performance shall complete a DOT Non-disclosure Agreement before starting work under the contract (See attachment C).

(b) Contracting officers or the cognizant Security Office shall retain contractor signed Non-disclosure Agreements in accordance with OA procedures.

SUBCHAPTER 1204.5--ELECTRONIC COMMERCE IN CONTRACTING

1204.502 Policy.

(b) The Senior Procurement Executive (SPE) is delegated, after consulting with the Administrator of the Office of Federal Procurement Policy (OFPP), the authority to ensure that information systems, technologies, procedures, and processes used by the Department of Transportation to conduct electronic commerce standards are met as specified by [FAR 4.502\(b\)\(1\) through \(5\)](#).

(c) The SPE must ensure that the agency systems are capable of ensuring authentication and confidentiality commensurate with the risk and magnitude of the harm from loss, misuse, or unauthorized access to or modification of the information, before using electronic commerce, in accordance with the requirements of [FAR 4.502\(c\)](#).

1204.502-70 Acquisition-Related System

1204.502.7000 User account maintenance responsibilities for acquisition-related systems.

It is the responsibility of each DOT Strategic Acquisition Council (SAC) OA member to ensure that user accounts in acquisition-related systems are promptly terminated upon the resignation or reassignment of users within their respective organization.

SUBCHAPTER 1204.6--CONTRACT REPORTING

1204.602 Federal Procurement Data System

(a) The government-wide Federal Procurement Data System (FPDS) shall be used by DOT to collect, query, and report data on procurement actions that exceed a dollar value of \$3,000. The FPDS is used by all DOT OAs as the primary source of procurement data. Each contracting officer is responsible for timely and accurate reporting of data to the FPDS.

(c) In accordance with [FAR 4.604\(a\)\(2\)](#) all actions that exceed a dollar value of \$3,000 (except those at 1204.602-70) shall be entered in the FPDS within 3 business days of the effective date of an action that obligated or deobligated funds. The SF 279, Federal Procurement Data System (FPDS)—Individual Contract Action Report, and the SF 281, Federal Procurement Data System (FPDS)—Summary Contract Action Report (\$25,000 or Less), are no longer used within DOT. The FPDS serves as the procurement data collection method for DOT.

1204.604 Responsibilities.

(a) (1) The COCO is responsible for ensuring complete, accurate, and timely federal procurement data quality in FPDS-NG. The COCO is responsible for ensuring all actions are captured in FPDS-NG per [FAR 4.604\(b\)\(2\)](#) and (3). Furthermore, COCOs must notify SPE of any discrepancies between data in FPDS-NG and other information available.

(2) COCOs must designate a system administrator and notify SPE in writing of the designation. OA system administrators, are responsible, at minimum, for the following: training of OA personnel, registering new users, and ensuring the validity of the information that is entered into FPDS-NG.

(b) COCO's must ensure input of reportable contract action data in accordance with FPDS-NG Guidance.

(c) FPDS-NG Data Integrity.

(1) Annual Verification & Validation (V&V) COCOs shall:

(i) Conduct an annual Verification & Validation (V&V) review in accordance with the OFPP Guidance. Each Operating Administration Report is due to the OSPE each year on or before December 1.

Instructions on conducting the Annual Procurement Data Quality Report and Certification consists of:

Reporting Templates and sampling methodologies will be provided via email to the SAC members.

Procurement Data Quality Report and Certification will be completed by each Operating Administration and certified by the COCO

Final certified report package due to OSPE on or before December 1st in .pdf format

(ii) Develop a plan for ensuring that all staff with data entry and review functions have a data accuracy evaluation factor in their performance appraisal and receive appropriate management feedback for their role in promoting and maintaining procurement data integrity. The Contracting Officer is ultimately responsible for accuracy of data entered into FPDS.

(iii) Implement agreed corrective action as identified in the annual V&V Report and provide status updates to SPE on a quarterly basis. The status update is due on the last business day of each quarter.

(1) The Office of the Senior Procurement Executive (SPE) shall:

(i) Define the scope of each Operating Administration's V&V Reports and approve the recommendations and proposed corrective action plans.

(ii) Track accuracy trends by OA and by data field.

(iii) Certify annually no later than January 5th by email in pdf format to OFPP and GSA that the agency FPDS records are complete and accurate.

1204.606 Reporting Data.

(a) When the Government-wide commercial purchase card is used as a form of payment and is supported by an instrument with a PIID, the transaction shall be reported in FPDS. In situations under the micro-purchase threshold where a Government-wide commercial purchase card is not used and PID is generated, the transaction shall be reported in FPDS.

SUBCHAPTER 1204.8--GOVERNMENT CONTRACT FILES

1204.801 General.

The COCO is designated as the head of each office performing contracting and contract administration functions. The chief of the finance office of the OA is designated as the head of the office performing paying functions.

There shall be an official contract file folder for every contract awarded, or order issued, or agreement entered into by DOT Operating Administrations. Each contract file shall be organized by sections with an applicable contract file checklist (see Appendix A). Each checklist must contain a listing of items and sub-items included in the file, the respective location of the items or sub-item (e.g., documents), and a cross reference to the specific requirements in the Federal Acquisition Regulation, TAR, TAM and other DOT Directive as applicable. Each OA shall develop policies and procedures for ensuring that the appropriate checklist is completed and place in each contract file. At a minimum, each checklist shall contain the data elements at [FAR 4.803](#).

1204.804 Closeout of contract files.

1204.804-1 Closeout by the office administering the contract.

(a) [FAR 4.804](#) outlines detailed procedures for closing out contract files. The file is normally closed out by the contracting office administering the contract; however, as permitted by [FAR 42.2](#), there may be instances where the file is administered by a Government agency or other than that which awarded the contract. A contract cannot be closed out until all terms and conditions of the contract have been satisfied by the contractor and the Government.

1204.804-170 Monitoring contract closeouts.

(a) *Policy.* Contracting Officers responsible for contract administration must ensure that their contracts are closed out within the time standards set forth under [FAR 4.804-1](#). Compliance with these standards may be beyond the contracting officer's control in situations where necessary administrative actions are required by others (e.g., responsible audit agency, contractor, etc.). However, the Contracting Officer shall maintain close liaison with these entities to ensure that the necessary actions are not unduly delayed and are accomplished.

(b) *Closeout action for cost reimbursement contracts.* The Contracting Officer shall ensure that closeout action (e.g., request for final audit, closing documents, etc.) commences within 90 calendar days after receipt and acceptance of all contract deliverables (i.e., the contract completion date).

(c) *Tracking system.* The COCO shall utilize an automated or manual contract closeout tracking information system to identify those contracts which are physically completed and ready for closeout, but have not been administratively closed out and disposed of in accordance with FAR 4.8, TAR 1204.8, and this subchapter.

(d) *Monitoring of tracking system.* The COCO is responsible for reviewing quarterly or as often as practical, the latest status of the contract closeouts and disposal to ensure that Contracting Officers are closing contracts in a timely manner.

1204.804-5 Procedures for closing out contract files.

(b) COs may use a Contract Completion Statement, to satisfy the requirements of FAR 4.804-5(b).

1204.805 Storage, handling, and disposal of contract files.

(a) DOT Order 1324.2, DOT Records Retention and Disposal Program, sets forth procedures for handling, storing and disposing of all files, including contract files, established by DOT. Contracting officers shall seek the guidance of their OA's records management officer (RMO) or their records liaison officer (RLO) for additional information concerning the requirements of the DOT Order. GSA and the National Archives and Records Administration (NARA) are authorized by law to establish, operate, and maintain records centers for Federal agencies. The list of Records Centers (RC) is located at http://www.archives.gov/facilities/records_centers.html.

(b) Files sent to a FRC must have a disposal date annotated on the front of the file. This is the date the file can and will be destroyed by the FRC. Contracting officers shall determine this date based on the retention period specified in (FAR) 48 C.F.R. 4.805. Since the documents listed under (FAR) 48 C.F.R. 4.805 are normally retained in one file in the contracting office, documents related to contract actions with a dollar value that exceeds \$25,000 shall be retained for at least 6 years and 3 months after final payment; documents related to contract actions with a dollar value of \$25,000 or less shall be retained for at least 3 years after final payment.

(c) Prior to disposal of a file, it may be necessary to retrieve a file from the FRC prior to disposal. Therefore, contracting officers should ensure that the Records Management Officer (RMO) or Records Liaison Officer (RLO) maintains a record of the files sent to the FRC that includes the identification number assigned to the file by FRC.

1204.805-70 Storage, handling and disposal of Government-wide commercial purchase card records.

Purchase card records at or below the simplified acquisition threshold (for other than construction orders) shall be retained for three years after final payment. Purchase card records for construction orders shall be retained for six years and three months after final payment.

SUBCHAPTER 1204.9--Taxpayer Identification Number Information

1204.903 Reporting contract information to the IRS.

(a) The SPE is authorized under [FAR 4.903](#) to report certain information to the Internal Revenue Service (IRS).

1204.904 Reporting payment information to the IRS.

In addition to the requirements cited under [FAR. 4.904](#), 26 U.S.C. 6041 and 6041A, require Federal agencies to report to the IRS all individuals, partnerships, proprietorships, etc. that will be paid \$600 or more in a calendar year.

1204.905-70 Solicitation provision.

The provision at [FAR 52.204-3](#) require the offeror to furnish its taxpayer identification number (TIN). If the provision at [FAR 52.204-3](#) is required, the contracting officer will provide the TIN to the finance office, who will furnish the TIN to the Department of Treasury with each invoice certified for payment.

SUBCHAPTER 1204.11—SYSTEM FOR AWARD MANAGEMENT

1204.1103 Procedures

(d) Contracting officers are to ensure each contract document transmitted to the payment office includes the assigned DUNS number or, if applicable, the DUNS+4 number, within the award document in accordance with [FAR 52.204-7\(b\)\(2\)](#).

SUBCHAPTER 1204.13—PERSONAL IDENTITY VERIFICATION

1204.1301 Policy.

(c) The DOT Office of the Chief Security Office (OSCO), and the Chief Information Officer (OCIO) have joint responsibility for agency-wide implementation of the HSPD-12 initiative.

(1) The DOT (OCSO) is responsible for agency-wide implantation of HSPD-12 related to the DHS personal identity verification (PIV) card and Physical Access Control System (PACS).

(2) The DOT OCIO is responsible for agency-wide implementation of the HSPD-12 initiative related to logical access control (LACS) using the DOT PIV card as the common means of authentication. The DOT Operating Administrations shall contact the DOT OCIO Identity Credential and Access Management Program Management Office (ICAM PMO) regarding implementation, agency instructions and compliance with HSPD-12 related logical access control and access management.

1204.1301-70 Other officials' responsibilities.

(a) DOT OAs must develop processes and procedures to ensure compliance with the DOT implementing guidelines set forth by the OCSO – IMD, and OCOP. At a minimum, such procedures shall include:

(1) conduct background checks/investigations on contractor personnel requiring routine, recurring, or continuous physical or logical access;

(2) require contractors to pre-screen its employees, as appropriate consistent with the policy, practices, and procedures described in Acquisition Alert 11-23, Special Security Requirement – Contractor Pre-screening; and

(3) ensure that contractors adhere to [FAR 4.1301\(d\)](#) regarding securing the return of DHS PIV cards.

1204.1302 Acquisition of approved products and services for personal identity verification.

(b) DOT Contracting officers shall not procure HSPD-12 related products and services, available by GSA Federal Supply Schedule 70 or through open market acquisitions, without the coordination of Additional information may also be obtained from the OMB Memorandum No. M-60-18, Acquisition of Products and Services for Implementation of HSPD12 and website:

<http://www.whitehouse.gov/sites/default/files/omb/assets/omb/memoranda/fy2006/m06-18.pdf>.

SUBCHAPTER 1204.14—REPORTING EXECUTIVE COMPENSATION AND FIRST TIER SUBCONTRACT AWARDS

1204.1402 Procedures

Each OA is responsible for ensuring compliance with these requirements.

SUBCHAPTER 1204.16—UNIQUE PROCUREMENT INSTRUMENT IDENTIFIERS

1204-1602 Identifying the PIID and supplementary PIID.

1204.1603 Procedures.

(a) Procurement Instrument Identifier (PIID). The unique PIID number controls, tracks and identifies each procurement action from receipt of the procurement request through award and closeout of the procurement instrument. Alphanumeric characters, other than those prescribed in this subchapter, shall not be used as a part of the PIID. If additional identification is needed by the OA for internal reasons, it shall be placed on the procurement instrument in such a location as to separate it from the PIID. The contracting officer shall assign a PIID to each type of instrument described under paragraph (F) of this section. The number shall be retained for the life of the instrument to which it is assigned.

(i) Basic elements of the PIID. The PIID shall consist primarily of 14 alphanumeric characters which may be expanded to 15 as permitted under paragraph (E) of this section. The characters shall be positioned as follows:

(A) *Positions one and two.* A two-digit alphabetic code which identifies the procuring agency. This code must always be "DT" which means the Department of Transportation.

(B) Positions three and four. A two-digit alphabetic code which identifies the DOT OA. The following codes shall be used:

FA	Federal Aviation Administration
FH	Federal Highway Administration
FR	Federal Railroad Administration
FT	Federal Transit Administration
MA	Maritime Administration
MC	Federal Motor Carrier Safety Administration
NH	National Highway Traffic Safety Administration
PH	Pipeline and Hazardous Materials Safety Administration (TBD)
RT	Research and Innovative Technology Administration
SL	Saint Lawrence Seaway Development Corporation
OS	Office of the Secretary of Transportation

(C) Positions five and six. A two-digit alphanumeric code which identifies the procurement office of the OA that issued the procurement instrument.

(D) Positions seven and eight. A two-digit numeric code which is the last two digits of the fiscal year in which the PIID is assigned to the procurement instrument.

(E) Position nine. A one-digit alphabetic code which identifies the type of procurement instrument (e.g., agreement, sealed bidding, contracts). The following codes shall be used.

LTR	PURPOSE
A -	<u>Agreement</u> : Use for a basic agreement, basic ordering agreement, or blanket purchase agreement as defined under FAR 8.405-3, 13.303 and 16.7. Do NOT use for Cooperative Agreements.
B -	<u>Sealed Bidding</u> : Use for invitation for bids as defined under FAR 14.2.
C -	<u>Contracts</u> : Use for all contracts (e.g., letter, 8(a), etc.) including contracts for appraisals, surveys, title, closing, and other work related to leasing or acquiring real estate rights. Do NOT use this code for Task or Delivery order contracts.
D -	<u>Task Order or Delivery Order Contracts</u> : Use for Indefinite Quantity, Definite Quantity, and Requirements contracts as defined under FAR16.5 (see paragraph (iii)(C) of this section for numbering of individual orders under task or delivery order contracts).
F -	<u>External Task Orders, Delivery Orders or BPA Calls</u> : Use when placing orders or calls directly against: (1) a contract administered by another Government agency or department (e.g., GSA, the Department of Veterans Affairs, or the Office of Personnel Management); (2) contracts administered by agencies other than DOT including the National Industries for the Blind, National Industries for the Severely Handicapped, and the Federal Prison Industries (UNICOR); (3) contracts or agreements awarded

	by another DOT OA; and (4) orders or calls against a OA's own contract that is open to ordering by another OA or Agency.
G -	<u>Grants</u> : Reserved for grants when a PIID formatted number is assigned.
H -	<u>Cooperative Agreements</u> : Reserved for cooperative agreements when a PIID formatted number is assigned.
K -	<u>Land Purchases and Condemnations</u> : Use for acquisition of permanent real estate interests (fee simple or easement) by purchase or condemnation. Does not include leasehold interests (land or space) in real property.
L -	<u>Lease Agreement</u> : Use for leasing real property and supplies or equipment. Also, includes instruments for both land and space where the Government obtains real estate rights and aerial easements for a limited period of time, and may or may not be monetary in consideration. Does NOT include Interagency and Intra Agency Agreements.
N -	<u>Intra-agency Agreements</u> : Use when placing an order with another DOT OA for supplies or services that the servicing OA may be in a position to supply, render or obtain by contract.
P -	<u>Purchase Orders</u> : Use for purchase orders described under FAR Part 13 (assign V, then W when numbering capacity of P becomes exhausted during a fiscal year). Also, includes orders for appraisals, surveys, title, closing, and other work related to leasing or acquiring real estate rights.
Q -	<u>Request for Quotation</u> : Use when the procedures under FAR Part 13 and FAR 8.4 are followed.
R -	<u>Request for Proposal</u> : Use when the procedures under FAR Part 15 are followed.
S -	<u>Sales Contract</u> : Use for sales and other disposal of real and personal property.

U -	<u>Utilities</u> : Use for contracts for electric, telephone, water, natural gas, and other utilities.
X -	<u>Interagency Agreements</u> : Use when placing an order with any other government agency (does NOT include any DOT OA) for supplies or services that the servicing agency may be in a position or equipped to supply, render, or obtain by contract. FAR 17.502 applies.
	The letters E, J, M, T, Y and Z are reserved for the internal use of the OA. These letters may NOT be used to identify a DOT procurement instrument in lieu of the designated codes assigned to the type of instrument found in this section.

(F) Positions ten through fourteen or fifteen. At the discretion of the OA, these characters may be numeric or alphanumeric. A separate set of serial numbers may be used for any type of procurement instrument.

(ii) Illustration of the PIID. An example of a PIID is illustrated as follows: The PIID DTFA013B00001 identifies a contract issued by the Department of Transportation, Federal Aviation Administration, Contracts Division, Washington, D.C, issued in Fiscal Year 2013.

<u>Position</u>	<u>Identification</u>	<u>Code</u>
1-2	Agency	DT
3-4	Operating Administration (OA)	FA
5-6	Procurement office of the OA	01
7-8	Fiscal Year in which the PIID is assigned to the procurement instrument.	03
9	Type of procurement instrument	B

10-14 or 15	Numeric serial number of the procurement instrument or	00001 or 000001 or
	Alphanumeric serial number of the procurement instrument	AB123 or ABC123

(iii) Supplementary elements to a PIID. Supplementary elements shall be used in conjunction with the basic elements of the PIID, to identify the following:

(A) Amendments to Solicitations. Amendments shall be assigned a four position alphanumeric serial number. The first position would always be A, and the last three positions would always be numbered sequentially beginning with 001. A sample solicitation amendment number would be "A001."

(B) Modifications to Contracts, Agreements, and Orders. Modifications to contracts, agreements, and orders shall be numbered sequentially with a four position numeric serial number beginning with 0001.

(C) Orders. A supplementary number shall be assigned to the following orders:

- (1) Orders placed by the OA against the OA's own contracts or agreement; and
- (2) Orders placed by the OA against other OA contracts or agreements.

This supplementary number shall NOT exceed fifteen positions. At the discretion of the OA, up to fifteen positions may be a combination of numeric and alphanumeric characters. Examples are: D94230001; TE423E000; W9423CE00; and VA3001.

There are additional limitations for OAs scheduled to implement the Departmental Procurement Platform (DP2). These OAs should follow specific guidance provided by the DP2 Program Office for numbering of task orders, delivery orders, and BPA calls.

SUBCHAPTER 1204.17 - SERVICE CONTRACTS INVENTORY

1204.1703 Reporting requirements.

Each OA is responsible for ensuring compliance with these requirements.

SUBCHAPTER 1204.70--REVIEW AND APPROVAL OF CONTRACTS AND CONTRACT RELATED DOCUMENTS.

1204.7000 Scope of subchapter.

(a) Except as provided in paragraph (b) of this section, this subchapter sets forth review and approval requirements for proposed solicitations, pre-negotiation objectives, documentation of negotiations, contract awards, and contract modifications when the value of the acquisition (inclusive of options) exceeds the simplified acquisition threshold. The award approval requirements under this subchapter are in addition to the approval requirements of TAM 1205.303, Announcement of contract awards.

(b) This subchapter does not apply to acquisitions made under [FAR Parts 8, 13, 16.5](#) or [17.5](#).

1204.7001 Definitions.

The following definitions are applicable only to this TAM subchapter:

(a) "Independent review" means review by a procurement professional(s) other than the drafter of the document being reviewed or the contracting officer responsible for the acquisition (e.g., a review board, a member of the policy staff, another contracting officer of an equal or higher organizational equivalent).

(b) "Legal sufficiency" means that the document has been reviewed and determined to be in compliance with applicable statutes, regulations, and procedures by an attorney in the OA legal counsel's office.

(c) "Review" means to scrutinize the document to ensure that the contracting officer has complied with acquisition statutes, regulations, policies and procedures; has followed sound business practices; and has ensured that the contents of the contract file are in accordance with [FAR 4.803](#).

1204.7002 General requirements.

(a) Contracting officers may authorize concurrent reviews of documents as appropriate.

(b) The requirements of this subchapter do not preclude other internal reviews that may be required by the OAs (e.g., coordination with quality assurance personnel, operational users, etc.).

(c) At remote contracting activities where the contracting officer is the highest ranking official, review at a level above the contracting officer is not required, unless otherwise directed by OA procedures.

1204.7003 Review and approval procedures.

(a) The contracting officer responsible for the acquisition shall review the solicitation, prenegotiation objective, the document meeting the [FAR 15.406-3](#) requirements, contract or contract modification, as applicable, prior to the other reviews required by this subchapter. The contracting officer is the level of approval for all proposed solicitations, prenegotiation objectives, documentation of price negotiations, contract awards, and contract modification awards valued at or below \$1,000,000. The contracting officer also is the level of approval for selected contract modifications which exceed \$1,000,000 (see paragraph (c)(3) of this section).

(b) The contracting officer shall ensure that all solicitations, contract awards, and contract modification awards are coordinated with the responsible technical/program office prior to issuance or award. Additionally, all solicitations, contract awards, and contract modification awards expected to exceed \$1,000,000 shall be reviewed for legal sufficiency.

(c) In addition to the requirements contained in paragraphs (a) and (b) of this section, OAs shall ensure that review and approval is made of the following documents for proposed acquisitions expected to exceed \$1,000,000:

(1) *Solicitations*: An independent review shall be performed of the solicitation. Based on this review, an individual at a level above the contracting officer responsible for the action shall approve the solicitation prior to its release to prospective offerors.

(2) *Prenegotiation Objectives and Negotiations*: Prenegotiation memoranda shall be reviewed and documentation of negotiations approved by an individual at least one level above the contracting officer responsible for the acquisition.

(3) *Contract and Contract Modification Awards*: An independent review shall be made of the contract or contract modification, as applicable and the contract file. The contract document submitted for review must be accompanied by the file which must contain all required documentation (e.g., prenegotiation objective, documentation of negotiations, determinations and findings, etc.) to support the proposed award. Based on this review, an individual, at a level above the contracting officer responsible for the acquisition, shall approve the proposed award. Note: The contracting officer is the level of approval for all unilateral contract modifications that do not require a proposal from or negotiations with the contractor (*e.g.*, those for incremental funding and exercising options).

1204.7004 Procedural documentation requirements.

(a) The contract file shall clearly indicate that the reviews mandated by this subchapter have been accomplished. All approval decisions and the resolution of all comments shall be written, signed, dated, and placed in the contract file.

(b) If the contracting officer approves or disapproves the award, the contracting officer shall include in the contract file a written determination, which shall be signed and dated, indicating that all of the conditions (e.g., corrections, deletions, additions, changes, etc.) were satisfied prior to award.

1204.7005 Periodic compliance reviews.

OAs with field contracting offices shall conduct, in accordance with the procedures of the OA, periodic oversight reviews (e.g., an established procurement management review program, review of selected procurement actions by Headquarters, etc.) of solicitations, prenegotiation objectives, documentation of negotiations, contract awards, contract modification and task orders awards. All reviews shall be documented in writing.

CONTRACT FILE CHECKLIST

ACQUISITION PLANNING

APPENDIX A

Subprocess	Item #	Item Required	Check	Regulations
Procurement Request Documentation	1	Procurement Request and Certification of Funding		TAM 1232.7 TAM 1232.702-70(a)(1) FAR 8.405-1 FAR 11.101 FAR 16.504(a) FAR 37.6012 FAR 37.602
	2	Draft Statement of Requirements (PWS/SOO/SOW)		TAM 1204, 1223, 1224 & 1239 FAR 11.101 FAR 37.601 FAR 37.602 FAR 8.405-2 FAR 16.504(a)
	3	(IGCE) Independent Gov Cost Estimate <i>negotiated</i>		TAM 1214, 1215 & 1232 FAR 15.404-1
	4	> \$150K -(IGCE) Independent Gov Cost Estimate <i>A&E</i>		TAM 1214, 1215 & 1232 FAR 36.605
	5	> SAT - Government Estimate of Construction Costs		FAR 36.203
	6	Specifications		FAR 11.101
	7	Interagency Agreement		FAR 17.503
Acquisition Plans	8	Acquisition Plans		FAR 7.105

				FAR 7.102
FAR Deviation Documentation	9	Justification and HCA Authorization for Individual FAR Deviation		TAM 1201.403 FAR 1.4
	10	FAR Class Deviation Proposals/Approvals		TAM 1201.403 FAR 1.4
Market Research	11	Market Research Results		FAR 15.201 FAR 10.002
	12	> micro purchase threshold - Determination of FPI Item Comparability		FAR 8.602(a)
	13	Market Research results of limited competition to WOSB or economically disadvantaged WOSB concerns		FAR 4.803
Small Business Consideration/ Preference Program Documents	14	Source List/Small Business Review Documents		TAM 1219.5 FAR 19.501 FAR 19.502-2 FAR 13.003(b)
	15	Socioeconomic Preference Consideration Documents (HUBZone and SDVOSB Set-Asides)		FAR 19.1305 FAR 19.1405

	16	SBA Correspondence (8(a) Search Letters, Evaluation Documents, Offering/Acceptance Letters)		FAR 19.800 FAR 19.202- 1 FAR 10.001
	17	Bundling Determination/Coordi nation with SBA PCR		FAR 19.202- 1 FAR 10.001
	18	> micro purchase threshold Small Business Set-Aside exemption		TAM 1219.5TAM 1219.202FAR 19.501FAR 19.502-2FAR 13.003(b)
	19	> micro purchase threshold - SBA PCR Coordination Documents		TAM 1219.5 FAR 19.202- 1 FAR 19.501
	20	> \$3K - Determination to solicit award on an unrestricted basis		TAM 1219.5 FAR 19.502- 2
	21	Determination that WOSB concerns or EDWOSB concerns are underrepresented based on the NAICS code assigned for the area Additional Guidance: Applicable if competition is limited to WOSB or economically disadvantaged WOSB		FAR 4.803
Contract Type and Quantity	22	Required HCA approval if		FAR 16.601(d)

Justifications		base+option exceeds 3 years- D&F for Time-and -Material or Labor-Hour Contract		FAR 16.602 FAR 12.207
	23	Commercial IDIQ T&M/LH Contract/Order		FAR 12.207
	24	HCA Determination for Use of Letter Contract		TAM 1216.603-3 FAR 16.603-3
	25	> 150K - COCO Approval of Firm-fixed-price, Level-of-effort Term Contract		FAR 16.207-3
	26	Multi-Year Contract HCA Determination		FAR 17.105-1
	27	Interagency Acquisition Determination and Findings		FAR 17.503
	28	Multiple Award IDIQ Determination		TAM 1216.501-2(b)(2) FAR 16.504[c]
	29	Contract type documentation		TAM 1216.6 FAR 16.103
Competition-Related Determinations	30	Justification for Other Than Full and Open Competition (JOFOC)		TAM 1206.302 FAR 6.302-1 FAR 18.104 FAR 6.303 FAR 6.304
	31	> SAT - CO Determination to		FAR 13.106-1

		Solicit One Source		
	32	Brand Name Description Justification		FAR 13.106-1 FAR 13.501 FAR 6.303
	33	> \$650K - Competition Advocate approval of Commercial Sole Source (including brand name justification)		FAR 13.501 FAR 6.501
	34	Required>SAT but not>\$6.5M[\$12M per FAR 13.500e] Commercial Item Test Program Sole Source (including brand name) Justification		FAR 13.106-1 FAR 13.501
	35	> \$3K - Statutory Exception Documentation to Use of Fair Opportunity Process for IDIQ		TAM 1216.501- 2(b)(2) FAR 16.505(b)
	36	Limited Sources Justification (LSJ) (Restricted Consideration of Schedule Contractors or Brand Name Specification)		FAR 8.405-6
	37	> SAT>\$150K - Limited Sources Justification (LSJ) if one BPA Holder Solicited Under Multiple BPAs		FAR 8.405-6 FAR 8.405-3
	38	Agency Head		FAR 6.202(b)

		Determination to Exclude a Source		
	39	IAW agency procedures- Commercial Item Waiver		FAR 12.302[c]
	40	Exemption From Use of Value Engineering Clause		FAR 48.201(a)(6)
	41	Government Property Documentation		FAR 45.102
OCOI Considerations	42	OCOI Written Analysis, Recommended Course of Action, Solicitation Provision/Contract Clause and Approving Officials Action unless waived by agency head		FAR 9.504[c] FAR 9.506(b)(1)(3)
Other Approvals/Justifications/Determinations/Analyses	43	Determination that None of the Functions to be Performed are Inherently Governmental		TAM 1207.5 FAR 7.503[e]
	44	Use of Warranties Consideration/Authorization to use a warranty		FAR 46.703 FAR 46.704 FAR 46.705
	45	Electronic and Information Technology (EIT)/Section 508 Exception Documentation		FAR 39.203

	46	> micro purchase threshold- Buy American Act Exception or Non-Availability Determination		FAR 25.103
	47	Personal Services/Nonpersonal Services Determination		FAR 37.103 FAR 37.104
	48	Covered by SCA >\$2,500- Service Contract Act Wage Determination		TAM 1222.404 TAM 1222.101 FAR 22.1007
	49	>\$2,000- Davis-Bacon General/Project Wage Determination		FAR 22.404-1 FAR 22.404-3
	50	>micro purchase threshold- EPA Designated Materials/Services Exception Justification		TAM 1223.404 FAR 23.405
	51	HCA Designation of Commercial Item Acquisition to be Used to Facilitate the Defense Against or Recovery from Nuclear, Biological, Chemical, or Radiological Attack		FAR 13.500 FAR 18.202
	52	IAW agency procedures- Authorization to Use a Warranty		FAR 46.704

	53	IAW agency procedures- Access to Classified Information Acquisition Review/Determination Documentation		TAM 1204.4 FAR 4.403
	54	Agency Head/Designee Authorization to Contact w/Government Employees		FAR 3.602
	55	Incentive/award fee justification		FAR 16.205 FAR 16.404 FAR 16.405-2
	56	Justification for expenditures to other than local firms. Additional Guidance: Approved by CO.		FAR 26.204
	57	ENERGY STAR or FEMP-designated product acquisition exemption determination		FAR 23.204
	58	Approvals/disapprovals of requests for deviations from cost principals		FAR 31.101 FAR 1.402
	59	Economy Act order D&F		FAR 17.502-2
	60	IAA/FFRDC determination/D&F		FAR 17.503 FAR 17.502-

		Additional Guidance: Prepared by nonsponsoring agency and provided to sponsoring agency.		1 FAR 17.502- 2 FAR 35.017- 3
Source Selection Documentation and Evaluation Criteria	61	HCA Determination of Availability/Non-Availability of Gov Personnel for Proposal Evaluation		FAR 37.203(d) FAR 37.204 FAR 37.205
	62	If other than CO- Agency Head Designation of Source Selection Authority		FAR 15.303
	63	Source Selection Strategy/ Plan		FAR 15.303(b)(2)
	64	Past Performance Evaluation Exception		FAR 15.304
	65	A&E Evaluation Board Establishment		FAR 36.602-2
	66	Evaluation Criteria Additional Guidance: May be included as part of the source selection plan.		FAR 15.303 FAR 12.602(a) FAR 15.304
	67	Evaluation Team Establishment Additional Guidance: May be included as part of the source selection plan.		FAR 303(b)(1)
	68	Advisory Multi-Step Process documentation		FAR 15.202

Synopsis Documentation	69	> \$25K unless FAR 12.603 procedures used -Government-wide Point of Entry (GPE) (Fed BizOpps) Notice of Proposed Contract Action Additional Guidance: Required unless exempt		TAM 1205.2 FAR 5.201 FAR 5.203
	70	Government-wide Point of Entry (GPE) (Fed BizOpps) Notice Exception		FAR 5.202
	71	Government-wide Point of Entry (GPE) (Fed BizOpps) Notice of Non competitive Acquisition Using Only One Responsible Source Authority, per FAR 6.302-1		TAM 1205.2 FAR 5.201 FAR 6.302-1 FAR 13.106-1
	72	Synopsis of streamlined procedures (combined announcement/solicitation) used		FAR 5.102(a)(6) FAR 12.603
	73	> SAT unless waived by HCA;CO option < SAT Construction Presolicitation Notice/Waiver		FAR 36.213-2
	74	Required Fee > \$25K GPE (FedBizOpps) Notice of Intent to Contract for A&E Services		TAM 1205.2 FAR 5.205 FAR 36.601-1

	75	> \$25K -Gov Point of Entry (GPE) (Fed BizOpps) Notice of Proposed Contract Action if funded in whole or in part by the Recovery Act		FAR 5.704
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Solicitation, Prep & Approvals

Subprocess	Item #	Item Required	Check	Regulations
Solicitation Justifications/ Approvals	1	Required Unless proposed by Contractor- Quality Assurance Surveillance Plan (QASP)		FAR 37.604 FAR 46.401(a)
	2	Wage Determination Problem Resolution (Mod, Correction, or Improper)		FAR 22.404-6 FAR 22.407
	3	Required if applicable- Requirement for Bonds and/or Insurance Compliance Review		FAR 28.3
	4	Statutory cost limitations waiver document		FAR 36.205
	5	Required if applicable- SPE Approval of Agency Specific Commercial Provisions		FAR 12.301
	6	Agency Head/Designee Approval of Conceptual Design Evaluation of Architect-Engineer (A&E) Firm		FAR 36.602-1
	7	Bid Samples Requirement Justification		FAR 14.202-4

	8	Descriptive Literature Requirement Justification		TAM 1214.202 FAR 14.202-5
	9	HCA/Designee Justification for Qualification Requirements		FAR 14.210 FAR 9.202
	10	> \$700K - HCA Waiver for Submission of Certified Cost or Pricing Data		FAR 15.403-1
	11	> SAT - HCA Authorization to Obtain Certified Cost or Pricing Data		FAR 15.403-4
	12	> \$25K - Determination Not to Synopsise Solicitation Availability		FAR 5.102(a)(5)
	13	> SAT > \$150K - Determination that E-Buy Posting of FSS Order Using Brand Name Specification Not in Governments Best Interest		FAR 8.405-6
	14	Agency Head Approval for Severable Services Crossing Fiscal Years		FAR 37.106
	15	Required one level above CO - No subcontracting opportunities		TAM 1219.705-2 FAR 19.705-2
	16	Determination that Liquidated Damages are Appropriate/Needed		FAR 11.502 FAR 11.503(a) FAR 36.206
	17	Justification to Use Options		FAR 13.10-1 FAR 17.205

Options Documentation	18	Required Approval one level above CO- Justification Not to Evaluate Options		FAR 17.206
Solicitation Provisions/ Attachments	19	Required if applicable- Final Statement of Work (SOW)/Specifications for Performance Based Acquisitions		FAR 11.101 FAR 37.6
	20	Required if applicable- Final Statement of Work (SOW)/Specifications		FAR 11.101 FAR 8.405-2 FAR 8.405-3
	21	Commercial Item Tailoring of Terms or Conditions Addendum		FAR 12.302
	22	Commercial Item Technical Data Addendum		FAR 12.211
	23	>\$3K- Compliant Multiple Award IDIQ Placement Procedures		TAM 1216.501-2(b)(2) FAR 16.505(b)
	24	Final Solicitation (Request For Proposal -RFP)		FAR 15.203 FAR 4.803
	25	Invitation For Bid (IFB)		FAR 14.2
	26	Commercial Streamlined Combined Synopsis/Solicitation		FAR 4.803 FAR 19.309
	27	Step One Request for Technical Proposal (RTP)		FAR 14.503-1 FAR 4.803
	28	Step Two Invitation for Bid		FAR 14.503-2 FAR 4.803

Solicitation Documents	29	Request for Quotation (RFQ) (FSS Services Requiring SOW)		FAR 8.405-2
	30	>SAT;<SAT CO option- Architect-Engineer Qualifications (SF330)		FAR 36.701
	31	Solicitation Amendments and Supporting Documentation		FAR 4.803 FAR 14.208 FAR 15.206 FAR 13.106-1(d) FAR 43.301
	32	Oral Solicitation Record for Simplified Acquisitions		FAR 15.206(f)
	33	IFB Cancellation Records		FAR 14.209
	34	Records of Exchanges With Industry or Dissemination of Information Prior to RFP Closing/Bid opening		FAR 15.201 FAR 14.211 FAR 14.203-2
	35	>SAT, paper solicitation being issued and FAR 12.603 procedures are not used. Solicitation/Contract/Order for Commercial Items (SF1449)		FAR 12.301
Solicitation Review/Approvals	36	Solicitation (RFP,IFB, Step-one RTP/Step Two IFB) Review /Resolution (technical, legal, business)		FAR 1.602-2[c]
	37	Invitation for Bid (IFB) Final Review by CO		FAR 14.202-6
	38	>\$25K unless exempt (GPE) (Fed BizOpps)		FAR 5.102(a)(1)

Solicitation Issuance		Solicitation Availability Publication		
	39	> micro purchase threshold - RFQ for FSS Order Containing Brand Name Specifications Posed to E-Buy with Justification		FAR 8.405-1 FAR 8.405-6 FAR 8.402
	40	> \$25K -Brand name justification/documentation required by FAR 6.302-1(c), 13.106-1(b) or 13.501, included with solicitation		FAR 8.405-1 FAR 8.405-6 FAR 8.402
Solicitation Distribution Records	41	Record of IFB distribution and Bids Received		FAR 14.204
Pre-Bid/Pre-Proposal Conference and Exchanges	42	Pre-Bid/Pre-Proposal Conference Records		FAR 14.207 FAR 15.201[c](8)
	43	Site Visit Records for Construction		FAR 36.523 FAR 52.236-26
	44	Preconstruction Conference Records		FAR 36.522 FAR 52.236-26

Receipts & Evaluation

Subprocess	Item #	Items Required	Check	Regulations
	1	Successful Technical/Management/Cost bid/proposal		FAR 4.803 FAR 14.408 FAR 14.401 FAR 15.504

Proposal Receipt Documentation	2	Successful Contractors representations and Certifications or CO verification of ORCA Verification		FAR 4.1201 FAR 15.504 FAR 4.803
	3	Bid Opening Record/Abstract of Offers/bids		FAR 14.402-1 FAR 14.403
	4	Record of solicitations (oral or written)		FAR 13.106-3(a)
	5	Record of late proposals/bids/modifications/determinations/notices		FAR 14.304 FAR 15.208
	6	Record of Oral Presentations		FAR 15.102
	7	Mistake in Bid Resolution		FAR 14.407-1
	8	Unsuccessful Proposals: Completed sections A,B,K and signed amendments (including pages of the solicitation that the offeror/quoter has altered or annotated		TAM 1204.805 FAR 4.803
	9	If foreign acquisition- Certification that the contractor does not conduct certain business operations in Sudan obtained or waiver by the President		FAR 25.702-2 FAR 25.702-3 FAR 25.702-4

Cancellation/Rejection on Determination	10	Solicitation cancellation/rejection determination		FAR 14.406 FAR 14.403(a) FAR 14.404- 1[c]
	11	Bid/proposal acceptance period extension letter		FAR 14.404- 1(d)
	12	Rejection of all bids notice		FAR 14.404-3
	13	Two-step sealed bidding discontinuation notice		FAR 14.503-1
	14	Bid Opening Postponement Records		FAR 14.402-3
	15	Source selection kickoff memo (including any supporting documentation)		FAR 12.206 FAR 15.305(a)
	16	> \$150K -Past performance evaluation		FAR 12.206 FAR 15.305(a) FAR 15.304
	17	Technical/Price/Cost evaluation documentation		FAR 13.106-2 FAR 8.405-2 FAR 8.404 FAR 12.602(a) FAR 15.305(a) FAR 16.505(a) FAR 36.213-4
	18	If OCOI situation is identified, unless waived by		FAR 9.506(d)

	agency head- Organizational Conflict of Interest Resolution		
19	Bid Responsiveness Determination		FAR 14.301
20	Foreign Construction Material Evaluation		FAR 25.204
21	Gov Construction Estimate Verification if Proposed Price significantly Lower		FAR 36.214
22	Prenegotiation objective memorandum (including profit or fee)		TAM 1215.406-1 TAM 1206.102(b) FAR 15.404-4 FAR 15.406-1
23	Price Negotiation Memorandum (PNM)		TAM 1215.406 FAR 15.406-3
24	Source selection decision documentation		FAR 15.305(a) FAR 14.408-7 FAR 12.206
25	SSA Proposal rejections		FAR 15.305(b)
26	unless determination is approved at a level above the CO- Option quantities evaluation		FAR 17.206
27	Competitive Range		FAR 15.306[c]

		Determination		
	28	Record of discussions		FAR 15.306(d)
	29	Proposal revisions/final proposal revisions		FAR 15.307
	30	Clarifications documentation		FAR 15.306(a) FAR 52.215-1 FAR 14.503-1
	31	FSS price reasonableness determination		FAR 8.404 FAR 8.405-2
Evaluation Support Documentation	32	Certified Cost or Pricing Data, Certification of Current Certified Cost or Pricing Data OR required justification for waiver		FAR 15.403-4 FAR 15.403-1 FAR 15.406-2
	33	Field pricing and/or audit assistance request/waiver and reports		FAR 15.404-2
	34	>SAT but not> \$6.5M > \$12M per FAR 13.500[e] Commercial test program written description of award procedures.		FAR 13.501
	35	Architect and Engineering Evaluation Board Report		FAR 36.602-1
	36	Authority to Use Contractor Support for Evaluation and		FAR 37.204

		Analysis		FAR 37.203(d)
Unsuccessful Proposals/Bids	37	Preaward notice of exclusion from competitive range		FAR 15.503(a)
	38	Preaward notice for small business programs		FAR 15.503(a)
	39	Two-step unacceptable proposal notification		FAR 14.503-1
	40	Record of preaward debriefings		FAR 15.505
Selection Decision	41	Source Selection Decision/Report		FAR 15.308
	42	Successful offeror reps and Certs		TAM 1204.805 FAR 4.1201 FAR 4.803
	43	Agency Head/Designee A&E Final Selection		FAR 12.602[c]
	44	Selection rationale documentation for streamlined synopsis/solicitation procedure		FAR 12.602[c]
	45	Preaward Protest Resolution Documentation		FAR 33.1

Award Decision & Documentation

Subprocess	Item #	Items Required	Check	Regulations
Approvals and Waivers	1	Overtime authorization justification		FAR 22.103-4(i)
	2	Documented CCR Database verification/exception		FAR 4.1102 FAR 18.102
	3	Certificate of Competency (COC) referral/issue/denial		FAR 19.602
	4	Contractor Responsibility Determination/Debarred List Verification		TAM 1209.4 FAR 9.103 FAR 9.105-1
	5	Preaward survey report		FAR 9.106
	6	Unauthorized Commitment ratification authorization		FAR 1.602-3
	7	Approved subcontracting plan, if subcontracting opportunities exist		TAM 1219.705-3 FAR 19.702 FAR 19.704
	8	Equal Employment Opportunity (EEO) Compliance		TAM 1222.805 FAR 22.805
	9	Legal/contract review of award documentation		FAR 1.602-2[c]
	10	Conflict of interest notification/response/waiver		FAR 9.506(b)(1)(3) FAR 9.504(a)(1)and(2) FAR 9.506(d)
	11	Approvals/disapprovals of requests for deviations from cost principals		FAR 31.101 FAR 1.402
	12	>\$650K; \$1.5M const- Approved commercial plan, if subcontracting opportunities exist for commercial items		TAM 1219.705-6 FAR 19.702
	13	T&M/LH FSS order/BPA order Determination and		FAR 8.404 FAR 8.405-1

		Findings (D&F) Additional Guidance: If POP, including options, is more than three years, D&F signed by CO and approved by HCA prior to execution of base period.		FAR 8.405-2 FAR 8.405-3
Guarantees and Bonds	14	Bid Guarantee, Performance, Payment or other bond documents and notices to sureties		FAR 28.2 FAR 28.101-1[c]
	15	Waiver of bid guarantee		FAR 28.101-1[c]
	16	Copy certificate of insurance		FAR 28.306(b)
Award Documentation	17	Signed original contract award		FAR 4.803 FAR 15.504
	18	Construction contract award document		FAR 36.702
	19	Sealed bidding award document		FAR 14.408
	20	Commercial Item award document		FAR 12.204 FAR 12.303
	21	Architect-Engineer Contract award		FAR 36.702
	22	Purchase Order		FAR 13.302 FAR 13.307
	23	FSS Order and supporting documentation		FAR 8.405-1 FAR 8.405-2 FAR 8.406-1
	24	FSS BPA Order		FAR 8.404 FAR 8.405-3
	25	Signed original task/delivery order document		FAR 16.505(a)

	26	Funding availability document		FAR 32.702 FAR 32.703-2
	27	Letter contract w/definitization schedule		FAR 16.603-2
Post award Actions	28	Postaward notification to unsuccessful suppliers		FAR 14.409-1 FAR 14.409-2 FAR 15.503(b)
	29	Record of postaward debriefings		FAR 15.506 FAR 36.607
	30	Preconstruction explanatory letter		FAR 22.406-1(b) FAR 36.607
	31	Notice of award		FAR 14.408 FAR 36.213-4
	32	> \$25K GPE (FedBizOpps) award notice		TAM 1205.303 FAR 5.301
	33	> \$4.0M - Public award announcement Post-award Synopsis/Press Release/Congressional Notification		TAM 1205.303 FAR 5.301
	34	> \$3K - Copy of FPDS NG documentation		TAM 1204.6 FAR 4.602 FAR 4.606
	35	Contract award distribution documentation		FAR 4.201
	36	Postaward conference orientation report or pre-construction orientation		FAR 22.406-1(b) FAR 36.212
	37	IAW agency procedures - CO authorization for the carrying of weapons		FAR 25.301-3 FAR 52.225-19
	38	> \$500K - GPE (FedBizOpps) award notice if funded in whole or in part by the Recovery Act		FAR 5.705

Closeout

Subprocess	Item #	Items Required	Check	Regulations
Closeout	1	Contract Closeout Summary/Review of Contract File Contents		FAR 4.804-5 FAR 4.803
	2	Physical Completion Statement		TAM 1204.804-5 FAR 4.804-4
	3	> \$150K Final Contractor Performance Evaluation		FAR 42.1502
	4	Record of Actions Taken		FAR 4.804-5
	5	Contractors Closing Statement/Release of Claims		FAR 4.804-5
	6	Final Payment/Settlement		FAR 4.804-5
	7	Contracts Funds Review/Excess Funds Deobligation		FAR 4.804-5
	8	Contract Completion Statement		FAR 4.804-5
	9	Government Property Report		FAR 52.245-1
	10	Notice of Intentions		FAR 27

APPENDIX (C)

AGREEMENT REGARDING NON-DISCLOSURE (Government personnel) OF INFORMATION FOR PROCUREMENT _____

The purpose of this Non-Disclosure Agreement is to ensure that no information of a commercially sensitive or source selection sensitive nature, which is obtained by virtue of participation on the acquisition team, is disclosed by members of the team

to other persons, companies or organizations; and that such information is not used by other persons, companies or organizations to obtain an unfair advantage.

NON-DISCLOSURE OF INFORMATION

As a member of the acquisition team for the subject procurement, I, the undersigned agree that I will not disclose to any person, company or organization not participating on the acquisition team any information learned by me as a result of my participation on that acquisition team, the disclosure of which might, directly or indirectly, afford some person, company or organization an unfair competitive advantage. Such information shall include, but not be limited to, information regarding discussions, and plans or decisions by acquisition team members relating to the acquisition. In addition, I will not disclose any information that pertains to internal agency communications regarding the acquisition, such as, but not limited to, acquisition plans, budgeting information, source selection plans, source selection evaluation memoranda or reports, technical analyses and recommendations, unless such release of information is authorized by appropriate agency officials.

I am aware of and will abide by the requirements of 18 U.S.C. § 1905, which in part provides: "Whoever, being an officer or employee of the United States or any department or agency thereof ... or agent of the Department of Justice as defined in the Antitrust Civil Process Act (15 U.S.C. 1311-1314), ... publishes, divulges, discloses or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined under this title or imprisoned not more than one year, or both; and shall be removed from office or employment."

These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a

violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling. I agree to immediately report to the Contracting Officer for this procurement any potential or possible violation of this Non-Disclosure Agreement.

NAME/ROUTING SYMBOL: _____

SIGNATURE _____ DATE: _____

COMPANY OR AGENCY NAME _____

ADDRESS: _____

TELEPHONE _____

Privacy Act Statement

Title I of the Ethics in Government Act of 1978 (5 U.S.C. App.), Executive Order 12674 and 5 CFR Part 2634, Subpart I require the reporting of this information. The primary use of the information on this form is for review by officials of the Department of Transportation to determine compliance with applicable federal conflict of interest laws and regulations. Additional disclosures of the information on this report may be made: (1) to a federal, state or local law enforcement agency if the Department of Transportation becomes aware of a violation or potential violation of law or regulations; (2) to a court or party in a court or federal administrative proceeding if the government is a party or in order to comply with a judge-issued subpoena; (3) to a source when necessary to obtain information relevant to a conflict of interest investigation or decision; (4) to the National Archives and Records Administration or the General Services Administration in records management inspections; (5) to the Office of Management and Budget during legislative coordination on private relief legislation; and (6) in response to a request for discovery or for the appearance of a witness in a judicial or administrative proceeding, if the information is relevant to the subject matter. This confidential certification will not be disclosed to any requesting person unless authorized by law.

CONTRACTOR EMPLOYEE NON-DISCLOSURE AGREEMENT

It is understood that as part of my official duties under the (contract number) or any of its task orders, I may come in contact with Government procurement sensitive information or proprietary business information from other contractors (e.g., cost data). I, as an official Government contractor employee, certify that I will not disclose, publish, divulge, release, or make known, in any manner or to any extent, to any individual other than an appropriate or authorized Government employee, the content of any sensitive information provided during the course of my employment. I understand that for the purpose of this agreement, sensitive information is to include procurement data, contract information, plans, strategies or other information not of a publicly released and available nature through appropriate sources.

I further certify that I will use proprietary business information only for official purposes in the performance of (contract number) and task order work, and will disclose such information only to those individuals who have a specific need to know in performance of official Government duties. I specifically will not disclose any such information to employees of my company or any other contractor employees who have not signed an applicable non-disclosure agreement. I will take all reasonable precautions to protect and to prevent the unauthorized disclosure and use of such information.

I hereby certify that I have read the non-disclosure agreement described above and I am familiar with the directives and policies governing the disclosure of sensitive information. I will fully and completely observe these directives and will not disclose such information to any unauthorized person, or use any information obtained for private use or gain at any time.

Name (Please Print)

SIGNATURE

Date

ORGANIZATION/AFFILIATION

REPORTING REQUIREMENTS

The following *is not* an all-inclusive listing of reporting requirements. Other procurement related reports may be required by statute, the FAR and DOT.

TITLE OF REPORT	REFERENCE	DATE DUE	WHERE
DOT F 4240.1, Annual Outline of DOT Construction Programs *	TAM 1236.271; 29 CFR 1.4	Annually; July 31	OSPE
Contractor Report of Government Property*	FAR Part 45.505; TAR 48; TAM 1245	Annually; October 31	Office of Security
Semi-annual Labor Enforcement Report	FAR Part 22	O.E. Semi-annually; April 25 and October 25	Department of Labor
Resource Conservation and Recovery Act Report	TAM 1223; Pub. L 98-616; E.O.12780	To Be Determined	To Be Determined
SF 294, Subcontracting Report for Individual Contracts (eSRS)	FAR 19.7	Semi-annually; April 30; October 30	Contracting Officer and OSDBU
SF 295, Summary Subcontract Report (eSRS)	FAR 19.7	See reverse of SF 295	OSDBU
Undefinitized Contract Action (UCA) Report*	TAM 1243.70	Upon request from the SPE	OSPE
Value Engineering Report*	OMB Circular A-131	Annually; December 7	OSPE

Report on Federal Support to Universities, Colleges, and Nonprofit Institutions	Section 3(a)(7) of the National Science Foundation (NSF) Act	Annually; O/A May 15	Upon request from NSF
Procurement Forecast Initial and Update	Public Law 100-656	Sept 15 (Initial) and Apr 15 (Update)	OSDBU
Competition Advocate Report	1206.502	November 1 for the preceding year	OSPE

CHAPTER 1205 - PUBLICIZING CONTRACT ACTIONS

SUBCHAPTER 1205.1 DISSEMINATION OF INFORMATION

1205.102 Availability of solicitations

SUBCHAPTER 1205.2 SYNOPSES OF PROPOSED CONTRACT ACTIONS

1205.202 Exceptions

1205.207 Preparation and transmittal of synopses

SUBCHAPTER 1205.3 SYNOPSES OF CONTRACT AWARDS

1205.301 General

1205.301-70 Synopsis of contracts containing Pub. L. 95-507 subcontracting plans and goals

1205.302 Preparation and transmittal of synopses of awards

1205.303 Announcement of contract awards

SUBCHAPTER 1205.4 RELEASE OF INFORMATION

1205.401 General

1205.403 Requests from members of Congress

1205.404 Release of long-range acquisition estimates

1205.404-1 Release procedures

SUBCHAPTER 1205.5—PAID ADVERTISEMENTS

1205.502 Authority

SUBCHAPTER 1205.1—DISSEMINATION OF INFORMATION

1205.102 Availability of solicitations.

(a)(5)(iii) The Senior Procurement Executive is authorized to make a written determination that access through the Government-wide point of entry (GPE) is not in the Government's interest.

SUBCHAPTER 1205.2--SYNOPSES OF PROPOSED CONTRACT ACTIONS

1205.202 Exceptions.

(b) The Head of the Contracting Activity (HCA) is authorized to make the written determination according to [FAR 5.202\(b\)](#).

1205.207 Preparation and transmittal of synopses.

(a) *Content*. When preparing synopses, the following is applicable

(5) **CLASSIFICATION CODE**. The contracting officer is responsible for determining the correct classification code for any FedBizOpps notice. The FedBizOpps staff is not authorized to determine the classification code for any FedBizOpps notice. A misclassified contract action fails to notify the firms most likely to respond and, therefore, the Competition in Contracting Act may be violated. The contracting officer shall exercise care to avoid misclassification. However, in the event a notice is not classified correctly, the misclassified contract action must be corrected and re-synopsized in the FedBizOpps. Detailed classification codes are available on the FedBizOpps website at: <http://www.FBO.gov/>.

SUBCHAPTER 1205.3--SYNOPSIS OF CONTRACT AWARDS

1205.301 General.

If the contracting officer determines that synopsis of award is unnecessary, the rationale must be documented in writing and included in the contract file.

1205.301-70 Synopsis of contracts containing Pub. L. 95-507 subcontracting plans and goals.

When applicable, the synopsis of contract award must include a statement identifying the contract as one containing Pub. L. 95-507 [FAR 19.702](#) subcontracting plans and goals.

1205.302 Preparation and transmittal of synopses of awards.

When a requirement is publicized through FedBizOpps, and an award announcement is required, the award announcement must also be publicized through FedBizOpps.

1205.303 Announcement of contract awards.

(a) *Public announcement.* Except as provided in [FAR 5.503\(a\)\(1\)](#), information on contracts valued at the threshold stated in [FAR.5.303\(a\)](#) must not be released to any source outside of DOT until the Assistant Secretary for Governmental Affairs Office has advised the contracting officer that the contract may be released. The contracting officer may sign the contract, but no information may be released outside of DOT until the procedures contained in the subparagraphs below have been accomplished.

(1) The contract notification procedures contained in this subchapter and Form DOT F 4220.41, Contract Award Notification (see TAM 1253.205-70), must be used to transmit the required contract award information to the Assistant Secretary for Governmental Affairs. The information contained on Form DOT F 4220.41 will be used by the Assistant Secretary for Governmental Affairs when preparing press releases and announcing contracts.

(2) Form DOT F 4220.41, must be prepared, signed, and submitted to Assistant Secretary for Governmental Affairs by the contracting officer or other official designated by the OA. The document must be delivered by hand to Room W85-332 of the 1200 New Jersey Ave, SE, Washington DC 20950, emailed to Beverly.Thorne@dot.gov or by facsimile transmission to (202) 366-5696.

(3) For those procurements subject to the requirements of TAM 1215.3, Source Selection, after the Source Selection Authority has selected the contractor(s) for award, the contracting officer must be notified immediately so that the Form DOT F 4220.41 can be prepared, signed, and transmitted to the Assistant Secretary for Governmental Affairs. All personnel are reminded that contract information contained on Form DOT F 4220.41 may be competition sensitive. Information concerning the award must not be disclosed to parties outside of DOT except by the Assistant Secretary for Governmental Affairs and the contracting officer.

(4) Unless the Assistant Secretary for Governmental Affairs requests the contracting officer or other designated official not to proceed with contract award, awards may be announced on the third working day following receipt of the Form DOT F 4220.41 by the Assistant Secretary for Governmental Affairs. The contracting officer is responsible for documenting the date the DOT F 4220.41 is received by the Assistant Secretary for Governmental Affairs by verifying receipt at (202) 366-9714.

Subchapter 1205.4—Release of Information

1205.401 General.

The contracting officer must consult OA legal counsel and/or personnel from the Freedom of Information Act (FOIA) office, as applicable, regarding the decision to release or withhold information under [FAR 5.401\(b\)](#). The contract file must document any decision to release or withhold information. A copy of the response from the FOIA office denying a request may be included in the file as the documentation.

1205.403 Requests from Members of Congress.

(a) *Individual requests.* The HCA is authorized to approve the release of certain contract information to Members of Congress under [FAR 5.403](#).

1205.404 Release of long-range acquisition estimates.

1205.404-1 Release procedures.

(a) The contracting officer is authorized to release long-range acquisition estimates.

(b)(1) The contracting officer is responsible for ensuring that classified information is released through existing security channels in accordance with agency security regulations. Contracting officers must comply with the security requirements set forth under TAM 1204.4 concerning the release of classified information

(b)(2) The contracting officer is responsible for ensuring that the information is publicized as widely as practicable to all parties simultaneously by any of the means described in [FAR 5](#).

SUBCHAPTER 1205.5--PAID ADVERTISEMENTS

1205.502 Authority.

(a) *Newspapers.* An official one level above the contracting officer is authorized to approve the publication of paid advertisements in newspapers under [FAR 5.502\(a\)](#).

(b) *Other media.* An official one level above the contracting officer is authorized to approve advertisements in media other than newspapers.

CHAPTER 1206 - COMPETITION REQUIREMENTS

1206.070 Definitions

SUBCHAPTER 1206.1--FULL AND OPEN COMPETITION

1206.102 Use of competitive procedures

SUBCHAPTER 1206.2--FULL AND OPEN COMPETITION AFTER EXCLUSION OF SOURCES

1206.202 Establishing or maintaining alternative source

SUBCHAPTER 1206.3--OTHER THAN FULL AND OPEN COMPETITION

1206.302 Circumstances permitting other than full and open competition

1206.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements

1206.302-7 Public interest.

1206.304 Approval of the justification.

SUBCHAPTER 1206.5--COMPETITION ADVOCATES

1206.501 Requirements

1206.502 Duties and Responsibilities

1206.570 Competition advocates for the procuring activity

Appendix A –Listing of DOT Operating Administration Competition Advocates By Position

1206.070 Definitions.

"Agency competition advocate" means an individual designated by the Senior Procurement Executive (SPE) to perform, at a minimum, the functions under Federal Acquisition Regulation FAR 6.502(b) and is synonymous with "Departmental competition advocate" and "Senior Competition Advocate (SCA)."

"Competition advocate for the procuring activity" means the individual designated by the Head of the Operating Administration (HOA) to approve Justifications for Other than Full and Open Competition (JOTFOCs) as permitted by FAR 6.304 and to perform the duties and responsibilities assigned under FAR 6.502. This is synonymous with "procuring activity competition advocate" and "Operating Administration (OA) Competition Advocate".

"Procuring activity," for the purposes of this chapter, means any headquarters or field organization designated by the HOA as having a significant acquisition function.

SUBCHAPTER 1206.1--FULL AND OPEN COMPETITION

1206.102 Use of competitive procedures.

(b) If only one responsible offer is received from the release of a competitive solicitation, the contracting officer must attempt to ascertain the reasons for the lack of response and place a written statement in the contract file documenting all conclusions regarding the lack of competition under the solicitation prior to proceeding to award.

SUBCHAPTER 1206.2--FULL AND OPEN COMPETITION AFTER EXCLUSION OF SOURCES

1206.202 Establishing or maintaining alternative sources.

(a) and (b) The Head of the Contracting Activity (HCA) is authorized to exclude a particular source from a contract action in order to establish or maintain an alternative source. The HCA is also the individual authorized to approve a Determination and Findings (D&F) in support of a contract action awarded under the authority of FAR 6.202(a).

SUBCHAPTER 1206.3--OTHER THAN FULL AND OPEN COMPETITION

1206.302 Circumstances permitting other than full and open competition.

1206.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.

The HCA is authorized to determine that only specified makes and models of technical equipment will satisfy the agency's need under FAR 6.302-1(b)(4).

1206.302-2 Unusual and compelling urgency.

The contracting officer must ensure that the justification supporting the use of this authority is approved prior to contract award unless immediate loss of life or property, or other equally compelling circumstances, are involved. When such a compelling circumstance exists, the contracting officer should inform the approving official of the action at the earliest opportunity, preferably before award. In cases involving approval after award, the justification required by FAR 6.303 must contain a summary of facts justifying approval after award, including a statement of the number of days that were available to execute the justification prior to award.

1206.302-7 Public interest.

(a)(2) The authority of the head of the executive agency to authorize other than full and open competition due to public interest under FAR 6.302-7 is reserved by the Secretary and may not be delegated. Operating Administrations (OAs) must coordinate and process all requests for a Secretarial determination under this authority through the SCA via the Head of the Operating Administration (HOA). The SCA must review the request and must prepare a recommendation to the Secretary regarding the merits of the request.

(c) All supporting documentation and a proposed determination and findings to be signed by the Secretary must accompany the request.

1206.304 Approval of the justification.

(a) Individuals acting in the place of approving officials must also meet the qualification requirements of FAR 6.304.

(c) Class justifications must be approved by the same approval authority as for individual justifications (see FAR 6.304(a) and TAM 1206.304(a) above).

SUBCHAPTER 1206.5--COMPETITION ADVOCATES

1206.501 Requirement.

The SPE is the individual authorized to appoint the Departmental Competition Advocate. "Departmental Competition Advocate" is synonymous with "Senior Competition Advocate." The HOA is the individual authorized to appoint Competition Advocates for the procuring activities.

1206.502 Duties and Responsibilities.

(b)(2) Competition advocates for the procuring activities shall submit an annual OA report to the Departmental Competition Advocate on or before November 1 for the preceding fiscal year (i.e., the report for FY 13 covering October 1, 2012 through September 30, 2013, is due November 1, 2013). The Departmental Competition Advocate shall submit an annual Departmental report to the SPE on or before December 15.

1206.570 Competition advocates for the procuring activity.

A listing of OA positions designated as competition advocates for the procuring activities (see TAM 1206.570 above) is maintained by the Office of the Senior Procurement Executive (OSPE). The HOA or designee must provide any revisions to this listing to OSPE within 10 working days of designation.

Appendix A

Competition Advocates by Operating

Administration

MODE	COMPETITION ADVOCATE
OST	Deputy
OST-R	Volpe Deputy Associate Administer for Operations
FHWA	Chief Financial Officer
FMCSA	Associate Administrator, Office of Administration
FRA	Associate Administrator, Office of Financial Management and Administration
FTA	Associate Administrator for Administration

MARAD	Associate Administrator for Administration
NHTSA	Associate Administrator, Planning Administrative and Financial Management
PHMSA	Associate Administrator for Administration Financial Officer
SLSDC	Associate Administrator

CHAPTER 1207-- ACQUISITION PLANNING

1207.000-70 Scope of chapter.

SUBCHAPTER 1207.1--ACQUISITION PLANS (AP)

1207.101 Definitions
1207.102 Policy
1207.103 Agency-head responsibilities
1207.104 General procedures
1207.104-70 Final DOT authority for bundling justifications.
1207.105 Contents of written acquisition plans.
1207.106 Additional requirements for major systems.
1207.107 Additional requirements for acquisitions involving bundling
1207.107-70 Requirements for APs involving bundling
1207.170 Updates and approval of acquisition plans
1207.171 Deviations

SUBCHAPTER 1207.2-- PLANNING FOR THE PURCHASE OF SUPPLIES IN ECONOMIC QUANTITIES

1207.204 Responsibilities of contracting officers

SUBCHAPTER 1207.4--EQUIPMENT LEASE OR PURCHASE

1207.401 Acquisition considerations

SUBCHAPTER 1207.5--INHERENTLY GOVERNMENTAL FUNCTIONS

1207.503 Policy

CHAPTER 1207--ACQUISITION PLANNING

1207.000-70 Scope of chapter.

This chapter establishes a disciplined Department-wide acquisition planning procedure for procuring supplies, including systems, and services.

SUBCHAPTER 1207.1--ACQUISITION PLANS (AP)

1207.101 Definitions

“*Acquisition streamlining*” means any effort that results in a more efficient and effective use of resources to design and develop or produce quality systems. This includes ensuring that only necessary and cost-effective requirements are included, at the most appropriate time in the acquisition cycle, in solicitations and resultant contracts for the design, development, and production of new systems or for modifications to existing systems that involve redesign of systems or subsystems.

“*Life-cycle cost*” means the total cost to the Government of acquiring, operating, supporting, and (if applicable) disposing of the items being acquired.

“*Order*” means an order placed under a —

- (1) Federal Supply Schedule contract; or
- (2) Task-order contract or delivery-order contract awarded* by another agency, (i.e., Government-wide acquisition contract or multi-agency contract). *The requirements of [FAR Part 7](#) do not apply to orders issued under a Volpe Center IDIQ contract.

“*Acquisition*” means the acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Additionally, Federal Acquisition Regulation (FAR) specifies that “Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.” The terms “procurement,” “contracting,” and “acquisition” are often used interchangeably. Acquisition is the process used to formalize business relationships between two parties. Department of Transportation (DOT) uses this process to formalize its business relationships with private industry (both profit and non-profit), other Government agencies, and educational institutions. These business relationships enable DOT to obtain the goods and services needed to accomplish its mission.

“Acquisition plan” means a “written Acquisition Plan” in accordance with Transportation Acquisition Manual (TAM) 1207.103 and 1207.104 as prescribed in [FAR 7.105](#).

“Acquisition planning package” means, as a minimum, the AP; and when bundling is planned, DOT Form 4250.1, Small Business Program Review Form and the bundling justification documentation. This term is synonymous with “acquisition package” as specified in [FAR 19.202-1\(e\)\(1\)](#).

1207.102 Policy.

(a) The Department of Transportation shall perform acquisition planning and conduct market research (see TAM Part 1208 and Part 1210) for all acquisitions in order to satisfy the requirements of [FAR 7.102](#) and promote and provide for the following:

(4) Maximum use of strategic sources. The use of strategic sources is intended to improve the Department’s economies of scale, expand use of good practices, and to reduce the cost of acquisitions required to obtain the same or similar goods and services. Acquisition Planning shall integrate the efforts of all personnel responsible for significant aspects of the acquisition. The purpose of acquisition planning is to ensure that the Government meets its needs in the most effective, economical, and timely manner.

(b) No synopsis for a proposed contract action may be released, solicitations issued, or funds transferred within or outside the Department until all required acquisition planning activities have been completed, documented and approved.

1207.103 Agency-head responsibilities.

(e) DOT's APs vary by dollar threshold, complexity, or criticality of the acquisition(s). To account for this variation, the Department has established a three tiered system with criteria and approval thresholds/authorities at which increasing greater detail and formality in the planning process is required. The Acquisition Planning Tiers and approvals are described in Table 1.

Table 1. The Three Tiers of DOT Acquisition Planning

TIER	TIER DEFINITION	DOCUMENTATION /ACTION	APPROVALS
I	Above Simplified Acquisition Threshold (SAT) Between \$150K to \$2M	Streamlined Acquisition Plan Form Comply with 48 CFR Comply with TAM 1207.107-70	Review and concurrence of the acquisition team (Acquisition Planner, CO, OA SBS, OA CIO and others as required) CO approval* See TAM 1207.107 Regarding Bundling Requirements
II	Acquisitions between \$2M and \$20M, (high risk acquisitions between \$150K - \$10M)	Formal Written Acquisition Plan in accordance with FAR 7.0 Comply with TAM 1207.107.70	Concurrence of the acquisition team (Program Manager, CO, OA, SBS,OA CIO, and others as required) COCO approval** See TAM 1207.107-70 regarding bundling requirements
III	Greater than \$20M or (high risk acquisitions above \$10M) *** <i>(Contract actions that have been defined as significant***)</i>	Briefing to the Acquisition Strategy Review Board (ASRB), presented by the PM and Supported by other members of the planning team Comply with TAM	Concurrence of the acquisition team (Program Manager, CO, COCO, GC, CFO, CIO, OSD BU, Competition Advocate, HCA and others as required) COCO concurrence of the acquisition plan** Concurrence by HCA

* High-risk contract types include all cost type contracts, labor hour/time materials, and all incentive type acquisitions. All high risk contracts e.g., cost reimbursement contracts MUST be approved by COCO or one level above the Contracting Officer in accordance with OA procedures at Tier I.

** Tier II high risk contracts MUST be approved by COCO or higher level authority.

*** Contract/covered actions that are identified as significant will be identified by the HOA, HCA, Senior Procurement Executive (SPE), Deputy Chief Administrative

Officer (CAO) or CAO as significant because of cross-agency impact, critical roles in mission accomplishment, or to ensure compliance with Presidential initiatives.

(1) Specific information and instructions for the completion of acquisition plans under each of the three tiers are described in the [Acquisition Planning Operational Guide](#).

(2) The estimated dollar amounts shall include all options, later phases of the same of the same project or program, and follow on contracts.

(3) Acquisition Planning is not required for:

i. Emergency acquisition (i.e., when the need for the supplies/service is of such an unusual and compelling urgency that the Government would be seriously injured if the supplies/service were not immediately acquired);

ii. Actions subsequent to the initial submittal of a plan which have already been approved (i.e., exercise of options); task or delivery orders under a single agency IDIQ contract(s);

iii. Procurements conducted under the Small Business Innovative Research Program;

iv. Intra-agency and Interagency Agreements authorized by 49 U.S.C 328 between the OST-R/VOLPE National Transportation System Center and DOT Operating Administrations.

1207.104 General procedures.

(a) Acquisition planning (AP) should begin as soon as the agency need is identified, preferably well in advance of the fiscal year in which contract award or order placement is necessary. In developing the plan, the planner shall form a team consisting of all those who will be responsible for significant aspects of the acquisition, such as contracting, fiscal, legal, technical and small business representatives. The planner should review previous plans for similar acquisitions and discuss them with the key personnel involved in the acquisition. Whenever significant changes occur, and no less often than annually, the planner shall review the plan and, if appropriate, revise it.

(b) The development of the AP and any required updates is the responsibility of the acquisition planner. The AP is located within the requirements office of the

operating administration, or within the requiring agency (if outside of DOT). The acquisition planner, among other functions, shall:

1. Coordinate with all personnel responsible for significant aspects of the plan (e.g., contracting, fiscal, legal, technical, small business, competition advocate, logistics);

2. Provide input to the plan as necessary;

3. Obtain applicable concurrences;

4. Forward the plan through the approval process;

5. Review and update the plan; and

6. Form a team of individuals responsible for developing acquisition planning information pertinent to their areas of expertise. Team members will generally include:

- (i) Requirements and logistics personnel.

- (ii) Contracting Office. Has responsibility for overall business strategy of the plan, including type of contract to be used, procurement milestones, and set-aside considerations.

- (iii) Competition Advocate. Provides input for promoting full and open competition, the acquisition of commercial items, and other related functions (see [FAR Part 6](#) and [7.104](#)).

- (iv) Small Business Specialist (SBS). Provides input that implements the small business program (see [FAR 7.104](#)).

- (c) In implementing the Department's framework for acquisition planning, the operating administrations shall strive to more effectively:

Promote the use of commercial items;

Enhance full and open competition;

Support full use of performance-based acquisition;

Promote strategic sourcing through consolidation of requirements;

Limit the use of high-risk acquisition authorities;

Increase the support of socio-economic programs;
Ensure the appropriate selection of contract type;
Facilitate the effective allocation and use of resources; and
Promote sustainability and green procurement.

1207.104-70 Final DOT authority for bundling justifications.

(a) When the SBS and the Small Business Administration (SBA) Procurement Center Representative (PCR) (see TAM 1219.201-70) concur in the proposed bundling, i.e., “Substantial Bundling” for procurements \$2.5 million and above, the AP approving official, please refer to Three Tiers of DOT Acquisition Planning chart above (Table 1), makes the final bundling determination when approving the AP package except when the determination is made by the Deputy Secretary under [FAR 7.107\(c\)](#). In this instance, the Deputy Secretary makes the determination before the HCA approves the AP (see TAM 1207.170(b) (3) and the chart at TAM 1207.107.70). The CO shall provide a copy of the completed DOT Form 4250.1 to the Office of Small and Disadvantaged Business Utilization (OSDBU).

(b) When the SBS or PCR determines anticipated acquisitions above the \$2.5 million threshold are unnecessary, unjustified or not identified as bundled, the OSDBU is the final DOT authority to determine whether bundling is justified or necessary unless the conditions of [FAR 7.107\(c\)](#) are met, then the Deputy Secretary is the final DOT authority.

(c) If the PCR disagrees with the OSDBU’s determination that bundling is necessary or justified, the PCR can pursue an appeal with the SBA in accordance with [FAR 19.505](#) [see Acquisition Planning Operational Guide (APOG) for additional information addressing bundling requirements].

1207.105 Contents of written acquisition plans.

The content of DOT's APs varies by dollar threshold, complexity, or criticality of the acquisition(s). To account for this variation, the Department has established a three tiered system (see TAM 1207.104) with criteria and thresholds at which increasing greater detail and formality in the planning process is required. The specific form and content of the acquisition plan at each tier is described in the APOG.

1207.106 Additional requirements for major systems.

Planners shall review the requirements at [FAR 7.106](#) for consideration in any major acquisition as defined in TAM 1234 and include any relevant information in the AP.

1207.107 Additional requirements for acquisitions involving bundling.

(a) The CO is the individual responsible for ensuring that market research is conducted to determine whether bundling is necessary and justified. The APOG has additional information concerning required market research when there is the potential for bundling and procurement strategies for substantial bundling.

(b)

(1) The DOT Deputy Secretary (S-2), without re-delegation, shall determine that bundling is necessary and justified under the circumstances at [FAR 7.107\(c\)](#).

(2) When the CO believes bundling is necessary and justified under the circumstances at [FAR 7.107\(c\)](#), a copy of the AP package shall be provided to the Office of the Senior Procurement Executive as it is being coordinated with the OSDDBU. Ultimately, prior to findings being forwarded to the Deputy Secretary for final decision, the HCA will forward the following documents for approval and recommended action:

(a) A copy of the approved acquisition plan required by [FAR 7.105](#) and [7.107](#);

(b) A copy of the SBA representative's (e.g., Procurement Center Representative) concurrence with the bundling of requirements or the decision of the HCA; and

(c) A copy of the CO's calculations showing how the expected benefits below the monetary thresholds under [FAR 7.107\(b\)](#) were derived.

If the reviewing official proposes to recommend disapproval to DOT Deputy Secretary, the reasons for disapproval will be discussed and resolved with the CO and/or at a managerial level within the OA. The reviewing official will forward findings on any unresolved issues to the Deputy Secretary for a final decision.

(a) The substantial bundling documentation requirement applies to all proposed DOT contracts and orders (see [FAR 7.101](#)) that involve bundling and are \$2.5 million or more and not set-aside or reserved entirely for small businesses.

1207.107-70 Requirements for APs involving bundling.

(a) When a planned acquisition has not been set-aside or reserved entirely for small businesses and bundling is planned, the following minimum requirements apply:

AP Thresholds Involving Bundling	Documentation Requirement
Over the simplified acquisition threshold and up to \$2.5 million.	Documentation supporting FAR 7.107(b) , 19.202-1(e)(2), and DOT F 4250.1.
\$2.5 million or more (also referred to as substantial bundling).	Documentation supporting FAR 7.107(b) and (e) , 19.202-1(e)(2) and DOT F 4250.1.
Regardless of dollar amount, when the conditions of FAR 7.107(c) exist.	Documentation supporting FAR 7.107(b), (c) and (e), 19.202-1(e)(2), and DOT F 4250.1.

1207.170 Updates and approval of acquisition plans.

(a) Updates. Tier III AP's are to be reviewed by the acquisition planner at least once every 12 months.

(1) AP is to be updated when there is a significant change to the approved plan. For example, AP may require updates for a new requirement, a change in existing requirements, a cost growth or a change in acquisition strategy including contract type. As significant cost growth can be defined as an increase in the total cost (or estimated cost) of greater than 20% of the original contract value. A copy of updated acquisition plans should be provided to the official (or position) that originally approved the acquisition plan.

(2) For Tier III acquisition plans, if, during the 12-month period, no significant change has occurred, the approving official for accuracy, currency, and completeness shall review the plan.

(b) Approval and Coordination

(1) Before submitting for approval, the acquisition planner shall coordinate the AP, including any updates, with the CO and when appropriate, the competition advocate, legal counsel, and the SBS

(2) Unless the AP is set-aside or reserved entirely for small businesses, the SBS and the PCR shall review an AP when it involves a contract(s) or orders(s) over the simplified acquisition threshold to ensure that any contract bundling is identified, necessary, and justified and form impact on the small business program.

(3) Any AP containing a bundling justification pursuant to [FAR 7.107\(c\)](#) shall be approved by the HCA. The HCA shall obtain the Deputy Secretary's concurrence of the bundling determination prior to approving the AP.

(4) Summary of AP Approvals by Acquisition Planning Tier as seen in Table 2:

Table 2. The Three Tiers of DOT Acquisition Planning

TIER	TIER DEFINITION	DOCUMENTATION/ACTION	APPROVALS
I	Above Simplified Acquisition Threshold (SAT) Between \$150K to \$2M	Streamlined Acquisition Plan Form Comply with 48 CFR Comply with TAM 1207.107-70	Review and concurrence of the acquisition team (Acquisition Planner, CO, OA SBS, OA CIO and others as required) CO approval* See TAM 1207.107 Regarding Bundling Requirements
II	Acquisitions between \$2M and \$20M, (high risk acquisitions between \$150K - \$10M)	Formal Written Acquisition Plan in accordance with FAR 7.0 Comply with TAM 1207.107.70	Concurrence of the acquisition team (Program Manager, CO, OA, SBS,OA CIO, and others as required) COCO approval** See TAM 1207.107-70 regarding bundling requirements
III	Greater than \$20M or (high risk acquisitions above \$10M) *** (Contract actions that have been defined as significant***)	Briefing to the Acquisition Strategy Review Board (ASRB), presented by the PM and Supported by other members of the planning team Comply with TAM	Concurrence of the acquisition team (Program Manager, CO, COCO, GC, CFO, CIO, OSDBU, Competition Advocate, HCA and others as required) COCO concurrence of the acquisition plan**

			Concurrence by HCA
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- * High-risk contract types include all cost type contracts, labor hour/time materials, and all incentive type acquisitions. All high risk contracts e.g., cost reimbursement contracts MUST be approved by COCO or one level above the Contracting Officer in accordance with OA procedures at Tier I.
- ** Tier II high risk contracts MUST be approved by COCO or higher level authority.
- *** Contract/covered actions that are identified as significant will be identified by the HOA, HCA, Senior Procurement Executive (SPE), Deputy Chief Administrative Officer (CAO) or CAO as significant because of cross-agency impact, critical roles in mission accomplishment, or to ensure compliance with Presidential initiatives.

(c) Operating Administration Procedures.

Consistent with the requirements outlined in this section, OA's shall document their procedures for the development and approval of acquisition plans. These plans should provide acquisition planners with specific guidance on development of acquisition plans, provide appropriate OA internal coordination procedures [i.e., review by OA Chief Information Officer (CIO) Office for Information Technology (IT) requirements, sustainability requirements, Section 508, etc.), and other information to support the effective and efficient acquisition planning.

1207.171 Deviations.

Deviations from the planning requirements of this subchapter are permissible when approved in writing the applicable approving official in TAR 1207.170. Deviations document is to be included in the contract file. Deviation requests shall:

- (a) Describe the planning procedures from which deviation is requested.
- (b) Contain sufficient detail to explain the basis for the request indicates recommended alternative procedures.

SUBCHAPTER 1207.2--PLANNING FOR THE PURCHASE OF SUPPLIES IN ECONOMIC QUANTITIES

1207.204 Responsibilities of contracting officers.

(a) The CO shall transmit in writing to the responsible requirement office the actual offeror response or a summary of their salient points.

(b) All transmittals shall request a prompt response to indicate whether the acquisition should remain as is, be amended, or cancelled. Before continuing with the negotiation or award of the acquisition, the CO shall decide, in conjunction with the Program Manager (PM), whether continuing out weights the potential cost saving benefits of delaying the acquisition.

SUBCHAPTER 1207.4--EQUIPMENT LEASE OR PURCHASE

1207.401 Acquisition considerations.

The decision to lease or purchase equipment shall be documented in the contract file and address, as a minimum, the factors in [FAR 7.401](#).

SUBCHAPTER 1207.5--INHERENTLY GOVERNMENTAL FUNCTIONS

1207.503 Policy.

(e) Contracts cannot be awarded for service/functions that are inherently governmental as defined in [FAR 2.101](#). A written determination by the requiring office shall accompany all purchase requests for services (either in whole or in part) that confirm that none of the services to be performed are inherently governmental. Any disagreement pertaining to the determination shall be resolved by the COCO before release of the solicitation.

CHAPTER 1208--REQUIRED SOURCES OF SUPPLIES AND SERVICES

SUBCHAPTER 1208.1-- EXCESS PERSONAL PROPERTY

1208.103 Information on available excess personal property

SUBCHAPTER 1208.4—FEDERAL SUPPLY SCHEDULE

1208.404 Using Schedules

SUBCHAPTER 1208.7—ACQUISITION FROM NON-PROFIT AGENCIES EMPLOYING PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

1208.703 Procurement List

SUBCHAPTER 1208.8--ACQUISITION OF PRINTING AND RELATED SUPPLIES

1208.802 Policy

SUBCHAPTER 1208.11--LEASING OF MOTOR VEHICLES

1208.1102 Presolicitation requirements

SUBCHAPTER 1208.1—EXCESS PERSONAL PROPERTY

1208.103 Information on available excess personal property

The offices listed in (Exhibit 1-1) are authorized to make “excess personal property” determinations for their respective OA. The Head of the Operating Administration (HOA) or their designees shall notify the Office of the Senior Procurement Executive (OSPE) within 30 days of any updates to this listing.

Exhibit 1-1

LISTING OF OA OFFICES RESPONSIBLE FOR MAKING EXCESS PERSONAL PROPERTY DETERMINATIONS

FHWA	Office of Information and Management Services
FMCSA	Business Information and Operations Division
FRA	Office of Acquisition and Grants Services

FTA	Associate Administrator for Administration, Administrative Services Division
MARAD	Associate Administrator for Administration, Office of Management Services
NHTSA	Associate Administrator for Administration
OST	Personal Property, Facilities Services Center
PHMSA	Associate Administrator for Administration, Administrative Services Division
OST-R	Associate Administrator for Administration, Administrative Services
SLSDC	Office of Finance and Administration, Comptroller

SUBCHAPTER 1208.4—FEDERAL SUPPLY SCHEDULES

1208.404 Use of Federal Supply Schedules.

SUBCHAPTER 1208.7—ACQUISITION FROM NON-PROFIT AGENCIES EMPLOYING PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

1208.703 Procurement List.

The Committee maintains a Procurement List of all supplies and services required to be purchased from AbilityOne participating nonprofit agencies. The Procurement List may be accessed at: <http://www.abilityone.gov>. Questions concerning whether a supply item or service is on the Procurement List may be submitted to info@abilityone.gov.

SUBCHAPTER 1208.8--ACQUISITION OF PRINTING AND RELATED SUPPLIES

1208.802 Policy.

(b) OST is designated as the Department's central printing authority for DOT. Each Operating Administration (OA) has appointed a printing control point (Exhibit 1-2). Approval must be obtained from the cognizant OA printing control point prior to acquiring any of the supplies or services delineated in FAR 8.802(b).

Exhibit 1-2**LISTING OF OA PRINTING CONTROL POINTS**

FHWA	Office of Information and Management Services, Publications and Visual Communications (HAIM-23)
FMCSA	Business Information and Operations Division (MC-MBI)
FRA	Office of Acquisition and Grants Services (RAD-30)
FTA	Associate Administrator for Administration, Administrative Services Division (TAD-12)
MARAD	Division of Management and Organization, Records Management (MAR-318.1)
NHTSA	Office of Communications and Consumer Information, Communications Services Division, NPO-503
OST	Chief, Printing Services, Information Services (M-30)
PHMSA	Office of Budget and Programs, Financial Manager
OST-R	Associate Administrator for Administration
SLSDC	Deputy Director, Financial Management and Administration

SUBCHAPTER 1208.11--LEASING OF MOTOR VEHICLES**1208.1102 Presolicitation requirements.**

(a)(2) OST, is responsible for issuing Departmental policy regarding the leasing of motor vehicles. The OA offices shown in (Exhibit 1-3) are responsible for the certification requirements of their OA in FAR 8.1102(a). HOAs or their designees shall notify the OSPE within 30 days of any updates to this listing.

(c) COCO approval as required by FAR 8.1102(c) shall be in writing and included in the contract file.

Exhibit 1-3**LISTING OF OA OFFICES AUTHORIZED TO CERTIFY
LEASING OF SEDANS AND STATION WAGONS**

FHWA	Office of Information and Management Services (HAIM 22)
FMCSA	Business Information and Operations Division (MC-MBI)
FRA	Office of Acquisition and Grants Services (RAD-30)
FTA	Associate Administrator for Administration, Office of Management Planning, Administrative Services Division (TAD-12)
MARAD	Associate Administrator for Administration, Office of Management Services, Division of Space and Management (MAR-313)
NHTSA	Associate Administrator for Administration, (NPO-200)
OST	Chief, Transportation Services, Facilities Services Center (M-50); for the IG, Director, Office of Financial, Administrative and Information Management (JM-30)
PHMSA	Office of Administration
OST-R	Associate Administrator for Administration
SLSDC	Office of Finance and Administration, Comptroller

CHAPTER 1209 - CONTRACTOR QUALIFICATIONS

SUBCHAPTER 1209.1--RESPONSIBLE PROSPECTIVE CONTRACTORS

- 1209.105 Procedures
- 1209.105-2 Determinations and documentation

SUBCHAPTER 1209.2--QUALIFICATION REQUIREMENTS

- 1209.202 Policy
- 1209.204 Responsibilities for establishment of a qualification requirement
- 1209.206-1 General

SUBCHAPTER 1209.3 FIRST ARTICLE TESTING AND APPROVAL

- 1209.302 General

SUBCHAPTER 1209.4--DEBARMENT, SUSPENSION, AND INELIGIBILITY

- 1209.402 Policy
- 1209.403 Definitions
- 1209.404 System of Award Management Exclusions
- 1209.404-70 Parties Excluded for Award by the Department of Treasury Listing
- 1209.405 Effect of listing
- 1209.405-1 Continuation of current contracts
- 1209.405-2 Restrictions on subcontracting
- 1209.406 Debarment
- 1209.406-1 General
- 1209.406-3 Procedures
- 1209.407 Suspension
- 1209.407-1 General
- 1209.407-3 Procedures
- 1209.408 Certification regarding debarment, suspension, proposed debarment, and other responsibility matters

SUBCHAPTER 1209.5--ORGANIZATIONAL AND CONSULTANT CONFLICTS OF INTEREST

- 1209.503 Waiver

SUBCHAPTER 1209.1 - RESPONSIBLE PROSPECTIVE CONTRACTORS

1209.105 Procedures.

1209.105-2 Determinations and documentation.

(b) Support documentation

(1) Pursuant to [FAR 9.105-2\(b\)\(1\)](#):

(i) For contract actions using other than simplified acquisition procedures: DOT Form 4220.1, Determination of Prospective Contractor Responsibility, shall be used to make the determination and document that a contractor is/is not responsible for the award.

(ii) For actions using simplified acquisition procedures:

(A) Use of DOT Form 4220.1, is required when documenting the determination that a firm is not responsible.

(B) When making award to a responsible offeror/quoter, the contracting officer's signing of the award constitutes a determination that the prospective offeror/quoter is responsible with respect to that award. The contracting officer must place supporting documentation for the determination in the contract/order file. At a minimum, supporting documentation for a simplified acquisition must include written evidence of having checked the System of Award Management (SAM). If the value of the acquisition exceeds the simplified acquisition threshold the supporting documentation must also include written evidence of:

(1) Consideration of past performance (including the Past Performance Information Retrieval System (PPIRS) and the Federal Awardee Performance and Integrity Information System (FAPIIS)).

(2) Ensure a satisfactory record of integrity and business ethics (including FAPIIS); and

(3) Whether the agency has been notified of the existence of an indictment, charge, conviction, civil judgment, or Federal tax delinquency on the part of the prospective contractor.

(iii) For all contract awards, the contracting officer shall include supporting documentation in the contract file that the information regarding the awardee was reviewed in SAM and FAPIIS. If there is no adverse information in either system, a statement indicating that the data bases were reviewed on (insert the date and time) and there was no adverse information found.

(2)(i) The contracting officer shall document the determination of nonresponsibility in FAPIIS directly (i.e., the responsibility is not delegable). For access to FAPIIS, contact the OA Focal Point for the Contractor Performance Assessment Reporting System (CPARS).

(ii) For each determination of nonresponsibility documented in FAPIIS, the contracting officer shall submit a copy of the determination to the appropriate debarring and suspending official listed at http://one10.dot.gov/office/ost/ospe/suspension_debarment/default.aspx. In addition, the contracting officer shall submit to the appropriate debarring and suspending official a copy of each determination of nonresponsibility based on inability to qualify or ineligibility under applicable laws and regulations.

(3) Task and Delivery Orders. A responsibility determination is not required when placing orders under indefinite delivery contracts, including order placed under the GSA Federal Supply Schedule. However, the contracting officer must check the SAM prior to: placing an order exceeding the guaranteed minimum under an indefinite quantity contract; placing an order under an optional use Federal Supply Schedule contract, blanket purchase agreement, or basic ordering agreement; or adding new work, exercising an option, or otherwise extending the duration of a current order [FAR 9.405-1\(b\)](#).

SUBCHAPTER 1209.2--QUALIFICATION REQUIREMENTS

1209.202 Policy.

(a)(1) The head of the contracting activity (HCA) is authorized to establish a qualification requirement. Prior to establishing a qualification requirement, the responsible technical office shall prepare and submit a written justification to the contracting officer for coordination and signature of the operating administration (OA) competition advocate.

(b) The responsible technical office shall prepare a written waiver request when applicable. The waiver shall be submitted to the contracting officer for

coordination and signature of the OA competition advocate, and approval by the HCA.

(e) The HCA is authorized to approve procurements that do not need to be delayed in order to comply with [FAR 9.202\(a\)](#). A written justification shall be prepared by the responsible technical office and submitted to the contracting officer for coordination and signature of the OA competition advocate, and approval by the HCA.

1209.204 Responsibilities for establishment of a qualification requirement.

(a)(2) The responsible technical office shall prepare a written determination to bear the cost of tests for a small business, and include the document in the contract file. The name of the firm for which the no-cost qualification tests will be performed, the amount of increased competition expected, and the dollar value of anticipated future requirements for the qualified product should be a part of the determination.

(c) The responsible technical office shall provide the list of qualified manufacturers and suppliers to the contracting officer.

1209.206 Acquisitions subject to qualification requirements.

1209.206-1 General.

(b) The HCA is authorized to determine that an emergency exists that would preclude enforcement of an established qualification requirement. A written justification for the emergency shall be prepared by the responsible technical office and submitted to the contracting officer for the OA competition advocate's concurrence and approval by the HCA.

(e)(3) The request that a qualification requirement not be enforced shall be written and justified by the technical office responsible for the acquisition. The request shall be submitted via the contracting officer with the OA competition advocate's signature for approval by the HCA.

SUBCHAPTER 1209.3--FIRST ARTICLE TESTING AND APPROVAL

1209.302 General.

The initiator of the procurement request shall prepare a written statement addressing the factors enumerated in [FAR 9.302](#) whenever first article testing and approval is required. The statement shall be forwarded with the procurement request to the contracting office.

SUBCHAPTER 1209.4--DEBARMENT, SUSPENSION, AND INELIGIBILITY

1209.402 Policy.

Debarment, suspension, and other actions which render a contractor ineligible to receive contract awards is a serious matter which deserves high level attention since there is an impact not only on DOT, but the entire Federal Government. The DOT procedures to implement the debarment and suspension requirements of [FAR 9.4](#) are set forth in this subchapter.

Lead agency coordination must be accomplished by each OAs HCA through the Interagency Committee on Debarment and Suspension (ICSD) before proceeding with a suspension or debarment action. The ICSD is the Government forum for vetting the lead agency coordination through which Federal agencies are given notice of proposed debarment and suspension actions. The OA's HCA may be considered the lead agency for the proposed action if no agency objects during the vetting process. Specific policies and instructions for the ICSD coordination are as follows:

- (1) The lead agency coordination information should include: name(s) of contractor or individual considered, addresses, business identification nomenclature, a brief summary of cause, and OA Point of Contact information.
- (2) An OA must contact the DOT ICSD procurement representative for internal DOT coordination if multiple OA's could be impacted or have an interest in a proposed suspension or debarment action of a contractor, prior to any OA's lead agency submittal to the ICSD.
- (3) Lead agency coordination submittals by an OA to the ICSD shall include a concurrent transmittal to the Office of the Senior Procurement Executive, Associate Director, Oversight & Business Strategies.
- (4) Under exceptional circumstances, the OA may determine that an immediate suspension or debarment is needed to protect the Government's interest. The HCA

shall clearly document the circumstances in the record and proceed with the suspension without prior coordination with the ISDC. The OA HCA shall provide a copy of the notice of suspension to the ISDC and the OSPE Associate Director, Oversight and Business Strategies concurrent with the notice to the contractor.

(d) The DOT agency procedures to implement the debarment and suspension requirements of [FAR 9.4](#) are established in this subchapter and TAR 1209.4.

1209.403 Definitions.

"Debarring official"—

(2) The HCA is authorized to impose debarments.

"Suspending official" —

The HCA is authorized to impose suspensions.

“Unfair trade practices” —

(2) The HCA is authorized to determine that a contractor knowingly made a false statement regarding a material element of a certification concerning the foreign content of an item of supply.

1209.404 System of Award Management Exclusions.

(c)(6) The HCA shall maintain records regarding debarment and suspension actions for 3 years after a contractor has been excluded from procurement programs.

(c)(7) The HCA shall establish any internal requirements necessary to ensure compliance with [FAR 9.404\(c\)\(5\)](#).

1209.404-70 Parties Excluded for Award by the Department of Treasury Listing.

Executive Order 13224 provides a means to disrupt the financial support network for terrorists and terrorist organizations by blocking the assets of certain foreign individuals and entities which are listed on the [Department of Treasury's Office of Foreign Assets Controls \(OFAC\)](#) website. Contracting officers shall not award

any contract to any listed individual or organization. The OFAC listing is also available at <https://www.sam.gov/> and is to be reviewed when checking for those debarred, suspended, or proposed for debarment in accordance with FAR 9.404.

1209.405 Effect of listing.

(a) The HCA is authorized to make a written determination of compelling reasons to solicit offers from, award contracts to, or consent to subcontract with contractors debarred, suspended, or proposed for debarment.

(d)(2) The HCA is authorized to determine that a bid or offer should be considered from a contractor whose name or company is included on the listing.

1209.405-1 Continuation of current contracts.

(a) The HCA is authorized to make a written compelling reason determination for continuing contracts and placing orders described in FAR 9.405-1(a) and (b) after a contractor is debarred, suspended, or proposed for debarment.

1209.405-2 Restrictions on subcontracting.

The HCA is authorized to allow contracting officers to consent to subcontracts with contractors debarred, suspended, or proposed for debarment.

1209.406 Debarment.

1209.406-1 General.

(c) The HCA is authorized to continue business dealings between the agency and a contractor that is debarred or proposed for debarment under [FAR 9.406-1\(c\)](#), except under [FAR 23.506\(e\)](#). (See TAR 1223.506(e)).

1209.406-3 Procedures.

(a) *Investigation and referral.* The Chief of the Contracting Office (COCO) shall promptly report a proposed debarment action directly to the HCA. The report shall be in writing and coordinated with OA legal counsel before the report is signed by the COCO and sent to the HCA. The report shall contain the following information:

(1) Name, address and telephone number for the point of contact for the activity making the report;

(2) Name and address of the contractor;

(3) Names and addresses of the members of the board, principal officers, partners, owners, and managers;

(4) Names and addresses of all known affiliates, subsidiaries, or parent firms, and the nature of the business relationship;

(5) For each contract affected by the conduct being reported;

(i) The contract number;

(ii) All office identifying numbers or symbols;

(iii) Description of supplies or services;

(iv) The amount;

(v) The percentage of completion;

(vi) The amount paid to the contractor;

(vii) Whether the contract is assigned under the Assignment of Claims Act and, if so, to whom;

(viii) The amount due to the contractor; and

(ix) The contract fund citations or treasury account symbols involved, to expedite accurate return of funds to open accounts, as appropriate.

(6) For any other contracts outstanding with the contractor or any of its affiliates—

(i) The contractor number(s);

(ii) The amount(s);

(iii) Whether the contract(s) is assigned under the Assignment of Claims Act and, if so, to whom; and

(7) A complete summary of all pertinent evidence and the status of any legal proceedings involving the contractor;

(8) An estimate of any damages sustained by the Government as a result of the contractor's action (explain how the estimate was calculated);

(9) The comments and recommendations of the contracting officer and each higher level contracting review authority regarding—

(i) Whether to suspend or debar the contractor;

(ii) Whether to apply limitations to the suspension or debarment;

(iii) The period of any recommended debarment; and

(iv) Whether to continue any current contracts with the contractor (explain why a recommendation regarding current contract is not included);

(10) When appropriate, as an enclosure to the report—

(i) A copy or extracts of each pertinent contract;

(ii) Witness statements or affidavits;

(iii) Copies of investigative reports;

(iv) Certified copies of indictments, judgments, and sentencing actions; and

(v) A copy of any available determinations of nonresponsibility in accordance with [FAR 9.105-2\(a\)\(1\)](#); and 1209.105-2.

(vi) Any other appropriate exhibits or documents.

(11) To the extent that information is available through FPDS-NG and/or USA spending.gov, provide a list of other agencies that hold current active contracts with the contractors.

1209.407 Suspension.

1209.407-1 General.

(d) The HCA is authorized to continue business dealings between the agency and a contractor that is suspended. However, see TAM 1223.506(e) regarding waivers to debarment or suspension determinations for actions under [FAR 23.5](#), Drug-Free Workplace.

1209.407-3 Procedures.

(a) *Investigation and referral.* The COCO shall promptly report a proposed suspension action directly to the HCA. The report shall be in writing and coordinated with OA legal counsel before the report is signed by the COCO and sent to the HCA. The report shall contain the information listed in TAM 1209.406-3.

(b) *Decision making process.* After receipt of the COCO report, the HCA may request from interested parties (including the contractor if deemed appropriate) a meeting or additional supporting information to assist in the suspension decision.

(c) *Notice of suspension.* After reviewing the COCO's report, and any additional information received in accordance with paragraph (b) above, the HCA shall prepare and coordinate with the OA legal counsel, a written notice of suspension.

(d) *Suspending official's decision.* When the contractor's submission raises a genuine dispute over facts material to the proposed suspension, the HCA may request the DOT Board of Contract Appeals (DOTBCA) to conduct fact finding and provide a report containing the results of the fact finding. The HCA shall notify the COCO of the decision whether or not to impose a suspension. The HCA shall then forward the original signed decision to the COCO for inclusion in the contract file. The HCA shall provide copies of the decision to the following offices:

1. Input data on the decision at <https://www.sam.gov/> in accordance with FAR 9.404(c);
2. SPE within 2 working days after being sent to GSA; and
3. OA Legal Counsel.

1209.408 Certification regarding debarment, suspension, proposed debarment, and other responsibility matters.

(a)(2) When the offeror indicates the existence of an indictment, charge, conviction, or civil judgment, the contracting officer shall obtain from the offeror, the information deemed necessary concerning the issues and seek the advice of legal counsel on the affirmative statement(s). Prior to proceeding with the contract award, the contracting officer shall notify the HCA of the facts, and submit a written responsibility determination.

SUBCHAPTER 1209.5--ORGANIZATIONAL AND CONSULTANT CONFLICTS OF INTEREST

1209.503 Waiver.

The HCA is authorized to waive any general rule or procedure of [FAR 9.503](#) and this subchapter by determining that its application in a particular situation would not be in the Government's interest. This authority may not be re-delegated.

CHAPTER 1210 - MARKET RESEARCH

1210.001 Policy

Appendix A-- Market Research Guide

Appendix B—DOT Vendor Communication Plan

1210.001 Policy.

(a) It is the DOT's policy to (1) ensure that legitimate needs are identified and trade-offs evaluated to (2) acquire items that meet those needs; (3) conduct market research; and (4) use the results of market research to determine if sources capable of satisfying the agency's requirements exist. The Department's market research policy is contained in the Market Research Guide.

(c) contract requirements that are bundled or, for which significant bundling is anticipated, must be coordinated with OA, and Small Business Specialist, Small Business Administration, in accordance with the requirements of TAR 7.107, and [FAR 7.104\(d\)\(1\)](#) and (2) and [FAR 10.001\(c\)](#).

Appendix A

Market Research Guide

Appendix B

DOT Vendor Communication Plan

CHAPTER 1211 – DESCRIBING AGENCY NEEDS

1211.002 Policy
1211.002-70 DOT policy

SUBCHAPTER 1211.1--SELECTING AND DEVELOPING REQUIREMENTS DOCUMENTS

1211.103 Market acceptance

SUBCHAPTER 1211.5--LIQUIDATED DAMAGES

1211.501 Policy

SUBCHAPTER 1211.6--PRIORITIES AND ALLOCATIONS

1211.602 General
1211.603 Procedures

CHAPTER 1211 – DESCRIBING AGENCY NEEDS

1211.002 Policy.

(a) Customers (program offices, requiring activities, etc.) are responsible for recommending the sensitivity of their requirements documents (for example, specifications, standards, related drawing and diagrams, schedules, etc.) for the purpose of posting these documents on the internet (See [FAR 5.102](#)). Procurement request packages shall indicate those requirements documents that are sensitive; lack of any such indication presumes the documents not sensitive in nature. Contracting Officers will safeguard sensitive procurement related information in a manner commensurate with the sensitivity indicated by the customer.

(b) The use of the metric system in DOT acquisitions is encouraged. Operating Administrations (OAs) requiring offices are responsible for utilizing the metric system in specifications, statements of work, and other related procurement documents. Procurement requests shall stipulate requirements using the metric system of measurement in accordance with the OA's metric transition plan. DOT Order 1020.1 series, Department of Transportation Transition to the Metric System, provides the DOT policy and administrative procedures, including the

offices responsible for specific functions pertaining to DOT's use and transition to the metric system.

(d) DOT's implementation of environmental issues are found at:
<http://dotnet.dot.gov/employeeservices/sustainability/>.

1211.002-70 DOT Policy.

(a) Solicitations and contracts that include electronic and information technology (EIT) deliverables must require contractor compliance with Section 508 Access Board standards. At a minimum, the following or language substantially similar to the following should be included in the statement of work or contract schedule when procuring EIT:

All electronic and information technology deliverables required under this contract must comply with Section 508 of the Rehabilitation Act and the Access Board Standards available for viewing at <http://www.section508.gov>. Unless otherwise indicated, the contractor represents by signature on this contract that all deliverables will comply with the Access Board standards.”

(b) Contracting officers may write additional special contract requirements or provisions in any solicitation or contract with an EIT deliverable to protect DOT from receiving non-compliant products.

(c) When all or some portion of an EIT requirement is commercially unavailable, contracting officers should employ best value criteria in solicitations for EIT as an incentive to ensure maximum compliance among all proposed deliverables with Access Board standards.

SUBCHAPTER 1211.1--SELECTING AND DEVELOPING REQUIREMENTS DOCUMENTS

1211.103 Market acceptance.

(a) The contracting officer is authorized to require offerors to demonstrate that the items offered have either achieved commercial market acceptance or been satisfactorily supplied to an agency under current or recent contracts for the same or similar requirements, and otherwise meet the item description, specifications, or other criteria prescribed in the public notice and solicitation.

SUBCHAPTER 1211.5--LIQUIDATED DAMAGES

1211.501 Policy.

(d) The Head of the Contracting Activity (HCA) is authorized to reduce or waive the amount of liquidated damages assessed under a contract after approval to do so is granted by the Department of Treasury, Commissioner, Financial Management Service, or designee.

SUBCHAPTER 1211.6--PRIORITIES AND ALLOCATIONS

1211.602 General.

(c) To use the authority of the Defense Priorities and Allocations System (DPAS) (15 C.F.R. 700), OAs must submit their requests to the Department of Commerce (DOC) to acquire materials, products, and services in support of relevant programs.

1211.603 Procedures.

(e) The HCA is responsible for ensuring that their contracting offices comply with the DPAS. Contracting officers shall comply with the following procedures when using the DPAS to support delegate agency certified programs.

(1) Assignment of priority ratings by a delegate agency. When authorized (see (TAR) 48 C.F.R. 1211.602), contracting officers may assign priority ratings only to those contracts and orders placed with contractors to acquire products, materials, and services in support of that agency's national defense related certified programs. Generally, only a "DO" priority rating may be used on these contracts or orders. The "DX" priority rating may be used only on those contracts and orders placed in support of certified programs approved by the President as being of the highest national defense urgency.

(2) Assignment of priority ratings by other DOT OAs. If a non-delegate DOT OA issues a contract or order for another Federal delegate agency, the OA, if requested by the delegate agency, may assign the appropriate "DO" or "DX" rating to the contractual document. The contracting officer of the non-delegate agency shall include a statement in the contractual document to indicate that the contract or order (or a specific item(s) under the contract or order) is being issued or procured for the delegate agency.

(3) Authorized Programs. Those DOD approved program categories certified for DPAS support are found in Schedule 1 to 15 C.F.R. 700.

(f) Contracting officers shall follow the procedures contained in paragraph (e) of this section when using rated orders.

(g) Special priorities assistance.

(1) When the Department of the Navy (DON) funds a program of the Maritime Administration (MARAD), contracting officers for MARAD should obtain special priorities assistance (SPA) from the DON in accordance with MARAD's written procedures.

(2) If contracting officers cannot resolve requests for SPA, the requests shall be forwarded to the appropriate office at Headquarters for assistance and further action. If the Headquarters office cannot provide assistance, Headquarters may submit the original and two copies of Form BIS-999, Request for Special Priorities Assistance, via the appropriate channels, to the DOC.

The form shall be thoroughly documented with all actions taken in attempting to resolve the request at the field and Headquarters levels.

(h) Violations of the DPAS. Violations of the DPAS by a contractor or subcontractor, at any tier, shall be reported to the DOC in accordance with OA procedures.

CHAPTER 1212 - ACQUISITION OF COMMERCIAL ITEMS

SUBCHAPTER 1212.1--ACQUISITION OF COMMERCIAL ITEMS GENERAL

1212.102 Applicability

SUBCHAPTER 1212.3--SOLICITATION PROVISIONS AND CONTRACT CLAUSES FOR THE ACQUISITION OF COMMERCIAL ITEMS

1212.301 Solicitation provisions and contract clauses for the
acquisition of commercial items

1212.302 Tailoring of provisions and clauses for the acquisition
of commercial items

SUBCHAPTER 1212.1--ACQUISITION OF COMMERCIAL ITEMS GENERAL

1212.102 Applicability.

(f)(1) The Head of the Contracting Activity (HCA) is authorized to determine if certain supplies or services to be acquired are to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack. If this determination is made, the contracting officer may acquire the item(s) as a commercial item and shall justify this determination in the contract files. The contracting officer shall notify the Office of the Senior Procurement Executive (OSPE) within five working days of the decision to use this authority. The SPE may make a Department-wide determination that an item(s) is to be acquired to facilitate defense against or recovery from terrorism or nuclear, biological, chemical, or radiological attack; thereby, permitting the item to be acquired Department-wide as a commercial item.

SUBCHAPTER 1212.3--SOLICITATION PROVISIONS AND CONTRACT CLAUSES FOR THE ACQUISITION OF COMMERCIAL ITEMS

1212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(b)(4) See TAM 1225.1001(a)(2)(iii) for the approving authority for waiving the examination of records clause.

1212.302 Tailoring of provisions and clauses for the acquisition of commercial items.

(c) An individual waiver shall be approved by the COCO and a class waiver by the HCA. The waiver shall be reviewed by legal counsel. An information copy of the class waiver shall be provided to the OSPE for a possible change to this manual.

CHAPTER 1213 - SIMPLIFIED ACQUISITION PROCEDURES

1213.000 Scope of part

SUBCHAPTER 1213.1 PROCEDURES

1213.101 General.
1213.106-1 Soliciting competition

SUBCHAPTER 1213.2--ACTIONS AT or BELOW THE MICRO-PURCHASE THRESHOLD

1213.201 General.

SUBCHAPTER 1213.3--SIMPLIFIED ACQUISITION METHODS

1213.301 Governmentwide commercial purchase card
1213.302 Purchase orders
1213.302-3 Obtaining contractor acceptance and modifying purchase orders
1213.303 Blanket purchase agreements (BPAs)
1213.303-3 Preparation of BPAs
1213.303-370 Modification of a BPA
1213.303-6 Review procedures
1213.303-670 Review responsibility

SUBCHAPTER 1213.5—IMPREST FUNDS AND THIRD PARTY DRAFTS

1213.305-1 General
1213.305-2 Agency responsibilities
1213.305-270 Waiver to Imprest Fund and Third Party Draft Prohibitions
1213.305-3 Conditions for use
1213.305-4 Procedures
1213.306 SF 44, Purchase Order--Invoice—Voucher

SUBCHAPTER 1213.71--DEPARTMENT OF TRANSPORTATION PROCEDURES FOR ACQUIRING TRAINING SERVICES

1213.7100 General

Appendix A - DOT Purchase/Credit Card Program

Appendix B - Acquiring Training Services

CHAPTER 1213 - SIMPLIFIED ACQUISITION PROCEDURES

SUBCHAPTER 1213.1 PROCEDURES

1213.000 Scope of part.

The Operating Administration's HCA is authorized to determine if supplies or services are to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack, thereby increasing the simplified acquisition threshold of \$300,000 (inside the United States) or \$1,000,000 (outside the United States) FAR Part 2.

1213.101 General.

(a) Except for acquisitions of \$3,000 or less, DOT F 4230.1, Simplified Acquisition Summary and DOT F 4230.1a, may be used to document purchases covered by FAR 13 and placed in the file.

(2) DOT contracting officers should follow the guidance at TAM 1219.800 when an award will be made in accordance with the Partnership Agreement between the Department of Transportation and the Small Business Administration.

1213.106-1 Soliciting competition.

(b) When soliciting from a single source the requirements official for the proposed acquisition shall prepare the supporting documentation for soliciting from a single source. The contracting officer for the action is the approval official for proposed actions exceeding \$3,000 up to the simplified acquisition threshold.

(3) When the acquisition requires a particular brand name, product or a feature of a product, peculiar to one manufacturer, which precludes consideration of a product manufactured by another company, the contracting officer shall ensure the request for quotation (RFQ) is posted with the brand name documentation in FedBizOpps as required by FAR 5.102(a)(6).

SUBCHAPTER 1213.2--ACTIONS AT OR BELOW THE MICRO-PURCHASE THRESHOLD

1213.201 General.

(c) Purchase card holders shall be authorized and trained in accordance with Appendix B to this chapter, DOT Purchase/Credit Card Program. Individuals delegated authority for acquiring training services shall be authorized and trained in accordance with Appendix C to this chapter, DOT Procedures for Acquiring Training Services.

(g)(1) The Head of the Contracting Activity (HCA) is the individual authorized to determine if supplies or services are to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack.

SUBCHAPTER 1213.3--SIMPLIFIED ACQUISITION METHODS

1213.301 Governmentwide commercial purchase card.

(b) DOT policies and procedures for the use of the DOT Purchase/Credit Card Program are contained in Appendix B.

1213.302 Purchase orders.

1213.302-3 Obtaining contractor acceptance and modifying purchase orders.

(b) The SF 30 shall be used to modify a purchase order.

1213.303 Blanket purchase agreements (BPAs).

1213.303-3 Preparation of BPAs

1213.303-370 Modification of a BPA

The SF-30 shall be used to modify a BPA

1213.303-6 Review procedures.

1213.303-670 Review responsibility.

(c) when the authorized caller under the BPA are not within the Operating Administration (OA) which issued the BPA, the contracting officer or the designated representative of the contracting officer within the OA using the BPA is responsible for the review.

1213.305 Imprest funds and third party drafts.

1213.305-1 General.

(a) Effective October 1, 2001, and pursuant to the Treasury Department, Financial Management Services Policy Directive, the use of imprest funds is prohibited throughout the Federal Government absent a waiver by the appropriate agency official (see TAM 1213.305-2(c)) in extremely limited circumstances (see the Department of the Treasury website: <http://fms.treas.gov/imprest/regulations.html>). OAs must eliminate the use of imprest funds unless they comply with the requirements of TAM 1213.305-2.

(b) The use of third party drafts (this does not include convenience checks covered in Appendix B) is generally prohibited in DOT, except where the Director, Office of Financial Management has granted approval (see the memorandum from the Chief Financial Officer (C.F.O. Basso, March 30, 2000), which established DOT's policy to phase out third party drafts.

1213.305-2 Agency responsibilities.

(c) The Office of Financial Management, is responsible for establishing DOT policy on the use of various payment mechanisms in contracting. See DOT 2700.13C Cash Credit Debit Management.

1213.305-270 Waiver to Imprest Fund and Third Party Draft Prohibitions

(a) The Director, Office of Financial Management may grant a waiver of the prohibition against the use of imprest funds only if the Treasury Department has already waived the Electronic Fund Payment (EFP) requirement pursuant to 31 C.F.R. 208, Management of Federal Agency Disbursements, and:

(1) Payments involve national security interest, military operations, or national disasters;

- (2) Payments are made in furtherance of a law enforcement action;
 - (3) The amount owed is less than \$25;
 - (4) The political, financial, or communications infrastructure of a foreign country does not support payment by a non-cash mechanism; or
 - (5) Payments are made in emergencies, or in mission critical circumstances, that are of such an unusual and compelling urgency that the government would otherwise be seriously injured unless payment is made by cash.
- (b) The Director, Office of Financial Management may grant a waiver of the prohibition against the use of third party drafts only if the Treasury Department has already waived the EFP requirement pursuant to 31 C.F.R. 208.

1213.305-3 Conditions for use.

- (a) The Director, Office of Financial Management is the individual authorized to approve imprest fund transactions when a limit other than \$500 is used.

1213.305-4 Procedures.

- (e) The individual making an approved purchase from the imprest fund shall be responsible for compliance with the documentation requirements of FAR 13.305-4(a) and DOT Order 2700.13C series. The individual having acquisition authority to approve purchases from the imprest fund shall be responsible for checking the authorized purchase requisition for compliance with the internal control requirements mandated by DOT Order 2700.13C series.

1213.306 SF 44, Purchase Order--Invoice--Voucher.

The use of the SF 44 form is prohibited in DOT unless permission to use the form has been granted by the Director, Office of Financial Management.

SUBCHAPTER 1213.71--DEPARTMENT OF TRANSPORTATION PROCEDURES FOR ACQUIRING TRAINING SERVICES

1213.7100 General.

DOT policies and procedures for acquiring training services using simplified acquisition procedures under a delegation of procurement authority are contained in Appendix B.

Appendix A

DEPARTMENT OF TRANSPORTATION PURCHASE/CREDIT CARD PROGRAM

GENERAL.

These policies and procedures implement the DOT Purchase/Credit Card Program. DOT encourages the use of the card for purchase and payment in accordance with FAR Part 13.301. DOT cardholders will use the purchase card, whenever possible, to purchase and to pay for all supplies and services for micro-purchases. Contracting officers are also encouraged to use the purchase card as a payment vehicle.

II. APPLICABILITY.

These policies and procedures apply to all DOT operating administrations (OA) (except FAA). OAs may authorize designated field offices to develop their own internal procedures to implement the DOT Purchase/Credit Card Program.

III. DEFINITIONS.

Program Definitions:

A. "Agency Program Coordinator (APC)" means an individual designated by the ordering agency to perform task order administration within the limits of delegated authority. The individual shall have overall responsibility for the Purchase/Credit Card Program within DOT. The APC for DOT is located in the Office of the Senior Procurement Executive (OSPE). The APC is responsible for preparing the Charge Card Management Plan and all reports required by OMB.

B. "Approving Official" a Government employee(s) within the OA who has a number of cardholders under his/her purview and determines that cardholders' purchases are made within applicable regulations, policies, and procedures.

C. "Electronic Access System" (EAS) is the access system the GSA contractor bank supplies to the government for card program operations.

D. "Card Issuing Bank" is the bank which issues purchase cards to cardholders and through its EAS generates monthly statements for approval by card holders and approving officials and provides program information via its EAS to manage the card program.

E. "Cardholder" is the individual Government employee within the OA who is either a warranted contracting officer or to whom a written delegation of procurement authority (DPA) has been issued by the cognizant Chief of the Contracting Office (COCO) or designee authorizing the use of the purchase/credit card.

F. "Cardholder Statement" is a monthly statement, for each card holder, accessed via the card issuer's EAS that itemizes all purchase and credit transactions made within the established billing period.

G. "Convenience Checks" are checks tied to a cardholder's account that is used in situations where a merchant does not accept a purchase card.

H. "Delegation of Procurement Authority (DPA)" means the authorization given by the COCO, or a designee appointed by the COCO with appropriate procurement authority, granting specific procurement authority to the individual Government employee for use of the purchase/credit card. OAs may choose to use the issuance of the purchase card as the DPA. In this case, the information required to establish a cardholder account is sufficient "documentation." Use of this method does not change any of the existing FAR, TAR, or TAM requirements, including the training, recordkeeping, and monitoring requirements.

I. Reserved

J. Reserved

K. "Finance Office Contact" is a government employee(s) within the OA who has the responsibility for responding to payment inquiries from the CORs, card issuing bank; approving officials and cardholders.

L. "Merchant Category Codes" (MCCs) are the codes established by the bankcard associations or banks to identify different types of businesses. Merchants select the codes best describing their business. The DOT and/or OA APC will limit the types of businesses where the card will be accepted by limiting the MCCs available to the cardholder.

M. "Monthly Cardholder Purchase Limit" is the spending limit imposed on a cardholder's cumulative purchases in a given month.

N. "Managing Account Limit" means the monthly spending limit imposed on a specific hierarchy node within the OAs hierarchy setup. Currently the managing Account limit is set at the level 4 of an OA's hierarchy.

O. "Nonexpendable Personal Property" means property which has a normal life expectancy of more than one year, has continuing use as a self-contained unit, is not consumed in use, does not lose its identity when put to use, or does not ordinarily become a non-severable component of other property.

P. Reserved

Q. "Single Purchase Limit" is the spending limit imposed on a cardholder for individual purchase/credit card transactions.

IV. PROGRAM STRUCTURE.

The design of the DOT Purchase/Credit Card Program is based on a hierarchical system developed to accommodate varying organizational structures within agencies.

V. OA RESPONSIBILITIES.

A. Internal Procedures. Each OA shall develop written internal Purchase/Credit Card Program procedures within the scope of the applicable GSA contract. The minimum elements to be addressed are set forth below:

1. Verify that all purchase card program participants are trained prior to entering the Purchase Card Program and ensure that this training is verifiable;
2. Ensure that all prospective card holders and approving officials understand and comply with the validation requirements;
3. Establish card holder and approving official accounts on-line via the contractor bank's EAS;
4. Submit changes to cardholder and approving official profiles, (i.e. single purchase, monthly purchase limits, address changes, etc.) to the card issuing bank;
5. Submit, in a timely fashion, account cancellations to the card issuing bank;
6. Establish and review internal controls; and
7. Ensure Electronic and Information Technology (see FAR 2.101) purchases are approved by the OA Chief Information Officer or designee by using the Form DOT F 4263.1 and ensure the accessibility requirements in TAM 1239 are met.

B. OA Agency Program Coordinator (APC). Each OA shall:

1. Appoint an APC, generally located within the Headquarters office, which will have overall responsibility for administering the Purchase/Credit Card Program within the OA, and
2. Provide the OA APC name, work address, routing symbol, room and telephone numbers to the DOT Agency Program Coordinator. The OA APC will be the OA's central point of contact for Smart Pay Program related issues.

C. Training. Each OA shall develop training which will ensure that potential approving officials and cardholders fully understand their responsibilities regarding procurement regulations, finance requirements and internal procedures under the Purchase/Credit Card Program. The OA shall ensure that all prospective cardholders understand and comply with the monthly statement validation requirements, as set forth in the applicable GSA Smart Pay contract and TAM. Purchase/credit cards shall not be issued to potential cardholders until they have received purchase/credit card training (which shall be verifiable). OAs may contact the DOT Agency Program Coordinator for assistance and information regarding existing training videos and manuals. GSA offers an on-line training courses

which can be found at GSA's Smart Pay website (<http://smartpay.gsa.gov/>). Cardholders and approving officials are required to take refresher training on an annual basis. This training must be verifiable.

1. Procurement Training. Procurement training shall, at a minimum, address the requirements of Federal Acquisition Regulation (FAR) Part 3 (Improper Business Practices and Personal Conflicts of Interest), Part 8 (Required Sources of Supplies and Services), Part 13 (Simplified Acquisition Procedures), Transportation Acquisition Manual (TAM); the applicable GSA contract; and internal OA procedures.

2. Finance Training. Finance training shall, at a minimum, address the requirements for safekeeping of purchase/credit cards and account numbers, retention of receipts for charges and credits for purchases, returns and disputed items, record keeping for purchase/credit card purchases, timely validation of monthly statements, summarization of accounting data on monthly statements of account, procedures to follow for account set-up, account changes and cancellation, disputes resolution, and procedures to follow if a purchase/credit card is lost or stolen.

3. Property Control Training. OAs shall include property management and control training to address the requirements for notifying the appropriate officials (i.e., property manager, property officer, property accountable officer) of delivery of non-expendable personal property in order to assure proper handling and inventory control of items ordered using the purchase/credit card.

4. EIT Accessibility Training. EIT accessibility training shall, at a minimum, address the requirements for compliance with the documentation prescribed in TAM, Chapter 1239 when an EIT deliverable may result from a procurement.

D. Task Order Issuance. DOT will issue one task order for DOT for purchase card services to a bank participating in GSA's Smart Pay program. OAs are not required to issue any contractual documents to GSA or the bank.

E. Account Set-Up. The card issuing bank will provide the APCs, through their EAS, a process for setting up both cardholders and approving officials.

1. Qualifications. OAs are responsible for determining the professional responsibility of prospective cardholders and approving officials. OA procedures are to describe how this responsibility will be carried out and by whom.

2. Account Set-Up Forms. The prospective cardholder application should be approved by the cognizant approving official and forwarded to the OA APC for review and if approved, execution.

Card accounts will be set up by APCs or their designee's in the contractor bank's EAS.

3. Purchase Limitations. The purchase limitations which are established under the Smart Pay Program should generally be based upon budgetary constraints, actual need, and the ability of the procuring office to monitor compliance. APCs should periodically review cardholders need for a purchase card and purchase card limits to ensure limits are commensurate with the need. For nonwarranted Contracting Officers the maximum single purchase limit for cardholders will be the micro purchase threshold (see below):

a. Micro-purchase threshold. Micro-purchase threshold means \$3,000, except for:

(1) Acquisitions of construction subject to the Davis-Bacon Act, \$2,000;

(2) Acquisitions of services subject to the Service Contract Act, \$2,500; and

(3) Acquisitions of supplies or services that, as determined by the Secretary, are to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical or radiological attack, as described in FAR 13.201(g)(1), except for construction subject to the Davis-Bacon Act (41 U.S.C. 428a) -

(a) \$15,000 in the case of any contract to be awarded and performed, or purchase to be made, inside the United States; and \$30,000 in the case of any contract to be awarded and performed, or purchase to be made, outside the United States. A requirement which would exceed an individual cardholder's single transaction purchase limitation shall not be divided or "split" into two or more transactions to stay under the single transaction purchase limitation.

(b) Single Purchase Limit. The APC will determine the single purchase limit when initiating each cardholder's account set-up. The APC shall consider the requirements in VII, "General Smart Pay Program Information", paragraph C, when determining the purchase limits.

(1) A single purchase/credit card transaction may consist of the purchase of a number of individual items, the sum of which (including any shipping costs) may not exceed the single transaction purchase limit.

a. Monthly Cardholder Purchase Limit. The APC will determine the monthly purchase limit for each cardholder under his or her purview.

4. Finance office reports. Finance office contacts shall be granted access to the contractor bank's EAS to meet any/all reporting/certifying requirements contained in OMB's A-123 Appendix B and Government Charge Card Abuse Prevention Act of 2012.

VI. INDIVIDUAL RESPONSIBILITIES.

Separation of Duties - A separation of duties shall exist among the key participants of the program to ensure the programs integrity. There must be no conflict of interest. For example, cardholders should never be approving officials for their supervisors. A single individual should not buy, receive, and certify funds availability for purchases. Assignment of duties such as authorizing, approving and recording transactions, receiving assets, approving cardholders statements, making payments, certifying funds, reviewing or auditing should be assigned to separate individuals to the greatest extent possible.

The following are some examples of Smart Pay Program official responsibilities:

A. HCA. The HCA is responsible for the overall operation of the Purchase/Credit Card Program within their organization and may delegate the responsibilities delineated below to the OA APC or other designated official(s) as they determine appropriate. These responsibilities include:

1. Taking appropriate action to inform organizations within the OA that the DOT Purchase/Credit Card Program is available for use;
2. Approving applications for cardholders and approving officials
3. Coordinating training for cardholders and approving officials;
4. Utilizing the contractor bank's EAS to set up cardholders and Approving Officials;

5. Approving changes in authorized merchant codes, single and monthly cardholder purchase limits, single and monthly office spending limits;
6. Cancelling purchase/credit card privileges of cardholders;
7. Deterring employee misuse of government cards, by implementing penalties for charge card violations that are jointly developed by HCA's and OA human resource components. These penalties will include salary offset, for instances of personal liability, and disciplinary actions for a cardholder or approving official's illegal, improper, or erroneous purchase made with a purchase card or convenience check. Disciplinary actions can include counseling, cancellation of the card, a written warning, notation in employee's performance evaluation, reprimand and/or suspension or termination of employment.
8. Downloading and reviewing (and taking action if required) monthly management reports from the card issuing bank; and
9. Appointing the OA Organization Program Coordinator.

B. OA Agency Program Coordinator (APC). The OA APC or designee will generally be the primary liaison between offices inside the OA and the card issuing bank. The APC or designee will have responsibility for:

1. Ensuring each designated cardholder and approving official receives training (and suspension of program access when training is not completed);
2. Make the tax exempt number available to cardholders and approving officials; and
3. Ensure security of all information management reports related to the program:

C. Finance Office Contact. The finance office contact is generally responsible for payment of all authorized and certified purchases to the card issuing bank. Finance offices will receive reports from the card issuing bank which will have information of all of the purchases and credits of approving officials in their OA. The finance office report generally represents the invoice from the bank. The finance office will have responsibility for:

1. Certifying payment for all authorized card transactions; and

2. Making payment to the card issuing bank in accordance with the Prompt Payment Act.

D. Approving Official. The approving official will generally be responsible for nominating potential cardholders within his or her purview, in accordance with OA procedures, and for ensuring that cardholders under their purview follow OA policies regarding use of the purchase card. Approving officials shall have no more than 7 cardholders under their purview, unless unavoidable circumstances make it impossible to achieve this ratio. The unavoidable circumstances shall be documented, and approved at a level above the approving official. The following are some examples of approving official responsibilities:

1. Preparing and submitting cardholder and approving official account set-up information, and other required information to the OA Organization Program Coordinator or designee;
2. Recommending credit limits (single purchase and monthly) for cardholders under his/her purview to the OA APC;
3. Ensuring that all cardholders validate (approve) account purchases, credits and initiate disputes (if required) via contractor bank's EAS within ten calendar days after the end of DOT's billing cycle (the 19th of each month);
4. Verifying that all purchases made by cardholders under his/her purview were authorized and were for valid government requirements. This verification shall take place no later than 20 days of the end of the DOT billing cycle (19th of the month);
5. Ensuring the proper accounting classification data and any disputed items are clearly documented;
6. Initiating appropriate action if a cardholder uses a purchase/credit card in an unauthorized manner, including cancellation of the cardholder's account and disciplinary action if appropriate;
7. Notifying OA APC immediately of lost or stolen cardholder purchase card;

E. Cardholder. The cardholder is responsible for executing purchase/credit card transactions within the limits of his/her DPA; complying with the FAR, TAR, TAM, the applicable GSA contract, and internal OA guidance; and verifying that:

1. Purchases and credits itemized on his or her monthly cardholder statement of account are only for goods or services received or returned;

2. Sales tax has not been charged;

3. Merchants have not charged the account prior to the date of shipment; and

All Purchase/Credit Card Program officials shall exercise care to safeguard cardholder account information when disposing of management or financial reports received from the card issuing bank. Supporting documentation for purchase card transactions shall be maintained for a period of 3 years for purposes of audits and/or procurement management reviews.

VII. GENERAL SMART PAY PROGRAM INFORMATION.

A. Receipt of the Purchase/Credit Card. The card issuing bank will send the card directly to the OA APC or cardholder at the work address specified by the OA. Upon receipt of the purchase/credit card, the cardholder must immediately activate the account by calling the contractor bank at the number on the back of the card.

B. Purchase/Credit Card Appearance. The Smart Pay card is easily discernible in its appearance from personal commercial credit cards.

C. Use of the Purchase/Credit Card.

1. If authorized, purchase cards can be used to: 1) make micro-purchases; 2) place a task or delivery order (if authorized in the basic contract, basic ordering agreement, or blanket purchase agreement); or 3) make payments, when the contractor agrees to accept payment by the card.

(a) Purchase cards cannot substitute for the acquisition process. The purchase card may be used as a payment mechanism, but not a contracting mechanism. Warranted contracting officers with credit limits in excess of the micro purchase threshold are required to follow all the appropriate competition and documentation requirements as defined in FAR Part 13 including notice, competition, and documentation. If a purchase over micro purchase threshold is anticipated and the product or service is not being acquired under an existing contract, the cardholder must include all applicable FAR and TAR clauses in solicitation/award documents. The purchase may be confirmed and the clauses included in an e-mail. However,

do not include the purchase card number in the message. Clauses are not required if the purchase is made under an existing contract such as a GSA schedule or BPA in which clauses have been included.

2. Use of the purchase/credit card shall be restricted to Government personnel who have received proper training in the use of the card. Furthermore, except as authorized by the applicable GSA contract, the only person authorized to use the card is the person whose name appears on the purchase/credit card. Permitting someone else to use an individual cardholder's purchase/credit card, even within the same program office or activity, may result in disciplinary action and/or cancellation of cardholder privileges. Additionally, the purchase/credit card shall not be issued to or used by contractor personnel under any circumstances.

3. Cardholders should always notify the vendor/contractor not to charge the card for the purchases until shipment is made and that purchases are for official U.S. Government purposes and, therefore, are tax exempt.

4. Cardholders shall not personally benefit from use of the card. Cardholders cannot join affinity programs and earn miles, points and other credits for personal use. A cardholder may not accept for personal use any benefit to which the Government is entitled as the result of an expenditure of Government funds.

5. Small Business Requirements, micro-purchases are exempt from the small business reservation requirements of the Small Business Act and from the Buy American Act; however, cardholders are encouraged to give full consideration to women owned, veteran owned, service disabled veteran owned, Historically Underutilized Business Zone (HUB Zone), and disadvantaged small business concerns when its practical to do so.

D. Unauthorized Use of the Purchase/Credit Card.

1. Prohibited Use of the Purchase/Credit Card. In addition to the limitations on the use of the Smart Pay Program purchase/credit card set forth in the applicable GSA contract, the purchase/credit card shall not be used for the following:

- a. Personal purchases or as identification when cashing a personal check; and
- b. Open market purchase of items available from mandatory sources.

2. Regulated Purchases. Each OA must determine if they will permit use of the purchase/credit card for circumstances which have been designated as regulated purchases in the applicable GSA contract.

3. GAO Special Interest Items. GAO decisions surrounding the concept of the "availability of appropriations" are often stated in terms of whether appropriated funds are or are not "legally available" for a given expenditure. Restrictions on the purposes for which appropriated funds may be used come from a variety of sources, including the Constitution, DOT Appropriations Acts, and decisions of the Comptroller General and his predecessor, the Comptroller of the Treasury. OAs are encouraged to review the GAO publication entitled Principles of Federal Appropriations Law (Volume 1, Volume 2, and Volume 3) and provide coverage of the above areas when developing its Purchase/Credit Card Program procedures. When developing purchase card procedures, OAs should consider that "accounting officers of the Government" have often applied restrictions on the following types of expenditures:

- a. Payment of attorney's fees;
- b. Purchase of entertainment and recreation;
- c. Payment of personal membership fees; and
- d. Payment of personal expense items such as gifts for employees, entry fees for contests, medals or trophies, and coffee/donuts for conferences or meetings.

4. On-line Money Transfer Services. Purchases made utilizing on-line money transfer services (e.g., PayPal, c2it by Citibank, Google Checkout, etc) are allowable but OAs should note that these purchases lack transparency (i.e., the purchases are often categorized under general MCCs), and often these transactions are not covered under the banks disputes/charge back procedures.

5. Publicizing Misuse/Fraud Cases. DOT will post/publicize purchase card misuse/fraud cases on the Acquisition and Grants Homepage and sent to OMB on a bi-annual basis. OAs should compile misuse and fraud details along with the penalties imposed on the cardholder and approving official. Cases will be posted/publicized without names.

E. Fund Control.

1. Each OA shall include in its internal controls the method it will use to control funds within the purchase/credit card program. The internal controls must effectively ensure that funds are not expended in excess of the appropriation.

2. The use of an individual Purchase Request (PR) for each purchase/credit card transaction is optional; however, all purchase transactions made by a cardholder shall be supported by a certification of funds availability and an accountable document (e.g., a sales slip for over-the-counter purchases, invoices, and packing slips).

3. Funds may be controlled in the finance office or by the approving official. The following approaches are provided as suggestions and are not intended to be the only means of funds control to be used in the purchase/credit card program:

a. The monthly limit for each approving official may be used by the finance office to commit at the beginning of each monthly card billing cycle. When approving officials approve their monthly statements, the amount of the recorded commitment will be reversed and expenditures will be recorded for the net amount of purchases made for the month.

b. The approving official may exercise fund control by establishing annual, quarterly or monthly commitment accounts for each cardholder under his/her purview, from which the cardholder could draw down when making purchases with the card.

4. Because PRs or other funding documents are not generally distributed to finance offices for obligation purposes under the Smart Pay Program, OAs need to pay special attention to end of fiscal year purchases to ensure funds are obligated timely to preclude the loss of funds.

F. Validation of Purchases. Individual cardholders, approving officials and finance offices are responsible for verifying (approving/disputing) and certifying for payment all authorized card purchases.

G. Billing Disputes. Cardholders are responsible for disputing any erroneous charges appearing on the monthly cardholder statement of account. Items returned to vendors and charges by a merchant before the date of shipment and acceptance are examples of disputable items.

1. Cardholders must use the contractor bank's EAS to dispute a transaction. Cardholders should dispute transactions via the bank's EAS as soon as it's apparent that there is a requirement to do so. Cardholders should print out a copy of dispute form and keep it in their purchase card file.

2. An example of an item which cannot be disputed with the card issuing bank is sales tax. Since purchases made with a U.S. Government purchase/credit card are tax free, the cardholder must contact the vendor and request a credit for the amount of sales tax charged. Cardholders may provide the merchant with their OA's tax identification number (which is embossed on the front of their purchase) card to help verify the cardholder's tax exempt status. The GSA Smart Pay website has additional information regarding understanding state sales tax (<http://smartpay.gsa.gov/>).

H. Interchange Fees. Traditionally interchange fees were not an allowable expense to be included in purchase card transactions. Recent litigation and industry settlements have changed this principle. For information on what industries and transactions that can be assessed interchange fees please refer to GSA's Smart Pay home page (<http://smartpay.gsa.gov/>).

I. Lost or Stolen Purchase/Credit Cards. The minimum notification requirements are set forth in the applicable GSA contract. Failure to notify the card issuing bank immediately of the loss or theft could result in the OA being liable for subsequent purchases charged to the card.

J. Refunds. Refunds generated by OA cardholder's are returned to directly the OA. Refunds are sent to the OAs quarterly. DOT maximizes its rebate in accordance with OMB's A-123 Appendix B.

K. Purchase/Credit Card Cancellations and De-activations. The OA Organization Program Coordinator or designee, will have the responsibility for canceling purchase/credit cards due to retirement, resignation, death, or termination of employment in accordance with established OA purchase card/credit card procedures. The procedures should provide for prompt notification of cancellation so open accounts cannot be utilized by unauthorized users. The OA Organization Program Coordinator should annually review purchase card activity, and consider de-activating/cancelling cards that are not being used on a regular basis (purchase cards being used for emergency purposes and/or COOP requirements are exempt from this review).

L. Personal Use. Disciplinary action will be taken against individuals using the Government purchase/credit card for personal use. Disciplinary action can range from a letter in the cardholder's official personnel file to cancellation of the card, a written warning, notation in employee's performance evaluation, reprimand and/or suspension or termination of employment. OAs should document all cases of cardholder/approving official abuse and misuse of the card for reporting purposes. Cardholder may be personally liable to the Government for the amount of any authorized transaction.

M. Liabilities. Purchase(s) by an unauthorized person. OAs will not be liable for any use of purchase/credit cards by a person who does not have actual or implied authority to utilize the purchase/credit card, provided that reasonable efforts are made to promptly notify the card issuing bank by telephone and in writing when purchase/credit cards are lost or stolen.

N. Convenience Checks. Convenience checks are a payment and/or procurement tool for use with merchants that do not accept purchase cards and for other purposes where charge cards are not accepted. Convenience checks should be used as a payment of last resort, only when no reasonable alternative merchant is available who accepts the charge card. Check writers are required to follow the same regulations, policies (documentation), and procedures as cardholders. Convenience checks shall never be paid payable to DOT employees, payments to other government agencies, cash awards, and shall not be used to reimburse DOT employees for personal and/or business related expenses. DOT must pay 1.9% of the total amount of the check for each check issued.

Public Law 104-134, The Debt Collection Improvement Act of 1996 requires that, with limited exceptions, Federal payments be made through electronic means. The Department of the Treasury has ruled that checks are NOT electronic funds transfer (EFT) compliant.

Waiver requirements for writing convenience checks can be found in the Treasury Financial Manual (TFM).

VIII. WRITTEN PROCEDURES, AUDIT AND REVIEW OF PURCHASE/CREDIT CARD TRANSACTIONS.

A. Written procedures developed by the OAs implementing the Purchase/Credit Card Program within their organizations must incorporate tight management controls to preclude abuse and outline courses of action in case abuses occur.

B. Each participating COCO must maintain oversight of the Purchase/Credit Card Program through regularly scheduled and/or randomly scheduled procurement management reviews of purchase/credit card transaction logs and documentation. These reviews may be performed in conjunction with regularly scheduled reviews (see TAM 1201.671) or as a separate review function. Some areas to cover include:

1. Adequate funding (and that funding was approved before the transaction by authorized personnel);
 2. Splitting of orders;
 3. Purchases were authorized in advance of the transaction;
 4. Only approved items were procured and in the authorized quantities;
 5. Sales tax has not been paid;
 6. Purchase of improper items;
 7. Use of purchase/credit cards by other than authorized users;
 8. Level III data (line item) when available.
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Appendix B

DOT Procedures for Acquiring Training Services

I. General.

DOT policies and procedures for acquiring training services by other than warranted contracting personnel are set forth herein.

II. Definitions.

A. "Chief of the Contracting Office (COCO)" means the individual responsible for managing the contracting office(s) within an Operating Administration (OA). The

COCO (or designee) is the official granting a delegation of procurement authority (DPA) under these procedures.

B. "Commercially-available/off-the-shelf," means existing training that is regularly offered to the general public and/or Government personnel in the course of normal business operations. The term includes training offered by a college, university, professional association, group, or organization. The term does not include training specifically developed, designed, or produced to meet a particular DOT requirement.

C. "Delegation of Procurement Authority (DPA)" means the authorizing document, approved and signed by the responsible COCO or designee granting specific procurement authority to an individual Government employee. If required by the organizational structure of the OA, the COCO or designee shall obtain the approval of the Head of the Contracting Activity prior to granting DPAs under these procedures.

D. "Established catalog or market price" means a catalog, price list, schedule or other verifiable and established record that: (1) is published or otherwise available for customer inspection, (2) states the current or last sales price to the public or private sector (3) is established in the course of ordinary and usual trade between buyers and sellers, and (4) can be substantiated by data from sources independent of the vendor.

E. "Fixed amount" means the cost of the training is of a firm amount (e.g., price per student, event, session, class program, course, seminar, or other instructional service).

F. Head of the Contracting Activity (HCA) means the individual responsible for managing the contracting offices within an OA who is a member of the Senior Executive Service.

G. Simplified acquisition procedure means the acquisition of training services by the methods prescribed in Federal Acquisition Regulation FAR Part 13, and as implemented by the Transportation Acquisition Regulation (TAR) and the Transportation Acquisition Manual (TAM).

H. "Training" as defined in the Government Employees Training Act (GETA), 5 U.S.C. 4101(4), means the process of providing for and making available to an employee, and placing or enrolling the employee in, a planned, prepared, and

coordinated program, course (including correspondence), curriculum, subject, system, or routine of instruction of education, in scientific, professional, technical, or mechanical trade, clerical, fiscal, administrative, or other fields, which will improve individual and organizational performance and assist in achieving the agency's mission and performance goals. For the purposes of these procedures, the term includes meetings, seminars, conferences, symposia and associated course training materials (e.g., study plans, workbooks, handbooks, and manuals) furnished with the training. It is not appropriate to use the SF-182 to purchase miscellaneous training supplies without also purchasing training.

III. POLICY.

No employee of DOT, other than a contracting officer or a recipient of a Delegation of Procurement Authority (DPA), operating within the limits of his or her authority, may enter into formal contracts, authorize contract modifications or otherwise contractually bind, commit or obligate the Government for training.

DPA recipients are only authorized to procure training under the conditions prescribed in paragraph IV, below. Otherwise, training must be procured by warranted DOT contracting officers.

Training shall be acquired within the limitations and procedures of the GETA, FAR, TAR, TAM, and the Departmental Personnel Manual (DPM). If the acquisition is accomplished through the use of the purchase/credit card, Appendix B of this Chapter, and OA purchase/credit card procedures shall be followed.

IV. APPLICABILITY.

The policies and procedures set forth herein apply to the Office of the Inspector General (OIG) and the OAs when:

A. A DPA has been issued to a specific individual authorizing the acquisition of supplies or services in support of DOT's mission.

B. The training cost for an individual student or training requirement does not exceed the lesser of:

- a limitation set forth in an individual's DPA; or
- the simplified acquisition threshold established by FAR Part 2;

C. The annual, reasonably foreseeable, aggregate training requirements cost does not exceed the simplified acquisition threshold. It would be inappropriate to segregate a known requirement for several courses on a specific subject into an individual requirement by date of offering or other means in order to circumvent the simplified acquisition threshold and, therefore, avoid sending the requirement to a contracting office for processing).

D. The training cost is based upon pre-established fixed catalog or market prices;

E. The training is available from a Government source of supply (e.g., General Services Administration, Office of Personnel Management, etc.) OR is commercially available/off-the-shelf or modified commercially available off-the-shelf as set forth in paragraph VI.G, below; and

F. The contracting methods discussed in paragraphs V.C. or VI.C. below are used to acquire training services.

V. ACQUISITIONS WITHIN THE MICRO-PURCHASE THRESHOLD (\$3,000 or less):

The DOT Purchase/Credit Card Program is the preferred method of acquiring all training services in an amount of \$3,000 or less. Every effort shall be made to provide purchase/credit cards to individuals (normally human resources management personnel) who are responsible for acquiring training services of \$3,000 or less in support of their activity.

A. Simplified acquisition training.

Each prospective DPA recipient is required to attend simplified acquisition training equivalent to the purchase/credit card training conducted by the OA (see Appendix B, Chapter V.C.).

B. Delegation of Procurement Authority (DPA).

1. Appendix B of this Chapter details the process for identifying prospective cardholders and processing card account set-up forms, and the required procurement, finance and property control training. Upon completion of the simplified acquisition training, an individual who has been granted a purchase/credit card DPA and issued a card is authorized to acquire training

services within the limits of the DPA, the policies and procedures for the use of the purchase/credit card set forth in Appendix B, and the OA purchase/credit card procedures.

2. Copies of pertinent acquisition regulations referenced in these procedures (including the DOT/OA purchase/credit card procedures), if not received as part of the simplified acquisition training, shall be requested from the responsible COCO by the Purchase/Credit Card Program approving official when preparing and submitting cardholder account set-up forms.

3. DPA recipients shall be appointed in writing. A memorandum shall be used to grant a purchase/credit card DPA. At the discretion of the OA and the responsible COCO, a purchase/credit card DPA and a DPA for acquiring training services in an amount of \$3,000 or less can be combined.

C. Methods of Acquiring Training Services.

1. DOT Purchase/Credit Card Program.

D. Funds Certification.

A Purchase Request (PR) DOT F 4200.1 is not required to acquire training services using a government purchase/credit card. In lieu of a PR, required approvals or funds certification may be secured by any method prescribed by an OA for recording the action. The action may be recorded by means of a memorandum, routing slip or other written documentation, by annual, quarterly or monthly commitment accounts established by accounting certification officers/funds administrators; by using electronic mail to document approvals and certifications, etc.

E. Competition.

Purchases within the micro-purchase threshold (\$3,000 or less) may be made without securing competition, if the price is determined fair and reasonable. Requirements in excess of \$3,000 shall not be divided or "split" into two or more separate purchases in order to avoid competition.

VI. ACQUISITIONS GREATER THAN THE MICRO-PURCHASE THRESHOLD (greater than \$3,000):

A. Simplified acquisition training.

Each prospective DPA recipient will be required to attend formal simplified acquisition training that, at a minimum, addresses the requirements of FAR Part 3, (Improper Business Practices and Personal Conflicts of Interest), FAR Part 8 (Required Sources of Supplies and Services), and FAR Part 13 (Simplified Acquisition Procedures). Contracting offices shall assist in identifying qualified simplified acquisition training courses for prospective DPA recipients.

B. Delegation of Procurement Authority.

1. The Office of the Inspector General (OIG) and each OA shall identify those Government employees (normally human resources management personnel) required to perform training support functions within their activity to be designated as DPA recipients responsible for acquiring training services within the limitations set forth in this Appendix B. When selecting prospective DPA recipients, consideration shall be given to an individual's experience in obtaining training services, business acumen, judgment, character and demonstrated financial responsibility (i.e., no seriously delinquent debts such as travel advances or charge card balances).

2. Upon successful completion of the required simplified acquisition training, the director/manager of the human resource office (or designee) will submit the name of the prospective DPA recipient (and a copy of the individual's course completion certificate or equivalent documentation) to the responsible COCO, requesting the issuance of a DPA. At the discretion of the COCO, a written DPA will be granted designating the individual as an authorized official for the acquisition of training services within the limitations and procedures of GETA, FAR, TAR, TAM, DPM and the procedures set forth in this Appendix B.

3. Copies of pertinent acquisition regulations referenced in these procedures, if not received as a part of the simplified acquisition training, shall be requested from the DPA granting official when requesting a DPA. A memorandum (see Sample Request for Delegation of Procurement Authority (Training Services)) shall be used to request a DPA to acquire training services under these procedures.

4. The COCO or designee shall appoint DPA recipients in writing (see Sample Delegation of Procurement Authority). The DPA memorandum shall state the scope of the DPA recipient's authority as limited by these procedures and shall be automatically terminated upon the individual's reassignment or termination of

employment. The DPA may also be terminated in writing in the case of unsatisfactory performance or for other reasons as determined necessary by the responsible COCO. DPAs granted under these procedures may not be redelegated.

C. Methods of acquiring training services.

1. DOT Purchase/Credit Card Program.

The purchase/credit card shall not be used to acquire training services in an amount greater than the micro-purchase threshold set forth in FAR 2.101. Purchases shall not be divided or "split" into two or more acquisitions to avoid the purchase/credit card threshold.

2. Use of SF-182.

For the purposes of these procedures, an SF-182 shall be considered an alternative agency purchase order form FAR Part 13.307). Applicable commercial item provisions and clauses as set forth in FAR Part 12.301 shall be attached to the form before issuing it to a vendor or contractor. When an SF-182 is used to acquire training from a Government source of supply, the FAR provisions and clauses are not required.

DPA recipients shall incorporate TAR 1252.237-71, and 1252.237-72 as required by TAR 1213.7101. TAR 1252.237-71 requires that offerors certify the data submitted with its offer; therefore, the provision must be incorporated in full text to a request for quotations or solicitation for training services when the content and/or presentations of the training are controlled by DOT (see TAR 1213.7100).

The SF-182 may also be used for requesting, approving and certifying payment for attendance at meetings, conferences, seminars and symposia, the primary purpose of which is to train the individual to meet a job-related need.

D. Funds Certification.

DPA recipients shall obtain the signature of the accounting certification official/funds administrator in the "Agency Use Only" section of the SF-182 as evidence of the availability of funds for obligation under the order. If one of the signatories in Section D, Approvals, is also responsible for funds certification, a second signature need not be obtained. A notation to the effect that "the individual

approving in Block #___ is also certifying the availability of funds for this purchase" is acceptable.

E. Competition.

Purchases in excess of micro-purchase threshold (\$3,000) must be acquired through reasonably competitive procedures (generally, soliciting at least three sources) in accordance with FAR Part 13.106-1. If practicable, two sources not included in the previous competition for similar training services should be requested to furnish quotations. DPA recipients should make every effort to locate new sources and rotate solicitations among sources to the maximum extent practicable. In accordance with FAR 13.103, standing price quotations, such as catalog prices, may be substituted for obtaining individual quotations for each purchase.

The DPA recipient may make a determination that only one source is reasonably available as set forth in FAR Part 13.106-3(1)(b); however, the official order file shall be documented to explain the absence of competition. (See sample Sole Source Justification.)

Competition need not be obtained when acquiring training from a Government source of supply.

F. Posting and Synopsizing Notices of Solicitations.

For proposed actions exceeding \$15,000, DPA recipients shall use the information system (electronic bulletin board or other means of displaying notifications) established in their respective contracting offices for the purpose of posting notices of solicitations or copies of solicitations in accordance with FAR 5.101. Actions exceeding \$25,000 shall be synopsized as required by FAR 5.201 unless the action is exempt in accordance with FAR 5.202.

G. Modifications.

In the event a change, revision or modification that alters the fixed price of commercially-available/off-the-shelf training is required to meet specific DOT requirements, either before or after executing an order for training services, the official order file shall be documented with supplemental information summarizing the changes (e.g., alterations, deletions, expansion, tailoring) required. The official order file shall also include a summary of the price negotiation, including the basis

for determining that the price to be paid for modified commercially-available/off-the-shelf training is fair and reasonable in relation to the established catalog or market price. DPA recipients may enlist the assistance of warranted contracting personnel in negotiating price adjustments when faced with changes to fixed-price, commercially available/off-the-shelf training.

Modifications shall be issued using an SF-182 as the obligating document. Additional pages may be attached as deemed necessary to adequately describe the change, revision or modification to the commercially-available/off-the-shelf training.

VII. ACQUISITION PROCEDURES:

Except as otherwise stated, the following requirements are applicable to the acquisition of all training services under these procedures:

A. Advanced Acquisition Planning.

Human resources management personnel are responsible for forecasting, to the best of their ability, the yearly training requirements for their activities. Human resources management personnel are responsible for monitoring and identifying predicted annual requirements of subordinate organizations that may be combined for contracting purposes. Yearly requirements in excess of the simplified acquisition threshold per individual student or training requirement must be identified and transmitted to procurement offices sufficiently in advance of the fiscal year in which formal contract award(s) is necessary. Personnel are encouraged to seek guidance concerning procurement lead-times from their responsible contracting office in order to allow sufficient time for processing contract award(s).

Emergency or unanticipated training situations may have an impact on training services acquisition. However, predictable annual requirements may not be divided or "split" into two or more acquisitions to avoid the competition threshold (\$2,500) and to avoid sending requirements to contracting offices. Neither shall predictable annual training requirements be "split" among equivalent training sources (i.e., essentially the same training given under different titles, or by different vendors) to avoid sending the requirements to contracting offices.

B. Small business set asides.

1. Except for training services acquired from a required Government source of supply, all acquisitions estimated to exceed the micro-purchase threshold (\$2,500) but not exceeding \$100,000 shall be exclusively reserved for small business concerns (FAR 13.003(b)(1)). If the purchase is made to other than a small business, the reason for the unrestricted purchase (see paragraph VII.D.) shall be documented in the official file.

2. DPA recipients are encouraged to request assistance from responsible Small Business Administration (SBA) center representatives and DOT Offices of Small and Disadvantaged Business Utilization (OSDBU) liaison personnel in identifying small business concerns capable of meeting their training requirements. The DOT Headquarters SBA Procurement Center Representative (PCR) can be reached at (202) 366-5325. A national directory of SBA PCRs is available at <http://www.sba.gov/content/government-contracting-field-staff-directory>.

C. Official Order File.

DPA recipients shall establish an official order file in support of the training acquired under these procedures. The file may be organized on an individual basis for each transaction or as a master filing system in which all of the records would be combined in one file, easily accessible for acquisition planning purposes as well as for reviews and audits.

D. Official Order File Documentation. The official order file shall include the following documentation as applicable to the purchase:

1. Funds certification. See paragraph V.D. above.

2. Approval from the Director, Office of Financial Management (B-30) and justification for the use of imprest funds (see paragraph V.C.3. above).

3. Price reasonableness. In accordance with FAR 13.106-3(a), the DPA recipient is responsible for documenting the official order file with the basis for determining the price reasonableness of the training to be purchased (e.g., competitive quotations, comparison with competitive published price lists, published market prices, fixed catalog prices).

4. Small business set asides. If a determination is made that there is no reasonable expectation of obtaining quotations from small businesses, as set forth in FAR

19.502-2(a)), the DPA recipient shall document the order file with the reason(s) for the unrestricted purchase.

5. Sole source justification. For requirements in excess of \$3,000, solicitations may be limited to only one source, if it is determined that it is the only source reasonably available (FAR 13.106-3(b)(3)(i)), and if the price is determined fair and reasonable. If only one source is solicited, the official order file must be documented to explain the absence of competition.

6. Modifications. The official order file documentation shall include a summary of the price negotiation and determination of price reasonableness as set forth in paragraph VI.G, above.

DPA recipients shall use Form DOT F 4230.1, Simplified Acquisition Summary for the purpose of documenting their official order file. The DPA recipient shall sign the Simplified Acquisition Summary form as the approving official. Form DOT F 4230.1 need not be completed when the training is acquired from a Government source of supply.

E. Administration and Close out of Official Order Files.

DPA recipients are responsible for ensuring that:

1. Training services are received and/or conducted in accordance with the terms of the order; and
2. All necessary information is maintained and reported in accordance with guidance from the responsible human resource office for all training obtained under these procedures;
3. Invoices are reviewed and approved for payment in a timely fashion in order to preclude the payment of interest under the provisions of the Prompt Payment Act (31 U.S.C. 3901 et. seq.); and
4. Official order files are not destroyed before three years after final payment.

F. Records.

In addition to the official order file, DPA recipients shall maintain a control log for the purpose of tracking all orders issued under these procedures when the

acquisition is accomplished using an SF-182 or the Government purchase/credit card. As a minimum, the control log shall provide the name and address of the vendor, training date(s), title, and total price of the training acquired under these procedures. Any additional information required by human resources development organizations for tracking and reporting purposes must also be maintained.

Each training office is required to maintain a yearly training log. By October 15 of each year, a copy of the log information for the previous twelve month period shall be provided to the COCO to assist in Departmental advanced acquisition planning and maintaining oversight on the appropriate use of the delegated authority.

VIII. AUDIT AND REVIEW.

The DPA granting official is responsible for reviewing a random sample of the official order files and control logs to ensure that authorized procedures are being followed. The reviews shall be conducted no less frequently than every three years from the implementation of these procedures. The responsible contracting office shall maintain written documentation of the results of these reviews and the records shall be made available to reviewing activities (i.e., GAO, OIG, M-60) on an as-required basis.

CHAPTER 1214 - SEALED BIDDING

SUBCHAPTER 1214.1—USE OF SEALED BIDDING

- 1214.101 Elements of sealed Bidding
- 1214.101-70 Independent Government Estimates

SUBCHAPTER 1214.2—SOLICITATION OF BIDS

- 1214.201 Preparation of invitation for bids
- 1214.201-7 Contract clauses
- 1214.202 General Rules for Solicitation of Bids
- 1214.202-4 Bid samples
- 1214.202-5 Descriptive literature
- 1214.202-7 Facsimile bid
- 1214.202-8 Electronic Bids

SUBCHAPTER 1214.4—OPENING OF BIDS AND AWARD OF CONTRACT

- 1214.401 Receipt and safeguarding of bids
- 1214.404 Rejection of bids
- 1214.404-1 Cancellation of invitations after opening
- 1214.407 Mistakes in bids
- 1214.407-3 Other mistakes disclosed before award
- 1214.407-4 Mistakes after award
- 1214.408 Award
- 1214.408-2 Responsible bidder--reasonableness of price
- 1214.409 Information to bidders
- 1214.409-2 Award of classified contracts
- 1214.470 Revalidation of requirements

SUBCHAPTER 1214.1--USE OF SEALED BIDDING

1214.101 Elements of sealed bidding.

1214.101-70 Independent Government estimates.

The requirements for an independent Government estimate found at TAM 1215.404-70 also apply to this subchapter.

SUBCHAPTER 1214.2--SOLICITATION OF BIDS

1214.201 Preparation of invitation for bids.

1214.201-7 Contract clauses.

(b)(2) and (c)(2) The Chief of the Contracting Office (COCO) is authorized to waive inclusion of [\(FAR\) 52.214-27](#) and [52.214-28](#) in a contract with a foreign government or agency of that government.

1214.202 General rules for solicitation of bids.

1214.202-4 Bid samples.

(c) *Justification.* The justification required by [FAR 14.202-4\(c\)](#) shall be prepared and signed by the technical official responsible for the procurement request and concurred in writing by the contracting officer.

1214.202-5 Descriptive literature.

(b) *Justification.* The justification required by [FAR 14.202-5\(b\)](#) shall be prepared and signed by the technical official responsible for the procurement request and concurred in writing by the contracting officer.

1214.202-7 Facsimile bids.

(a) Contracting officers may authorize facsimile bids FAR 14.201-6(w) after considering the factors outlined in FAR 14.202-7, provided that procedures and controls are established by the COCO for receiving and safeguarding incoming bids.

1214.202-8 Electronic bids.

(a) Contracting officers may authorize use of electronic commerce for submission of bids. If electronic bids are authorized, the solicitation shall specify the electronic commerce method(s) that bidders may use.

SUBCHAPTER 1214.4--OPENING OF BIDS AND AWARD OF CONTRACTS

1214.401 Receipt and safeguarding of bids.

(a) Contracting offices shall properly identify and deposit unopened bids in the bid box. Bid envelopes received by mail shall be time-stamped and checked for identification prior to deposit in the bid box. Bid samples should receive the same degree of security as bids, and accounted for by the maintenance of local records. Bid samples shall not be given away, loaned, diverted, or used for any purpose other than that intended.

1214.404 Rejection of bids.

1214.404-1 Cancellation of invitations after opening.

(c) The COCO is authorized to make a written determination to cancel an invitation for bids, and reject all bids before award when any of the conditions at [FAR 14.404-1\(c\)\(1\) through \(10\)](#) are met.

(e) The COCO is authorized to make a written determination to complete an acquisition through negotiations when the conditions at [FAR 14.404-1\(e\)\(1\)](#) are met.

1214.407 Mistakes in bids.

1214.407-3 Other mistakes disclosed before award.

(e) The COCO is authorized to determine whether or not a bid may be corrected or withdrawn according to the provisions of [FAR 14.407-3\(a\) through \(d\)](#). This authority may not be re-delegated.

1214.407-4 Mistakes after award.

(b) The determination authorized under [FAR 14.407-4\(b\)](#) shall be made, in writing, by the contracting officer. The determination shall be included in the contract file.

(d) The determination made under [FAR 14.407-4\(b\)](#) shall be coordinated according to OA procedures. Legal counsel must be included in the coordination process, and evidence of legal review shall be included in the contract file.

1214.408 Award.

1214.408-2 Responsible bidder--reasonableness of price.

(a) The determination required by [FAR 14.408-2](#) shall be in writing and included in the contract file.

1214.409 Information to bidders.

1214.409-2 Award of classified contracts.

Disposition actions for classified information furnished or created in connection with a solicitation shall be in accordance with the Defense Industrial Security Program. (See TAM 1204.403.)

1214.470 Revalidation of requirements.

If a procurement action has been in process for over one year from the date an adequate procurement request was received, the contracting officer shall revalidate the request to ensure a valid requirement still exists before the bid opening date. The revalidation shall be documented in the contract file.

CHAPTER 1215 - CONTRACTING BY NEGOTIATION

SUBCHAPTER 1215.2—SOLICITATION AND RECEIPT OF PROPOSALS AND INFORMATION

- 1215.204 Contract Format
- 1215.209 Solicitation provisions and contract clauses

SUBCHAPTER 1215.3-- SOURCE SELECTION

- 1215.303 Responsibilities
- 1215.304 Evaluation factors and significant subfactors
- 1215.305 Proposal Evaluation

SUBCHAPTER 1215.4—CONTRACT PRICING

- 1215.401-70 Definitions
- 1215.402 Pricing Policy
- 1215.403 Obtaining certified cost or pricing data
- 1215.403-1 Prohibition on obtaining certified cost or pricing data
- 1215.403-570 Instructions for submission of certified cost or pricing data or information other than certified cost or pricing data
- 1215.404 Proposal Analysis
- 1215.404-1 Proposal analysis techniques
- 1215.404-2 Data to support proposal analysis
- 1215.404-4 Profit
- 1215.404-70 Independent Government Estimate
- 1215.406 Documentation
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Appendix A--DOT Structured Approach for Profit or Fee Objective

SUBCHAPTER 1215.2--SOLICITATION AND RECEIPT OF PROPOSALS AND INFORMATION.

1215.204 Contract format.

(e) The Chief of the Contracting Office (COCO) is authorized to exempt contracts from the uniform contract format.

1215.209 Solicitation provisions and contract clauses.

(b)(4) See TAM 1225.1001(a)(2)(iii) for the approving authority to waive the examination of records clause.

SUBCHAPTER 1215.3—SOURCE SELECTION

1215.303 Responsibilities.

(a) The Head of the Operating Administration (HOA) is responsible for source selection. The contracting officer is designated the Source Selection Authority (SSA), unless the HOA or designee appoints another individual, for all proposed acquisitions or group of acquisitions (except those acquisitions under paragraph (b)).

(b) The SSA for acquisitions subject to the requirements of TAM Chapter 1234 shall be designated in the source selection strategy/plan or earlier (e.g., in the acquisition plan) if possible. The SSA shall be determined based upon the complexity of the acquisition, the risks involved, the dollar value of the acquisition and the need for continuing direct oversight.

1215.304 Evaluation factors and significant subfactors.

(c)(3)(i) Source Selection officials shall use the Past Performance Information Retrieval System (PPIRS), in addition to other sources, for obtaining contractor past performance information in source selection.

(c)(7) The use of recovered materials, environmentally preferable purchasing criteria developed by the Environmental Protection Agency (see <http://www.ofee.gov>), and the environmental objectives set forth in FAR 23.703(b), must be considered when developing source selection factors. (See TAM 1223.4).

1215.305 Proposal evaluation.

(a)(2)(ii) The Past Performance Information Retrieval System (PPIRS) has been established as a government-wide past performance system and serves as a central warehouse for performance assessment reports. While other systems or methods of collecting past performance information are encouraged, COs shall search PPIRS to review contractor performance information for source selection purposes.

PPIRS receives its completed reports from the Contractor Performance Assessment System (CPARS) and the Federal Awardee Performance and Integrity Information System (FAPIIS).

OAs shall continue to obtain past performance information from PPIRS (i.e. when conducting a past performance evaluation during source selection).

(a)(4) *Cost information.* Cost information may be provided to members of the technical evaluation team as the SSA deems necessary.

SUBCHAPTER 1215.4--CONTRACT PRICING

1215.401-70 Definitions.

"Order" means any action under a contract which requires or directs the contractor to provide supplies or services including, but not limited to: task orders, job orders, and orders issued under indefinite-delivery contracts, technical directions, letters of technical direction, technical task directives, directives and other similar actions. It does not include technical directions and directives which provide only technical instructions for clarification purposes. These technical instructions shall not change or modify any terms or conditions of the contract, including price, delivery, rights of the parties, or the effort to be performed.

1215.402 Pricing Policy.

Whenever agreement on prices is necessary for prime contracts, contract modifications, and any order issued under a contract, the requirements of FAR 15.4 and this subchapter apply unless specifically excluded.

1215.403 Obtaining certified cost or pricing data.

1215.403-1 Prohibition on obtaining certified cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. 254b).

(c)(1)(i)(B) Contracting officers shall submit to the COCO for a decision, a written statement of the facts which lead to the contracting officer's determination that the price of the otherwise successful offeror is unreasonable. The COCO's written decision shall be placed in the contract file.

1215.403-570 Instructions for submission of certified cost or pricing data or information other than certified cost or pricing data.

When an offeror refuses to provide needed data or information, the contracting officer shall refer the matter to the COCO for resolution.

1215.404 Proposal analysis.

1215.404-1 Proposal analysis techniques.

(a)(7) A five-volume set of Contract Pricing Reference Guides to guide pricing and negotiation personnel are available at http://www.acq.osd.mil/dpap/cpic/cp/contract_pricing_reference_guides.html. The five guides are: I Price Analysis, II Quantitative Techniques for Contract Pricing, III Cost Analysis, IV Advanced Issues in Contract Pricing, and V Federal Contract Negotiation Techniques. These references provide detailed discussion and examples applying pricing policies to pricing problems, however, they are not directive and should be considered informational only.

1215.404-2 Data to support proposal analysis.

(a) Field pricing assistance.

Use of private certified public accounting firms to provide field pricing assistance to a contracting officer is permissible when pricing assistance is not available timely from either the cognizant audit or contracting agency.

1215.404-4 Profit.

(b) *Policy.*

(1) Pursuant to FAR 15.404-4, DOT has established a structured approach for determining the profit or fee objective.

(i) The contracting officer shall use the DOT structured approach (Form DOT F 4220.32, Weighted Guidelines Profit/Fee Objective), to determine the profit or fee objective before conducting negotiations for those acquisitions that require cost analysis. Form DOT F 4220.32 shall be made a part of the pre-negotiation memorandum, or documentation of the negotiation when making award without discussions.

(ii) The contracting officer may use an alternate structured approach in lieu of the weighted guidelines for the acquisitions listed below. The rationale for profit or fee determined by the alternate structured approach shall be substantiated in a manner similar to that used in the weighted guidelines method.

(A) Architect-engineering contracts;

(B) Management contracts for operation and/or maintenance of Government facilities;

(C) Construction contracts;

(D) Contracts primarily requiring delivery of material supplied by subcontractors;

(E) Termination settlements;

(F) SBIR contracts;

(G) Cost realism analysis is the only form of cost analysis that is required;

(H) Cost-plus-award-fee contracts; and

(I) Contracts having unusual pricing situations.

(d) *Profit-analysis factors.* (1) Appendix A, DOT Structured Approach for Profit or Fee Objective, cites elements which should be considered when completing Form DOT F 4220.32.

(2) *Additional factors.* Factors to be considered for nonprofit organizations also are contained in Appendix A.

1215.404-70 Independent Government Estimate.

(a) The requiring office shall provide an Independent Government Estimate (IGE) for proposed negotiated acquisitions, unless exempted by TAM 1215.404-70(c).

(b) The IGE should reflect how the estimate was derived by delineating such costs as the major labor categories, materials, travel, consultant, computer usage, etc. Any previous cost experience the Government has had in acquiring the same or similar items should also be provided with the IGE.

(c) Unless the contracting officer requires otherwise, an IGE is not required for the following:

(1) proposed awards using simplified acquisition procedures under FAR Part 13;

(2) administrative modifications such as incremental funding;

(3) modifications to exercise fixed priced options;

(4) modifications to resolve cost overruns under cost reimbursement contracts;

(5) SBIR contract awards;

(6) proposed acquisitions for items that meet the commercial item definition in FAR Part 2; and

(7) when prices for the supplies or services are set by law or regulation.

1215.406 Documentation.

1215.406-1 Prenegotiation objectives.

(a) The Government's prenegotiation objective shall be in writing and have substance, rationale, and detail sufficient to explain to a third party how the overall reasonableness of the proposed prices were determined and how the objective represents a fair and reasonable price.

(b) Contracting offices shall establish procedures for the review and approval of the prenegotiation objective which shall be documented in a Prenegotiation Memorandum (PM). The PM shall be signed by the contracting officer, approved at a level commensurate with the value and complexity of the proposed acquisition, and be in consonance with the requirements of TAM 1204.70.

1215.406-3 Documenting the negotiation.

(a) See TAM 1204.70 for the review and approval of the document described at FAR 15.406-3.

1215.407 Special cost or pricing areas.

1215.407-1 Defective certified cost or pricing data.

(d) The contracting officer or designated contract specialist is the Assessing Official for defective pricing issues in the Contractor Performance Assessment Reporting System (CPARS) and shall comply with the requirements of FAR 42.1503(h). See <http://one10.dot.gov/office/ost/ospe/cpars/SitePages/Home.aspx> to access the CPARS Guide and additional CPARS information.

1215.407-4 Should-cost review.

(b) *Program should-cost review.*

(3) The CO should request participation of the contract administration office.

(4) The responsible contracting personnel shall organize and manage should-cost reviews. The team leader is responsible for completing the should-cost report. The report must include:

(a) The results of the review, including proposed versus recommended hours, tasks, or issues. Discuss each cost element in terms of review method, finding, and proposed or recommended cost. Indicate team members available to support negotiations;

- (b) Improvement recommendations, including long and short term benefits, to be passed on to the contractor or the Government, including monitoring approach;
- (c) A list of lessons learned having value to later should-cost teams; and
- (d) Attachments, including letters recommending changes, implementing plans, prenegotiation objectives, and price negotiation memorandum.

SUBCHAPTER 1215.6—UNSOLICITED PROPOSALS

- (a) The Chief of the Contracting office is responsible for establishing procedures for controlling unsolicited proposals received in the contracting office. Within ten working days after receipt of an unsolicited proposal, the contracting office shall review the proposal and determine whether the proposal meets the content and marking requirements of FAR 15.6. If the proposal does not meet these requirements, it shall be returned to the submitter giving the reason for noncompliance.
- (b) The OA contracting office is the designated point of contact for receipt and handling of unsolicited proposals. Persons with DOT who receive unsolicited proposals, such as technical personnel, shall forward the document to their responsible contracting office.

1215.606-1 Receipt and initial review.

- (a) The agency contact point must make an initial review determination within seven calendar days after receiving a proposal.
- (b) If the proposal meets the requirements at FAR 15.606-1(a), the agency contact point must acknowledge receipt within three calendar days after making the initial review determination and advise the offeror of the general timeframe for completing the evaluation.
- (c) If the proposal does not meet the requirements of FAR 15.606-1(a), the agency contact point must return the proposal within three calendar days after making the determination. The agency point of contact must inform the offeror, in writing, of the reasons for returning the proposal.

1215.606-2 Evaluation.

(a) Comprehensive evaluations should be completed within sixty calendar days after making the initial review determination. If additional time is needed, the agency contact point shall advise the offeror accordingly and provide a new evaluation completion date. The evaluation office must neither reproduce nor disseminate the proposal to other offices without the consent of the contracting office from which the proposal was received for evaluation. If additional information from the offeror is required by the evaluating office, the evaluator must convey this request to the responsible contracting office. The evaluator shall not directly contact the proposal originator.

(b) If the evaluator recommends acceptance of the proposal, the responsible contracting officer shall ensure compliance with all of the requirements of FAR 15.607.

Appendix A

DOT STRUCTURED APPROACH FOR PROFIT OR FEE OBJECTIVE

Introductory Remarks

When using the Form DOT F 4220.32, Weighted Guidelines Profit/Fee Objective, the contracting officer shall categorize the acquisition as a manufacturing, research and development (R&D) or a services effort. To determine to which category a particular acquisition belongs, the contracting officer shall rely on the nature of the work to be performed. When acquisitions involving R&D and services require a significant amount of facilities for efficient contract performance (as determined by the contracting officer), the manufacturing weighted guidelines method may be appropriate. Similarly, certain contracts for the manufacture of small quantities of high technology supplies and equipment may not require a significant amount of facilities. In these cases, an R&D classification may be appropriate.

In determining profit or fee, DOT recognizes the tax posture of the business entity. A fair and reasonable management fee to a non-profit organization with a tax-exempt status is considerably lower than a profit/fee to a commercial enterprise with a taxable status.

Non-Profit Organizations

The following applies to non-profit organizations:

1. As used in this appendix, non-profit organizations are defined as those business entities organized and operated exclusively for charitable, scientific, or educational purposes; of which no part of the net earnings accrue to the benefit of any private shareholder or individual; of which no substantial part of the activities include carrying on propaganda, or otherwise, on behalf of any candidate for public office; and which are exempt from Federal income taxation under Section 501 of the Internal Revenue Code.
2. When the Weighted Guidelines Method for arriving at a profit/fee position is used for non-profit organizations, the contracting officer shall make the following adjustments:
 - a. The weight ranges for "Cost risk" (Item 14 on the DOT F 4220.32) shall be replaced with -1 to 0.
 - b. The Total Profit/Fee Objective (Item 20 on the DOT F 4220.32) shall be reduced by up to 1% for manufacturing type efforts and up to 3% for R&D or Services type efforts.

Commercial Organizations. (See FAR 31.103)

I. Contractor Effort

This factor takes into account what resources are necessary and what the contractor must do to meet the contract performance requirements. To evaluate and assign weight to this factor on the DOT F 4220.32, the cost content of the proposed contract must be analyzed in the following areas:

A. *Material acquisition (e.g., subcontracted items, purchased parts, and other material).*

1. Consider the managerial and technical efforts necessary for the prime contractor to administer subcontracts and select subcontractors, including efforts to break out subcontracts from sole sources through the introduction of competition.

2. Consider whether the contractor's purchasing program makes a substantial contribution to the performance of a contract through the use of subcontracting programs involving many sources; new complex components, systems, or subsystems; and close surveillance by the prime contractor.

B. Direct labor (e.g., engineering, service, manufacturing, and other labor).

1. Analysis of the various items of cost shall include evaluation of the comparative quality and level of the engineering talents, manufacturing and service skills, and experience to be employed. In evaluating labor for the purpose of assigning profit weights, consideration shall be given to the amount of notable scientific talent, unusual or scarce engineering talent needed, in contrast to journeyman engineering effort or supporting personnel. Higher weights are normally assigned to engineering, professional, or highly technical skill levels and lower weights to semiprofessional or other skill levels.

2. The variety of engineering, manufacturing and other types of labor skills required and the contractor's manpower resources for meeting these requirements shall be considered.

C. Overhead and general management (general and administrative (G&A)).

When analyzing overhead and G&A, consider the makeup of these expenses and how much they contribute to contract performance. If the contractor proposes a single indirect cost rate, the contracting officer shall breakout the composite rate or contact the auditor to determine what is in the overhead and G&A expense pools. This information will assist in determining the appropriate weights for overhead and G&A on the DOT F 4220.32.

D. Other costs.

Include all other direct costs associated with contractor performance under this item. This includes airfare, lodging, computer support, etc. The assignment of a weight on the DOT F 4220.32 for this factor shall be based on the nature of these costs and how much they contribute to contract performance.

II. Contractor Risk

The degree of cost risk assumed by the contractor should influence the amount of profit/fee anticipated. Consider the following when determining a weight for cost risk:

A. Contract type.

The degree of cost risk is related to the selection of contract type. For example, if a portion of the risk has been shifted to the Government through cost-reimbursement, or other risk reducing measures, the weight assigned to this factor should be less than acquisitions where the contractor assumes most or all of the risk. This is particularly evident when using time-and-material and labor-hour contracts priced on a time and material basis. These contract types shall be considered to be cost-plus-fixed-fee contracts for the purpose of establishing a profit weight in the evaluation of the contractor's assumption of cost risk.

B. Subcontracting program.

The contractor's subcontracting program may have a significant impact on the contractor's acceptance of risk under a particular contract type. Analysis is necessary to determine if real cost risk has been transferred to a subcontractor. If this is the case, the contract cost risk weight assigned may be below the range that would normally be assigned.

C. Definitization.

For procurement actions that involve definitization of a letter contract, un-priced change orders, etc., where partial performance has occurred, evaluate the effect on total contract cost risk. If it is determined that the total amount of cost risk has been effectively reduced as a result of the partial performance, a lower weight may be appropriate. In addition, evaluate the type of work performed (e.g., complexity) and the type of work remaining to ensure an equitable weight assignment.

III. Capital Investments

Form DOT F 4220.34, Contract Facilities Capital and Cost of Money, is used to determine the capital employed and cost of money amounts to be entered on the DOT F 4220.32.

A. Utilization.

To evaluate how facilities contribute to the profit objective requires knowledge of the level of facilities utilization needed for contract performance, the source and financing of the required facilities, and the overall cost effectiveness of the facilities offered. Contractors furnishing their own facilities that significantly contribute (as determined by the contracting officer) to lower total contract costs generally receive additional profit/fee. Conversely, contractors that rely on the Government to provide or finance needed facilities normally receive a correspondingly lower profit/fee. The following factors should also be considered:

1. The productivity improvements resulting from the facilities capital investment including the economic value of the facilities capital (e.g., physical age, un-depreciated value, idleness, and expected contribution to future Government needs).

2. The degree to which the capital investment has direct, identifiable, and exceptional benefits to the Government, such as: new investments in state-of-the-art technology which reduce acquisition cost or yield other tangible benefits such as improved product quality or accelerated deliveries, or investment in new equipment for R&D applications.

B. New Investment.

To assist in evaluating *new* investment, the contracting officer should request the contractor to submit reasonable evidence that the new facilities investment will result in benefits to the Government.

IV. Special Factors

A. Productivity.

The purpose of this factor is to recognize a prospective contractor's investment in modern cost-reducing facilities and other improvements in efficiency. This factor is applied when the acquisition is a follow-on manufacturing effort, actual cost data are available to establish a baseline, and changes in item configuration are not large enough to invalidate price comparability. The dollar amount inserted under the measurement base of the DOT F 4220.32 is based on the estimated cost reduction that can be attributed to productivity gains.

B. Independent development.

The purpose of this factor is to recognize independent research and development on the part of the prospective contractor pertaining to the end item being procured. To determine the appropriate weight to assign this factor on the DOT F 4220.32, it is important to evaluate whether the development cost was recovered directly or indirectly from Government sources. This factor is applied when the item is important to the advancement of the DOT mission and the prospective contractor demonstrates initiative in determining the need and application of the developed item.

C. Other.

1. *Socioeconomic programs.* This factor covers a number of special circumstances or particular acquisitions. It relates to the prospective contractor's participation in Federal socioeconomic programs. In addition to providing a reward for unusual initiative in supporting Government socioeconomic programs, failure or unwillingness on the part of the prospective contractor to support these programs should be viewed as evidence of poor performance for the purpose of establishing this profit/fee objective factor.

2. *Performance.* The purpose of this factor is to evaluate the prospective contractor's past and present performance in such areas as: product quality, meeting specifications and contract schedules (including the administrative aspects of performance), efficiency in cost control (including the need for and reasonableness of costs incurred) especially under cost reimbursement contracts, accuracy and reliability of previous cost estimates, timely processing of changes, standards of good workmanship, history for reasonable and cooperative behavior and commitment to customer satisfaction, and the prospective contractor's business-like concern for the interest of the customer.

APPENDIX B
WEIGHTED GUIDELINES
DOT Form 4220.32

CHAPTER 1216 - TYPES OF CONTRACTS

SUBCHAPTER 1216.1—SELECTING CONTRACT TYPES

1216.103 Negotiating contract type

SUBCHAPTER 1216.2—FIXED PRICE CONTRACTS

1216.203-4 Contract Clauses

SUBCHAPTER 1216.3—COST REIMBURSEMENT CONTRACTS

1216.301-2 Applications

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SUBCHAPTER 1216.4—INCENTIVE CONTRACTS

1216.401 General

SUBCHAPTER 1216.5—INDEFINITE-DELIVERY CONTRACTS

1216.503 Requirements Contracts

1216.504 Indefinite-quantity Contracts

1216.505 Ordering

SUBCHAPTER 1216.6—TIME-AND-MATERIALS, LABOR-HOUR AND LETTER CONTRACTS

1216.601 Time-and materials contracts

1216.602 Labor Hour contracts

1216.603 Letter contracts

1216.603-2 Application

1216.603-3 Limitations

Appendix A – Contract Type Selection Documentation Template

Appendix B – **DOT Cost Plus Award-Fee Contracting Guide**

Appendix C – Determination and Findings authority to use a (Time and Material or Labor Hour Contract)

CHAPTER 1216 – TYPES OF CONTRACTS

SUBCHAPTER 1216.1 –SELECTING CONTRACT TYPES

1216.103 Negotiating contract type.

(d)(1) Each contract file shall include documentation to show why the particular contract type was selected. This shall be documented in the acquisition plan, or in the contract file if a written acquisition plan is not required by agency procedures.

(i) Explain why the contract type selected must be used to meet the agency need.

(ii) Discuss the Government's additional risks and the burden to manage the contract type selected (*e.g.*, when a cost-reimbursement contract is selected, the Government incurs additional cost risks, and the Government has the additional burden of managing the contractor's costs). For such instances, acquisition personnel shall discuss –

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

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

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

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

(iv) For other than a firm-fixed price contract, at a minimum the documentation should include –

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

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

(C) An assessment regarding the adequacy of Government resources that are necessary to properly plan for, award, and administer other than firm-fixed-price contracts; and

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

(v) A discussion of why a level-of-effort, price redetermination, or fee provision was included.

(2) Exceptions to the requirements at (d)(1) of this section are –

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

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

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

SUBCHAPTER 1216.2—FIXED PRICE CONTRACTS

1216.203 Fixed-price contracts with economic price adjustment.

1216.203-4 Contract clauses.

(d)(2) The contracting officer has the authority to develop a clause to meet the requirements of the instant contract.

1216.206 Fixed-ceiling-price contracts with retroactive price redetermination.

1216.206-3 Limitations.

(d) The authority of the Head of the Contracting Activity (HCA) to approve the use of a fixed-price contract with retroactive price determination under FAR 16.206-3(d) shall be retained at the HCA or higher level.

SUBCHAPTER 1216.3—COST-REMBURSEMENT CONTRACTS

1216.301-2 Applications.

(b) A sample template is provided as Appendix A of this Chapter for documenting contract type selection when a written acquisition plan is not required.

1216.301-370 Limitations.

Any reference to “order” in this subchapter has the same meaning as defined in FAR 7.1.

SUBCHAPTER 1216.4--INCENTIVE CONTRACTS

1216.401 General

(e) For incentive/award fee type contracts to be effective they require a significant amount of planning, and careful oversight. Contracting Officers are required to carefully review the requirements of FAR 16.401 and the DOT Cost-Plus-Award-Fee Contracting Guide (included as Appendix B) prior to contemplating the award of an award fee type contract. Additionally, to help ensure the effective design, award, and administration of incentive/award fee type contracts, OA's should ensure that contract specialists and contracting officer representatives (CORs) assigned to award and administer incentive/award fee type contracts have the requisite experience and training to properly design and manage these complex arrangements. In support of this objective, OA's should ensure the contracting officers assigned to manage incentive/award fee type contracts are FAC-C Level III certified, and that COR's are at least FAC-COR Level II certified. For especially large and complex arrangements, securing additional targeted training for the acquisition team would be a best practice.

(f) *Incentive-and Award-Fee Data Collection and Analysis.* Each OA is responsible for collecting relevant data as described in FAR 16.401(f) and including it as part of the acquisition planning process in support of contract type selection, when applicable. A summary of the OA's incentive and award fee data

analysis for the preceding fiscal year should be provided to M-60 no later than November 30th.

(g) Incentive-and Award-Fee Best Practices. The authority of the Agency Head is delegated to the Chief of the Contracting Office (COCO) to provide mechanisms for sharing proven incentive strategies as described in FAR 16.401(g) among contracting and program management officials supported by the COCO's organization, when applicable.

SUBCHAPTER 1216.5--INDEFINITE-DELIVERY CONTRACTS

1216.503 Requirements contracts

(a)(1) The procurement request initiator shall prepare a written statement outlining the basis and methodology for determining the estimated quantity under a requirements contract.

(d)(1) The Chief of the Contracting Office (COCO) is responsible for making the determination under FAR 16.503(d)(1).

(d)(2) The COCO is responsible for making the determination under FAR 16.503(d)(2).

1216.504 Indefinite-quantity contracts.

(a)(1) The procurement request initiator shall prepare a written statement outlining the basis and methodology for determining the estimated quantity under an indefinite-quantity contract.

(c)(2)(i)(A) The COCO is responsible for making the determination under FAR 16.504(c)(2)(i)(A).

(c)(2)(i)(B) The COCO is responsible for making the determination under FAR 16.504(c)(2)(i)(B).

(c)(2)(ii) The COCO is responsible for making the determination under FAR 16.504(c)(2)(ii).

1216.505 Ordering.

(b)(8) The DOT Task and Delivery Order Ombudsman is the Associate Director, Office of Acquisition Policy, Oversight and Business Strategies (M-61) located in the Office of the Senior Procurement Executive (M-60).

(c)(2)(ii) The COCO is responsible for making the determination under FAR 16.504(c)(2)(ii).

(c)(3) The COCO is responsible for making the determination under FAR 16.505(c)(3).

SUBCHAPTER 1216.6--TIME-AND-MATERIALS, LABOR-HOUR, AND LETTER CONTRACTS

1216.601 Time-and-materials contracts.

(d) (1) When making the required determination and findings, the contracting officer shall use a format substantially the same as the format found in Appendix C to this chapter.

(f)(1) The contracting officer is authorized to execute the actions cited in FAR 16.601(f)(1), when determined to be necessary.

1216.602 Labor hour contracts.

When making the required determination and findings, the contracting officer shall use a format substantially the same as the format found in Appendix C to this chapter.

1216.603 Letter contracts.

1216.603-2 Application.

(c) The COCO is the approval authority under FAR 16.603-2(c)). See TAM 1243.70 for other requirements applicable to letter contracts as undefinitized contract actions.

1216.603-3 Limitations.

The COCO is authorized to approve the use of a letter contract under FAR 16.603-3.

1216.670 Agency Specific Requirements.

(a) Requests submitted to the COCO for authority to issue a letter contract shall include as a minimum:

- (1) the name and address of the proposed contractor;
 - (2) the location where the contract is to be performed;
 - (3) the contract number, including modification number, if applicable;
 - (4) a brief description of the work or services to be performed;
 - (5) the amount of the letter contract;
 - (6) the performance period or delivery schedule;
 - (7) the estimated total amount of the definitive contract;
 - (8) the type of definitive contract to be executed (firm-fixed-price, cost-plus-award-fee, etc.);
 - (9) a statement that the definitive contract will contain all required clauses or that deviations to the required clauses have been obtained;
 - (10) a statement as to the necessity and advantage to the Government of a letter contract and why no other contract type is suitable; and
 - (11) a statement as to the competition received pursuant to FAR 16.603-3(b).
- (b) Profit or fee under letter contracts shall not be paid until after definitization of the letter contract (see TAR 1252.216-74).
- (c) Letter contracts shall contain the appropriate sections of the uniform contract format as discussed FAR 15.204-1 as practicable.
-

Appendix A

CONTRACT TYPE SELECTION DOCUMENTATION **(When Not Addressed as Part of the Acquisition Planning Process)**

This guide contains a summary of the pertinent FAR requirements that a contracting officer (CO) must consider and/or document in the contract file regarding contract type unless listed as an exception in FAR 16.103(d)(2). *The CO must check all blocks that apply and attach a written explanation as needed to this document. This document can be used to obtain approval one supervisory level above the contracting officer as required by the FAR.*

Procurement Request No. _____ Proposed Contract Type _____
Contracting Officer _____ Approving Official: _____

I. Appropriate use of cost reimbursement contracts (FAR 16.301-2 & 16.301-3)

- The CO must be able to document the applicability of either:
 - Circumstances do not allow the agency to define its requirements sufficiently to allow for a fixed-price type contract (see 7.105); or
 - Uncertainties involved in contract performance do not permit costs to be estimated with sufficient accuracy to use any type of fixed-price contract.

Rational supporting block checked is as follows:

- The CO must consider the factors in 16.104, documented as follows:
- The CO finds the contractor's accounting system is adequate for determining costs applicable to the contract or order. Attach documentation supporting this finding.
- By doing the following, the CO is ensuring adequate Government resources are available to award and manage a contract other than firm-fixed-priced (see 7.104(e)), including appropriate Government surveillance during performance in accordance with 1.602-2, to provide reasonable assurance that efficient methods and effective cost controls are used:
 - Designation of at least one contracting officer's representative (COR) qualified in accordance with 1.602-2 has been made prior to award of

the contract or order; and

- The COR will use appropriate Government surveillance during performance to provide reasonable assurance that efficient methods and effective cost controls are used.

II. Acquisition planning to support selection of other than firm-fixed-price type contracts, including cost reimbursement contracts (FAR 7.103 & 7.105; 16.103(d)(1) & 16.104)

- Explain why the contract type selected must be used to meet the agency need (address requirements of 16.301-2 and 16.301-3 if cost reimbursement contract is selected)
- Discuss the Government's additional risks and the burden to manage the contract type selected (*e.g.*, when a cost-reimbursement contract is selected, the Government incurs additional cost risks, and the Government has the additional burden of managing the contractor's costs). For such instances, acquisition personnel shall discuss:
 - How the Government identified the additional risks (*e.g.*, pre-award survey, or past performance information);
 - The nature of the additional risks (*e.g.*, inadequate contractor's accounting system, weaknesses in contractor's internal control, non-compliance with Cost Accounting Standards, or lack of or inadequate earned value management system); and
 - How the Government will manage and mitigate the risks.
- Discuss the Government resources necessary to properly plan for, award, and administer the contract type selected (*e.g.*, resources needed and the additional risks to the Government if adequate resources are not provided).
- For other than a firm-fixed price contract, at a minimum the documentation should include:
 - An analysis of why the use of other than a firm-fixed-price contract (*e.g.*, cost reimbursement, time and materials, labor hour) is appropriate;
 - Rationale that detail the particular facts and circumstances (*e.g.*, complexity of the requirements, uncertain duration of the work, contractor's technical capability and financial responsibility, or adequacy

- of the contractor's accounting system), and associated reasoning essential to support the contract type selection;
- An assessment regarding the adequacy of Government resources that are necessary to properly plan for, award, and administer other than firm-fixed-price contracts; and
 - A discussion of the actions planned to minimize the use of other than firm-fixed-price contracts on future acquisitions for the same requirement and to transition to firm-fixed-price contracts to the maximum extent practicable.
- A discussion of why a level-of-effort, price redetermination, or fee provision was included.
 - Exceptions to the requirements at (d)(1) of this section are
 - Fixed-price acquisitions made under simplified acquisition procedures;
 - Contracts on a firm-fixed-price basis other than those for major systems or research and development; and
 - Awards on the set-aside portion of sealed bid partial set-asides for small business.

III. FAR 16.104 Factors CO should consider in selecting contract type

Price competition. Normally, effective price competition results in realistic pricing, and a fixed-price contract is ordinarily in the Government's interest.

Price analysis. Price analysis, with or without competition, may provide a basis for selecting the contract type. The degree to which price analysis can provide a realistic pricing standard should be carefully considered. (See 15.404-1(b).)

Cost analysis. In the absence of effective price competition and if price analysis is not sufficient, the cost estimates of the offeror and the Government provide the bases for negotiating contract pricing arrangements. It is essential that the uncertainties involved in performance and their possible impact upon costs be identified and evaluated, so that a contract type that places a reasonable degree of cost responsibility upon the contractor can be negotiated.

Type and complexity of the requirement. Complex requirements, particularly those unique to the Government, usually result in greater risk assumption by the

Government. This is especially true for complex research and development contracts, when performance uncertainties or the likelihood of changes makes it difficult to estimate performance costs in advance. As a requirement recurs or as quantity production begins, the cost risk should shift to the contractor, and a fixed-price contract should be considered.

Combining contract types. If the entire contract cannot be firm-fixed-price, the contracting officer shall consider whether or not a portion of the contract can be established on a firm-fixed-price basis.

- *Urgency of the requirement.* If urgency is a primary factor, the Government may choose to assume a greater proportion of risk or it may offer incentives tailored to performance outcomes to ensure timely contract performance.
- *Period of performance or length of production run.* In times of economic uncertainty, contracts extending over a relatively long period may require economic price adjustment or price redetermination clauses.
- *Contractor's technical capability and financial responsibility.*
- *Adequacy of the contractor's accounting system.* Before agreeing on a contract type other than firm-fixed-price, the contracting officer shall ensure that the contractor's accounting system will permit timely development of all necessary cost data in the form required by the proposed contract type. This factor may be critical.
 - When the contract type requires price revision while performance is in progress; or
 - When a cost-reimbursement contract is being considered and all current or past experience with the contractor has been on a fixed-price basis. See 42.302(a)(12).
- *Concurrent contracts.* If performance under the proposed contract involves concurrent operations under other contracts, the impact of those contracts, including their pricing arrangements, should be considered.
- *Extent and nature of proposed subcontracting.* If the contractor proposes extensive subcontracting, a contract type reflecting the actual risks to the prime contractor should be selected.

- *Acquisition history.* Contractor risk usually decreases as the requirement is repetitively acquired. Also, product descriptions or descriptions of services to be performed can be defined more clearly.

IV. Acquisition Resources to award and manage cost reimbursement contracts (FAR 1.602-2)

- CO appoints in writing a COR on all contracts and orders. See 7.104(e).
- Provides a copy to the contractor
- Dates the appointment prior to the award date of the contract or order.
- States in the appointment -
 - The extent of the COR's authority to act on behalf of the contracting officer;
 - The limitations on the COR's authority;
 - The period covered by the designation;
 - The authority is not re-delegable; and
 - That the COR may be personally liable for unauthorized acts.
- The person to be appointed COR must be —
 - A Government employee
 - Certified and maintain certification in accordance with the current Office of Management and Budget memorandum on the Federal Acquisition Certification for Contracting Officer Representatives (FAC-COR) guidance
 - Qualified by training and experience commensurate with the responsibilities to be delegated (Nomination Form)
 - Not given any authority to make any commitments or changes that affect price, quality, quantity, delivery, or other terms and conditions of the contract; and
 - Designated in writing, with copies furnished to the contractor.

Appendix B – DOT Cost Plus-Award Fee Contracting Guide

See:

http://one10.dot.gov/office/ost/ospe/Shared%20Documents/DOT_CPAF_%20Guide_v1.pdf

Appendix C

Determination and Findings authority to use a (specify Time and Materials or Labor Hour) contract

DETERMINATION AND FINDINGS

Authority to use a (*specify Time and Materials, or Labor Hour*) contract

FINDINGS

1. The (*specify OA and contracting office within the OA*) of the Department of Transportation proposes to contract for (*describe the supplies and/or services being procured and identify program/project, if applicable*).
2. The estimated amount of the contract ceiling price is \$_____.
3. (*Explain why no other type of contract is suitable for procuring the supplies or services of the kind or quantity required without using the proposed type of contract.*)

DETERMINATION

On the basis of the above findings, I hereby determine that no other type of contract other than a (*specify a Time and Materials or Labor Hour contract*) is suitable for this procurement.

_____	_____
Date	Signature of Approving Officials

CHAPTER 1217 - SPECIAL CONTRACTING METHODS

SUBCHAPTER 1217.1 -- MULTI -YEAR CONTRACTING

1217.104	General
1217.108	Congressional notification

SUBCHAPTER 1217.2—OPTIONS

1217.204	Contracts
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SUBCHAPTER 1217.4—LEADER COMPANY CONTRACTING

1217.401	General
1217.402	Limitations

SUBCHAPTER 1217.5--INTERAGENCY AND INTRA-AGENCY ACQUISITIONS

1217.500	Scope of subchapter
1217.501	General
1217.501-70	DOT Policy
1217.502	Procedures
1217.502-1	General
1217.502-2	The Economy Act
1217.503	Ordering Procedures
1217.504-70	Reporting Requirements
1217.570	Signature Authority
1217.571	Legal Review

SUBCHAPTER 1217.6--MANAGEMENT AND OPERATING CONTRACTS

1217.602	Policy
1217.605	Award, renewal, and extension

SUBCHAPTER 1217.7—INTERAGENCY ACQUISITIONS: ACQUISITIONS BY NONDEFENSE AGENCIES ON BEHALF OF THE DEPARTMENT OF DEFENSE

Appendix A--Determination and Findings for Use of Interagency Acquisitions or Intra-agency Acquisition--Under the Economy Act

Appendix B--Determination of Best Procurement Approach for Use of Other Than Interagency Direct Acquisitions

Appendix C--Template for Determination of Best Procurement Approach Use of an Interagency Direct Acquisition

CHAPTER 1217-SPECIAL CONTRACTING METHODS

SUBCHAPTER 1217.1—MULTI-YEAR CONTRACTING

1217.104 General.

(b) The authority to modify the requirements of [FAR 17.1](#) is considered a deviation under TAM 1201.403. See TAM 1201.403 for the approval authority.

1217.108 Congressional notification.

(a) For all Operating Administrations (OAs), the Head of the Operating Administration (HOA) is the authority under [FAR 17.108](#) to give written notification of a proposed multi-year contract that includes a cancellation ceiling in excess of \$12.5 million. This notification shall be coordinated with the Office of Budget and Program Performance (B-10). One copy of the notification is to be submitted to the Office of the Senior Procurement Executive.

Subchapter 1217.2—Options

1217.204 Contracts.

(e) Total contract periods may exceed five years as approved by the Chief of the Contracting Office (COCO) on a case-by-case basis. This authority shall not be delegated.

(1) Situations that may warrant this approval include contracts with phase-in or phase-out requirements or when the requirement is known, stable, and recurring; and the price and availability in the commercial market place is expected to be relatively stable during the period of the contract.

(2) The COCO shall approve the solicitation before it is released and the decision shall be documented in the contract file. Documentation shall include rationale for why a period longer than five years is necessary and how the price risks normally associated with a long performance period were mitigated.

SUBCHAPTER 1217.4--LEADER COMPANY CONTRACTING

1217.401 General.

Leader company contracting shall not be used without the written authorization of the Senior Procurement Executive.

1217.402 Limitations.

See TAM 1217.401.

SUBCHAPTER 1217.5-70—INTERAGENCY AND INTRA-AGENCY ACQUISITIONS

1217.500 Scope of subchapter.

(a) This subchapter establishes DOT policy and procedures that will assure the appropriate and consistent use of inter-agency agreements as prescribed by [FAR 17.5](#) and intra-agency acquisitions. Intra-agency acquisitions means a procedure by which an OA obtains needed supplies or services from, or through, another OA by an assisted acquisition or a direct acquisition as defined in [FAR Part 2](#), under any authority, except as provided for herein and in [FAR 17.500\(c\)](#).

(c) The provisions of this subchapter do not apply to interagency or intra-agency transactions under an interagency agreement whose primary purpose is other than contracting on behalf of DOT, such as:

(1) Interagency and intra-agency agreements authorized by 49 U.S.C. 328, the statutory authority that specifically authorizes agreements between the John A. Volpe National Transportation Systems Center (Volpe Center) and other DOT

operating administrations (OAs) and with other Federal agencies, State and local governments, public authorities, private organizations, and foreign countries, where the Volpe Center is the Servicing Agency. Contracting is considered incidental to the purpose of transactions involving the performance of reimbursable work by the Volpe Center under interagency and intra-agency agreements. DOT Order 2300.8 titled Financing Activities at the DOT/RITA/Volpe Center applies when processing interagency or intra-agency agreements where the Volpe Center is the Servicing Agency.

(d) This subchapter does not apply when the Federal Aviation Administration is the requesting agency.

(e) This subchapter does not apply to contracts with the Small Business Administration based upon Section 8(a) of the Small Business Act.

1217.501 General.

(a) Interagency acquisitions include intra-agency ordering under another DOT OA's indefinite-delivery contract, when authorized.

1217.501-70 DOT Policy.

(a) Except as provided in [FAR 7.3](#), it is the policy of DOT not to place Federal agencies in direct competition with commercial sources.

(b) DOT policy requires that interagency and intra-agency acquisitions be written to ensure that the obligation of fiscal year funds is valid, that the servicing agency is authorized to provide the stated goods or services, that the stated requirements are consistent with DOT's mission responsibilities, and that each acquisition complies with applicable laws and regulations.

(c) Interagency and intra-agency acquisitions permitted by separate statutory authority shall not use the Economy Act. Interagency or intra-agency acquisitions under separate statutory authority must be executed according to the requirements and restrictions of the applicable statute.

1217.502 Procedures.

1217.502-1 General.

(a) *Determination of best procurement approach.* In addition to the requirements of [FAR 17.502-1](#), each OA shall address in this document a written analysis of alternatives to ensure the appropriate business decision is made. Suggested format for preparing this document are included as Appendix B.

(1) Assisted acquisitions. Each OA shall determine the procedures for obtaining the OA's contracting officer's concurrence on the best procurement approach determination required under [FAR 17.502-1\(a\)\(1\)](#).

(2) Direct acquisitions. Each OA shall determine the procedures for obtaining the OA's contracting officer's concurrence on the best procurement approach determination required under [FAR 17.502-1\(a\)\(2\)](#).

(b) *Written agreement on responsibility for management and administration.*

(1) Assisted acquisitions.

(i) Each OA shall establish the managerial position responsible for signing interagency agreements specifying the general terms and conditions governing the relationship between the parties.

(ii) A copy of the signed interagency agreement will be maintained in the order for the assisted acquisition services, as well as in the contract or order file issued by the servicing agency on behalf of the requesting agency when a DOT OA is the servicing agency.

(c) *Business-case analysis requirements for multi-agency contracts and governmentwide acquisitions contracts.* SPE approval is required prior to an OA developing a business-case in order to establish a multi-agency contract. In addition, while a business case is not required in order for a DOT OA to make its indefinite-delivery contract available to other DOT OAs for issuing direct acquisitions, the OA must ensure that the following conditions are met in accordance with OA procedures: (1) multi-OA ordering was clearly stated in the solicitation and resulting contract award(s), including any limitations or restrictions; (2) ordering procedures for OA contracting officers (COs) to follow are clearly established and documented; and (3) delegation of ordering authority to other DOT OA COs is clearly established, including any delegation procedures. Notification shall be provided to the SPE of any indefinite-delivery contract awarded in DOT that permits ordering by all DOT OA COs for posting purposes on the DOT website.

1217.502-2 The Economy Act.

(a) Intra-agency business transactions that do not result in a contract or an order as stated in [FAR 17.502-2\(a\)](#), are not subject to the FAR, TAR or TAM. Such business transactions are required to be processed per Section 9 of the Financial Management Policies Governing Funded Interagency and Intra-agency Agreements issued by the DOT Financial Management Office. However, if the Economy Act is the applicable authority for the transaction, then the contracting officer of the requesting OA will need to approve the determination and findings.

(c) Requirements for determinations and findings.

(2) When an acquisition will be made under the Economy Act, a determination and findings (D&F) is required and shall be prepared in substantially the same format as shown in Appendix A, covering the requirements set forth in [FAR 17.502-2](#). The D&F shall be signed by the OA contracting officer, including when the FAA is identified as the servicing agency under an intra-agency acquisition. Should a modification to an interagency or intra-agency acquisition result in a new acquisition outside the original scope of work, then a new D&F is required.

(i) When the Economy Act is used as the authority for an interagency or intra-agency acquisition, the requiring office shall submit to the contracting officer documentation supporting the conclusion that it is more convenient or economical to obtain the required supplies or services through the proposed interagency or intra-agency agreement, rather than by direct contract with a commercial concern. Current market prices or recent procurement prices may be used in this process.

1217.503 Ordering procedures.

(b) Each OA is required to comply with the Financial Management Policies (FMP) (Section 9) when issuing an interagency acquisition under [FAR Subpart 17.5](#) for supplies or service with another government agency or OA.

(1) Forms. In accordance with FMP Section 9, or intra-agency acquisitions for assisted acquisitions, the requiring office shall use DOT Form 2300.1a to initiate and execute all orders. For interagency acquisitions for assisted acquisitions, the requiring office shall use the DOT Form 2300.1a to initiate the action and, unless another mutually-agreeable document is available, to award the action. Any award

document used instead of the DOT Form 2300.1a must include the required elements in Section 9, paragraph 9.5.3. This form is used in lieu of a procurement request (PR), except that a PR is used to initiate direct acquisition orders.

(2) Modifications. See the Financial Management Policies (Section 9), paragraph 9.5.4 for assisted acquisitions; modifications for direct acquisition orders will be processed using an SF 30 form.

(d)(3)(ii) Although not subject to the FAR, FAA contracts are deemed to include appropriate protection provisions and provide for adequate contract administration as required by [\(FAR\) 48 C.F.R. 17.503\(d\)\(3\)](#). No further verification is needed when the FAA is the servicing agency.

1217.504-70 Reporting requirements.

Each OA is responsible for assisting the SPE in preparing the annual report on interagency acquisitions as requested.

1217.570 Signature authority.

Section 9 of the Financial Management Policies does not require contracting officer review or approval of interagency or intra-agency acquisitions. However, direct acquisitions involving the placement of orders against another agency or OA's indefinite delivery contract will require a contracting officer to sign the order; with the CO's warrant authority equal to or greater than the dollar amount of the order. HCAs, in consultation with their Chief Financial Officer, may determine what role, if any, the contracting officer will have in formulating, reviewing or signing interagency or intra-agency acquisitions for assisted acquisitions.

1217.571 Legal Review.

Each OA is responsible for establishing legal review requirements for interagency and intra-agency acquisitions, legal counsel review is strongly recommended for interagency and intra-agency acquisitions and modifications to such documents that are over \$500,000 (especially complex actions). This review is to be completed before execution of the order. Legal review is also recommended for those interagency and intra-agency acquisitions for lesser amounts that may present legal questions.

SUBCHAPTER 1217.6--MANAGEMENT AND OPERATING CONTRACTS

1217.602 Policy.

(a) The authority of the agency head to authorize contracting officers to enter into or renew any management and operating contract under [FAR 17.602\(a\)](#) is retained by the Secretary.

(c) Each OA is responsible for reviewing their current contractual arrangements consistent with [FAR 17.602\(a\)](#) and coordinating with the Senior Procurement Executive the results of this review and any action taken.

1217.605 Award, renewal, and extension.

(b) Each OA with authority to enter into or renew management and operating contracts as defined in [FAR 17.601](#) is responsible for establishing OA procedures as required by [FAR 17.605\(b\)](#).

SUBCHAPTER 1217.7 – INTERAGENCY ACQUISITIONS: ACQUISITIONS BY NONDEFENSE AGENCIES ON BEHALF OF THE DEPARTMENT OF DEFENSE

1217.703 Policy.

(a) DOT certification will be accomplished at the OA level. The authority of the agency head to certify that the agency will comply with applicable procurement requirements when conducting an acquisition on behalf of DOD under [FAR 17.703\(a\)](#) is delegated to the OA HCA or designee serving in a position in a grade above GS-15 under the General Schedule (or equivalent).

(c) Each OA is responsible for submitting the certification required under [FAR 17.703\(c\)](#) directly to DOD with a copy provided to the OSPE.

Appendix A

**Determination and Findings for Use of Interagency
or Intra-agency Acquisition Under the Economy Act
DEPARTMENT OF TRANSPORTATION
*Name of Operating Administration & Contracting Office***

DETERMINATION AND FINDINGS

Findings

1. The proposed (*enter Interagency or Intra-agency Acquisition*) (IAA) with (*name of agency or DOT OA*) is to obtain (*description and purpose of supplies or services required*).
2. It is more economical or convenient to obtain the required supplies or services through the proposed IAA Acquisition rather than by direct contract with a commercial concern because (*state rationale*).
3. The following circumstances apply to this requirement: (*select at least one of the following statements, as applicable*) (i) The acquisition will appropriately be made under an existing contract of the servicing agency, entered into before placement of the order, to meet the requirements of the servicing agency for the same or similar supplies or services; (ii) The servicing agency has the capability or expertise to enter into a contract for such supplies or services that is not available within the requesting agency; or (iii) The servicing agency is specifically authorized by law or regulation to purchase such supplies or services on behalf of other agencies.
4. Legal authority for the acquisition otherwise exists.
5. The action does not conflict with any other agency's authority or responsibility.
6. The acquisition involves the use of a commercial or industrial activity operated by the servicing agency, and conforms to the requirements of [\(FAR\) 48 CFR Subpart 7.3](#). (*Include only if applicable: This finding is applicable if the servicing agency operates a commercial or industrial activity using Government personnel. In order to conform to the requirements of [\(FAR\) 48 CFR Subpart 7.3](#), the servicing agency must operate the activity as the result of an A-76 review process, or the activity must be scheduled for A-76 review.*)

Determination

Based upon these findings, I hereby determine that it is in the Government's interest to obtain the required supplies/services from another (*enter Federal agency or DOT agency*), as authorized by the [Economy Act](#) (31 U.S.C. 1535).

Date

Contracting Officer

cc: Copy to Servicing Agency (or OA)

Appendix B

Determination of Best Procurement Approach for Use of Other Than Interagency Direct Acquisitions

INSTRUCTIONS: This is a general template available for use when processing an interagency acquisition which is categorized as other than an interagency direct acquisition; including Assisted Acquisition. The Requiring Office Initiator must complete Parts I and II and ensure supporting information is provided for all three criteria identified under Part II.

Financial Control Number _____

Determination of Best Procurement Approach

Part I - Analysis of Procurement Approaches

Consider all feasible alternative methods for obtaining the required supplies/services, and evaluate each approach considering costs and benefits/disadvantages. Annotate “none” or “not applicable” as required.

1. (Insert name of OA) In-House Resources: *[Identify if in-house sources are available and/or if expertise required is/is not available in-house]*
2. (Insert name of OA) Existing Contracts: *[List any active contracts for the same services or requirement. If none, so state.]*
3. New Contract: *[Address the feasibility of issuing a new contract]*

4. Other:

Part II – Determination of Best Procurement Approach

Based on the analysis of procurement approaches described in Part I, I hereby determine that using the services of *[insert name of servicing activity/agency]* for *[insert description of supplies/services]* required by the *[insert name of OA]* represents the best procurement approach pursuant to Federal Acquisition Regulation (FAR) 17.502-1(a)(1) because this action:

1. Satisfies the schedule, performance and delivery requirements of the *[insert name of OA]*.

[Include an explanation of factors such as the servicing agency's authority, experience, and expertise as well as customer satisfaction with its past performance]

2. Is cost effective.

[Describe why the servicing agency can provide the services more cost effectively, considering the reasonableness of the servicing agency's fees, if applicable]

3. Will result in the use of funds in accordance with appropriation limitations and compliance with the laws and policies of the *[insert name of OA]*.

[Include a statement that the funds are available and appropriate for the supplies or services being acquired to include the fiscal year and type of funds to be used]

[insert name and organization code]
Requiring Office Initiator

Date

Concur:

[insert name and organization code]
Contracting Officer

Date

Appendix C

Template for Determination of Best Procurement Approach Use of an Interagency Direct Acquisition

INSTRUCTIONS: *This is a general template available for use when processing an interagency direct acquisition. If the PR Initiator prepares the determination, then revise the signature section to include both PR initiator and contacting officer.*

PR number _____

Determination of Best Procurement Approach

I hereby determine that the use of an interagency “direct acquisition” under *[insert either - “federal supply schedule (FSS) contract no. _____” if over \$500,000; OR “governmentwide agency contract (GWAC) no. _____ awarded by (insert name of agency/activity); OR “multi-agency contract (MAC) no. _____ awarded by (insert name of awarding agency/activity); OR “intra-agency contract no. _____ awarded by (insert name of awarding OA)]* for *[insert description of supplies/services]* required by *[insert name of OA]* that represents the best procurement approach pursuant to Federal Acquisition Regulation (FAR) 17.502-1(a)(2) based on the following factors:

1. The contract vehicle is most suitable for this acquisition.
[Briefly describe the basis for this determination.]
2. The administrative cost savings from using an already existing contract is the most advantageous method of fulfilling the *[insert name of OA]* needs.
[Compare the administrative cost of conducting a new procurement to the estimated amount for placing and administering an order under this contract.]
3. The contract vehicle offers a lower price, greater number of vendors, and reasonable access fees, demonstrating its value to the *[insert name of OA]*.
[Describe the value of this action to the OA. For example: “Market research showed that vendors on the contract offer competitive prices when compared to other sources in their industry. There are no suitable existing indefinite delivery, indefinite quantity contracts available at the [insert name of OA].”]

4. The [insert name of OA] possesses the expertise to place orders and administer them against the selected contract throughout the acquisition lifecycle.

[Describe the OA's experience placing and administering similar orders and how the order will be administered. For example: "The [insert name of OA] will perform contract administration duties which include: quality assurance, surveillance, voucher examination, past performance data collection, and accurate data reporting in the Federal Procurement Data System. This office has placed and administered orders under similar contract number(s) [insert contract number(s)] in the past. The contracting officer's technical representative for this requirement will be [insert name], who will oversee performance and accept the [insert supplies/services] to be provided. The COTR is properly trained in accordance with federal and Departmental requirements and will be appointed in writing by the contracting officer."]

5. Fiscal year [insert year and type of funds] funds are appropriate for the supplies or services being acquired and are available in the amount of [insert amount].

[insert name and organization code]
Contracting Officer

Date

CHAPTER 18—EMERGENCY ACQUISITIONS

SUBCHAPTER 18.1—AVAILABLE ACQUISITION FLEXIBILITIES

- 1218.102 System for Award Management
- 1218.109 Priorities and allocation

SUBCHAPTER 18.2—EMERGENCY ACQUISITION FLEXIBILITIES

- 1218.201 Contingency Operation
- 1218.202 Defense or recovery from certain attacks.
- 1218.203 Emergency declaration or major disaster declaration.

SUBCHAPTER 18.1—AVAILABLE ACQUISITION FLEXIBILITIES

1218.102 System for Award Management.

Contractors are not required to be registered in the System for Award Management (SAM) for contracts awarded to support unusual and compelling needs or emergency acquisitions. (See [FAR 4.1102](#)). However, contractors are required to register with SAM in order to gain access to the Disaster Response Registry. Contracting officers shall consult the Disaster Response Registry via <https://www.acquisition.gov> to determine the availability of contractors for debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities inside the United States and outlying areas. (See [FAR 26.205](#)).

1218.109 Priorities and allocations.

DOT should use the Defense Priorities and Allocation System (DPAS) procedures for assignment of ratings as appropriate. (See TAR 1211.602 and TAM 1211.602).

SUBCHAPTER 18.2—EMERGENCY ACQUISITION FLEXIBILITIES

1218.201 Contingency operation.

- (b) The Head of the Agency or designee shall make the required determination to increase the micro-purchase threshold to support a contingency operation.
- (c) The Head of the Agency or designee shall make the required determination to increase the simplified acquisition threshold to support contingency operation.

1218.202 Defense recovery from certain attacks.

- (a) The SPE or designee shall make the required determination to increase the micropurchase threshold to support defense against or recovery from nuclear, biological, chemical, or radiological attack.
- (b) The SPE or designee shall make the required determination to increase the simplified acquisition threshold to support defense against or recovery from nuclear, biological, chemical, or radiological attack.
- (c) The SPE or designee shall make the determination that the acquisition is to be used to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack.

1218.203 Emergency declaration or major disaster declaration.

- (a) DOT OAs must comply with statutory requirements and guidance regarding preferences given to local organizations, firms and individuals when contracting for major disaster or emergency assistance activities when the President has made a declaration; under the Robert T. Stafford Disaster Relief Act. (See TAM 1205.303 regarding Congressional notifications of covered contract actions (limited waiver). See [FAR 6.208](#) Set-asides for local firms during a major disaster or emergency and [FAR 26.202](#) Local area preference).

CHAPTER 1219 - SMALL BUSINESS PROGRAMS

SUBCHAPTER 1219.2 – POLICIES

1219.201	General policy
1219.201-70	Procurement Center Representative (PCR)
1219.202	Specific policies
1219.202-1	Encouraging small business participation in acquisitions
1219.202-270	DOT Procurement forecast
1219.202-271	DOT Small Business Review Form
1219.202-5	Data Collection and reporting requirement

SUBCHAPTER 1219.5--SET-ASIDES FOR SMALL BUSINESS

1219.501	General
1219.501-70	Small Business Program Review DOT Form 4250.1
1219.502	Setting aside acquisitions
1219.502-3	Partial set-asides
1219.505	Rejecting Small Business Administration recommendations
1219.506	Withdrawing or modifying small business set-asides

SUBCHAPTER 1219.6--CERTIFICATES OF COMPETENCY AND DETERMINATIONS OF RESPONSIBILITY

1219.602	Procedures
1219.602-1	Referral

SUBCHAPTER 1219.7--THE SMALL BUSINESS SUBCONTRACTING PROGRAM

1219.704	Subcontracting plan requirements
1219.704-70	Reporting requirements
1219.705	Responsibilities of the contracting officer under the subcontracting assistance program
1219.705-2	Determining the need for a subcontracting plan
1219.705-3	Preparing the solicitation
1219.705-470	Reviewing the subcontracting plan
1219.705-5	Awards involving subcontracting plans
1219.705-6	Postaward responsibilities of the contracting officer
1219.705-7	Liquidated damages

SUBCHAPTER 1219.8--CONTRACTING WITH THE SMALL BUSINESS ADMINISTRATION (THE 8(a) PROGRAM)

1219.800	General
1219.803	Selecting acquisitions for the 8(a) Program
1219.803-70	Simplified procedures for 8(a) acquisitions under PAs
1219.804	Evaluation, offering, and acceptance
1219.804-2	Agency offering
1219.804-3	SBA acceptance
1219.804-70	SBA acceptance of 8(a) requirements under the PA for acquisitions exceeding \$150,000
1219.804-471	Repetitive acquisitions
1219.805	Competitive 8(a)
1219.805-2	Procedures
1219.806	Pricing the 8(a) contract
1219.808	Contract negotiation
1219.808-1	Sole Source
1219.810	SBA appeals
1219.811	Preparing the contracts
1219.811-1	Sole source
1219.811-2	Competitive
1219.811-70	Additional contract procedures
1219.812	Contract administration

SUBCHAPTER 1219.10 SMALL BUSINESS INNOVATION RESEARCH PROGRAM

1219.7001	Small Business Innovation Research (SBIR) Program
1219.7002	Procurement specific requirements for SBIR awards.

Appendix A -- DOT Partnership Agreement with The Small Business Administration

CHAPTER 1219 - SMALL BUSINESS PROGRAMS

SUBCHAPTER 1219.2 - POLICIES

1219.201 General policy.

(c) The Head of the Contracting Activity (HCA) is responsible for effectively implementing the small business program within their Operating Administration (OA), including achieving program goals. This responsibility may not be delegated.

(d)(2) The authority of the agency head to appoint the Director of Small and Disadvantaged Business Utilization may not be delegated.

(d)(7) and (8) The HCA acting on behalf of the Director, Office of Small and Disadvantaged Business Utilization (OSDBU) is authorized to assign a small business specialist to each contracting office where the Small Business Administration (SBA) has assigned an SBA procurement center representative (PCR). The Director, OSDBU shall concur in the assignment of all small business specialist.

(d)(9) The cognizant OA small business specialist acting on behalf of the OSDBU shall review each procurement request to comply with the requirements of FAR 19.

(i) Each OA Small Business Specialist (SBS) acting on behalf of the OSDBU shall recommend that a suitable requirement be awarded as a Small Business (SB) set-aside under subpart [FAR 19.5](#) as a small business set-aside, under subpart [FAR 19.8](#) as a Section 8(a) award, under subpart [FAR 19.13](#) as a HUBZone set-aside, under subpart [FAR 19.14](#) as a service-disabled veteran-owned small business set-aside, or under subpart [FAR 19.15](#) as a set-aside for economically disadvantaged women-owned small business (EDWOSB) concerns or women-owned small business (WOSB) concerns eligible under the WOSB Program.

(ii) Each OA Small Business Specialist shall be appointed, in writing, by the responsible HCA. A copy of the appointment shall be provided to the OSDBU. The responsibilities of the SBS include:

(iii) Ensures that all small businesses are given an equal opportunity to compete for DOT acquisitions;

(iv) Assist contracting officers in locating small businesses to participate in DOT acquisitions;

(v) Assist the Director, OSDBU in carrying out the purpose of the Small Business Act, particularly Sections 8 and 15, and 31 (15 U.S.C. § 637, 644 and 657a); and

- (6) Cooperate with the SBA PCR in carrying out their assignments and responsibilities as related to DOT acquisitions;
 - (7) Seek alternatives to the practice of contract bundling and help mitigate the effects of any unnecessary and unjustified contract bundling;
 - (8) Advise small businesses of all known financial assistance available to them under existing laws and regulations and assist them in applying for financial assistance;
 - (7) Participate in the evaluation of prime contractor's small business subcontracting plans;
 - (8) Assure that records are maintained and accurate reports prepared concerning small business participation in acquisition programs;
 - (9) Act as liaison with the appropriate SBA office or representative in connection with set-asides, certificates of competency, size classification, and any other matter concerning the small business programs;
 - (10) Participate in business opportunity, Federal procurement and other Government-industry conferences and meetings as required; and
 - (11) Review acquisition plan (AP) or strategy in accordance with [FAR 7.104\(d\)](#) and TAM 1207.171, unless the acquisition(s) is entirely set-aside for small business.
- (f)(1) The Director, OSDBU is the agency designee responsible for making the determination under [FAR19.201\(f\)\(1\)](#). The HCA shall notify the OSDBU when it is believed or if it receives public notification of undue burden on the information required by [FAR 19.201\(f\)\(1\)\(i\) through \(v\)](#). The HCA or designee is encouraged to discuss specific situations of burden with the OSDBU prior to submitting a formal notice to the OSDBU.

1219.201-70 Procurement Center Representative (PCR).

SBA PCR's are located at three facilities servicing DOT:

- (a) OA Headquarters in the Washington, DC -Metropolitan Area.

(b) Federal Highway Administration contracting office located in Denver, CO.

(c) Volpe National Transportation Systems located at the SBA office in Augusta, ME.

1219.202 Specific policies.

Any requirement which has previously been procured under the 8(a) program requires concurrence by the PCR and approval of the Director, OSDBU on DOT F 4250.1, Small Business Program Review Form. The approval shall be obtained prior to any public notice or solicitation of the requirement.

1219.202-1 Encouraging small business participation in acquisitions

(e) The contracting officer shall provide a copy of the proposed acquisition package to the SBA PCR at least 30 days before a solicitation is issued when the requirements at [FAR 19.202-1\(e\)](#) apply.

1219.202-270 DOT Procurement forecast.

The purpose of the DOT procurement forecast is to make available to small businesses, those expected contract opportunities that small business concerns, including those owned and controlled by socially and economically disadvantaged individuals, are capable of performing. The forecast is a summary of the advanced acquisition planning process conducted in each OA. The following requirements apply:

(1) *Responsibility.* The Head of the Operating Administration (HOA) or designee shall ensure that forecasts and any updates are prepared for expected contract opportunities valued over the simplified acquisition threshold. The procurement forecast shall be submitted with instructions from the OSDBU.

(2) *Preparation and approval.* The forecast shall be prepared and approved the year proceeding the fiscal year in which the procurement action will be initiated. The initial forecast shall be approved by the OA approving official no later than September 1 and submitted to the OSDBU by September 15. The OSDBU will coordinate with Small Business Specialist to input procurement forecast opportunities in the OSDBU website by no later than September 15th of each year. Updates to the procurement forecast shall occur immediately when there is a

change in the acquisition strategy, or the listed procurement opportunity has been awarded or cancelled. A negative response is required when neither an initial forecast nor update is contemplated for the period.

(3) *Exceptions.* The following proposed procurement actions should not be included in the forecast:

(a) Actions proposed under inter and intra agency agreements for work to be performed by Government employees;

(2) Intra-agency agreements between OST-R and DOT OAs where Volpe is the servicing agency;

(3) Actions conducted under the Small Business Innovative Research Program; and

(4) *Reporting.* The OSDBU will provide the initial forecast to the Administrator of the Small Business Administration and to small businesses as required by Title V, Contract Planning, Goal Setting and Reviews of Pub.L 100-656.

SUBCHAPTER 1219.5--SET-ASIDES FOR SMALL BUSINESS

1219.501 General.

(c) Each DOT proposed action exceeding the simplified acquisition threshold must be reviewed by the cognizant OA small business specialist prior to synopsisizing the requirement and the results documented in the file using the DOT Form 4250.1. The requirement must be reviewed for potential inclusion in the socio-economic programs. The COCO must resolve any disagreement between the SBS and the contracting officer on the determination. Disagreements between the SBS and personnel from the Small Business Administration will be resolved in accordance with [FAR 19.5](#).

1219.501-70 DOT Small Business Review Form

(a) Purpose. The DOT Small Business Review Form 4250.1 documents effort to ensure small business concerns are considered for inclusion in Federal Government acquisitions and that market research is conducted for each open market procurement.

(b) Requirement. In accordance with [FAR 19.202](#), specific Policies, OAs shall use DOT Form 4250.1 for all purchases over the simplified acquisition threshold to comply with the small business review requirements and to document consideration and recommendations for applicable acquisitions prior to synopsis or solicitation release. This form is not required for procurements processed under the SBIR Program.

(c) On a monthly basis, the OSDBU extracts contract award data from the Federal Procurement Data System (FPDS) at www.fpds-ng.gov. The data is used by OSDBU and the OAs to measure small business participation. OSDBU is responsible for furnishing end of the fiscal year data to SBA.

1219.501-71 Small Business Program Review DOT Form 4250.1.

(a) The CO along with the SBS and program official shall jointly complete the Small Business Program Review Form 4250.1 in accordance with the form instructions. Approval or concurrence shall take place in the following order:

(1) Set Aside Recommendation.

IF ...	THEN ...
i. IF the contracting officer recommends that the acquisition be set-aside,	THEN , the SBS is authorized to approve the form.
ii. IF the contracting officer does not recommend that the acquisition be set-aside OR recommends that the acquisition be removed from a set-aside program, or proposes to bundle a requirement,	THEN , the SBS must review the recommendation and determine whether or not to concur and the form shall be forwarded to the OSDBU/SBA PCR for review and action
iii. IF the OSDBU/SBA PCR does not concur with the CO/SBS recommendation,	THEN , the CO must furnish written notice of non-concurrence to the appropriate SBA representative within 5 working days of the CO's receipt of the SBA recommendation. However every effort should be made to reach a solution prior to involving the agency OSDBU.

IF , the PCR's recommendation is not accepted by the CO/SBS and OSDBU	THEN , the PCR may appeal the decision per FAR 19.505.
(2) Bundled Acquisitions.	
IF ...	THEN ...
i. IF either the SBS or PCR determines that bundling is necessary and justified, but does not meet the measurable substantial benefits at FAR 7.107(b)(1) and (2)	THEN , the OSDBU's signature is required for concurrence in the proposed bundled acquisition, and the Deputy Secretary must approve the action in accordance with FAR 7.107(c).
ii. IF an acquisition strategy involves contract bundling that is unnecessary, unjustified or unidentified as bundled in accordance with FAR 7.104(d)(1).	THEN , the SBS must notify the agency OSDBU.

(b) When a reviewer at any level, does not concur with another official's determination, the recommendation shall be justified in writing.

1219.502 Setting aside acquisitions.

1219.502-2 Total small business set –asides.

(b) If the contracting officer receives only one acceptable offer from a responsible small business concern in response to a set-aside, the contracting officer should make an award to that firm. If the contracting officer receives no acceptable offers from responsible small business concerns, the set-aside shall be withdrawn and the requirement, if still valid, shall be resolicited on an unrestricted basis.

1219.502-3 Partial set-asides.

(a)(5) The COCO is authorized to make the determination under [FAR 19.502-3\(a\)\(5\)](#). The determination shall be made on a case-by-case basis.

1219.505 Rejecting Small Business Administration recommendations.

(b) The COCO is authorized to render a written decision under [FAR 19.505\(b\)](#) to the SBA PCR within 7 working days. Pending issuance of a decision to the SBA PCR, the contracting officer shall suspend action on the acquisition.

(d) The COCO shall forward the justification that upheld the contracting officer's decision through the HCA to the Deputy Secretary.

(e) The Deputy Secretary is authorized to reply to the SBA Administrator's appeal within 30 working days when the agency rejects SBA's recommendation.

1219.506 Withdrawing or modifying small business set-asides.

(b) The COCO is responsible for resolving disagreements between the contracting officer and the OA SBS.

SUBCHAPTER 1219.6--CERTIFICATES OF COMPETENCY AND DETERMINATIONS OF RESPONSIBILITY

1219.602 Procedures.

1219.602-1 Referral.

(a)(2) The contracting officer shall forward a copy of the notice of nonresponsibility determination sent to SBA to the OSDBU.

1219.602-3 Resolving differences between the agency and the Small Business Administration.

(a) Certificate of Competencies (COCs) valued between \$100,000 and \$25,000,000. When following the procedures under [FAR 19.602-3](#), the contracting officer shall coordinate through the COCO and the OSDBU prior to SBA taking a final action on a COC.

(1) When the contracting officer and SBA cannot resolve disagreements regarding an SBA COC, the contracting officer shall proceed in accordance with [FAR 19.602-3](#).

(2) The COCO is authorized to receive SBA Headquarters' notice of a COC case file. A copy of the notice must be provided to the DOT OSDBU.

(3) If the contracting officer decides to file an appeal, the COCO is authorized to notify SBA Headquarters that the agency intends to appeal the issuance of the

COC. A copy of the notice of appeal must be provided to the DOT OSDBU within ten business days.

SUBCHAPTER 1219.7--THE SMALL BUSINESS SUBCONTRACTING PROGRAM

1219.704 Subcontracting plan requirements.

1219.704-70 Reporting requirements.

Prime contractors that meet the statutory requirements at [FAR 19.702](#) shall submit subcontracting accomplishments on the Individual Subcontracting Report (ISR) and the Summary Subcontracting Report (SSR) by using the web-based Electronic Subcontracting Report System (eSRS) at <http://www.esrs.gov> (see 19.704(a)(10)(iii)).

1219.705 Responsibilities of the contracting officer under the subcontracting assistance program.

1219.705-2 Determining the need for a subcontracting plan.

(c) A copy of the an agency pre-determination that no subcontracting opportunities will exist under a proposed requirement (see [FAR 19.705-2\(c\)](#)) must be approved at a level above the CO and shall be provided through the SBS and PCR to the Director, OSDBU for approval at least ten workdays prior to solicitation release and a copy placed in the contract file.

1219.705-3 Preparing the solicitation.

The contracting officer shall allow the SBA and the OSDBU five (5) days for a concurrent review of any solicitation requiring a subcontracting plan and to submission of advisory comments before the solicitation is issued. Failure of the SBA or OSDBU to submit comments within the time allotted will not delay issuance of the solicitation.

1219.705-470 Reviewing the subcontracting plan.

The individuals responsible for the subcontracting plan review process include the contracting officer, the OA SBS and the SBA's PCR. The approval authority for the subcontracting plan is the contracting officer, with the SBS, OSDBU and SBA

PCR providing support in advisory and assistance roles in accordance with FAR 19.705-4(d)(7) .

(a) The contracting officer shall approve the subcontracting plan in accordance with FAR 19.705-4 and the subcontracting plan demonstrates a good faith effort in utilizing small businesses as subcontractors. The subcontracting plan shall be incorporated into the contract.

1219.705-5 Awards involving subcontracting plans.

(a)(3) The contracting officer shall forward a copy of the proposed contract (including the subcontracting plan and documentation) to the SBA resident PCR and OSDBU concurrently, allowing five (5) days for their review and submission of advisory comments. Failure of the PCR or OSDBU to submit comments within the five (5) day period shall not delay award.

1219.705-6 Post-award responsibilities of the contracting officer.

(b) A copy of the approved small business subcontracting plan shall be provided to the Director, OSDBU within seven (7) days of contract award.

1219.705-7 Liquidated damages.

(d) The CO must consult with legal counsel, the SBS, and OSDBU prior to making a determination that the contractor failed to make a good faith effort to carry out the subcontracting plan and maintain a copy of the final decision in the contract file.

SUBCHAPTER 1219.8--CONTRACTING WITH THE SMALL BUSINESS ADMINISTRATION (THE 8(a) PROGRAM)

1219.800 General.

(f) The current DOT and the SBA Partnership Agreement (PA) delegates SBA's contract execution functions to the U.S. Department of Transportation (see 13 C.F.R. § 124.501). The PA sets forth the delegation of authority and establishes the basic procedures for expediting the award of 8(a) contract requirements. This PA replaces all terms and conditions of any previously executed Memorandum of Understanding (MOU) or PA with the U.S. Department of Transportation or subordinate agencies on the issue of expediting the award of requirements pursuant

to Section 8(a) of the Act. As stated in the PA the effective date was October 17, 2012 and does not have an expiration date.

1219.803. Selecting acquisitions for the 8(a) Program

1219.803-70 Simplified procedures for 8(a) acquisitions under PAs.

Contracting officers may use the simplified acquisition procedures at FAR 13 to issue purchase orders or contracts not exceeding the simplified acquisition threshold, to 8(a) participants. Contracting officers must also follow the procedures set forth in the DOT/SBA PA Section IV (c)(i) (ii) and (3) when using simplified acquisition procedures.

1219.804 Evaluation, offering, and acceptance.

1219.804-2 Agency offering.

(a) When applicable, this notification must identify that the offering is in accordance with the PA identified in TAM 1219.800.

1219.804-3 SBA acceptance.

(d)(2) The HCA is authorized to issue a determination on SBA's appeal of the contracting officer's determination of the NAICS code designation.

1219.804-70 SBA acceptance of 8(a) requirements under the PA for acquisitions exceeding the simplified acquisition threshold.

Contracting officers shall follow the procedures set forth in the PA when offering a potential 8(a) requirement to SBA for acceptance.

1219.804-471 Repetitive acquisitions.

Any requirement which has previously been procured through the 8(a) Program, but which is now being proposed for reprocurement outside of the 8(a) Program shall be approved by the Director, OSDDBU. The clearance shall be obtained prior to any public notice or solicitation of the requirement.

1219.805 Competitive 8(a).

1219.805-2 Procedures.

Contracting officers shall follow the procedures set forth in the PA Section IV (a) and (b) when submitting an offering letter for a competitive 8(a) procurement to SBA for acceptance.

1219.806 Pricing the 8(a) contract.

(a) When required by [FAR Part 15.4](#), the contracting officer shall obtain certified cost and pricing data directly from the 8(a) contractor.

1219.808 Contract negotiations.

1219.808-1 Sole Source.

(b) The 8(a) contractor is responsible for negotiating with the OA within the time established by the OA. If the 8(a) contractor does not negotiate within the established time and the OA cannot allow additional time, the OA may, after notification and approval by SBA, proceed with the acquisition from other sources.

(c) The OA contracting officer is authorized to negotiate directly with the 8(a) firm; however, if requested by the 8(a) firm, the SBA may participate in negotiations.

1219.810 SBA appeals.

The Deputy Secretary is authorized to render decisions on SBA appeals in accordance with [FAR 19.810](#).

1219.811 Preparing the contracts.

1219.811-1 Sole source.

(a) The contract to be awarded must be prepared in accordance with the PA according to TAM 1219.800.

(b) The award should be prepared in accordance with DOT's normal contracting procedures except for the following:

- (1) The award form shall cite 41 U.S.C. 253(c)(5) and 15 U.S.C.637(a) as the authority for use of other than full and open competition;
- (2) Include the appropriate clauses at (TAR) 1252.219-71, and 1252.219-72 which allow for direct award to the 8(a) contractor under the authority of the PA;
- (3) A single award document shall be used between the OA and the 8(a) contractor. As such, a single signature by the agency's contracting officer to enter into 8(a) contracts will suffice (i.e., an SBA signature will not be required). The 8(a) contractor's signature shall be placed on the award document as the prime contractor. The 8(a) contractor's name and address shall be placed in the "awarded to" or "contractor name" block on the appropriate form(s).

1219.811-2 Competitive.

- (a) Competitive 8(a) awards shall be prepared in accordance with the same standards in TAM 1219.811-1.
- (b) The process for obtaining signatures shall be as specified in TAM 1219.811-1(d).

1219.811-70 Additional contract procedures.

The contracting officer shall ensure that all proposed joint ventures involving 8(a) participants are approved by SBA before contracts are awarded. A copy of the approved joint venture must be included in the contract file.

1219.812 Contract administration.

- (d) The COCO is authorized to either confirm or withdraw the contracting officer's request to SBA to waive the requirement for contract termination.

SUBCHAPTER 1219.70 Small Business Innovation Research Program

1219.7001 Small Business Innovation Research (SBIR) Program.

(a) Purpose and Authority

The Small Business Innovation Research (SBIR) Program was established under the Small Business Innovation Development Act of 1982 (P.L. 97-219),

reauthorized until September 30, 2000 by the Small Business Research and Development Enhancement Act (P.L. 102-564), reauthorized until September 30, 2008 by the Small Business Reauthorization Act of 2000 (P.L. 106-554), and reauthorized through FY2017 by the 2012 Defense Authorization Act (P.L.112-81).

The statutory purpose of the SBIR Program is to strengthen the role of innovative small business concern (SBCs) in Federally-funded Research/Research and Development (R/R&D).

The goals of the Program are:

- (1) Stimulate technological innovation;
- (2) Meet Federal R/R&D needs;
- (3) Foster and encourage participation in innovation and entrepreneurship by socially and economically disadvantaged persons;
- (4) Increase private sector commercialization of innovations derived from Federal research and development funding.

To achieve these purposes the Act required that each agency with an extramural R&D budget of over \$1 billion set aside a percentage of their extramural R&D budget for a SBIR Program as described in the Program's Reauthorization. The set-aside percentage was raised to 2.6% in FY 2012 and will increase a minimum of .1% every year from FY2012-FY 2016. This increase in the set-aside percentage was included as part of the Program Reauthorization which was part of the 2012 National Defense Authorization Act (P.L. 112-81).

To comply with obligations of the 1982 Act, the Department of Transportation SBIR Program was established by memorandum dated November 5, 1982, the Secretary of Transportation delegated to the OST-R/Volpe National Transportation Systems Center (Volpe Center) the overall responsibility for implementing, coordinating and administering the DOT SBIR Program.

(b) The DOT SBIR Three Phase Program:

At least annually, DOT publishes a synopsis and solicitation to solicit from qualified SBCs, innovative research proposals for Phase I work that address high priority R/R&D topics. The topics that have the most potential to enter the

commercial marketplace are generated by each of DOT's participating operating administrations. In support of the Volpe Center's administration of the DOT SBIR Program, operating administrations participate in the solicitation and award process. The three phases are:

(1) **Phase I:** Phase I is an open, competitive process where SBCs submit proposals that respond to research topics contained in a solicitation. Proposals can be funded up to \$150,000.00 and have a period of performance of no more than six months. During this period the successful SBC focuses on the conduct of feasibility-related experimental or theoretical research or R/R&D in response to specified research requirements. These requirements, as defined by each operating administration's research topic statement contained in a solicitation, may be general or narrow in scope, depending on the needs of the administration. The primary objective and basis for a Phase I award is the scientific and technical merit of the proposal and its relevance to DOT requirements. Several SBCs with different proposed solutions to a given problem may be awarded Firm-Fixed Price (FFP) type Phase I contracts. Only awardees in Phase I can submit a proposal for and be awarded a Phase II contract.

(2) **Phase II:** The objective of Phase II is to continue the R/R&D effort from the completed Phase I contract. Award of a Phase II contract is based upon the results of Phase I and the scientific and technical merit and commercial potential of the Phase II proposal. Commercial potential includes the ability to transition the technology to private sector applications, Government applications, or Government contractor applications.

Phase II B. Sequential Phase II or IIB, awards may be granted to advance and/or accelerate active Phase II to advance and/or accelerate currently active Phase II SBIR-funded technologies towards commercialization and/or enhance the overall strength of the commercial potential of the Phase II project.

(3) **Phase III:** Refers to work that derives from, extends, or logically concludes efforts(s) performed under a DOT or another Department's Phase I and/or Phase II contract. Phase III contracts are funded by sources other than the set-aside funds dedicated to the SBIR Program. Phase III is typically oriented toward commercialization of SBIR research and technology and may be for products, production, services, R/R&D or a combination thereof. The award may be made at any time and there is no limit on the number, duration, type, or dollar value of Phase III awards made to a SBC.

Questions regarding the DOT SBIR Program should be addressed to the following:

DOT/SBIR Program Office
U.S. Department of Transportation
Office of the Assistant Secretary for Research and Technology
John A. Volpe National Transportation Systems Center (Volpe Center)
55 Broadway, RVT-91
Cambridge, Massachusetts 02142-1093

Telephone: (617) 494-2051
Email: DOTSBIR@.dot.gov
Website: www.volpe.dot.gov/sbir

1219.7002 Procurement specific requirements for SBIR awards.

(a) Exemptions from TAM requirements. The following DOT policies and procedures as stipulated in the TAM do not apply when processing procurements under the SBIR Program:

- (1) TAM Subchapter 1204.70
- (2) TAM Subchapter 1207.1
- (3) TAM Section 1215.404-4(b)(1)
- (4) TAM Section 1215.404-70
- (5) TAM Section 1219.501(d)

(b) Procurement requirements applicable to SBIR awards. The following requirements apply when processing procurements under the SBIR Program in addition to all applicable federal and departmental regulations unless otherwise exempt:

- (1) DOT requires the use of iEdison (which stands for interagency Edison) for invention and patent reporting resulting under contracts awarded under the SBIR Program.

CHAPTER 1220 – RESERVED. There is no text implementing or supplementing FAR Part 20.

CHAPTER 1221 – RESERVED. There is no text implementing or supplementing FAR Part 21.

CHAPTER 1222--APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

1222.001 Definition.

SUBCHAPTER 1222.1—BASIC LABOR POLICIES

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1222.101-1	General
1222.101-170	DOT Labor Coordinator/Advisor
1222.101-3	Reporting labor disputes
1222.101-4	Removal of items from contractors' facilities affected by work stoppages
1222.103	Overtime
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SUBCHAPTER 1222.3--CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

1222.302	Liquidated damages and overtime pay
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SUBCHAPTER 1222.4—LABOR STANDARDS FOR CONTRACTS INVOLVING CONSTRUCTION

1222.404	Davis-Bacon Act wage determinations
1222.404-1	Types of wage determinations
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SUBCHAPTER 1222.5—USE OF PROJECT LABOR AGREEMENTS FOR FEDERAL CONSTRUCTION PROJECTS

1222.503	Policy
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SUBCHAPTER 1222.6—WALSH HEALY PUBLIC CONTRACT ACT

1222.604	Exemptions
1222.604-2	Regulatory exemptions
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SUBCHAPTER 1222.8--EQUAL EMPLOYMENT OPPORTUNITY

1222.803	Responsibilities
1222.804	Affirmative action programs
1222.804-2	Construction
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SUBCHAPTER 1222.10--SERVICE CONTRACT LABOR STANDARDS

1222.1003	Applicability
1222.1003-4	Administrative limitations, variations, tolerances, and exemptions
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1222.1008-1	Obtaining wage determinations
1222.1021	Request for hearing
1222.1021-70	Additional hearings data

SUBCHAPTER 1222.13—EQUAL OPPORTUNITY FOR VETERANS

1222.1305	Waivers
1222.1308	Complaint procedures
1222.1310	Solicitation provision and contract clauses

SUBCHAPTER 1222.14--EMPLOYMENT OF WORKERS WITH DISABILITIES

1222.1403	Waivers
1222.1406	Complaint procedures.
1222.1408	Contract clause.

SUBCHAPTER 1222.15—PROHIBITION OF ACQUISITION OF PRODUCTS PRODUCED BY INDENTURED CHILD LABOR

1222.1503 Procedures for acquiring end products on the list of products requiring contractor certification as to forced indentured child labor.

Appendix A--Determination and Finding

Appendix B--Semi-Annual Labor Compliance Report

Appendix C--Format for Requesting Equal Employment Opportunity Preaward clearances

CHAPTER 1222 - APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

1222.001 Definition.

For the purpose of DOT, the term "contracting agency," appearing in FAR Part 22, means the Operating Administration (OA).

SUBCHAPTER 1222.1—BASIC LABOR POLICIES

1222.101 Labor relations.

1222.101-1 General.

(e) The authority of the Head of the Contracting Activity (HCA) under FAR 22.101-1(e) to designate programs or requirements for which it is necessary that contractors be required to notify the Government of actual or potential labor disputes that are delaying or threaten to delay the timely contract performance is retained by the HCA.

1222.101-170 DOT Labor Coordinator/Advisor.

(a) The labor coordinator for the DOT is under the auspices of the Office of General Counsel, Office of the Secretary, Washington, DC.

(b) Each OA may appoint a labor advisor at the Headquarters level. If one is appointed, the OAs shall advise, in writing, the contracting offices for which they are responsible of the appointment. The labor advisor will be responsible for coordinating with and/or obtaining advice from the DOT labor coordinator on

contracting matters of a severe nature when deemed appropriate or as may be required by this chapter.

1222.101-3 Reporting labor disputes.

(a) Contracting officers shall report to their labor advisor, or the DOT labor coordinator if an OA labor advisor does not exist, any potential or actual labor disputes, such as strikes, that may have a serious impact on the Department's programs. The following information shall be provided to the advisor/coordinator:

(1) The contractor's and, if applicable, subcontractor's name, address, contract number, and the contractor's point of contact at the contractor's plant or the place where work is being performed such as a construction site;

(2) The date the strike began or will begin;

(3) The urgency or critical nature of the affected contract, and whether another source can perform the contract;

(4) Name, address, and telephone number of the local union and union representative(s);

(5) An assessment of the strike with regard to settlement of the issues;

(6) Number of employees affected by the strike; and

(7) The extent, if any, of participation by a federal or state mediation agency.

(b) The contracting officer shall advise, as applicable, the responsible OA labor advisor or DOT labor coordinator when the strike is terminated and the work has resumed under the contract.

1222.101-4 Removal of items from contractors' facilities affected by work stoppages.

(a) The contracting officer shall make the determination under FAR 22.101-4 according to the requirements contained therein. If the contracting officer makes the determination under FAR 22.101-4 to remove items or materials from the contractor's or subcontractor's facility, the contracting officer shall follow the procedures below:

(1) Contact the OA's labor advisor or DOT labor coordinator and apprise that person of the decision;

(2) Obtain a list of the contracts the contractor has with other Government agencies or DOT OAs. If contracts of the agency or OA are or may become involved in the removal of items, advise the applicable contracting office of the decision to remove items; and

(3) Unless otherwise advised by the labor advisor or labor coordinator, submit a written request for removal of items to the contractor and the union representative. The request shall include the following:

(i) A statement of the urgency or criticality of the items or materials;

(ii) A full description of the items including color, weight, dimensions, etc., quantity, the contract/subcontract number, the contract line item number, etc.; and

(iii) A decision on whether Government or contractor/subcontractors personnel will remove the items from the location, the mode of transportation and destination, and whether the delivery terms will not be the same as those in the contract.

(b) If the contractor or subcontractor and union representative grant the request for removal of items and Government personnel will remove the items, extreme care must be taken to avoid the use or appearance of force and prevent incidents that might detrimentally affect labor-management relations.

(c) If a negative response is received from the contractor, subcontractor, or union representative and the items are still critical, the contracting officer shall seek advice from the Chief of the Contracting Office (COCO) and the DOT labor coordinator on the next action to be taken. It may also become necessary to seek advice or assistance from the National Office of the Federal Mediation and Conciliation Service, 2100 K Street, N.W., Washington, DC, 20006, or other mediation agency.

1222.103 Overtime.

1222.103-4 Approvals.

(a) An official one level above the contracting officer is authorized to sign the Determination & Findings (D&F) required by FAR 22.103-4 unless a higher level is specified in OA procedures. The D&F shall be written in the format of Appendix A, and placed in the contract file.

SUBCHAPTER 1222.3--CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

1222.302 Liquidated damages and overtime pay.

(c)(1) The contracting officer is authorized to reduce the amount of liquidated damages assessed for liquidated damages of \$500 or less.

(c)(2) The contracting officer is authorized to release the contractor or subcontractor from the liability for liquidated damages of \$500 or less.

(c)(3) The contracting officer is authorized to recommend that the Secretary of Labor reduce or waive liquidated damages over \$500.

(d) The contracting officer is authorized to take the actions under FAR 22.302(d). If the contractor is entitled to any remaining assessments, the contracting officer shall provide instruction to the cognizant finance office. The contractor shall be provided with a written decision on the disposition of funds withheld and the basis for the decision.

SUBCHAPTER 1222.4—LABOR STANDARDS FOR CONTRACTS INVOLVING CONSTRUCTION

1222.404 Davis-Bacon Act wage determinations.

1222.404-1 Types of wage determinations.

(a)(2) Wage determinations are available via the Internet at: www.wdol.gov.

1222.404-6 Modifications of wage determinations.

(b)(6) For Sealed Bidding the contracting officer is authorized to request an extension of the 90-day period from the Administrator, Wage and Hour Division.

1222.404-10 Posting wage determinations and notice.

The contracting officer shall email a copy of Department of Labor (DOL) Publication WH-1321, Notice of Employees Working on Federal and Federally Financed Construction Projects for posting with the wage rates and an executed copy of the contract to the contractor. The poster is available via the Internet at <http://www.dol.whd/regs/compliance/poster/fedprojc.pdf> or by calling 1-866-4-USA-DOL.

1222.406 Administration and enforcement.

1222.406-2 Wages, fringe benefits, and overtime.

(b) (2) The contracting officer shall submit the information required by FAR 22.406-2(b)(2) to the Administrator, Wage and Hour Division, DOL. The contracting officer shall advise interested parties of DOL's determination within ten working days after receipt of the determination.

1222.406-8 Investigations.

(d) Contracting officer's report. The contracting officer shall submit the report of violations required under FAR 22.406-8(b) to the COCO. The contracting officer shall use Form DOT F 4220.8, Summary of Underpayments, to support the total number of employees cited on Standard Form (SF) 1446, Labor Standards Investigation Summary Sheet.

(2)(iv) The report to the Attorney General of the United States shall be coordinated with, and forwarded to the Department of Justice by the DOT Office of the General Counsel.

1222.406-9 Withholding from or suspension of contract payments.

(c) Disposition of contract payments withheld or suspended.

(4) Liquidated damages. If the contractor is entitled to funds withheld or collected for liquidated damages, the contracting officer shall provide instruction to the cognizant finance office. The contractor shall be provided with a written decision on the disposition of funds withheld and the basis for the decision.

1222.406-13 Semiannual enforcement reports.

(a) The Headquarters of each DOT OA shall submit the semiannual report by April 25 and October 25 of each calendar year by email to dws@fenix2.dol-esa.gov or by mail to Wage and Hour Division, Office of Enforcement Policy, Government Contracts Team, Room S3018, 200 Constitution Avenue, NW Washington DC 20210. Negative responses are not required.

(b) An original and one copy of each report shall be submitted in the Appendix B format, in accordance with the instructions therein.

SUBCHAPTER 1222.5—USE OF PROJECT LABOR AGREEMENTS FOR FEDERAL CONSTRUCTION PROJECTS

1222.503 Policy.

(a) DOT encourages the use of Project Labor Agreements in connection with large-scale construction projects \$25,000,000 and above in accordance with Executive Order 13502 and <https://one.dot.gov/ost/m1/m60>.

SUBCHAPTER 1222.6—WALSH -HEALEY PUBLIC CONTRACTS ACT

1222.604 Exemptions.

1222.604-2 Regulatory exemptions.

(b)(1) The HCA is authorized to request specific exemptions under FAR 22.604-2(b)(1). The Senior Procurement Executive (SPE) is authorized to request class exemptions under FAR 22.604-2(b)(1).

1222.608 Procedures.

(a) Award. The contracting officer shall provide email or mail DOL Publication WH-1313, Notice to Employees Working on Government Contracts along with the executed copy of the contract to the contractor. Copies of the poster may be obtained by writing to the Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210, ATTN: Wage and Hour-ESA Forms and Publications, Room S-3028. The poster is also available at <http://www.dol.gov/> or by calling 1-866-4-USA-DOL (872-365).

(b) Breach of stipulation. Unless otherwise specified by OA procedures, the contracting officer shall submit written notice of any violations to the applicable DOL region.

SUBCHAPTER 1222.8--EQUAL EMPLOYMENT OPPORTUNITY

1222.803 Responsibilities.

(c) The HOA is the individual responsible for ensuring that the requirements of FAR 22.8 are carried out within the agency, and for cooperating with and assisting the Office of Federal Contract Compliance (OFCCP) in fulfilling its responsibilities.

(d) The contracting officer shall obtain the assistance of the OA's local legal counsel on matters concerning the applicability of Executive Order (E.O.) 11246. If further assistance is needed, the matter shall be referred to the Deputy Assistant Secretary, Department of Labor in accordance with OA procedures.

1222.804 Affirmative action programs.

1222.804-2Construction.

(b) The Office of Federal Contract Compliance Program (OFCCP), DOL publishes in the Federal Register goals and timetables for minority and female utilization in the construction industry. This information is listed at http://www.dol-esa.gov/preaward/pa_reg.html.

1222.805 Procedures.

(a) Preaward clearances for contracts and subcontracts of \$10 million or more (excluding construction).

(1) Contracting officers shall conduct an initial search of a contractor's compliance records via the Internet at: <http://www.dol-esa.gov/preaward/> unless one of the exceptions in FAR 22.805(a)(8) or FAR 22.805(a)(8) apply.

(6) The contracting officer shall prepare a request in substantially the same format as Appendix C, in strict accordance with the instructions of the appendix, to prevent premature disclosure of the proposed contractor, subcontractor, if any, and the amount of the award. Since the OFCCP conducts the compliance review at the

primary point of production of each contractor and first-tier subcontractor, contracting officers shall request the clearance from the OFCCP regional office which has jurisdiction over the contractor and subcontractor. Additional information can be viewed at <http://www.dol.gov/ofccp/regs/compliance/preaward/pacrqsts.htm>.

(7) The 15 and 20-day preaward clearance requirement timeframes under FAR 22.805(a)(7) shall be included in the acquisition cycle milestone planning.

(b) Furnishing posters. The contracting officer may request copies of the poster titled "Equal Employment Opportunity is the Law, Discrimination is Prohibited" via telephone by calling 1-866-4-USA-DOL. The poster is also available via the Internet.<http://www.dol.gov/ofccp/regs/compliance/posters/pdf/Supplement>.

1222.807 Exemptions.

(a)(1) The HCA is authorized to determine that a contract is essential to the national security and that the award of the contract without complying with one or more of the requirements of FAR 22.8 is necessary to the national security.

(a)(2) For a request for exemption under FAR 22.807(a)(2), the signatory authority is the SPE;

(b)(5) For a request for exemption under FAR 22.807(b)(5), the signatory authority is the HCA; and

(c) The contracting officer shall prepare a D&F setting forth clear and convincing reasons why an exemption was necessary under FAR 22.807(a)(1), FAR 22.807(a)(2) or (b)(5). The D&F shall be in substantially the same format as Appendix A. All requests for exemptions shall be submitted via the HCA to the SPE for the Deputy Assistant Secretary's approval.

SUBCHAPTER 1222.10--SERVICE CONTRACT LABOR STANDARDS

1222.1003 Applicability.

1222.1003-4 Administrative limitations, variations, tolerances, and exemptions.

(a) The contracting officer shall submit requests for limitations, variances, tolerances, and exemptions under FAR 22.10, to the Wage and Hour Administrator via the OA labor advisor (if any). Also, see TAM 1222.1021 for additional procedures concerning rate variances.

1222.1003-7 Questions concerning applicability of the Act.

Contracting officers may request written or oral advice from the OA labor advisor or the DOT labor coordinator; requests to the Administrator, Wage and Hour Division, shall be in writing.

1222.1008 Procedures for obtaining wage determinations.

1222.1008-1 Obtaining wage determinations.

(f) If the contracting officer has questions regarding the procedures for obtaining a wage determination, or questions regarding the selection of a wage determination, the contracting officer should request assistance from the OA labor advisor.

1222.1008-2 Preparation of SF 98a.

The Wage and Hour Division's "Service Contract Act Directory of Occupations" may be available through the Government Printing Office (GPO) rider requisitioning process; therefore, contracting officers shall consult with the GPO or the OA directives coordinator prior to placing a direct purchase order for the Directory with GPO.

1222.1013 Review of wage determination.

Contracting officers shall request advice from the OA's labor advisor when the conditions under FAR 22.1013(a) or (b) exist.

1222.1014 Delay over 60 days in bid opening or commencement.

The contracting officer's inquiry to the Wage and Hour Division as required by FAR 22.1014 shall be in writing. A copy of the applicable wage determination shall be attached to the request to facilitate a prompt review and response by DOL. A telephone inquiry should be made if a response to the written inquiry is not received within a reasonable time.

1222.1021 Request for hearing.

1222.1021-70 Additional hearings data.

(a) Contracting Officers will forward requests for hearings to the Administrator, Wage and Hour Division, DOL, through their OA labor advisor or labor attorney, with a copy submitted to the SPE via email to Procurement.Support@dot.gov. In addition to the requirement of FAR 22.1021(a), the request for a variance hearing shall include copies of the relevant wage determination, if issued, collective bargaining agreement, and the e98 that requested the wage determination in question. The statement shall contain an analysis concerning the differences between the collectively bargained rates issued and the rates contained in the following:

(1) Corresponding Federal wage board rates and surveys (while it is not necessary that the challenged rate be higher than the corresponding Federal rate, this is an important factor);

(2) Relevant Bureau of Labor Statistics survey data and the comparable Service Contract Act wage determination;

(3) Other wage data (e.g., rates paid in local hospitals would be appropriate for comparison on contracts for hospital antiseptic services, while rates paid in local schools could be of value in comparison for janitorial or food service workers); and

(4) Other collectively-bargained wages and benefits.

(b) If the contracting officer cannot provide all of the information required in paragraph (a) above with the request for a hearing, the approximate time needed to obtain the data or to develop the information must be provided. The request shall clearly demonstrate the efforts being made to obtain or develop the information. A statement that data are not available will not be accepted by DOL.

(d) Unless the Administrator, Wage and Hour Division determines that extraordinary circumstances exists, requests for hearings that are not submitted within the timeframes referenced in FAR 22.1021(d)(1) and (2) will not receive consideration by DOL.

SUBCHAPTER 1222.13—EQUAL OPPORTUNITY FOR VETERANS

1222.1305 Waivers.

(a)(1) For a request for exemption under FAR 22.1305(a)(1), the signatory authority is the HCA or designee no lower than the Senior Executive Service (SES) level.

(a)(2) For a request for exemption under FAR 22.1305(a)(2), the signatory authority is the SPE.

(b) The HCA is authorized to grant the waiver under FAR 22.1305(b).

(c) The contracting officer shall prepare a D&F setting forth clear and convincing reasons why an exemption will be necessary under FAR 22.1305(a)(1) or (a)(2) or was necessary under FAR 22.1305(b). The D&F shall be in substantially the same format as Appendix A. The request to the Deputy Assistant Secretary, OFCCP, for an exemption under FAR 22.1305(a)(1) or (a)(2), or the notification to the Deputy Assistant Secretary, OFCCP, as required by FAR 22.1305(b) shall be submitted through the OA's channels to the above signatory authorities. The following procedures apply:

(1) When the approving official under FAR 22.1305 is the HCA, the OA shall communicate directly with the OFCCP to obtain OFCCP's written concurrence; and

(2) When the approving official under FAR 22.1305 is the SPE, the contracting officer shall forward the D&F through the appropriate channels to the Office of the Senior Procurement Executive for signature. After signature, the contracting officer shall communicate directly with the OFCCP to obtain OFCCP's written concurrence.

1222.1308 Complaint procedures.

The contracting officer shall forward complaints about the administration of the Vietnam Era Veterans Readjustment Assistance Act of 1972, as amended, directly to the DOL Veteran's Employment and Training Service. (A directory of Veterans' Employment and Training Service Regional and State offices is available at: <http://www.dol.gov/vets/aboutvets/contacts/main.htm>. All questions concerning the complaints shall be directed to the appropriate office of the DOL OFCCP. All questions concerning the complaints shall be directed to the appropriate office of the DOL.

1222.1310 Solicitation provision and contract clauses.

(a)(1)(ii) See TAM 1222.1305(b) for the waiver authority granted to the HCA.

SUBCHAPTER 1222.14--EMPLOYMENT OF WORKERS WITH DISABILITIES

1222.1403 Waivers.

(a)(1) The HCA or designee, at a level no lower than the SES, is authorized to waive any or all of the terms of the clause at FAR 52.222-36, Affirmative Action for Workers with Disabilities for any contract if a waiver is deemed to be in the national interest.

(a)(2) The SPE is authorized to waive any or all of the terms of the clause at FAR 52.222-36, Affirmative Action for Workers with Disabilities, for groups or categories of contracts if a waiver is in the national interest.

(b)(1) The HCA is the individual authorized to waive any requirement of FAR 22.14 when a contract is determined to be essential to the national security, and that its award without complying with such requirements is necessary to the national security.

(c) The contracting officer shall write a D&F setting forth clear and convincing reasons for the exception for the approving official specified under TAM 1222.1403(a)(1), (a)(2) or (b)(1)(b)(1). The D&F shall be in the format of and as required by Appendix A. The D&F and the concurrence shall be retained in the contract file. The following procedures apply:

(1) When the approving official under FAR 22.1403 is the HCA, the OA shall communicate directly with the OFCCP to obtain OFCCP's written concurrence; and

(2) When the approving official under FAR 22.1403 is the SPE, the contracting officer shall forward the D&F through the appropriate channels to M-60 for signature. After signature, the contracting officer shall communicate directly with the OFCCP to obtain OFCCP's written concurrence.

1222.1406 Complaint procedures.

When oral complaints are received, contracting officers shall request the nature of the complaint (e.g., by whom, against whom, the reason, etc.) signed by the plaintiff. The contracting officer shall submit directly to the OFCCP. Written complaints received by contracting officer shall be forwarded to the OFCCP by letter.

1222.1408 Contract clause.

(a)(2) See TAM 1222.1403(a)(1), (a)(2) or (b)(1) for waiver authorities granted to specific individuals.

(b) See TAM 1222.1403(a)(1), (a)(2) or (b)(1) for waiver authorities granted to specific individuals.

SUBCHAPTER 1222.15—PROHIBITION OF ACQUISITION OF PRODUCTS PRODUCED BY FORCED OR INDENTURED CHILD LABOR

1222.1503 Procedures for acquiring end products on the List of Products Requiring Contractor Certification as to Forced Indentured Child Labor.

(e) Contracting officers shall refer the matter for investigation to the Assistant General for Investigations, 1200 New Jersey Avenue, S.E., Washington, DC 20590.

Appendix A

DETERMINATION AND FINDINGS

Authority to
{indicate what is being waived, exempted, granted, etc.}

FINDINGS

1. {Identify the contracting office, OA, and agency (i.e., DOT), what is being acquired, and the intended use of the product or service.}
2. {Include, as applicable or appropriate, the information required by FAR 1.704.}

DETERMINATION

As {insert the title of the approving official that must sign this document}, I hereby determine that {state the determination made (e.g., the contract is essential to the national security, one or more of the terms of a clause is waived, overtime is essential to meet delivery or performance schedules, etc.)}.

Date: {Signature of the official making the determination and the date of the determination}

Appendix B

SEMI-ANNUAL LABOR COMPLIANCE REPORT

The following semi-annual report (Davis-Bacon and Related Acts and Contract Work Hours and Safety Standards Act) by {insert OA's name} is submitted as required by 29 C.F.R., Part 5.7(b), and All Agency Memorandum #189, dated February 5, 1998.

1. Period covered:
2. Number of prime contracts awarded:
3. Total dollar amount of prime contracts awarded:
4. Number of contractors against whom complaints were received:
5. Number of investigations completed:
6. Number of contractors found in violation:
7. Amount of back wages found due:
 - a. Davis-Bacon Act: (prevailing wage violations)
 - b. Contract Work Hours and Safety Standards Act (CWHSSA): (overtime violations)
8. Amount of back wages paid:
 - a. Davis-Bacon Act:
 - b. CWHSSA:
9. Total number of employees paid wage restitution under the Davis-Bacon and related Acts and/or CWHSSA:
10. Amount of liquidated damages assessed under CWHSSA:
Federal Agency:
Responsible Official:
Title:
Address and Phone No:
E-mail Address (if available)

DOT INSTRUCTIONS FOR COMPLETING THE SEMI-ANNUAL LABOR COMPLIANCE REPORT

1. Enter the beginning and ending dates of the period covered by the semiannual report.
 2. Enter the number of prime contracts which are subject to the Davis-Bacon Act (or any of the related statutes listed in 29 C.F.R. Part 5), awarded by the OA and/or (where applicable) its operating and management contractors. Include federally assisted contracts subject to these Acts.
 3. To the extent available, enter the total dollar amount of the contracts.
 4. Enter the total number of contractors (including subcontractors) against whom complaints were received by your OA.
 5. Enter the total number of investigations completed by your OA.
 6. Enter the number of contractors (including subcontractors) found in violation as a result of the investigations reported in item 5 above. Do not count a contractor or subcontractor more than once in a single investigation because of a violation of more than one Act, or because more than one contract is included in the investigation.
 7. Enter the total amount of back wages due employees of the contractors/subcontractors reported in item 6 above, showing under (a) the amount found due because of violations of the Davis-Bacon and Related Acts; and (b) the amount of back wages found due because of violations of the Contract Work Hours and Safety Standards Act.
 8. Enter the amount of back wages paid showing under (a) the back wages paid due to violations of the Davis-Bacon and Related Acts; and (b) the back wages paid due to violations of the Contract Work Hours and Safety Standards Act.
 9. Enter the number of employees paid wage restitution (i.e., back wages) under the Davis-Bacon and related Acts and/or the Contract Work Hours and Safety Standards Act. This figure is the unduplicated count; that is, an employee paid wage restitution as a result of an investigation shall be counted only once, regardless of the fact that the employee may have been paid wage restitution under the Davis-Bacon and Related Acts and also paid wage restitution under the Contract Work Hours and Safety Standards Act.
 10. Enter the total amount of liquidated damages assessed as a result of violations of the Contract Work Hours and Safety Standards Act, including any such amounts assessed by your OA as a result of investigations made by DOL.
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Appendix C

Format for requesting equal employment opportunity preaward clearances.

Department of Labor Office of Federal Contract Compliance Program

{Insert the address of the appropriate OFCCP regional office}

This letter, or portions thereof, contains PROPRIETARY OR SOURCE SELECTION INFORMATION related to the conduct of a Federal agency procurement, the disclosure of which is restricted by Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423). The unauthorized disclosure of such information may subject both the discloser and recipient of the information to contractual, civil and/or criminal penalties as provided by law.

An Equal Employment Opportunity preaward clearance is requested on {insert the name, address, and telephone number of the prospective contractor}

{Insert all other applicable information required by FAR 22.805(a)(5). The amount of the proposed contract(s) and subcontract(s), if any, shall not be disclosed. In lieu thereof, insert "\$10 million or more" as the estimated amount of the prime contract and first-tier subcontract(s).}

It is requested that verbal clearance and a written confirmation be provided as soon as possible to {insert the name, title, and telephone number of the point of contact in the contracting office}.

{Insert name, title, and signature of authorized contracting person}

Note: The first paragraph of the above letter is primarily for full and open competition acquisitions. The paragraph may be deleted or modified when requesting a preaward clearance for other than full and open competition acquisitions. Written pre-award clearances are not required if the contractor is listed on the Pre-Award Contractor Registry available via the Internet at <http://www.dol.gov/ofccp/regs/compliance/preaward/pacrqsts.htm>. If a contracting officer finds the name of the prospective contractor on the list, he or she need only note that the company was on the list and can proceed to issue the contract.

CHAPTER 1223--ENVIRONMENT, ENERGY AND WATER EFFICIENCY RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG FREE WORKPLACE

SUBCHAPTER 1223.1--Sustainable Acquisition Policy

1223.102	Authorities
1223.103	Sustainable Acquisitions
1223.105	Exemption Authority
1223.170	Statement of work sustainability requirements

SUBCHAPTER 1223.2--Energy and Water Efficiency and Renewable Energy

1223.203	Energy-efficient products
1223.204	Procurement exemptions
1223.205	Energy-savings performance contracts

SUBCHAPTER 1223.4--Use of Recovered Materials and Biobased Products

1223.403	Policy
1223.404	Agency affirmative procurement programs
1223.405	Procedures
1223.5	Drug-Free Workplace
1223.501	Applicability.
1223.7	Contracting for Environmentally Preferable Products and Services
1223.703	Policy
1223.704	Electronic products environmental assessment tool (EPEAT)

Appendix A DOT Green Procurement Program

<http://dotnet.dot.gov/employeeservices/sustainability/>

DOT Order 4351 - Overarching Sustainability Policy

DOT Order 4352 - Greenhouse Gas Emissions Policy

DOT Order 4353 - Sustainable Buildings Policy

DOT Order 4354 - Energy Conservation Policy

DOT Order 4355 - Water Management Policy

DOT Order 4356 - Pollution Prevention and Waste Management Policy

DOT Order 4357 - Sustainable Acquisition Policy

DOT Order 4358 - Electronics Stewardship Policy

DOT Order 4359 - Fleet Sustainability Policy
Secretary LaHood's Policy on Sustainability (July 2010)
Secretary LaHood's Policy on Adaptation (June 2011)
Recycling Policy for Headquarters (July 2011)
Recycling Guide for Headquarters (July 2011)
Action Memo - Renewable Energy Requirements (March 2011)
Printing Policy (February 2011)
Action Memo -Leadership in Sustainability Reporting (June 2011)
Action Memo - Energy and Water Audits at DOT Facilities (April 2011)
Memorandum on Climate Change Adaptation (March 2011)
Action Memo - 2011 SSPP Template for Operating Administrations (December 2010)
Action Memo - Data Call for Executive Order 13514 (November 2010)
Action Memo - FY2012 OA SSPPs (September 2011)

SUBCHAPTER 1223.1--Sustainable Acquisition Policy

1223.102 Authorities.

1223.103 Sustainable acquisitions.

(a) DOT policy is that it will advance sustainable acquisition by ensuring that 95 percent of new contract actions for the supply of products and for the acquisition of services (including construction) are:

(1) Energy-efficient (ENERGY STAR or Federal Energy Management Program (FEMP)-designated);

(2) Water-efficient;

(3) Biobased;

(4) environmentally preferable (*e.g.*, EPEAT-registered, or non-toxic or less toxic alternatives);

(5) Non-ozone depleting; or

(6) Made with recovered materials.

(b) The required products in the contract actions for services include products that are—

(1) Delivered to the Government during performance;

(2) Acquired by the contractor for use in performing services at a Federally-controlled facility; or

(3) Furnished by the contractor for use by the Government.

(c) The required products in the contract actions must meet agency performance requirements.

(d) For purposes of meeting the 95 percent sustainable acquisition requirement, “contract actions” includes new contracts (and task and delivery orders) on existing contracts.

1223.105 Exemption authority.

(a), (b) and (c) The head of the agency authority is delegated to the OA Administrator. However, all such actions require coordination with the Office of the Senior Procurement Executive.

1223.170 Statement of work sustainability requirements.

The following provision should be included in all statements of work for all new solicitations and contracts, as well as for all new task and delivery orders issued under existing contracts that do not include this requirement, that (1) require the delivery of services or construction; (2) require performance within the United States; and (3) meet the requirements of TAM 1223.103(b). Inclusion of this general requirement does not relieve the PR Initiator from including in the SOW explicit sustainability requirements applicable to the required services or construction (e.g., see samples of biobased SOW language on the Biobased website: www.biopreferred.gov/procurement_resources.aspx; and guidance on GSA Green Products Compilation Web Tool (www.sftool.gov/GreenProcurement)).

“To the maximum extent possible and consistent with the Federal Acquisition Regulations Part 23, the Government requires during the performance of the work under this Statement of Work (SOW) the Contractor to provide or use products that are: energy efficient (ENERGY STAR® or Federal Energy Management Program

(FEMA)-designated); water-efficient; biobased; environmentally preferable (e.g., EPEAT-registered, or non-toxic or less toxic alternatives); non-ozone depleting; or made with recovered materials. Unless otherwise identified in this SOW, each recovered materials or biobased product provided and delivered must meet, but may exceed, the minimum recovered materials or biobased content of an EPA- or USDA-designated product. The sustainable acquisition requirements specified herein apply only to products that are required to be: (1) delivered to the Government during contract performance; (2) acquired by the contractor for use in performing services (including construction) at a Federally-controlled facility; (3) furnished by the contractor for use by the Government; or (4) specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.”

Subchapter 1223.2 Energy and Water Efficiency and Renewable Energy

1223.203 Energy-Efficient products.

(b) In addition to the ENERGY STAR and Federal Energy Management Program (FEMP) websites provided below, the DOT Green Procurement Plan (see Appendix A), provides the Department’s established green procurement plan and policies for use in acquisition planning, solicitations and contract administration.

(1) ENERGY STAR® at <http://www.energystar.gov/products>; and

(2) FEMP at http://www1.eere.energy.gov/femp/procurement/eep_requirements.html

1223.204 Procurement exemptions.

DOT Operating Administrations shall specify products that are ENERGY STAR or FEMP labeled/approved products. The authority to make the determination that no ENERGY STAR or FEMP-designated product is reasonably available that meets the functional requirements of the Department; or no ENERGY STAR or that no FEMP-designated products is cost effective over the life of the product taking energy cost savings into account, is the COCO. The approved document shall be maintained in the contract file.

1223.205 Energy-savings performance contracts.

(c) DOT Operating Administration's may enter into Energy Savings Performance Contracts (ESPC) under 42 USC 8287, as amended, subject to the requirements of 10 CFR Part 436. The contracting officer shall submit the Department of Energy (DOE) schedule and Measurement & Verification (M&V) protocols for any ESPC action or order to: DOT Office of Administration. The purpose of early notification is to provide DOT Office of Administration the opportunity to provide assistance and guidance to the contracting activity and program officials.

Subchapter 1223.4 Use of Recovered Materials and Biobased Products

1223.403 Policy.

DOT has adopted the EPA and USDA guideline recommendations in implementing its GPP for recovered materials and biobased products. Program officials and contracting officers shall use product descriptions and prepare contract specifications reflecting cost-effective procurement and use of designated recycled and biobased products, encouraging bidders to supply products containing recycled materials and biobased products. A program office initiating an acquisition has the responsibility for determining:

- (1) Whether recovered materials and/or biobased products should be included in the specifications for designated items; and
- (2) Whether the statement of work and/or specification involve(s) the use of items subject to the DOT GPP (Appendix A).

1223.404 DOT Green Procurement Programs.

- (a) The DOT's Green Procurement Program is provided as Appendix A and must be used by DOT OAs.

1223.405 Procedures.

- (a) *Designated items and procurement guidelines.*

(1) Recovered Materials. Section 6002 of the Resource Conservation and Recovery Act (RCRA) requires the Department to apply purchasing preferences to products containing recovered materials. EPA's Comprehensive Procurement Guideline for Federal agencies at 40 CFR 247, implements the Federal Government's buy-recycled program and designates recovered materials items

which Federal agencies must give preference. For items designated in EPA guidelines, procurements must include products composed of the highest percentage of recovered materials practicable. See <http://www.epa.gov/epawaste/consERVE/tools/cpg/products/index.htm> for a list of EPA designated items.

(2) Biobased products. The Biobased Products Preference Program sponsored by the United States Department of Agriculture (USDA) is modeled after the EPA Recovered Material Program. The USDA has selected and prioritized items for designation as “preferred” biobased products. The USDA, other Government agencies, private industry groups, and independent manufacturers have evaluated these items against program criteria established collaboratively. See <http://www.biopreferred.gov/BioPreferred/faces/catalog/Catalog.xhtml> for a list of designated biobased preferred products.

(b) *Procurement exemptions.*

(2) When an exemption is used for an EPA-designated item or the procurement of a product containing recovered material does not meet or exceed the EPA recovered material content guidelines, the contracting officer shall place a written justification in the contract file. The contracting officer’s decision and written determination must be based on EPA criteria at <http://www.epa.gov/epaoswer/non-hw/procure/backgrnd.htm> or 40 CFR 247.

Subchapter 1223.5—Drug-Free Workplace

1223.501 Applicability.

(d) The Head of the Operating Administration (HOA) is authorized to determine the applicability of this subchapter for contracts by law enforcement agencies under [FAR 23.501\(d\)](#).

Subchapter 1223.7 Contracting for Environmentally Preferable Products and Services

1223.703 Policy.

(a) DOT's cost-effective contracting preference program is established in the attached Affirmative Procurement Program (Appendix A).

(b)(2) Where applicable, DOT Operating Administrations shall purchase WaterSense labeled products and choose irrigation contractors who are certified through a WaterSense labeled program. WaterSense is a voluntary Environmental Protection Agency public-private partnership that identifies and promotes high-performance products and programs that help preserve the nation's water supply. Additional information is available at www.epa.gov/watersense. Products currently included in the WaterSense label program include high efficiency toilets, showerheads, bathroom sink faucets, landscaping irrigation services and weather or sensor based irrigation technologies. The DOT Affirmative Procurement Plan at Appendix A includes information about currently available products. The www.epa.gov/watersense website is routinely updated with new product information and should be consulted as needed.

1223.704 Electronic products environmental assessment tool (EPEAT).

(c) The authority to grant an exception that no-EPEAT-registered product meets agency requirements is delegated to the contracting officer. The contracting officer must coordinate the requirements or program official's submitted documentation with the Office of Administration before granting an exception. The exception shall be documented and placed in the contract file.

CHAPTER 1224 - PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

SUBCHAPTER 1224.1—PROTECTION OF INDIVIDUAL PRIVACY

1224.103 Procedures.

SUBCHAPTER 1224.1—PROTECTION OF INDIVIDUAL PRIVACY

1224.103 Procedures.

(a) The requirement for Contracting Officer and OA Privacy Officer review of information technology system acquisitions that may fall under the Privacy Act of 1974 and the E-Government Act of 2002, is found at TAM 1239.1.

(b) The requiring and contracting offices shall review requirements for work on any publicly accessible DOT website to ensure appropriate privacy language is included in procurement requests. This language should normally be part of the statement of work, in accordance with the memorandum entitled, (DOT) Public Web Site Requirements, dated May 18, 2004, and shall state as follows:

“The contractor shall ensure that the publicly accessible Web site conforms to the privacy requirements of the E-Government Act of 2002. This includes ensuring the website:

(1) Uses only session cookies and no persistent cookies or other persistent tracking devices.

(2) Posts a privacy policy titled, "Privacy Policy" that meets OMB and E-Government Act requirements for federal public web sites.

(3) Provides a link to the privacy policy that is labeled, “Privacy Policy” on the homepage, all known major entry points into the web site and all pages that collect personal information.

(4) Posts an accurate and complete XML translation of the Privacy Policy, according to World Wide Web Consortium Platform for Privacy Preferences standards.

The contractor shall provide access to the Government for the purposes of performing scans or conducting other verification techniques to ensure the above requirements are met.”

CHAPTER 1225 - FOREIGN ACQUISITION

SUBCHAPTER 1225.1--BUY AMERICAN ACT--SUPPLIES

- 1225.103 Exceptions.
- 1225.105 Determining reasonableness of cost.

SUBCHAPTER 1225.2—BUY AMERICAN ACT —CONSTRUCTION MATERIALS

- 1225.202 Exceptions.

SUBCHAPTER 1225.10—ADDITIONAL FOREIGN ACQUISITION REGULATIONS

- 1225.1001 Waiver of right to examination of records

SUBCHAPTER 1225.1--BUY AMERICAN ACT--SUPPLIES

1225.103 Exceptions.

(a) *Public Interest.* The Head of the Operating Administration (HOA) is authorized to determine that domestic preference would be inconsistent with the public interest.

(b) *Non availability.*

(b)(1)(iii)(C) The support documentation and the determination shall be submitted to the Senior Procurement Executive (SPE) along with the same documentation requirements as a TAR change found at TAR 1201.301-70. The SPE will forward the information to the Civilian Agency Acquisition Council for consideration.

(b)(2)(i) The Chief of the Contracting Office (COCO) is authorized to make the determination that an article, material, or supply is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(b)(2)(ii) The support documentation and the determination shall be submitted to the SPE along with the same documentation requirements as a TAR change found at TAR 1201.301-70. The SPE will forward the information to the Civilian Agency Acquisition Council for consideration.

1225.105 Determining reasonableness of cost.

(a)(1) The COCO is authorized to determine that evaluation of offers under a foreign acquisition will differ from the procedures in [FAR 25.105](#). Determinations must be sent to the SPE for possible publication in the TAR.

SUBCHAPTER 1225.2—BUY AMERICAN ACT —CONSTRUCTION MATERIALS

1225.202 Exceptions.

(a)(1) The COCO is authorized to determine that application of the restrictions of the Buy American Act to a particular construction material would be impracticable and inconsistent with the public interest.

SUBCHAPTER 1225.10—ADDITIONAL FOREIGN ACQUISITION REGULATIONS

1225.1001 Waiver of right to examination of records.

(a)(2)(iii) With the concurrence of the Comptroller General, the Head of the Contracting Activity (HCA) is authorized to determine that it will best serve the interest of the United States to use the appropriate alternate clause under [FAR 25.1001\(a\)\(2\)](#). This authority may not be delegated.

CHAPTER 1226 - OTHER SOCIOECONOMIC PROGRAMS

SUBCHAPTER 1226.1--INDIAN INCENTIVE PROGRAM

1226.103 Procedures

SUBCHAPTER 1226.2 --DISASTER OR EMERGENCY ASSISTANCE ACTIVITIES

1226.202 Local area preference
1226.202-2 Evaluation preference
1226.203 Transition of work
1226.205 Disaster Response Registry

SUBCHAPTER 1226.1--INDIAN INCENTIVE PROGRAM

1226.103 Procedures.

(f) The contracting officer must make a decision under [FAR 26.104](#) prior to issuing the solicitation. If the contracting officer decides that subcontracting opportunities exist, funds must be obtained to cover the anticipated 5 percent prime contractor incentive payment as it applies to the amount paid the subcontractor. Otherwise, the contracting officer may be in violation of the Anti-Deficiency Act (31 U.S.C. 1341). OA budget or finance procedures shall be followed to obtain the funds.

SUBCHAPTER 1226.2--DISASTER OF EMERGENCY ASSISTANCE ACTIVITIES

1226.202 Local area preference.

1226.202-2 Evaluation preference.

DOT OAs are authorized to provide preferences to local organizations, firms, and individuals when contracting for major disaster or emergency assistance activities when the President has made a declaration under the Robert T. Stafford Disaster Relief Act.

1226.203 Transition of work.

(b) The authority to determine that transitioning work in the performance of response, relief, and reconstruction contracts or activities in effect on the date on which the President declares a major disaster or emergency to local firms is not feasible or practicable is delegated to the Head of the Contracting Activity.

1226.205 Disaster Response Registry

(b) A list of prospective vendors voluntarily participating in the Disaster Response Registry can be retrieved using the System for Award Management (SAM) search tool, which can be accessed via <https://www.acquisition.gov>. These vendors may be identified by selecting the criteria for “Disaster Response Contractors”. Contractors are required to register with SAM in order to gain access to the Disaster Response Registry.

CHAPTER 1227—PATENTS, DATA, AND COPYRIGHTS

SUBCHAPTER 1227.3—PATENT RIGHTS UNDER GOVERNMENT CONTRACTS

1227.302	Policy
1227.303	Contract clauses
1227.304	Procedures
1227.304-1	General
1227.305	Administration of Patent Rights Clauses
1227.305-4	Protection of Invention Disclosures

SUBCHAPTER 1227.3--PATENT RIGHTS UNDER GOVERNMENT CONTRACTS

1227.302 Policy.

1227.303 Contract clauses.

The Head of the Contracting Activity (HCA) is authorized under [FAR 27.303\(a\)\(3\)](#), [FAR 27.303\(a\)\(3\)](#) and [\(d\)\(1\)](#) to make the determination, at the time of contracting, that it would be in the national interest to acquire the right to sublicense foreign governments or international organizations pursuant to any existing or future treaty or agreement.

1227.304 Procedures.

1227.304-1 General.

(a)(3) The COCO is authorized under [FAR 27.304-1\(a\)\(3\)](#) to make a decision on the contractor's appeal of the agency determination. The decision shall be coordinated with legal counsel.

(g) The COCO is authorized to initiate a march-in proceeding according to [FAR 27.304-1](#). The decision to initiate a march-in proceeding shall be coordinated with legal counsel.

1227.305 Administration of Patent Rights Clauses.

1227.305-4 Protection of Invention Disclosures.

(b) When a contractor discloses an invention under a contract, the contracting officer shall consult with the Operating Administration (OA) Patent Counsel to determine the proper action to be taken. If the OA does not have a Patent Counsel, the DOT Patent Counsel shall be consulted before proceeding.

CHAPTER 1228 - BONDS AND INSURANCE

SUBCHAPTER 1228.1--BONDS AND OTHER FINANCIAL PROTECTIONS

1228.101	Bid guarantees
1228.101-1	Policy on use
1228.105	Other types of bonds
1228.106	Administration
1228.106-2	Substitution of surety bonds
1228.106-6	Furnishing information
1228.170	Performance Guarantee Timeframes

SUBCHAPTER 1228.2--SURETIES AND OTHER SECURITY FOR BONDS

1228.202	Acceptability of corporate sureties
1228.203	Acceptability of individual sureties
1228.203-7	Exclusion of individual sureties
1228.204	Alternatives in lieu of corporate or individual sureties
1228.204-1	United States bonds or notes.

SUBCHAPTER 1228.1--BONDS AND OTHER FINANCIAL PROTECTIONS

1228.101 Bid guarantees.

1228.101-1 Policy on use.

(c) The HCA is authorized to approve a class waiver from the requirement to obtain a bid guarantee when a performance or a performance bond and payment bond is required.

1228.105 Other types of bonds.

The contracting officer is authorized to approve the use of other types of bonds in connection with acquiring particular supplies or services.

1228.106 Administration.

1228.106-2 Substitution of surety bonds.

(a) The contracting officer is authorized to approve the substitution of a new surety bond covering all or part of obligations on a bond previously approved.

1228.106-6 Furnishing information.

(c) The contracting officer is the individual who will furnish to the requestor a certified copy of the payment bond and the contract for which it was given, and determine the reasonable and appropriate costs the requestor must pay for the preparation of copies.

1228.170 Performance Guarantee Timeframes

When performance guarantees are required, the contracting officer should consider including a contract requirement to have the performance guarantee include the warranty period, which is typically one year after final acceptance. The contract requirement should state “performance and/or payment bonds will be permitted as prescribed in [FAR Part 28](#), and will be held or at least one year after the completion of the contract.”

SUBCHAPTER 1228.2--SURETIES and Other Security for Bonds

1228.202 Acceptability of corporate sureties.

(d) [Department of the Treasury's Listing of Approved Sureties \(Department Circular 570\)](#) is published annually on July 1. Interim changes are published in the Federal Register as they occur and may be obtained at <http://www.fms.treas.gov/c570/>.

1228.203 Acceptability of individual sureties.

(g) Contracting officers shall refer evidence of possible criminal or fraudulent activities by an individual surety to legal counsel for review and further action.

1228.203-7 Exclusion of individual sureties.

(a) The HCA is authorized to exclude an individual from acting as a surety on bonds submitted by offerors on procurements by the executive branch of the Federal Government.

(d) The HCA must state, in writing, the compelling reasons for justifying acceptance of a bond from an individual surety whose name is on the System for Award Management at <https://www.sam.gov>.

1228.204 Alternatives in lieu of corporate or individual sureties.

(a) HCAs shall establish required safeguards to protect against the loss of the security.

(d) The Contracting officers shall not accept the bonds of individual sureties whose names appear in the System for Award Management Exclusions (see 9.404) unless the HCA states in writing the compelling reasons justifying acceptance.

1228.204-1 United States bonds or notes.

(b) HCAs shall establish procedures consistent with Treasury Department Circular No. 154 for bonds and notes received by contracting officer located outside of the District of Columbia.

CHAPTER 1229 - TAXES

SUBCHAPTER 1229.1--GENERAL

1229.101 Resolving tax problems

SUBCHAPTER 1229.3—STATE AND LOCAL TAXES

1229.303 Application of State and local taxes to Government contractors and subcontractors

SUBCHAPTER 1229.4—CONTRACT CLAUSES

1229.401 Domestic contracts

1229.401-4 New Mexico gross receipts and compensating tax

SUBCHAPTER 1229.1--GENERAL

1229.101 Resolving tax problems.

(a) For the purpose of [FAR 29.101](#), the designated legal counsel for the Operating Administrations (OAs) is their Office of Chief Counsel. For the Office of the Secretary (OST), the designated legal counsel is the Office of the General Counsel

(b) Contracting officers shall seek the advice of the OA legal counsel, when the following problems or circumstances exist:

(1) When tax problems cannot be resolved in accordance with the policy and procedures of [FAR Part 29](#);

(2) When the Department of Justice must be consulted for representation or intervention in proceedings concerning taxes;

(3) When a state or local tax appears to have a direct effect on an interstate commerce transaction;

(4) When a judicial or administrative action against the contractor is threatened;

(5) When an actual or potential tax is imposed which resulted from an amendment to a tax law or a change made by tax authorities;

(6) When there is a possibility that paid taxes will be refunded; and

(7) When a problem concerns actual or potentially large sums of taxes.

(c) All problems forwarded to the OA's legal counsel for review and/or resolution shall be accompanied by the following:

(1) A copy of the contract, when applicable;

(2) A comprehensive statement of the facts, any substantiating documents or correspondence, the legal issues, and recommended course of action, if any; and

(3) When applicable, a statement concerning the effect the problem has or will have on existing acquisition policy and procedures, and any recommended changes to them. Any recommended changes to DOT policy or procedures concerning taxes shall be transmitted through appropriate channels to the SPE for action.

SUBCHAPTER 1229.3—STATE AND LOCAL TAXES

1229.303 Application of State and local taxes to Government contractors and subcontractors.

The Head of the Contracting Activity (HCA) is authorized under [FAR 29.303\(a\)](#) to review contentions that a contractor is an agent of the Government for the purpose of claiming immunity from State or local sales or use taxes. HCA decisions concerning the designation of prime contractors and subcontractors as agents of the Government for the purpose of claiming immunity from State or local sales or use taxes shall be coordinated with legal counsel.

Subchapter 1229.4—Contract clauses

1229.401 Domestic contracts.

1229.401-4 New Mexico gross receipts and compensating tax.

(c) Participating agencies. DOT entered into an agreement with the State of New Mexico Taxation and Revenue Department, on January 18, 1990.

CHAPTER 1230 - COST ACCOUNTING STANDARDS ADMINISTRATION

SUBCHAPTER 1230.2--CAS PROGRAM REQUIREMENTS

1230.201	Contract requirements
1230.201-5	Waiver
1230.201-7	Cognizant federal agency responsibilities
1230.202	Disclosure requirements
1230.202-2	Impracticality of submission

SUBCHAPTER 1230.2--CAS PROGRAM REQUIREMENTS

1230.201 Contract requirements

1230.201-5 Waiver.

(a) The Senior Procurement Executive (SPE) may waive the applicability of the Cost Accounting Standards (CAS) that meets the conditions in [FAR 30.201-5\(b\)](#). Waiver requests shall be submitted to the SPE for approval at least 30 days before the anticipated contract award.

(d) Request for waiver of applicability of Cost Accounting Standards (CAS) under the conditions of [FAR 30.201-5\(d\)](#) shall be submitted to the SPE for review and forwarding to the CAS Board.

(e) The Office of the SPE will submit DOT's report to the CAS Board for any waivers granted under paragraph (a), on a fiscal year basis, not later than 90 days after the close of the Government's fiscal year.

1230.201-7 Cognizant Federal Agency responsibilities.

Contracting officers shall not individually administer CAS on a contract-by-contract basis. Administration of CAS should be delegated to the particular contractor organization or location, which is usually the Federal agency responsible for negotiating indirect cost rates on behalf of the Government. Contracting officers shall ensure coordinated administrative actions provide assurance that individual contractors follow their cost accounting practices

consistently under all CAS covered contracts and that noncompliance issues are resolved, equitably, and uniformly.

1230.202 Disclosure requirements.

1230.202-2 Impracticality of submission.

The authority of the agency head to determine that it is impractical to secure the Disclosure Statement and authorize contract award under FAR 30.202-2 is non-delegable.

CHAPTER 1231 - CONTRACT COST PRINCIPLES & PROCEDURES

SUBCHAPTER 1231.1 APPLICABILITY

- 1231.101 Objectives
- 1231.109 Advance agreement

SUBCHAPTER 1231.2 CONTRACTS WITH COMMERCIAL ORGANIZATIONS

- 1231.205 Selected costs
- 1231.205-6 Compensation for personal services
- 1231.205-32 Pre-contract costs

SUBCHAPTER 1231.1—APPLICABILITY

1231.101 Objectives.

Request for individual and class deviation concerning cost principles shall be submitted to the Office of The Senior Procurement Executive (SPE) for processing. The SPE is delegated the authority to grant individual deviations. The SPE will forward request for class deviation to the Civilian Agency Acquisition Council (CAAC) for approval.

1231.109 Advance agreements.

See TAM 1231.205-32.

SUBCHAPTER 1231.2 - CONTRACT WITH COMMERCIAL ORGANIZATIONS

1231.205 Selected costs.

1231.205-6 Compensation for personal services.

(g)(6) The Head of the Contracting Activity (HCA), or designee at a level no lower than that of the COCO is authorized to grant the waiver under [FAR 31.205-6\(g\)\(6\)](#).

1231.205-32 Pre-contract costs.

(b) The use of an "advance agreement," "anticipatory costs," or any other type of "if and when" statement as a vehicle to authorize pre-contract costs is inappropriate. However, such documents may be used to establish agreement on the treatment of pre-contract costs such as the effort to be performed, amount to be reimbursed if a contract is awarded. These documents may only be used in exceptional circumstances where a written approval has been granted by the Chief of the Contracting Office (COCO). The request for COCO approval shall include:

(1) Identification of the requirement and a brief description of the work for which pre-contract costs are necessary;

(2) A statement that all statutory and regulatory actions required to justify source selection has occurred;

(3) Name of the prospective contractor;

(4) Total amount of pre-contract costs involved and a statement that the funds necessary to cover this amount have been provided to the contracting officer;

(5) Total estimated time of the effort requiring pre-contract costs;

(6) Justification for why it is necessary for the contractor to proceed prior to contract award; and

(7) A statement that the contracting officer advises the prospective contractor that incurrence of pre-contract costs is solely at its own risk and that in the event negotiations do not result in a contract, the Government shall be under no obligation to reimburse the contractor for pre-contract costs.

CHAPTER 1232 - CONTRACT FINANCING

1232.006	Reduction or suspension of contract payments upon finding of fraud
1232.006-1	General
1232.006-3	Responsibilities
1232.006-4	Procedures
1232.006-5	Reporting

SUBCHAPTER 1232.1--NON-COMMERCIAL ITEM PURCHASE FINANCING

1232.102	Description of contract financing methods
1232.105	Uses of contract financing
1232.114	Unusual contract financing

SUBCHAPTER 1232.2--COMMERCIAL ITEM PURCHASE FINANCING

1232.201	Statutory authority
1232.202-4	Security for Government financing
1232.206	Solicitation provisions and contract clauses

SUBCHAPTER 1232.4--ADVANCE PAYMENTS FOR NON-COMMERCIAL ITEMS

1232.402	General
1232.404	Exclusions
1232.407	Interest
1232.409	Contracting officer's actions
1232.409-1	Recommendation for approval
1232.409-2	Recommendation for disapproval

SUBCHAPTER 1232.5--PROGRESS PAYMENTS BASED ON COSTS

1232.501	General
1232.501-2	Unusual progress payments
1232.502	Pre-award matters
1232.502-2	Contract finance office clearance
1232.504	Subcontracts under prime contracts providing progress payments

SUBCHAPTER 1232.6--CONTRACT DEBTS

1232.602	Responsibilities
1232.604	Demand for payment
1232.608	Interest
1232.608-1	Interest charges

SUBCHAPTER 1232.7--CONTRACT FUNDING

1232.702	Policy
1232.702-70	Procurement requests
1232.703-3	Contracts crossing fiscal years.
1232.770	Volpe National Transportation Systems Center Working Capital Fund

SUBCHAPTER 1232.8--ASSIGNMENT OF CLAIMS

1232.802	Conditions
1232.803	Policies

SUBCHAPTER 1232.9--PROMPT PAYMENT

1232.903	Responsibilities
1232.904	Determining payment due dates
1232.905-70	Final payment documentation
1232.906	Making payments

SUBCHAPTER 1232.11--ELECTRONIC FUNDS TRANSFER

1232.1107-70	Payment Information
1232.1110	Solicitation provision and contract clauses

SUBCHAPTER 1232.70 – CONTRACT PAYMENTS

- Appendix A -- Determinations and Findings
- Appendix B -- Demand for Payment Letter to Department of Transportation Contractors
- Appendix C -- Demand for Payment Letter Defective Pricing
- Appendix D -- Demand for Payment Letter, Cost Accounting Standards (CAS)
- Appendix E -- Demand for Payment Letter, Contract Clause Requiring Interest from date of Overpayment (Other than Defective Pricing or CAS)

Appendix F -- Demand for Payment Letter , Contract Does Not include a Clause Requiring Interest Payment
Appendix XXXD-- Requirements Package Checklist

CHAPTER 1232 - CONTRACT FINANCING

1232.006 Reduction or suspension of contract payments upon finding of fraud.

1232.006-1 General.

(b) The Head of the Operating Administration (HOA) is authorized to determine if there is substantial evidence that the contractor's request for advance, partial, or progress payments is based on fraud. The HOA, or designee, shall hold a rank no lower than Level IV of the Executive Schedule. This authority does not apply to commercial interim payments under [FAR 32.2](#), or performance-based payments under [FAR 32.10](#).

1232.006-3 Responsibilities.

(a) The DOT Office of Inspector General is authorized to develop specific procedures relating to reduction or suspension of contract payments upon a finding of fraud.

(b) Government personnel shall follow the procedures found in DOT Order 8000.5 series, to report suspected fraud related to advance, partial, or progress payments.

1232.006-4 Procedures.

(a) The remedy coordination official for DOT is the Inspector General.

1232.006-5 Reporting.

The HOA shall prepare the report required by [FAR 32.006-5](#). The HOA, or designee, no lower than Level IV of the Executive Schedule. As a minimum, the report shall contain the recommendations of the remedy coordination official, the actions taken on the recommendations with the reasons for such actions, and an assessment of the effects of such actions on the Government.

SUBCHAPTER 1232.1--NON-COMMERCIAL ITEM PURCHASE FINANCING

1232.102 Description of contract financing methods.

(e)(2) Progress payments based on a percentage or stage of completion are authorized only under contracts for construction, alteration, and repair, shipbuilding, and architect-engineering. Contracting officers shall ensure that the payments are commensurate with the work and that the work meets the requirements of the contract. When contracting officers propose to make these types of payments under other contracts, a written Determinations and Findings (D&F) in the format of Appendix A shall be signed by the Head of the Contracting Activity (HCA). The D&F must indicate the reasons why progress payments based on costs cannot be practically used and why it is feasible to administer progress payments based on a percentage or stage of completion.

1232.105 Uses of contract financing.

(a)(2) DOT is not listed under [FAR 32](#) as a loan guaranteeing agency; therefore, the exceptions under [FAR 32.105\(a\)](#) do not apply to DOT.

1232.114 Unusual contract financing.

The HCA is authorized to approve the use of unusual contract financing.

SUBCHAPTER 1232.2--COMMERCIAL ITEM PURCHASE FINANCING

1232.201 Statutory authority.

The contracting officer is authorized to determine appropriate or customary terms and conditions regarding payment for commercial items.

1232.202-4 Security for Government financing.

(a)(2) The required determination shall be in writing, reviewed by legal counsel, and retained in the contract file.

1232.206 Solicitation provisions and contract clauses.

(g) The HCA is authorized to develop agency procedures under [FAR 32.206](#).

(g)(2) The HCA is authorized to develop agency procedures under [FAR 32.206](#).

SUBCHAPTER 1232.4--ADVANCE PAYMENTS FOR NON-COMMERCIAL ITEMS

1232.402 General.

(c)(1)(iii)(A) When the proposed advance payment will be \$500,000 or less, the contracting officer is responsible for determining, based on written findings, that the advance payment is in the public interest.

When the advance payments will be over \$500,000, the Chief of the Contracting Office (COCO) is responsible for the written determination of public interest.

(c)(1)(iii)(B) When the proposed advance payment will be \$50,000 or less, the contracting officer is responsible for determining, based on written findings, that the advance payment facilitates the national defense. When the proposed advance payment will be over \$50,000, the DOT Board of Contract Appeals (DOTBCA) is responsible for the written determination that the advance payment facilitates the national defense. The contracting officer shall submit a recommendation of approval or disapproval to the DOTBCA (S-20).

(e)(2) When the contracting officer proposes to authorize advance payments to a contractor, the requisitioning office, legal counsel, and finance office shall be consulted prior to writing the D&F required by [FAR 32.402\(c\)\(1\)\(iii\)](#). The D&F shall be written in the format of [FAR 32.410](#).

1232.404 Exclusions.

(a)(9) Unless otherwise approved by the Office of the Senior Procurement Executive, no other types of transactions are excluded from the requirements of [FAR 32.4](#).

1232.407 Interest.

(d) Contracting officers are authorized to exclude interest from advance payments on the contracts listed under [FAR 32.407\(d\)](#), subject only to the approval of the appropriate official shown below.

- (1) The contracting officer may exclude interest from *advance payments of \$500,000 or less* under the authority of [FAR 32.402\(c\)\(1\)\(iii\)\(A\)](#);
- (2) The COCO, may exclude interest from *advance payments over \$500,000* under the authority of [FAR 32.402\(c\)\(1\)\(iii\)\(A\)](#);
- (3) The contracting officer, may exclude interest from *advance payments of \$50,000 or less* under the authority of [FAR 32.402\(c\)\(1\)\(iii\)\(B\)](#); and
- (4) The *DOTBCA*, may exclude interest from *advance payments over \$50,000* under the authority of [FAR 32.402\(c\)\(1\)\(iii\)\(B\)](#).

1232.409 Contracting officer action.

1232.409-1 Recommendation for approval.

After review by counsel, the D&F and the other items shall be forwarded through appropriate office(s) to the approving official (see TAM 1232.402) for review and approval. Contracting officers shall also discuss the proposed payments with the applicable finance office to ensure compliance with all Department of Treasury regulations governing these payments.

1232.409-2 Recommendation for disapproval.

Contracting officers shall transmit the information required by [FAR 32.409-2](#) through appropriate office(s) to the approving official under TAM 1232.402 for review and approval of the recommendation to disapprove the request for advance payment.

SUBCHAPTER 1232.5--PROGRESS PAYMENTS BASED ON COSTS

1232.501 General.

1232.501-2 Unusual progress payments.

- (a)(3) The COCO is authorized to approve the contractor's request for unusual progress payments.

1232.502 Preaward matters

1232.502-2 Contract finance office clearance.

Contracting officers shall obtain written approval and coordination from the officials named below before taking any of the following actions:

- (a) The COCO must approve a progress payment rate higher than the customary rate [FAR 32.501-1](#);
- (b) The COCO must approve deviations from the progress payment terms prescribed in [FAR 32](#); and
- (c) When providing progress payments to a contractor--
 - (1) The COCO, with advice from Operating Administration (OA) legal counsel, must approve progress payments when the contractor's financial condition is in doubt;
 - (2) The COCO, with advice from OA legal counsel, must approve progress payments when the contractor has had an advance payment request or loan guarantee denied for financial reasons or when the progress payment was approved but was withdrawn or allowed to lapse within the previous 12 months; and
 - (3) The HCA, with advice from OA legal counsel, must approve progress payments when the contractor is named in the consolidated list of contractors indebted to the United States (known commonly as the "Hold-up List").

1232.504 Subcontracts under prime contracts providing progress payments.

- (c) The contracting officer may not approve unusual progress payments from contractors to subcontractors unless authorized by the COCO. A written D&F is not required; however, if the contractor's request to make unusual progress payments is granted, the contract file shall be documented to reflect the rationale for the decision.

SUBCHAPTER 1232.6--CONTRACT DEBTS

1232.604 Demand for payment.

(a) If the contracting officer has any indication that a contractor owes money to the Government under a contract, the contracting officer shall immediately determine if an actual debt is due and the amount. If a debt is due, the contracting officer shall promptly issue a demand for payment letter to the contractor in accordance with the standards and requirements of [FAR 32.604](#), Demand for Payment. The demand for payment should be modeled after the template provided in Appendix B, Demand for Payment Letter. Making an immediate demand for payment is intended to increase the timeliness of repayment of the debt and to begin accumulating interest if the contract provides that interest begins to accrue as of the date of a demand for payment. If a final decision under [FAR 33.211](#), Contracting officer's decision, results in a contractor owing any amount to the government, the final decision notice to the contractor shall include a demand for payment per [FAR 32.604](#) and TAM Appendix C. If the contractor appeals the final decision to the Board of Contract Appeals, the contracting officer must notify the OA's payment office that an appeal has been filed.

1232.607 Installment payments and deferment of collection.

(a) The contracting officer shall not approve or deny either a request for installment payments or a request for deferment of payment of a contractor's debt under a contract. If a contractor submits a request for installment payments or deferment of payment, the contracting officer shall:

- (1) Analyze the request and determine the recommended course of action per [FAR 32.607](#); and
- (2) Submit the request and the recommendation (together with all other data required by [FAR 32.607](#)) to the OA Chief Financial Officer (CFO) for a decision of whether the request should be approved.

1232.608 Interest.

1232.608-1 Interest charges.

(a) The contracting officer shall consult with the OA's finance office concerning contractor's debts that may be exempt from interest charges.

(b) The OA's payment office may consult with the contracting officer about the proper interest charges to apply to any contract debt unpaid after 30 days from the

issuance of a demand. Such interest charges and credits shall comply with [FAR 32.608](#).

1232.610 Compromising debts.

Contracting officers are not authorized to compromise debts.

SUBCHAPTER 1232.7--CONTRACT FUNDING

1232.702 Policy.

1232.702-70 Procurement requests

(a) The contracting officer shall accept electronically submitted Procurement Request. Electronic, Procurement Requests are prepared by the requiring office prior to executing any contract as defined under [FAR 2.101](#).

(b) The PR must be certified by a responsible fiscal authority such as a funds administrator or finance office.

(c) The PR must be supported by an independent Government estimate as required by TAM 1215.404-70.

(d) The contracting officer may request additional information if deemed necessary to carry out the acquisition. See also Appendix D.

1232.703-3 Contracts crossing fiscal years.

(b) The COCO, or designee, is authorized to enter into a basic contract and options or orders under that contract for procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year if the period of the basic contract, options or orders under that contract do not exceed one year each.

SUBCHAPTER 1232.8--ASSIGNMENT OF CLAIMS

1232.802 Conditions.

(e)(1) The contracting officer is the designated recipient of the document referred to under [FAR 32.802\(e\)\(1\)](#).

1232.803 Policies.

(d) The HCA, or designee, is authorized to determine whether a no-setoff commitment may be included in a contract in accordance with [FAR 32.803\(d\)](#).

SUBCHAPTER 1232.9--PROMPT PAYMENT

1232.903 Responsibilities.

(a) The Assistant Secretary for Budget and Programs is authorized to establish policies and procedures for implementing the Prompt Payment regulations (5 C.F.R. 1315).

(b) DOT's policy is to pay invoices in accordance with the requirements of the Prompt Payment regulations (5 C.F.R. 1315), as implemented by the FAR and the payment terms and conditions set forth in the contract. Any additional DOT standards for establishing due dates are prescribed in the appropriate (TAR) 48 C.F.R. or TAM paragraph which corresponds to the applicable (FAR) 48 C.F.R. paragraph. Prior to including a payment clause in a solicitation or contract that will require payments to be made earlier than those specified in the Prompt Payment regulations, contracting officers shall consult with their respective finance office.

1232.904 Determining payment due dates.

(d)(1)(i) The contracting officer's justification for extending the due date beyond the 14 days for progress payments as permitted by [FAR 32.904\(d\)\(1\)\(i\)](#) shall be approved at one supervisory level above the contracting officer.

1232.905-70 Final payment documentation and process.

(a) As required by [FAR 52.216-7](#), contractor's final release on DOT Form 4220.04 shall reflect the total contract price, amounts previously paid, and the amount of the final voucher.

(b) The contractor shall clearly indicate the basis and amount of any claim.

(c) When a release contains an exception that the contracting officer considers acceptable, the following notation shall be placed on the release:

"Release approved by contracting officer this _____ day of _____ (Month/Year) _____ (signature)."

(d) To close out contracts one year after completion and acceptance of the work when the contractor fails to execute an appropriate release, the contracting officer must obtain a certification of final payment from a level above the contracting officer of the contract balance and obtain a check from the disbursing office. The check shall be mailed to the contractor, certified mail return receipt, notifying the contractor that this is final payment. Any surety should also be provided with this notification. Thirty calendar days after the return of the certified mail receipt, the contracting officer may close out the contract. If the contractor refuses to accept the certified letter or cannot be located, the check shall be returned to the disbursing office and the contracting officer may deobligate the contract balance and close out the contract.

1232.906 Making payments.

(a) The due date for making contract financing payments by the designated payment office will be the 30th day after the designated billing office has received a proper request. The Assistant Secretary for Budget and Programs is authorized to prescribe policies and procedures that are otherwise different from this 30th day due date.

SUBCHAPTER 1232.11--ELECTRONIC FUNDS TRANSFER

1232.1107-70 Payment Information.

DOT has established an electronic communication connection for payments with the Department of Treasury Regional Financial Center, Kansas City, MO, via the Automated Clearinghouse (ACH), a nationwide electronic payments network. DOT finance offices shall use the information in the System for Award Management (SAM) database to make electronic funds transfer (EFT) payments to contractors.

1232.1110 Solicitation provision and contract clauses.

(a)(1) The contracting officer shall insert [52.232-33](#), Payment by Electronic Funds Transfer—System for Award Management, in all proposed solicitations and contracts.

SUBCHAPTER 1232.70--CONTRACT PAYMENTS

1232.7000 Scope of subchapter.

This subchapter prescribes policies and procedures for the submission, review, and approval of payments under cost-reimbursement, time-and-materials, and labor-hour contracts and orders as defined under [FAR Part 16](#).

1232.7001 Policy.

DOT's policy is to perform an in-depth review of all invoices and vouchers submitted by contractors; therefore, the COCO shall ensure that the requirements of this subchapter are met.

1232.7002 Invoice and voucher review and approval.

(a) Contracting officers are ultimately responsible for the review and approval of each invoice/voucher submitted by the contractor. However, the contracting officer may delegate to a representative, the authority to review and approve invoices submitted for payment under fixed-price contracts. The person delegated this authority shall provide a copy of the approved invoice and supporting documents to the contracting officer for the contract file. The contracting officer may delegate the authority to approve vouchers for payment under other than fixed-price contracts only to contract specialists. When invoices and vouchers are reviewed, the extent of the review depends on the terms and conditions of the contract. The following list includes representative tasks associated with reviewing and approving invoices and vouchers.

- (1) Ensure that the contractor completes and submits the invoice or voucher in accordance with the contract;
- (2) Ensure that the invoice or voucher is "proper" as that term is defined in the contract;
- (3) Ensure that the billed costs are allocable to the contract and allowable in accordance with FAR 31 and any other terms and conditions of the contract;
- (4) Ensure that evidence that a Government representative received, inspected, and accepted the supplies or services has been received. (This may be done electronically);

(5) Ensure that the contractor's progress under the contract is commensurate with the payment requested. The unliquidated progress payments may not exceed the fair value of the work to be accomplished on the undelivered portion of the contract; and

(6) Ensure that the correct amounts are withheld from the invoice or voucher as required by the contract, such as progress payment liquidation, percentage of fixed fee, etc.

(b) Cost-reimbursement.

(1) When cost-reimbursement payments will be made under the contract, the contracting officer shall obtain the recommendation of Government personnel such as technical representatives, quality assurance inspectors, auditors, etc., concerning payment of the voucher.

(2) The responsibility for reviewing and recommending approval of vouchers may be delegated by the contracting officer to the COR.

(c) If the contracting officer determines that the amount billed is allocable and allowable to the contract, he or she shall furnish the designated payment office an approval in accordance with agency procedures.

(d) Time-and-materials and labor-hour contracts.

(1) When processing vouchers for time-and-materials (T&M) or the COR should ensure that the hourly rates for each category on the voucher match the rates specified in the contract for the period being invoiced;

(2) Material costs included in the voucher are adequately supported by invoices and/or payment;

(3) Accuracy of the mathematical calculations contained in the voucher; and

(4) The hours worked against the hours billed for the period.

(5) The responsibility for reviewing and recommending approval of vouchers on T&M and labor-hour contracts may be delegated by the contracting officer to the COR.

1232.7003 Record of payment.

(a) The contracting officer and the representative delegated the authority to review and approve invoices shall establish a record of payment file for each contract. The file shall contain evidence as to what was paid, what was disallowed or withheld and the rationale for withholding or disallowing payments; the balance available for payment under the contract after the invoice or voucher has been paid; and any correspondence to the contractor concerning the payments.

APPENDIX A

DETERMINATION AND FINDINGS

Authority to Make Progress Payments

FINDINGS

1. The *(identify the OA and the contracting office)* of the Department of Transportation proposes to contract for *(describe the supplies and/or services being procured and identify the program/project, if applicable)*.
2. *(Indicate the type of contract proposed and the estimated amount of the contract.)*

DETERMINATION

On the basis of the above findings, I hereby determine that *(explain why progress payments based on costs cannot be practically used and why it will be feasible to administer progress payments based on a percentage or stage of completion basis)*.

(Signature of the HCA)

Appendix B

DEMAND FOR PAYMENT LETTER TO DEPARTMENT OF TRANSPORTATION CONTRACTORS

INTRODUCTION:

This DOT Appendix provides templates for various types of demand for payment letters to be sent to a contractor who owes money to the government as a result of a debt that has arisen under a DOT contract or order. Demands for payment of contract debt are governed by FAR 32.6.

INSTRUCTION:

When preparing a demand for payment letter, select the template that best fits the type of debt for which you are seeking payment. The difference between the templates is due to differences in contract clauses regarding payment of interest by the contractor for different types of debt that occur. For example, contract clauses governing some contract debts, such as a Defective Pricing debt, require a contractor to repay any overpayments PLUS interest on the overpayment amounts beginning at the date(s) of overpayment. Other types of debts are governed by a contract clause that only requires payment of interest beginning 30 days after issuance of a demand for payment. Still other types of debts are not governed by any contract clause that addresses payment of interest on the debt; interest payments under these debts are governed by law.

Appendix B provides five sample templates for your use. They are a starting point for preparation of the demand for payment letter. Remember each letter must be customized to fit the situation.

Select the template that best fits the situation and prepare the letter to match the facts of the situation and the requirements of the FAR.

**Demand For Payment Letter
Template Number 1**

**Contract Debt with interest required ONLY
by Interest clause, FAR 52.232-17 or 52.212-4(i)(6).**

Instruction for use of Template Number 1

1. Use template if it is determined that the debt arises from the contract and the contract requires payment of interest ONLY in the Interest clause, FAR 52.232-17 or 52.212-4(i)(6).
2. Modify template to insert appropriate amounts to describe the debt.
3. Modify Template to delete paragraphs that do not apply to the situation.

Company Representative's Name
Company Name
Company
Address City,
State, Zip Code

Dear (company representative's name)

This letter is to inform you that (insert company name) is indebted to the United States Government in the amount of \$XXXX) on Contract No. XXXXXXX and that payment in full is due not later than 30 days after the date of this notification.

Please remit a check in the amount of \$XXX,XXX payable to the payment office that is identified in the contract, annotated with the contract number and accompanied by a copy of this demand for payment.

This debt resulted from (fully describe the basis of debt).

The amount due is comprised of—

Principal Amount of Debt	\$
Interest (if there are previously accrued amounts)	\$

Penalty (if applicable)	\$
Total Debt owed	\$

(If the lines of accounting are not readily available, instead of the above paragraph and chart, the letter should include the below statement. Also see FAR 32.604(b)(2)(iv) for specific instructions. **DELETE THE PARAGRAPH IF YOU FILLED OUT THE ABOVE TABLE.**)

The distribution of the debt by lines of accounting will be provided in a separate letter by (insert date by which the lines of accounting will be provided].

Any amounts not paid within 30 days from the date of this demand for payment will bear interest. Interest shall be computed from the date of the demand for payment until repayment by the contractor. The interest rate shall be the interest rate established by the Secretary of the Treasury, as provided in Section 611 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six-month period as established by the Secretary until the amount is paid. This rate is published on the Department of the Treasury's website, <http://www.fms.treas.gov/prompt/index.html>.

If you are financially unable to pay the full amount of the debt at the present time, you may request an installment payment agreement or deferment of collection if immediate payment is not practicable or if the amount is in dispute. Your request for installment or deferment should be made in writing and supported by certified statements of income and financial position covering the last 12 months. Requests for installments or deferment should be made to the payment office accounts receivable division.

If you have not liquidated the debt within 30 days of the date due or requested installment payments or deferment of collection, the payment office may initiate withholding of principal, interest, penalties, and administrative charges. The debt may be subject to the Department of the Treasury offset from any Federal payments otherwise due your company. The debt may be referred to the Department of the Treasury for collection, and its collection actions could include credit bureau reporting, referral to the Treasury Offset Program for administrative offsets, and referral to third-party collection agencies. In addition, the Agency may seek to collect amounts owed through internal administrative offset or by referral to the Department of Justice for legal action. You will be responsible for all fees

charged in collection of the debt, including the fee assessed by Treasury for any debt referred to it for collection. When you provide a check as payment, you authorize the Agency either to use information from your check to make a one-time electronic funds transfer from your account or to process the payment as a check transaction.

You may review a Privacy Act Statement required by 5 U.S.C. 552a(e)(3) stating our authority for soliciting and collecting the information from your check, and explaining the purposes and routine uses which will be made by your check information, at <http://www.fms.treas.gov/otcnet/index.html>). Furnishing the check information is voluntary, but a decision to not do so may require you to make payment by some other method.

In the event the contract is assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 15), the rights of the assignee will be scrupulously respected and withholding of payments shall be consistent with those rights.

If you believe that the debt is invalid or the amount is incorrect or you have any questions, please contact the undersigned immediately at (XXX) XXX-XXXX. You have a right to a full explanation of the debt and to inspect and copy records relating to the debt. Interest will continue to accrue while the debt is in dispute.

Sincerely,

Contracting Officer
cc: Payment office identified in the contract

**Demand For Payment Letter
Template Number 2**

DEFECTIVE PRICING

Instruction for Use of Template Number 2

1. Use template if it is determined that the contract debt arises from a submission of defective cost or pricing data.
2. Modify template to insert appropriate amounts to describe the debt.
3. Modify template to delete paragraphs that do not apply to the situation.

Company Representative's Name
Company Name Company Address City, State, Zip Code

Dear (company representative's name)

This letter is to inform you that (insert company name) is indebted to the United States Government in the amount of \$XXXXXX) on Contract No. XXXXXX and that payment in full is due not later than 30 days after the date of this notification.

Please remit a check in the amount of \$XXXXXX payable to the payment office that is identified in the contract, annotated with the contract number and accompanied by a copy of this demand for payment.

Repayment of this debt is necessary to recoup overpayment made by the Government stemming from overpricing as a result of submittal of defective certified cost or pricing data. The reduced contract price is shown in the attached contract modification. The dates and amounts of overpayments are shown below along with the interest and penalty due on each overpayment (or see attached).

The interest due amount has been computed in accordance with (Insert clause number and title here; e.g.; FAR 52.215-10, Price Reduction for Defective Certified Cost or Pricing Data.). Based on the requirements of that clause, your obligation to pay interest began on the date(s) of overpayment. The below table shows the amount owed as of (insert date interest computation ended – should be as close as possible to the date of the demand letter.) Interest will continue to

accumulate from that date until full payment is made. The computation of the amount of interest you owe for this initial period is as follows:

ITEM	OVERPAYMENT AMOUNT	DATE OF OVERPAYMENT	INTEREST DUE THRU (INSERT DATE)	PENALTY AMOUNT

The amount due is comprised of—

Principal Amount of Debt	\$
Interest (if there are previously accrued amounts)	\$
Penalty (if applicable)	\$
Total Debt owed	\$

(If the lines of accounting against which the debt is due are readily available, the letter should include the following. See FAR 32.604(b)(2) for specific instructions. DELETE THE PARAGRAPH IF YOU CANNOT FILL OUT THE DISTRIBUTION OF THE DEBT.)

The following is a distribution of the debt by lines of accounting:

XXXXXX	\$
XXXXXX	\$
XXXXXX	\$

(If the lines of accounting are not readily available, instead of the above paragraph and table, the letter should include the below statement. Also see FAR 32.604(b)(2)(iv) for specific instructions. DELETE THE PARAGRAPH IF YOU FILLED OUT THE ABOVE TABLE.)

The distribution of the debt by lines of accounting will be provided in a separate letter by *(insert date by which the lines of accounting will be provided)*.

If you are financially unable to pay the full amount of the debt at the present time, you may request an installment payment agreement or deferment of collection if immediate payment is not practicable or if the amount is in dispute. Your request for installment or deferment should be made in writing and supported by certified statements of income and financial position covering the last 12 months. Requests for installments or deferment should be made to the payment office accounts receivable division.

If you have not liquidated the debt within 30 days of the date due or requested installment payments or deferment of collection, the payment office may initiate withholding of principal, interest, penalties, and administrative charges. The debt may be subject to the Department of the Treasury offset from any Federal payments otherwise due your company. The debt may be referred to the Department of the Treasury for collection, and its collection actions could include credit bureau reporting, referral to the Treasury Offset Program for administrative offsets, and referral to third-party collection agencies. In addition, the Agency may seek to collect amounts owed through internal administrative offset or by referral to the Department of Justice for legal action. You will be responsible for all fees charged in collection of the debt, including the fee assessed by Treasury for any debt referred to it for collection. When you provide a check as payment, you authorize the Agency either to use information from your check to make a one-time electronic funds transfer from your account or to process the payment as a check transaction. You may review a Privacy Act Statement required by 5 U.S.C. 552a(e)(3) stating our authority for soliciting and collecting the information from your check, and explaining the purposes and routine uses which will be made by your check information, at (<http://www.fms.treas.gov/otcnet/index.html>). Furnishing the check information is voluntary, but a decision to not do so may require you to make payment by some other method.

In the event the contract is assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 15), the rights of the assignee will be scrupulously respected and withholding of payments shall be consistent with those rights.

If you believe that the debt is invalid or the amount is incorrect or you have any questions, please contact the undersigned immediately at (XXX) XXX-XXXX. You have a right to a full explanation of the debt and to inspect and copy records relating to the debt. Interest will continue to accrue while the debt is in dispute.

Sincerely,

Contracting Officer

cc: Payment office identified in the contract

Demand For Payment Letter
Template Number 3

COST ACCOUNTING STANDARDS (CAS)

Instructions For Use of Template Number 3

1. Use template if it is determined that the contract debt is as a result of operation of a CAS clause.
2. Modify template to insert appropriate amounts to describe the debt.
3. Modify Template to delete paragraphs that do not apply to your situation.

Company Representative's Name
Company Name
Company
Address City,
State, Zip Code

Dear (*company representative's name*)

This letter is to inform you that (*insert company name*) is indebted to the United States Government in the amount of (\$XXXXXX) on Contract No. XXXXX and that payment in full is due not later than 30 days after the date of this notification.

Please remit a check in the amount of \$XXXXXX payable to the payment office that is identified in the contract, annotated with the contract number and accompanied by a copy of this demand for payment.

Repayment of this debt is necessary to recoup overpayment made by the Government stemming from overpricing as a result of submittal of defective certified cost or pricing data. The reduced contract price is shown in the attached contract modification. The dates and amounts of overpayments are shown below along with the interest and penalty due on each overpayment (or see attached).

The interest due amount below/ above has been computed in accordance with (*Insert clause number and title here; e.g.; FAR 52.230-5, Cost Accounting Standards*). Based on the requirements of that clause, your obligation to pay

interest began on the date(s) of overpayment. The below table shows the amount owed as of *(insert date interest computation ended – should be as close as possible to the date of the demand letter.)* Interest will continue to accumulate from that date until full payment is made. The computation of the amount of interest you owe for this initial period is as follows:

ITEM	OVERPAYMENT AMOUNT	DATE OF OVERPAYMENT	INTEREST DUE THRU (INSERT DATE)

The amount due is comprised of—

Principal Amount of Debt	\$
Interest (if there are previously accrued amounts)	\$
Penalty (if applicable)	\$
Total Debt owed	\$

The following is a distribution of the debt by contract and by lines of accounting:

Contract #1

XXXXXX	\$
XXXXXX	\$
XXXXXX	\$

Contract #2

XXXXXX	\$
XXXXXX	\$
XXXXXX	\$

Contract#3, Etc.

(If the lines of accounting are not readily available, instead of the above paragraph and table, the letter should include the below statement. Also see FAR 32.604(b)(2)(iv) for specific instructions. DELETE THE PARAGRAPH IF YOU FILLED OUT THE ABOVE TABLE.)

The distribution of the debt by lines of accounting will be provided in a separate letter by *(insert date by which the lines of accounting will be provided)*.

If you are financially unable to pay the full amount of the debt at the present time, you may request an installment payment agreement or deferment of collection if immediate payment is not practicable or if the amount is in dispute. Your request for installment or deferment should be made in writing and supported by certified statements of income and financial position covering the last 12 months. Requests for installments or deferment should be made to the payment office accounts receivable division. If you have not liquidated the debt within 30 days of the date due or requested installment payments or deferment of collection, the payment office may initiate withholding of principal, interest, penalties, and administrative charges. The debt may be subject to the Department of the Treasury offset from any Federal payments otherwise due your company. The debt may be referred to the Department of the Treasury for collection, and its collection actions could include credit bureau reporting, referral to the Treasury Offset Program for administrative offsets, and referral to third-party collection agencies. In addition, the Agency may seek to collect amounts owed through internal administrative offset or by referral to the Department of Justice for legal action. You will be responsible for all fees charged in collection of the debt, including the fee assessed by Treasury for any debt referred to it for collection. When you provide a check as payment, you authorize the Agency either to use information from your check to make a one-time electronic funds transfer from your account or to process the payment as a check transaction. You may review a Privacy Act Statement required by 5 U.S.C. 552a(e)(3) stating our authority for soliciting and collecting the information from your check, and explaining the purposes and routine uses which will be made by your check information, at (<http://www.fms.treas.gov/otcnet/index.html>). Furnishing the check information is voluntary, but a decision to not do so may require you to make payment by some other method.

In the event the contract is assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 15), the rights of the assignee will be scrupulously respected and withholding of payments shall be consistent with those rights.

If you believe that the debt is invalid or the amount is incorrect or you have any questions, please contact the undersigned immediately at (XXX) XXX-XXXX. You have a right to a full explanation of the debt and to inspect and copy records relating to the debt. Interest will continue to accrue while the debt is in dispute.

Sincerely,

Contracting Officer

cc: Payment office identified in the contract

2. Modify template to insert appropriate amounts to describe the debt.
3. Modify Template to delete paragraphs that do not apply the situation

Company Representative's Name

Company Name Company Address City, State, Zip Code

Dear (*company representative's name*)

This letter is to inform you that (*insert company name*) is indebted to the United States Government in the amount of \$XXXXXX on Contract No. XXXXX and that payment in full is due not later than 30 days after the date of this notification.

Please remit a check in the amount of \$XXXXXX payable to the payment office that is identified in the contract, annotated with the contract number and accompanied by a copy of this demand for payment. This debt resulted from (*fully describe the basis of debt*).

The amount due is comprised of—

Principal Amount of Debt	\$
Interest (if there are previously accrued amounts)	\$
Penalty (if applicable)	\$
Total Debt owed	\$

(If the lines of accounting against which the debt is due are readily available, the letter should include the following. See FAR 32.604(b)(2) for specific instructions. DELETE THE PARAGRAPH IF YOU CANNOT FILL OUT THE DISTRIBUTION OF THE DEBT.)

The following is a distribution of the debt by lines of accounting:

XXXXX	\$
XXXXX	\$
XXXXX	\$

(If the lines of accounting are not readily available, instead of the above paragraph and table, the letter should include the below statement. Also see FAR 32.604(b)(2)(iv) for specific instructions. DELETE THE PARAGRAPH IF YOU FILLED OUT THE ABOVE TABLE.)

The distribution of the debt by lines of accounting will be provided in a separate letter by *(insert date by which the lines of accounting will be provided)*.

(Make sure you have checked with your general counsel to determine if interest and penalties apply to this debt. If they do not apply, remove the below paragraph. If you have not liquidated the debt within 30 days of the date due or requested installment payments or deferment of collection, the payment office may initiate withholding of principal, interest, penalties, and administrative charges. Handling charges will be assessed to cover administrative costs incurred as a result of not receiving timely payment. Charges will be computed from the date of this notice and will accrue monthly with the applicable interest and handling charges. In the case of any late payment, the amount received will be applied in this sequence: (1) to any accrued penalty and handling charges; (2) to any accrued interest; and (3) to outstanding principle.

If you are financially unable to pay the full amount of the debt at the present time, you may request an installment payment agreement or deferment of collection if immediate payment is not practicable or if the amount is in dispute. Your request for installment or deferment should be made in writing and supported by certified statements of income and financial position covering the last 12 months. Requests for installments or deferment should be made to the payment office accounts receivable division.

If you have not liquidated the debt within 30 days of the date due or requested installment payments or deferment of collection, the payment office may initiate withholding of principal, interest, penalties, and administrative charges. The debt may be subject to the Department of the Treasury offset from any Federal payments otherwise due your company. The debt may be referred to the Department of the Treasury for collection, and its collection actions could include credit bureau reporting, referral to the Treasury Offset Program for administrative offsets, and referral to third-party collection agencies. In addition, the Agency may seek to collect amounts owed through internal administrative offset or by referral to the Department of Justice for legal action. You will be responsible for all fees charged in collection of the debt, including the fee assessed by Treasury for any debt referred to it for collection. When you provide a check as payment, you authorize the Agency either to use information from your check to make a one-time electronic funds transfer from your account or to process the payment as a check transaction. You may review a Privacy Act Statement required by 5 U.S.C. 552a(e)(3) stating our authority for soliciting and collecting the information from your check, and explaining the purposes and routine uses which will be made by your check information, at (<http://www.fms.treas.gov/otcnet/index.html>). Furnishing the check information is voluntary, but a decision to not do so may require you to make payment by some other method.

In the event the contract is assigned under the Assignment of Claims Act of 1940 (31 U.S.C.3727 and 41 U.S.C. 15), the rights of the assignee will be scrupulously respected and withholding of payments shall be consistent with those rights.

If you believe that the debt is invalid or the amount is incorrect or you have any questions, please contact the undersigned immediately at (XXX) XXX-XXXX. You have a right to a full explanation of the debt and to inspect and copy records relating to the debt. Interest will continue to accrue while the debt is in dispute.

Sincerely,

Contracting Officer
cc: Payment office identified in the contract

ACTION: Payment under (*Enter the DOT number assigned to the contractual instrument*)

From: (*Enter the name and title of the individual authorized to sign this portion of the memorandum - e.g., contracting officer, specialist/administrator, etc.*)

To: (*Enter the name of the person to whom the memorandum is being sent - e.g., contracting officer's representative, inspector*)

The attached invoice/voucher was submitted by the contractor for payment under the subject contract. Please review this document and provide your recommendation or acceptance, as appropriate, by endorsement below.

(*Signature of individual authorized to sign*)

Attachment (*Enter the invoice or voucher number and the amount*)

FIRST ENDORSEMENT

From: (*Enter the name and title of the individual authorized to sign this portion of the memorandum - e.g., contracting officer's representative, inspector*)

To: (*Enter name of the person to whom the memorandum is being sent - e.g., contracting officer, specialist/administrator, etc.*)

I have reviewed the attachment(s) and the following applies (*check one*):

(a) Cost-reimbursement contract. I recommend ___ approval ___ disapproval. The costs incurred ___ are ___ are not reasonable or allocable for the reasons indicated in the attachment.

(b) Fixed-price contract. I recommend ___ approval ___ disapproval.

(1) The supplies or services were accepted on _____ OR

(2) The supplies or services ___ are not acceptable for the reasons indicated in the attachment.

(c) Progress Payment. I recommend ____ approval ____ disapproval for the reasons indicated on the attachment.

(Signature of individual authorized to sign)

Attachment

SECOND ENDORSEMENT

From: *(Enter name of the contracting officer)*

To: *(Enter name of the finance officer)*

The attached Invoice/Voucher No. *(Insert number and amount)* is approved for payment in the amount of *(Insert amount)*. After this payment, the balance remaining available for payment under this contract is *(Insert amount)*. Please contact me if this balance does not agree with your payment record.

(Signature of contracting officer)

Attachment

Appendix C

Requirements Package Checklist

For CONTRACT ACTIONS OVER \$150,000.00

1. PR Number	
2. Acquisition award date For the purpose of establishing milestones, the assigned buyer needs to	Is this a Follow-on Requirement? Yes No If Yes, current contract expiration

know the target date to preclude uninterrupted service to mission operations

date: ____/____/____ If No,
required contract award
date: ____/____/____

3. Complete package must include all of the following mandatory items. Select Non-mandatory items determined necessary for your requirement. Attach these documents to your PR in PRISM. Your SOW/PWS should be attached in Word format not as a PDF.

MANDATORY ITEMS

MARKET RESEARCH-- Market research identifies recommended and potential sources.

STATEMENT OF WORK/PERFORMANCE WORK STATEMENT--A Statement of Work is either performance based or non-performance based.

INDEPENDENT GOVERNMENT COST ESTIMATE--The IGCE aides in budget forecasting for the program office and helps the procurement office determine the reasonableness of a contractor's cost (estimated costs for the base plus all option years must be included).

FUNDING DOCUMENTS--Funding must be provided for all procurement actions.

COR NOMINATION and certificate of training

SMALL BUSINESS PROGRAM REVIEW FORM--complete Parts 1 and 2, sign and date the form before forwarding to procurement

INCLUDE THE FOLLOWING ITEMS ONLY IF DETERMINED NECESSARY FOR YOUR INDIVIDUAL REQUIREMENT

Urgency or Sole Source Justification (See Paragraph **SOLE SOURCE OR URGENCY**) Economy Act Decisions (See Paragraph **ECONOMY ACT**)

Lease VS. Purchase (See Paragraph **LEASE VS. PURCHASE**)

EIT implements section 508 of the Rehabilitation Act of 1973 (See Paragraph **ELECTRONIC AND INFORMATION TECHNOLOGY (EIT)**) OSHA requirements (See Paragraph **OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION (OSHA)**)

GFP (See Paragraph **GOVERNMENT FURNISHED PROPERTY**)

Information Technology requirements (See Paragraph **INFORMATION TECHNOLOGY-RELATED PROCUREMENTS**) Buy American Act (See Paragraph **BUY AMERICAN ACT. Supplies and Construction Materials**)

4. Contract Type Information.

a. Time-and-materials (T&M) and cost-reimbursement (CR) contract types require justification in accordance with Federal Acquisition Regulations. *Note: the Contracting Officer makes the final determination of which order type is in the best interest of the Government.*

CHECK THE APPROPRIATE BLOCKS (See Paragraph **CONTRACT TYPE** for detailed descriptions) Firm fixed price (FFP) (no justification required) Cost-Reimbursement (CR) (provide justification) Time-and-Materials/Labor Hour/Letter (T&M/LH) (provide justification) Indefinite Delivery (used in conjunction with FFP, CR, and T&M - - orders are issued against the contract)

b. T&M/LH and CR contract types require justification in accordance with Federal Acquisition Regulations.

5. Evaluation Criterion and Associated Evaluation Adjectives (Required when not citing FAR Subpart 6.3) *(Note – evaluation criterion shall include “Past Performance” as a mandatory criteria. Cost is a mandatory criterion since it is integral to the best value trade-off decision.*

Basis of evaluation (check one):	Best Value Trade-Off Lowest-Price, Technically Acceptable
Non-Cost Factors	
List the specific areas of your past performance requirements to be evaluated. These areas should correspond with, and relate to, specific SOW requirements.	
1. Past Performance (mandatory).	
2. Technical /Management Approach (non-mandatory).	
a.	
b.	
c.	
d.	
List any other evaluation criteria important to you, and the associated weights, below.	

3. Other Factors. (This is not mandatory.)							
a.							
b.							
c.							
d.							
<p align="center">Cost Factor (mandatory)</p> <p>Evaluation adjective ratings are applied to past performance, technical / management approach and any other non-cost factors for which you may want to evaluate contractor proposals. Note that balancing cost against the non-cost factors indicates how you will make your best value trade-off decision, and as a result, an adjective rating is not applied to the cost factor. Indicate whether all non-cost evaluation factors, when combined:</p> <table border="0"> <tr> <td>Are significantly more important than</td> <td>Approximately equal to:</td> <td>Significantly less important than:</td> </tr> <tr> <td></td> <td align="center">...the Cost Factor</td> <td></td> </tr> </table> <p>ADDITIONAL INFORMATION:</p>		Are significantly more important than	Approximately equal to:	Significantly less important than:		...the Cost Factor	
Are significantly more important than	Approximately equal to:	Significantly less important than:					
	...the Cost Factor						

:

CHAPTER 1233 - PROTESTS, DISPUTES, AND APPEALS

SUBCHAPTER 1233.1—PROTESTS

1233.102	General
1233.103	Protest to the agency
1233.104	Protests to GAO

SUBCHAPTER 1233.2--DISPUTES AND APPEALS

1233.203	Applicability
1233.209	Suspected fraudulent claims
1233.210	Contracting officer's authority
1233.211	Contracting officer's decision
1233.212	Contracting officer's duties upon appeal
1233.213	Obligation to continue performance

SUBCHAPTER 1233.1--PROTESTS

1233.102 General.

(b) The contracting officer is authorized to determine that a solicitation, proposed award, or award does not comply with the requirements of law or regulation in accordance with [FAR 33.102](#).

1233.103 Protests to the agency.

(d)(4) Each Operating Administration (OA), in consultation with the DOT Center for Alternate Dispute Resolution (C-4), shall develop procedures concerning protests to the agency. Such procedures shall address the appropriate use of voluntary Alternate Dispute Resolution (ADR) in all agency protest actions.

1233.104 Protests to GAO.

(a) *General procedures.* The Head of the Contracting Activity (HCA) is responsible for the preparation and submission of the agency report to the Government Accountability Office (GAO) in accordance with the requirements of [FAR 33.104](#) and the GAO's Bid Protest Regulations, 4 C.F.R. Part 21. The

agency report shall be coordinated with legal counsel before the report is signed by the HCA and sent to GAO. For the purpose of submitting a protest report, the ‘agency’ is synonymous with OA.

(b)(1) *Protests before award.* The HCA shall prepare the written finding [FAR 33.104\(b\)\(1\)](#) and coordinate with legal counsel before the notice is signed by the HCA and sent to GAO. In addition, the applicable Congressional and public affairs offices shall be informed of this action as required in OA policies and procedures.

(c)(2) *Protests after award.* The HCA shall prepare the written finding and coordinate with legal counsel before the notice is signed by the HCA and sent to GAO.

(g) *Notice to GAO.* If the OA does not fully implement GAO’s recommendation within 60 days after it is received, the HCA is responsible for reporting the failure to GAO as required by [FAR 33.104\(g\)](#). The written notice shall be coordinated with legal counsel before it is signed by the HCA and sent to GAO. A copy of all notices to GAO submitted in accordance with [FAR 33.104\(g\)](#) shall be kept in OA protest files.

SUBCHAPTER 1233.2--DISPUTES AND APPEALS

1233.203 Applicability.

(b)(2) The HCA shall make the determination whether or not it would be in the public interest to apply the Contract Disputes Act of 1978 (41 U.S.C. §§601-613) to any contract with an international organization or a subsidiary body of that organization.

1233.209 Suspected fraudulent claims.

COCOs shall refer these matters to the Office of the Inspector General (OIG) or other appropriate investigative organizations.

1233.210 Contracting officer’s authority.

It is the DOT’s policy to encourage the use of ADR procedures. A decision to use ADR procedures requires review and approval by legal counsel.

1233.211 Contracting officer's decision.

If a final decision under [FAR 33.211](#), Contracting officer's decision results in a contractor owing any amount to the government, the final decision notice to the contractor shall include a demand for payment per [FAR 32.604](#), TAM 1232.604 and DOT Appendix B.

1233.212 Contracting officer's duties upon appeal.

Upon receipt of notice of appeal by a contractor, the contracting officer will notify OA legal counsel, who will appoint an attorney to represent the Government before the DOT Board of Contract Appeals. The DOT BCA rules of procedures are contained in 48 C.F.R. Part 6302.

1233.213 Obligation to continue performance.

When using the clause at [FAR 52.233-1](#), Disputes, with its Alternate I, the contracting officer shall make the determination that continued performance is necessary.

CHAPTER 1234 - MAJOR SYSTEM ACQUISITION

1234.0	General
1234.001	Definition
1234.003	Responsibilities
1234.004	Acquisition strategy
1234.005-70	Project continuation

SUBCHAPTER 1234.2--EARNED VALUE MANAGEMENT SYSTEM

1234.201	Policy
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1234.0 General.

1234.001 Definition.

“Major acquisition” as used in this chapter, means an acquisition or project for supplies or services that requires submission of an OMB Exhibit 300 (Capital Asset Plan/Business Case) in accordance with [OMB Circular A-11, Preparation, Submission and Execution of the Budget](#), and also for information technology acquisitions, compliance with the Department Information Resources Management Manual (DIRMM). A major acquisition typically has one or more of the following characteristics:

- (a) life-cycle costs of \$150 million or more;
- (b) is a financial system, e-gov system, or e-business system with a life-cycle cost of \$500,000 or more; or
- (c) an acquisition that does not meet the dollar thresholds of paragraphs (a) or (b) of this section but--
 - (1) is mission-critical;
 - (2) requires special management attention because of its importance to an OA mission;

(3) plays a significant role in the administration of OA programs, processes or other resources; or

(4) directly supports the President's Management Agenda.

1234.003 Responsibilities.

(a) For major system acquisitions, DOT uses the process delineated in OMB Circular A-11, Preparation, Submission and Execution of the Budget and for information technology acquisitions, in addition to OMB Circular A-11, the Department Information Resources Management Manual (DIRMM). Operating Administrations (OAs) shall follow the DIRMM for information technology (IT) acquisitions and shall establish comparable procedures for non-IT acquisitions including expanding their Investment Review Board (IRB) function to account for non-IT acquisitions.

(b) The OA procedures for non-IT acquisitions shall identify the four Phases of Capital Planning—Plan, Select, Control and Evaluate, and the roles and responsibilities of each key agency official in the four phases. Contracting officers shall:

(1) Provide support throughout the life-cycle of the project from early planning, preparation of yearly supporting documents (e.g., OMB Exhibit 300) for the budget cycles, through contract closeouts;

(2) Participate on the IRB process. As a minimum, the contracting officer shall advise the project manager and project sponsor as to the appropriateness of contract type(s) and approaches to be used. The contracting officer shall ensure the acquisition strategy considerations are appropriate for each project and are documented.

(c) Each IRB determines whether the project may be considered a major acquisition as defined in TAM 1234.001 and be submitted as part of the investment portfolio.

1234.004 Acquisition strategy.

For the purpose of this section, acquisition strategy means acquisition plans for major systems acquisitions. Acquisition plans for major system acquisitions shall be in writing and prepared in accordance with [FAR 7.1](#), TAM 1207.1. The project

sponsor shall select a project manager, to manage the resulting project, and a planning team having the requisite mix of education and experience to develop an acquisition strategy [e.g., full OMB Exhibit 300 (Business Case)] tailored to meet the major acquisition requirements.

1234.005-70 Project continuation.

The Head of the Operating Administration is authorized to reaffirm the mission need and objectives of a program and to grant approval to proceed.

SUBCHAPTER 1234.2--EARNED VALUE MANAGEMENT SYSTEM

1234.201 Policy.

(a) An EVM is required for major acquisitions for development, in accordance with OMB Circular A-11. The Government may also require an EVM for other acquisitions, in accordance with agency procedures.

CHAPTER 1235 - RESEARCH AND DEVELOPMENT CONTRACTING

1235.014	Government property and title
1235.016	Broad agency announcement
1235.017	Federally Funded Research and Development Centers
1235.017-2	Establishing or changing an FFRDC Centers
1235.017-4	Reviewing Federally FFRDC
1235.017-7	Limitation on the creation of new FFRDC

1235.014 Government property and title.

(b) The Head of the Contracting Activity (HCA) is authorized to provide individual deviations to the FAR policy regarding title to equipment purchased by the contractor under [FAR 35.014\(b\)](#), and the Senior Procurement Executive (SPE) is the individual authorized to provide class deviations.

1235.016 Broad agency announcement.

Each Operating Administration is responsible for establishing procedures for processing broad agency announcements (BAA), when the BAA is used to issue a contract.

1235.017 Federally Funded Research and Development Centers.

1235.017-2 Establishing or changing an FFRDC.

(j) The Assistant Secretary for Administration is authorized to establish or change the basic purpose and mission of an FFRDC under [FAR 35.017-2\(j\)](#).

1235.017-4 Reviewing FFRDC's.

(b) The Head of the Operating Administration (HOA) is authorized to continue or terminate the sponsorship under [FAR 35.017-4\(b\)](#).

1235.017-7 Limitation on the creation of new FFRDC's.

The authority of the agency head to submit to Congress a report concerning the purpose, mission, and general scope of the effort of the DOT FFRDC under [FAR 35.017-7](#) is nondelegable.

CHAPTER 1236 - CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

SUBCHAPTER 1236.2--SPECIAL ASPECTS OF CONTRACTING FOR CONSTRUCTION

1236.203	Government estimate of construction costs
1236.206	Liquidated damages
1236.208	Concurrent performance of firm-fixed price and other types of construction contracts
1236.209	Construction contracts with architect-engineer firms
1236.212	Preconstruction orientation
1236.213-2	Pre-solicitation notices
1236.270	Contracting with the National Institute of Building Sciences
1236.271	Report of proposed Federal construction

SUBCHAPTER 1236.6--ARCHITECT-ENGINEER SERVICES

1236.602	Selection of firms for architect-engineer contracts.
1236.602-1	Selection criteria
1236.602-2	Evaluation boards
1236.602-3	Evaluation board functions
1236.602-4	Selection authority
1236.602-5	Short selection process for contracts not to exceed the simplified acquisition threshold
1236.603	Collecting data on and appraising firms' qualifications
1236.606	Negotiations
1236.606-70	General
1236.609	Contract clauses
1236.609-1	Design within funding limitations

SUBCHAPTER 1236.2--SPECIAL ASPECTS OF CONTRACTING FOR CONSTRUCTION

1236.203 Government estimate of construction costs.

(a) The Government estimate shall be designated "For Official Use Only" unless the nature of the information therein requires a security classification, in which

case it shall be handled in accordance with applicable security regulations. The "For Official Use Only" designation shall be removed only when the estimate is made public in accordance with the instructions in this section.

(b) If the acquisition is by sealed bidding, a sealed copy of the detailed Government estimate shall be filed with the bids until bid opening. After the bids are read and recorded, the "For Official Use Only" designation shall be removed and the estimate shall be read and recorded in the same detail as the bids.

(c) If the acquisition is by negotiation, the following procedures apply:

(1) The overall amount of the Government estimate shall not be disclosed prior to award;

(2) At the time of award, the "For Official Use Only" designation on the Government estimate shall be removed; and

(3) After award, the Government estimate may be revealed, upon request.

1236.206 Liquidated damages.

Liquidated damages provisions are generally appropriate in construction contracts in accordance with the provisions of [FAR 11.5](#).

1236.208 Concurrent performance of firm-fixed-price and other types of construction contracts.

The Chief of the Contracting Office (COCO) is authorized to approve the use of cost-plus-fixed-fee, price-incentive, or other types of contracts with cost variation or cost adjustment features concurrently at the same work site with firm-fixed-price, lump sum, or unit price contracts.

1236.209 Construction contracts with architect-engineer firms.

The HCA or designee is authorized to approve the award of a contract for the construction of a project to the firm that designed the project or its subsidiaries or affiliates.

1236.212 Preconstruction orientation.

(b) When the contracting officer considers such action warranted, a preconstruction conference shall be arranged with the contractor and such subcontractors as the contractor may designate to assure that there is a clear understanding of the contract requirements (including labor standards provisions) and the rights and obligations of the parties.

(c) Form DOT F 4220.3 entitled, "Preconstruction Conference Agenda and Checklist," or a similar checklist, shall be used as the agenda of, or checklist for, the preconstruction conference.

1236.213-2 Presolicitation notices.

(a) The COCO is authorized to waive the requirement to send presolicitation notices to prospective bidders on any construction requirement when the proposed contract is expected to equal or exceed the simplified acquisition threshold.

1236.270 Contracting with the National Institute of Building Sciences.

(a) The National Institute of Building Sciences (NIBS) was chartered in 1974 to provide advice to the public and private sectors on issues involving new building technology and the building regulatory process. Public Law 93-383, Housing and Community Development Act of 1974, specifically authorizes agencies to contract with and accept contracts from the NIBS for specific services where deemed appropriate by the responsible Federal officials involved. NIBS provides assistance or advice on building-related matters by processing:

(1) On-line databases on current developments in building science and technology in areas such as architecture and engineering, products and materials, health and safety, and codes and standards; and

(2) Information pertaining to asbestos in public buildings and lead-based paint poisoning, energy efficiency in offices and industrial buildings, and seismic safety of buildings.

(b) Section 809(g)(3) of Pub. L. 93-383 expressly authorizes agencies and departments to contract with NIBS. In this regard, the exception to full and open competition at [FAR 6.302-5](#) may be used, if the contracting officer determines this to be an appropriate exception, to award such contracts. However, the exception to full and open competition at [FAR. 6.302-1](#) should be used when it is determined

that NIBS, because of its unique capabilities and charter, is the only source that will satisfy the requirement.

(c) The synopsis requirements at [FAR 5.2](#) are applicable unless a waiver is granted pursuant to [FAR 5.202\(b\)](#).

1236.271 Report of proposed Federal construction.

(a) Section 1.4 of the Davis-Bacon Procedural Rules, 29 C.F.R. Part 1, Procedures for Predetermination of Wage Rates, requires agencies using wage determinations under the Davis-Bacon Act, among other statutes, to furnish the Administrator, Department of Labor (DOL), a general outline of its proposed construction programs for the coming year indicating the estimated number of projects for which wage determinations will be required, the anticipated types of construction, and the locations of construction.

(b) OAs shall use, DOT F 4240.1 Annual Outline of DOT Construction Programs, to fulfill the requirements of TAM 1236.271. The report shall be electronically (e-mail) submitted to M-60 not later than August 31 of each fiscal year. M-60 will consolidate all OA reports for transmittal to DOL. Negative reports are required.

SUBCHAPTER 1236.6--ARCHITECT-ENGINEER SERVICES

1236.602 Selection of firms for architect-engineer contracts.

1236.602-1 Selection criteria.

(b) The COCO is authorized to approve the use of a design competition. When a design competition is used, the COCO's written approval is required prior to soliciting proposals.

1236.602-2 Evaluation boards.

(a) The COCO shall establish one or more ad hoc A-E evaluation boards for each acquisition of A-E services. For A-E acquisitions exceeding the simplified acquisition threshold, the following requirements apply in addition to those set forth in [FAR 36.602-2](#):

(1) The A-E evaluation board(s) shall be composed of the following members:

- (i) One member with experience in acquisition of A-E services (normally the contracting officer or contract specialist/negotiator);
 - (ii) One or more members with technical experience in the fields of architecture, engineering or construction (normally someone from the organization responsible for establishing the A-E work requirements);
 - (iii) One member with technical knowledge of the functional (user) requirements of the project; and
 - (iv) Other special members as are deemed necessary.
- (2) A-E board members may be appointed from among highly qualified professional employees of other Government agencies or the private sector who are engaged in the practice of architecture, engineering, construction, or related professions.

1236.602-3 Evaluation board functions.

The HCA retains the authority to direct the functions of the evaluation board.

- (a) For A-E acquisitions exceeding the simplified acquisition threshold, the A-E evaluation board shall perform the following functions in addition to, or in combination with, those of [FAR 36.602-3](#), and in the sequence indicated:
- (1) Analyze the nature and scope of the project work requirements.
 - (2) Develop the evaluation criteria and rating systems to be used in screening firms for the pre-selection list and in the final selection. The screening criteria should be based on information provided by the Architect-Engineer Qualifications Form (SF-330).
 - (3) Prepare the public announcement (see [FAR 5.205\(d\)](#)) for the project and provide it to the contracting officer for publication.
 - (4) Screen the SF 330 and any other qualification data received in response to the public announcement of the project and prepare a pre-selection list of the best qualified firms for further consideration. The pre-selection list must consist of at least three firms.

(5) When appropriate, obtain in writing more specific and detailed qualification, experience and past performance data (see [FAR 36.602-1\(a\)](#)) not provided by the SF 330 which are needed to evaluate the firms using the established selection criteria. The firms should also be provided with a description of the nature and the scope of work to be accomplished to assist them in their responses. The A-E firms shall be advised not to submit price proposals, design sketches, drawings or design data at the time the qualification and past performance information is submitted.

(6) Conduct interviews with the firms on the pre-selection list. As part of the interview, the A-E firms shall be given an opportunity to make an oral presentation of their qualifications and experience, proposed project approach and any other relevant data. The project manager and other key project personnel and consultants proposed by a firm should participate in the interview.

(7) Whenever it is practical and advantageous, the A-E evaluation board should visit the offices of the A-E firms on the pre-selection list to inspect their facilities and work environments, to meet members of the proposed project team, and to see both work in progress and additional examples of completed projects.

(8) Review the SF 330 and other experience and qualification data for each firm on the pre-selection list, and perform a systematic numerical evaluation rating of the firms.

(9) Develop a rank order listing of at least three firms considered most highly qualified to perform the required work, based on the numerical evaluation ratings of the firms on the pre-selection list.

(10) Prepare a report which shall include in sufficient detail:

(i) The extent of the board's review and evaluation;

(ii) The list described in paragraph (9) of this section;

(iii) Recommendations; and

(iv) Considerations on which the recommendations are based.

(d) The COCO is authorized to receive the report prepared by the evaluation board.

1236.602-4 Selection authority.

(a) The COCO is authorized to make the final selection of the most highly qualified firms.

(b) The COCO will normally approve the evaluation board's recommendation, unless the report does not adequately support the recommendation, or there is evidence of bad faith or fraud. If the COCO does not concur with the recommendation, the A-E evaluation board will be reconvened until an acceptable recommendation is presented. If there is evidence of bad faith or fraud on behalf of the board, a new A-E board will be reconvened until an acceptable recommendation is presented. The approved report shall serve as authorization for the contracting officer to commence negotiations with the A-E firm ranked number one by the A-E evaluation board.

1236.602-5 Short selection process for contracts not to exceed the simplified acquisition threshold.

OAs are authorized to use either of the short selection processes of [FAR 36.602-5](#).

(b) *Selection by the chairperson of the board.* The COCO is authorized to review and approve the selection report.

1236.603 Collecting data on and appraising firms' qualifications.

(a) DOT OAs shall establish ad hoc evaluation boards instead of a permanent DOT board to select A-E firms. Unless otherwise established or designated by each OA, the contracting office will be considered the office to meet the requirements of [FAR 36.603\(a\)](#). However, if an OA requires a permanent evaluation board, it may establish one for its evaluations and may also offer its services to other OAs.

1236.606 Negotiations.

1236.606-70 General.

(a) The limitation on A-E fees of six percent of the estimated construction cost (see [FAR15.404-4\(c\)\(4\)\(i\)\(B\)](#)) applies to those services that are integral to the development and delivery of the plans, designs, drawings and specifications of a construction project. Such services include work done by a contractor's in-house workforce or that is outsourced to a different firm and include efforts at joint reviews with Government personnel during the various stages of

design. Overhead, general and administrative costs and profit related thereto are included in the six percent. The limitation however, does not apply to the cost of investigative and other services that are not integral to the production of plans, designs and specifications including but not limited to the following:

- (1) Development of program requirements (scope of work);
- (2) Determination of project feasibility;
- (3) Preparation of drawings of an existing facility, where current drawings are not available;
- (4) Subsurface investigations (soil borings);
- (5) Structural, electrical and mechanical investigations of an existing building, where current information is not available;
- (6) Surveys: topographic, boundary, utility;
- (7) Preparation of models, color renderings, photographs or other presentation materials;
- (8) Travel and per diem for special presentations;
- (9) Supervision and inspection of construction;
- (10) Preparation of operating and maintenance manuals;
- (11) Master planning and
- (12) Reproduction of designs for interim reviews and solicitation documents for distribution to potential offerors.

1236.609 Contract clauses.

1236.609-1 Design within funding limitations.

(c) The authority to determine in writing not to include clause [FAR 52.236-22](#) in fixed-priced A-E contracts because: (1) cost limitations are secondary to performance consideration and additional project funding can be expected, if

necessary; (2) the design is for a standard structure and is not intended for a specific location; or (3) there is little or no design effort involved is retained by the HCA.

CHAPTER 1237 - SERVICE CONTRACTING

SUBCHAPTER 1237.1--SERVICE CONTRACTS—GENERAL

1237.104	Personal services contracts
1237.104-70	Services of individual experts and consultants.
1237.106	Funding and term of service contracts
1237.112	Government use of private sector temporaries
1237.112-70	Stenographic reporting services
1237.113-1	Waiver of cost allowability limitations

SUBCHAPTER 1237.2--ADVISORY AND ASSISTANCE SERVICES

1237.203	Policy
1237.203-71	Third party benefits
1237.204	Guidelines for determining availability of personnel
1237.205	Contracting officer responsibilities
1237.205-70	Accounting and information system

SUBCHAPTER 1237.5--MANAGEMENT OVERSIGHT OF SERVICE CONTRACTS

1237.503	Agency-head responsibilities
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SUBCHAPTER 1237.1--SERVICE CONTRACTS- -GENERAL

1237.104 Personal services contracts.

(b) The Chief of the Contracting Office (COCO) is authorized, under 5 U.S.C. 3109 to procure by contract the temporary or intermittent services of experts or consultants or an organization thereof, if such an acquisition is authorized by an appropriation or other statute, without regard to the laws of competitive service, position classification and the general schedule pay grades.

1237.104-70 Services of individual experts and consultants.

(a) The rate of pay for services rendered by an expert or consultant is limited and cannot be exceeded unless specifically authorized by the appropriation or other

statute which authorizes the acquisition of the services. The rate of pay for services rendered by a consultant to an advisory committee is governed by 41 C.F.R. Subpart 101-6.10.

(b) Since the statutes governing the acquisition of and rate of pay for these services are subject to change, the contracting officer shall seek the advice of the OA legal counsel prior to taking action on the procurement request for such services.

1237.106 Funding and term of service contracts.

(b) The COCO is authorized to approve entering into a contract, exercising an option, or placing an order under a contract for procurement of severable services for a period that begins in one fiscal year and ends in the next fiscal year if the period of the performance period does not exceed one year.

1237.112 Government use of private sector temporaries.

(a) *Definitions.* The following words and terms are used in and defined for this subsection.

"*Critical need*" means a sudden or unexpected occurrence; an emergency; a pressing necessity; or an exigency. Such occasions are characterized by additional work or deadlines required by statute, executive order, court order, regulation, or formal directive from the Secretary of Transportation or designee. A recurring, cyclical peak workload, by itself, is not a critical need.

"*Parental and family responsibilities*" means situations such as absence for pregnancy, childbirth, child care, and care for elderly or infirm parents or other dependents.

"*Temporaries*" means those employees of a temporary help service firm who are supervised and paid by that firm and whom that firm assigns to perform the contract work assignments.

"*Temporary help service firm*" means a contractor which provides services that are performed by its pool of employees possessing the appropriate work skills for brief or intermittent periods. The firm is the legally responsible employer and maintains that relationship during the time its employees are assigned to the contract. The firm recruits, tests, hires, trains, assigns, pays, provides benefits and leave to, and as necessary, addresses performance problems, disciplines, and terminates its

employees. The firm is responsible for payroll deductions and payment of income taxes, social security (FICA), unemployment insurance, and worker's compensation, and any required liability insurance and bonding.

(b) *Policy.* Temporary help services may be acquired for the brief or intermittent use of the skills of private sector temporaries. Acquisition of these services are subject to the following conditions:

(1) The temporary will be performing the work of an employee who will be absent from the position for a temporary period (short-term) because of a personal need including emergency, accident, illness, parental or family responsibilities, or mandatory jury service.

(2) In the judgment of the head of the requesting office, the temporary help is for a critical need which cannot be delayed.

(c) *Exceptions.* Temporary help services cannot be acquired--

(1) To displace a Federal employee;

(2) For the work of managerial or supervisory positions;

(3) To perform the work of a Senior Executive Service (SES) employee or to occupy an SES position; or

(4) To circumvent the regular recruitment and hiring procedures under the civil service laws for permanent appointment in the competitive civil service.

(5) To circumvent controls on employment levels; or

(6) In lieu of appointing a surplus or displaced Federal employee as required by 5 C.F.R. Part 330, Subpart F (Agency Career Transition Assistance Plan for Displaced Employees) and Subpart G (Interagency Career Transition Assistance Plan for Displaced Employees).

(d) *Certification of need.* The requirements office must submit a Checklist for Private Sector Temporary Personnel (Appendix A), with the procurement request (PR) for temporary help services. The entire checklist must be completed or the contracting officer shall reject the PR.

(e) *Acquisition and contract requirements.* The contracting officer shall comply, as applicable, with all of the policy and procedures of the FAR to acquire temporary help services by contract.

The following limitations apply:

(1) The contract shall not create or imply an employer-employee relationship between the Government and the contractor's temporary, and the temporary shall not be eligible for civil service employee benefits, including retirement; and

(2) *Time limit on use of temporary help service firm.* The contract shall not require the use of a temporary help service firm in a single situation, as defined at TAM 1237.112(a) initially for more than 120 workdays. However, if the Government employee's absence or DOT critical need continues to exist beyond the initial 120 workdays, the temporary help services may be extended up to a maximum limit of 240 workdays.

(3) *Time limit on use of individual employee of a temporary help service firm.* The contract shall not require that a temporary at an office work for more than 120 workdays in a 24-month period. The 24-month period begins on the first day of assignment. However, the temporary may work up to a maximum of 240 workdays if it is determined that using the services of the same individual for the same situation will prevent significant delay.

(f) *Approval for extended services by the OA personnel office.* If the requiring office desires to retain the services of the same temporary help service firm beyond 120 workdays, or needs to use a temporary beyond the 120 workdays, the requiring office must submit information to the OA personnel office for approval. The OA personnel office should receive the notification at least 10 working days *before* the 120 workday period expires. The information required for submission is:

(1) A full justification for the extension beyond the 120 workday period;

(2) The new termination date or number of extra workdays needed;

(3) The total number of days worked by the current temporary and the reason for using the individual;

(4) The importance of the work to be done and the impact of delay or interruption; and

(5) The actions taken to find other solutions, and the availability of external and internal candidates.

(g) *Contract administration.* The office receiving the temporary service shall ensure that an employer-employee relationship is not established with the contractor's temporary. However, technical advice, assignment of task, task-related instructions, office orientation, and review of the temporary's work products are necessary to ensure that the temporary performs the requisite services.

1237.112-70 Stenographic reporting services.

(a) The contracting officer is authorized to procure stenographic services by contract under 5 U.S.C. 3109.

1237.113-1 Waiver of cost allowability limitations.

(a) The Head of the Contracting Activity (HCA) or designee no lower than the COCO is authorized to waive the cost allowability limitations at [FAR 31.205-6\(g\)](#) on severance payments to foreign nationals pursuant to [FAR 37.113-1\(a\)](#).

SUBCHAPTER 1237.2--ADVISORY AND ASSISTANCE SERVICES

1237.203 Policy.

1237.203-71 Third party benefits.

When a contract calls for technical assistance or advice that will benefit a third party, these are considered advisory and assistance services in the context of any regulation, statute, or guidance on these services. While these services may ultimately benefit an external or third party such as grantees or the states, the services are nonetheless acquired to accomplish the program objectives of DOT.

1237.204 Guidelines for determining availability of personnel.

(a), (b) and (d) The COCO is delegated the authorities at [FAR 37.204](#).

(b)(1) The determination must ensure that the requirements of [FAR 9.5](#) are met.

1237.205 Contracting officer responsibilities.

The contracting officer shall ensure that the requirements of [FAR 37.205](#) are met.

1237.205-70 Accounting and information system.

All advisory and assistance services shall be reported to the Federal Procurement Data System in accordance with the procedures under TAM 1204.6.

SUBCHAPTER 1237.5--MANAGEMENT OVERSIGHT OF SERVICE CONTRACTS

1237.503 Agency-head responsibilities.

(a) The contracting officer is authorized to ensure that requirements for services are clearly defined and appropriate performance standards are understood by potential offerors. See [FAR 37.503\(a\)](#).

(b) The contracting officer is authorized to ensure that service contracts are awarded and administered to meet the customer's required budget and delivery schedule. See [FAR 37.503\(b\)](#).

(c) The HCA is authorized to ensure that specific OA procedures are in place before awarding service contracts in accordance with OFPP Policy Letter 92-1 for Inherently Governmental functions.

(d) The HCA is authorized to ensure that strategies are developed, and staff trained for effective implementation of service contract policies in [FAR 37.103](#).

CHAPTER 1238-- FEDERAL SUPPLY SCHEDULE CONTRACTING

SUBCHAPTER 1238.1--FEDERAL SUPPLY SCHEDULE PROGRAM

1238.101 General.

The procedures for ordering from the GSA FSS contracts are set forth in FAR Part 8 and TAM Chapter 1208.

SUBCHAPTER 1238.1--FEDERAL SUPPLY SCHEDULE PROGRAM

1238.101 General.

(e) Multiple award schedules [FAR Part 8.404](#). Multiply award schedules can be accessed at <http://www.gsa.gov/portal/content/197465#>.

CHAPTER 1239 - ACQUISITION OF INFORMATION TECHNOLOGY

SUBCHAPTER 1239.1--GENERAL

1229.101	Policy
1239.105-70	Privacy and Information Technology Systems
1239.107-70	Form

SUBCHAPTER 1239.2--ELECTRONIC AND INFORMATION TECHNOLOGY

1239-201-70	Scope of Chapter
1239.203-70	Documentation of Commercial Non-Availability other than Credit Card Purchases
1239.203-71	Documentation of Electronic and Information Technology (EIT) Credit Card Purchases
1239.204-70	Documentation of Undue Burden other than Credit Card Purchases

SUBCHAPTER 1239.1 GENERAL

1239.101 Policy.

(b) All commercial software, hardware, and telecommunications products and services procured by contract (including through subcontracts), purchase order, task order (including GSA Schedules), small purchase, purchase card (see documentation requirements of 1239.203-70 and 1239.203-71) or otherwise, are required to be approved in advance by the Operating Administration (OA) Chief Information Officer (CIO) or designee in accordance with OA procedures and 1239.2. See the memorandum entitled, Guidelines for Information Technology (IT) Purchases dated October 1, 2004.

Further DOT requirements for IT are contained in DOT Order 1350.2, "Departmental Information Resource Management Manual (DIRMM)" which is issued and maintained by the Office of the Chief Information Officer.

1239.105-70 Privacy and Information Technology Systems

(a) Procurement requests for information technology systems, including acquisitions for databases and publicly accessible websites, are to contain a DOT F 1361, Checklist for Privacy Compliance, completed by the requiring official and OA Privacy Officer and approved by the OA Privacy Officer (or designee) before forwarding to the Contracting Officer for processing. The Contracting Officer is to ensure the appropriate contract clauses and language (see 1239.105-70(b)) relating to privacy is included in any resultant contract.

(b) When a DOT F 1361, Checklist for Privacy Compliance, indicates that a Privacy Impact Assessment (PIA) is required for an acquisition, the following language is to be included in the contract, normally in the statement of work by the requiring office, unless the contracting officer determines another section of the contract format is more appropriate.

“This acquisition requires a Privacy Impact Assessment (PIA) to be conducted by the Government. To ensure the PIA is current and accurate, the contractor shall provide either a written confirmation to that effect or a report listing the requirements needed to make the PIA current and accurate. This confirmation or report (as applicable) is to be provided to the requiring official and OA Privacy Act coordinator 30 days before the system is deployed.”

(c) The requiring office must include the requirements of 1224.1 in requirements for the development and management of DOT public web sites to ensure compliance with the E-Government Act of 2002.

1239.107-70 Forms.

(a) Requiring officials and Privacy Officers are to complete a DOT F 1361, Checklist for Privacy Compliance, and include a copy in the procurement request package when an acquisition is for an information technology system, including acquisitions for data bases and acquisitions for publicly accessible web sites.

(b) OAs shall use the DOT F 4263.1 to indicate the CIO’s approval of Electronic and Information Technology (EIT) purchases using the credit card. See the definition of EIT at [FAR 2.101](#). The approved DOT F 4263.1 shall be retained by the credit card holder.

SUBCHAPTER 1239.2 – ELECTRONIC AND INFORMATION TECHNOLOGY

1239.201-70 Scope of subchapter.

This chapter prescribes acquisition policies and procedures for Electronic and Information Technology (EIT). [FAR 2.101](#) states that EIT has the same meaning as information technology. The DOT guidelines found in the memorandum entitled, "Guidelines for Information Technology (IT Purchases," dated October 1, 2004 applies to EIT.

1239.203-70 Documentation of Commercial Non-Availability other than Credit Card Purchases.

Purchase request packages for any acquisition that may include electronic and information technology (EIT) as a deliverable must include a fully completed "Section 508 Determination and Certification" (Form DOT 4260.1). If it is determined that some part of the requirement is not commercially available, this document must be accompanied by its, "EIT Commercial Non-Availability Certification," (Form DOT 4261.1) and be signed by the requiring official, the requiring official's immediate supervisor or office chief, and the Operating Administration's (OA) Chief Information Officer. These properly certified documents must be included in the purchase request package before forwarding to the applicable contract office. All EIT purchases, regardless of the purchase methodology used, shall be approved by the OA CIO or designee.

1239.203-71 Documentation of Electronic and Information Technology (EIT) Credit Card Purchases.

Credit card purchases of EIT require a completed DOT F 4263.1, Checklist for EIT Credit Card Purchases, to be approved by the OA CIO or designee prior to purchasing the EIT. The approved DOT F 4263.1 shall be retained by the credit card holder.

1239.204-70 Documentation of Undue Burden other than Credit Card purchases

If it is determined that conformance with the Agricultural and Transportation Barriers Compliance Board (Access Board) standards would impose an undue burden or would result in a fundamental alteration in the nature of the product, conformance is only required to the extent that it does not impose an undue burden or result in a fundamental alteration. Access through alternative means is still required if an undue burden exception applies. Undue burden means "significant

difficulty or expense” when considering all agency resources available to the program or component, for which the product is being developed, procured, maintained or used.

All justifications of undue burden claims must be documented in writing. The requiring organization must complete and certify using “Section 508 Determination and Certification for EIT Purchase Requests” (DOT F 4260.1) and the “EIT Undue Burden Exception Determination and Certification” (Form DOT 4262.1) forms. All undue burden claims and other applicable documents must be submitted to the DOT Chief Technology Officer (CTO), who will coordinate with the DOT Secretary for approval in accordance with the undue burden review process pursuant to DOT Order 1351.23 Electronic and Information Technology (EIT) Accessibility Policy.

CHAPTER 1240

Solicitation Provisions and Contract Clauses (RESERVED)

There is no text implementing or supplementing FAR Part 40.

CHAPTER 1241-- ACQUISITION OF UTILITY SERVICES

SUBCHAPTER 1241.1 - GENERAL

1241.103 Statutory and delegated authority

SUBCHAPTER 1241.2 - ACQUIRING UTILITY SERVICES

1241.201 Policy

SUBCHAPTER 1241.5 - SOLICITATION PROVISION AND CONTRACT CLAUSES

1241.501 Solicitation provision and contract clauses

SUBCHAPTER 1241.1-GENERAL

1241.103 Statutory and delegated authority.

(c) Requests for certifications that allow for delegations of authority from GSA for utility service contracts for periods over one year and not greater than ten years shall be submitted by the Chief of the Contracting Office (COCO) to the Senior Procurement Executive (SPE). The request shall describe the items to be acquired, the total value of the acquisition (including options) and the period of contract performance. The request also shall certify that there are personnel technically qualified to deal with special utility problems (e.g., technical knowledge of the items being purchased including the determination of a reasonable price).

SUBCHAPTER 1241.2--ACQUIRING UTILITY SERVICES

1241.201 Policy.

(d)(2)(i) The contracting officer is authorized under [FAR 41.201\(d\)\(2\)\(i\)](#) to enter into a contract pursuant to 42 U.S.C. 8287 (which pertains to the subject of shared energy savings including cogeneration).

SUBCHAPTER 1241.5--SOLICITATION PROVISION AND CONTRACT CLAUSES

1241.501 Solicitation provision and contract clauses.

(a) Contracting officers may use variations of the prescribed provision and clauses under [FAR 41.5](#) when necessary for a particular acquisition of utilities. However, the variations should be reviewed by counsel for legal sufficiency.

CHAPTER 1242 - CONTRACT ADMINISTRATION AND AUDIT SERVICES

1242.002 Interagency agreements

SUBCHAPTER 1242.1--CONTRACT AUDIT SERVICES

1242.102 Assignment of contract audit services

1242.70 Contract audit follow-up

1242.71 Audit of direct and indirect cost

SUBCHAPTER 1242.2--CONTRACT ADMINISTRATION SERVICES

1242.202 Assignment of contract administration

SUBCHAPTER 1242.3 --CONTRACT ADMINISTRATION OFFICE FUNCTIONS

1242.302 Contract administration functions

SUBCHAPTER 1242.6--CORPORATE ADMINISTRATIVE CONTRACTING OFFICER

1242.602 Assignment and location

SUBCHAPTER 1242.7--INDIRECT COST RATES

1242.703 General

1242.703-1 Policy

1242.703-2 Certificate of indirect costs

1242.705 Final indirect cost rates

1242.705-1 Contracting officer determination procedure

1242.705-3 Educational institutions

1242.708 Quick-closeout procedure

1242.708-70 DOT quick-closeout procedures

SUBCHAPTER 1242.8--DISALLOWANCE OF COSTS

1242.803 Disallowing costs after incurrence

SUBCHAPTER 1242.15--CONTRACTOR PERFORMANCE INFORMATION

1242.1500 Scope of subchapter
1242.1502 Policy

SUBCHAPTER 1242.71--AUDIT OF DIRECT AND INDIRECT COSTS

1242.701 DOT Policy

1242.002 Interagency agreements.

(c) DOT negotiates various Memorandums of Agreements (MOA) for contract administration and audit services with other Federal agencies. These MOAs serve as interagency agreements within the meaning of [FAR 42](#).

SUBCHAPTER 1242.1--CONTRACT AUDIT SERVICES

1242.102 Assignment of contract audit services.

(a) Contracting offices shall follow the procedures under the Memorandum of Understanding MOU and current billing rates as amended between DOT and the Department of Defense to order audit services

(b) Where the cognizant audit agency has declined to conduct an audit the OA may contract for audit services outlined in [FAR 42.101\(a\)](#).

1242.170 Contract audit follow-up.

SPE shall be responsible for audit follow-up. The follow-up shall occur on a quarterly basis. SPE shall obtain a listing of all open audits from DCAA. A listing of open audits for which audit reports are older than 90 days shall be provided to the OAs. The OAs shall provide the status of each audit (e.g. disposition with a copy of the price negotiation memorandum, negotiations in process, etc.) to SPE within 30 days after the list is provided to the OA. OAs shall maintain a listing of all open audits older than 90 days and the status of those audits.

SUBCHAPTER 1242.2--CONTRACT ADMINISTRATION SERVICES

1242.202 Assignment of contract administration.

(a) *Delegating functions.* Contracting offices may obtain contract administration assistance from the Defense Contract Management Agency, when the Chief of the Contracting Office (COCO) determines that such action is in the best interest of DOT. DOT has an MOU with the Department of Defense for contract administration support services. Contracting officers shall comply with the MOU when ordering services.

(c) *Delegating additional functions.*

(2) The Chief of the Contracting Office (COCO) is authorized to approve a delegation of authority to the Contract Administration Office (CAO), to issue orders under provisioning procedures in existing contracts and under basic ordering agreements for items and services identified in the schedule.

SUBCHAPTER 1242.3 --CONTRACT ADMINISTRATION OFFICE FUNCTIONS

1242.302 Contract administration functions.

(a)(13) The assignment of contract administration to a Defense Contract Management Agency does not affect the designation of the paying office unless the payment function is transferred to the CAO. If the contracting officer intends to delegate the contract payment function to another agency, the contracting officer shall discuss the procedure for transferring funds with the Operating Administration (OA) assigned payment office. All payments to contractors will be made by the payment office designated in the contract.

The CAO or the contracting officer's designee under fixed price contracts shall review and approve contractor invoices for payment. The CAO shall review and approve contractor's vouchers (invoices) under cost-reimbursement, labor hour or time and material contracts, and this function cannot be delegated to a Contracting Officer's Representative (COR).

SUBCHAPTER 1242.6--CORPORATE ADMINISTRATIVE CONTRACTING OFFICER

1242.602 Assignment and location.

(a) The Head of the Contracting Activity (HCA) or designee with a rank no lower than a Senior Executive (SES) is authorized to approve the assignment of a corporate administrative contracting officer.

SUBCHAPTER 1242.7--INDIRECT COST RATES

1242.703 General.

1242.703-1 Policy.

DOT normally relies on the indirect cost rates established by the Defense Contract Audit Agency (DCAA) or the Defense Contract Management Agency (DCMA), and the Department of Health and Human Services (HHS) whenever available. However, contracting officers are authorized to use private CPA services when it is determined that DCAA, DCMA or HHS have not established indirect cost rates, nor will they do so in a timeframe adequate to the contracting officer's need. Where DCAA has an audit presence, DOT will use DCAA unless DCAA agrees otherwise.

1242.703-2 Certificate of indirect costs.

(b)(1) *Waiver of certification.* The COCO is authorized to waive the requirement for certified final indirect costs rates in accordance with [FAR 42.703-2](#).

1242.705 Final indirect cost rates.

1242.705-1 Contracting officer determination procedure.

(a) *Applicability and responsibility.*

(3) When the business units are not included in [FAR 42.705-1\(a\)\(1\) or \(2\)](#), the Administrative Contracting Officer (ACO) of the contract is the contracting officer responsible for obtaining or negotiating a rate using the guidance under [FAR 42.704](#) and TAM 1242.708 and 1242.708-70.

(b) *Procedures.*

(1) Contracting officers shall require the contractor to submit a copy of the contractor's final indirect cost rate proposal to the responsible auditor.

1242.705-3 Educational institutions.

(b) *Predetermined final indirect cost rates.*

(3) The HCA is the level of approval for use of a predetermined final indirect cost rate under a contract with an educational institution when the conditions under [FAR 42.705-3\(b\)\(3\)](#) apply.

1242.708 Quick-closeout procedure.

(a)(2)(ii) The 10 percent parameter under [FAR 42.708\(a\)\(2\)\(ii\)](#) does not apply to DOT contracts.

1242.708-70 DOT quick-closeout procedures.

The contracting officer shall:

(a) Require the contractor to submit the following: (1) the contractor's final indirect cost rate proposal reflecting actual cost experience during the covered period(s), together with supporting cost or pricing data, for each of its fiscal years for which quick-closeout is involved, and (2) a final voucher and a summary of all costs by cost element and for each of its fiscal years for the contract(s) in question.

(b) Notify the responsible audit activity, either verbally or in writing, identify the contract(s), and request: (1) the contractor's indirect cost history covering a sufficient number of fiscal years to see the trend of claimed, audit questioned, and disallowed costs; and (2) any other information that could impact the decision to use quick-closeout procedures. Indirect cost histories should be requested from the contractor only when the responsible audit activity is unable to provide the information. If government auditing services are not readily available to meet the time constraints of the contracting officer, then the services of a private certified public accounting (CPA) firm may be used as necessary by the contracting officer.

(c) Review the contract(s) for indirect cost rate ceilings and any other contract limitations, as well as the rate history information.

(d) If quick-closeout procedures are appropriate based upon the information obtained pursuant to paragraphs (a), (b), and (c) of this section, the contracting officer shall document the file stating the findings and rationale for proceeding

with the quick closeout procedures. See TAM 1242.7100, Policy, on file documentation for audits of direct and indirect costs.

(e) Final indirect cost rates should be established using one of the following:

(1) Ceiling indirect cost rates established in the contract (if applicable), consistent with [FAR 42.707\(c\)\(1\) and \(2\)](#).

(2) Contractor's claimed actual rates adjusted based on the contractor's indirect cost history.

(3) Recommended rates from the responsible audit agency, the local pricing office, another installation pricing office, or other recognized knowledgeable source, such as a private CPA firm.

(4) Billing rates established in the contract.

(5) Previous year's final rates in the contract, if established.

(6) Contracts established final rates for another fiscal year closest to the period for which quick-closeout rates are being established.

(f) If an agreement is reached with the contractor, obtain a release of all claims and other applicable closing documents (see TAR 1204.804-570).

(g) The contracting officer will submit to a DOT central repository and any audit results obtained from a private CPA for use by other DOT contracting officers to avoid repetitive audit requests for the same contractors.

SUBCHAPTER 1242.8--DISALLOWANCE OF COSTS

1242.803 Disallowing costs after incurrence.

(a) *Contracting officer receipt of vouchers.*

Contracting officers shall process reimbursement vouchers in accordance with their OA voucher/invoicing procedures.

(b) Auditor receipt of vouchers.

(1) The contracting officer may authorize the contractor to send vouchers directly to the contract auditor, if agreed to by the contract auditor and if a funding agreement is executed by the OA with the cognizant government audit agency. If this authority is granted, the auditor shall (i) receive reimbursement vouchers directly from contractors, (ii) approve for payment those vouchers found acceptable, and (iii) forward approved vouchers for payment to the responsible payment office. The auditor shall not be allowed to approve or suspend payment of questionable costs. The auditor shall send reimbursement vouchers with questionable costs to the contracting officer with a recommendation concerning approval, disapproval or suspension of payment.

(2) The auditor shall not be allowed to issue the contractor a notice of suspended and/or disapproved contract costs.

(3)(ii) When the contractor files a claim under the Disputes clause of the contract for costs not reimbursed, the contracting officer shall process the claim in accordance with OA procedures.

SUBCHAPTER 1242.15--CONTRACTOR PERFORMANCE INFORMATION

1242.1500 Scope of subpart.

This subchapter provides policies and establishes responsibilities for recording and maintaining contractor performance information. See also <http://one10.dot.gov/office/ost/ospe/SitePages/Home.aspx>.

1242.1502 Policy.

(a) OAs shall prepare a contractor performance evaluation for all contracts, task orders and/or delivery orders in accordance with FAR 42.1502(a) however, note the discretion afforded the contracting officer regarding orders under single-agency contracts. (See [FAR 42.1502\(d\)](#)). The evaluation shall be completed using the Department of Defense's Contractor Performance Assessment Reporting System (CPARS). General information on this system and the CPARS user's manual are available at <http://www.cpars.gov/>. Interim evaluations are required to be performed on contracts exceeding one year in duration (including options). This will assist contractors with improving marginal performance and will help identify any major deficiencies. Interim evaluations will also facilitate performance

evaluations at contract completion, as well as determining whether to exercise contract options, if any.

1242.1503 Procedures.

(a)(1) Each OA shall establish internal procedures to implement CPARS. These procedures will include training requirements for Focal Points/System Administrators, Assessing Official (AO), Reviewing Officials (RO), and contractors, to ensure procedures for monitoring the timely completion of reports, report integrity (e.g., quality of reports), and overall CPARS system administration are in place.

(a)(2) The COCO shall determine who will evaluate the contractor's performance. Contracting officers, CORs, and other program office users are candidates likely to be selected to perform the evaluation. Both acquisition and program office personnel are required to participate in the electronic evaluation process. Instruction for submitting evaluations into CPARS are available at <http://www.cpars.gov/>.

OA procedures shall provide that:

(1) Contracts and task/delivery orders that require past performance evaluations shall be registered in the CPARS within 30 days of award of the instrument.

(2) Input for evaluations shall generally be obtained from the technical office, the contracting office, where appropriate, the end users of the product or service.

(3) Appropriate Government personnel will be identified as (i) "Assessing Official Representatives" (AORs) for the purpose of providing input into contractor performance evaluations, and (ii) "Assessing Officials" (AOs) for the purpose of reviewing, finalizing and signing the evaluations and forwarding them to the contractor for comment. A contract may have multiple AORs, always including the COR and possibly including the program manager and end users. CORs will not be designated as AOs. Evaluations prepared by the AOR(s) will be forwarded to the AO who will be the contracting officer or other official at a level above the COR.

(4) Government personnel will be identified as CPARS "Focal Points" (FP), who will be responsible for CPARS access authorizations for Government and contractor personnel registering the contract, and the monitoring, distribution and

control of evaluations. To ensure continuity of operations, it is recommended that each OA identify a Primary and Alternate FP. The OA Focal Point will grant users access to input records via the FAPIIS input module of the Contractor Performance Assessment Reporting System. The Federal Awardee Performance Information Integrity System (FAPIIS) input module is located at <https://www.cpars.gov>.

(5) CPARS “Senior Command Official” (SCO) will be identified. (SCO is a CPARS term, and is used here even though DOT is not organized by “Commands.”) The SCO will be at a level higher than the CPARS FP. SCO functions include assisting the CPARS FP with training, monitoring and policy; evaluating quality and compliance metrics; providing metrics to management. SCOs may not also be FPs.

(a)(3) An interim evaluation should be obtained from an individual who monitored the contractor’s performance when their assignment of duties or employment ends prior to the physical completion of a contract.

(d) The COCO is the final authority on disagreements between the parties regarding a contractor’s performance evaluation. In the event the COCO is also the contracting officer, the final authority to resolve a disagreement will be referred to the responsible individual one level above the COCO. Release and markings of the completed evaluations to other than Government personnel and the contractor whose performance is being evaluated shall be conducted in accordance with FAR 42.1503(b).

(f) Access to the CPARS is restricted to DOT personnel with a need to enter the database for the purposes of evaluating, reviewing or commenting on a contractor’s performance. DOT contractor personnel, who require access to the CPARS for the purpose of evaluating performance as a responsibility of an OA contracting office, must have a current non-disclosure statement on file with both the OA and CPARS system administrators.

(1) The DOT administrator of the CPARS is located in the Office of the Senior Procurement Executive (M-62). The DOT administrator provides access to an administrator in each OA.

(2) The OA administrators are responsible for assigning access rights (user ID and passwords) to contracting personnel (i.e., contracting officer, contract specialist, COR, contractor, etc.) to perform the required evaluation, comment or rebuttal process under password restricted accounts. The list of OA system administrators

can be found at

<http://one10.dot.gov/office/ost/ospe/cpars/Lists/CPARS%20Focal%20Points/AllItems.aspx>.

The integrity of the database (CPARS) is ensured through constant auditing by the CPARS system administrator.

(g) All past performance information (electronic or hard copy) shall be retained in the contract file *for the purpose of source selection information* for three (3) years after contract completion. However, the evaluation, contractor rebuttal and the OA decision becomes a part of the contract file, and must be retained and disposed of in accordance with TAM 1204.805.

SUBCHAPTER 1242.71--AUDIT OF DIRECT AND INDIRECT COSTS

1242.701 DOT Policy.

The contracting officer is responsible for ensuring that the direct and indirect costs paid under a cost reimbursement contract are allowable. Under most circumstances, DOT recognizes that periodic incurred cost audits by a contractor's responsible audit agency are the preferred mechanism to assist the contracting officer in ensuring the validity of direct and indirect costs billed under cost reimbursement contracts. If at any time the contracting officer decides not to obtain an independent audit, or such audit services are not readily available from the responsible audit agency, the contracting officer shall document the file as to why the independent audit was not obtained. The file documentation shall include, as a minimum, a discussion of: (1) the reason an independent audit was not obtained (e.g., small dollar amounts remaining un-audited or unsettled; low dollar value of the contracts; planned audit was cancelled); (2) the extent of the analysis that was performed in lieu of obtaining an independent audit (e.g., desk analysis; a comparison of proposed direct costs and indirect rates to incurred direct costs and actual indirect rates; an examination of the costs included in the submission of indirect costs to detect any unallowable costs, or questionable amounts or accounts); and (3) other factors affecting the contracting officer's decision and the mitigation of risk (e.g., an approved accounting system; the absence of significant audit issues and problems in previous pre-award, post-award, or final audits; contract ceilings below claimed indirect rates)

CHAPTER 1243--CONTRACT MODIFICATIONS

SUBCHAPTER 1243.1--GENERAL

- 1243.1 General
- 1243.105 Availability of funds

SUBCHAPTER 1243.2--CHANGE ORDERS

- 1243.2 Change Orders
- 1243.205 Contract clauses

SUBCHAPTER 1243.70--UNDEFINITIZED CONTRACT ACTIONS

- 1243.7000 Scope of subchapter
- 1243.7001 Definitions
- 1243.7002 Policy
- 1243.7003 Administration of UCAs
- 1243.7004 UCA monitoring system and report

SUBCHAPTER 1243.1--GENERAL

1243.105 Availability of funds.

The contracting officer shall obtain a certified Form DOT F 4200.1, Procurement Request, from the requirements office to meet the conditions set forth in [FAR 43.105](#).

SUBCHAPTER 1243.2--CHANGE ORDERS

1243.205 Contract clauses.

The 30-day period cited in the clauses referenced at [FAR 43.205\(a\) through \(d\)](#) may be changed at the discretion of the contracting officer.

SUBCHAPTER 1243.70--UNDEFINITIZED CONTRACT ACTIONS

1243.7000 Scope of subchapter.

This subchapter sets forth the requirements for the administration of undefinitized contract actions as required by the House Appropriation Subcommittee on Transportation Report No. 101-584 (H.R. 5223).

1243.7001 Definitions.

"Undefinitized contract action" (UCA) means any contract action for which the contract terms, specifications, or price are not established before performance is begun under the action, and includes but is not limited to:

- (1) Change Orders. All modifications/supplemental agreements issued under the "Changes" clause when the price for the change has not been negotiated;
- (2) Maximum Priced Actions. All actions issued with a not-to-exceed limitation except for change orders and letter contracts; and
- (3) Letter Contracts. A letter contract is a written preliminary contractual instrument that authorizes the contractor to begin immediately manufacturing supplies or performing services.

"Value" means the ceiling amount of the action (i.e., the Government's estimated amount for the change order; the not-to-exceed amount cited on the maximum price action, or the limitation of the Government's liability on the letter contract).

1243.7002 Policy.

Contracting officers shall exert every effort to keep UCAs to a minimum.

1243.7003 Administration of UCAs.

Contracting officers shall negotiate the UCA and issue the definitized contractual document within six months after the UCA has been issued to the contractor. If this timeframe is not met, the contracting officer should document the contract file to state the reason for the delay.

1243.7004 UCA monitoring system and report.

- (a) The Head of the Contracting Activity (HCA) shall ensure that a system is developed and maintained to monitor UCAs. The Chief of the Contracting Office (COCO) shall ensure that progress is being made to definitize the UCAs within the

six-month period (except see [FAR 16.603-2](#) for additional requirements for letter contracts. Also, see TAM 1216.603-2(c) for COCO approval to extend the definitization schedule under letter contracts.

(b) Operating Administrations (OAs) may be required to prepare UCA reports upon request from the Office of the Senior Procurement Executive (M-60). Therefore, the UCA monitoring system established by the OA should be able to provide, at a minimum, the total number and value of all change orders, maximum priced actions, and letter contracts.

CHAPTER 1244 - SUBCONTRACTING POLICIES AND PROCEDURES

SUBCHAPTER 1244.2--CONSENT TO SUBCONTRACTS

1244.202	Contracting officer's evaluation
1244.202-2	Considerations
1244.203	Consent limitations

SUBCHAPTER 1244.3--CONTRACTORS' PURCHASING SYSTEMS REVIEWS

1244.302	Requirements
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SUBCHAPTER 1244.2--CONSENT TO SUBCONTRACTS

1244.202 Contracting officer's evaluation.

1244.202-2 Considerations.

The review required by [FAR 44.202-2\(a\)](#) shall be documented in writing (including supporting facts and rationale), signed by the contracting officer, and included in the contract file.

1244.203 Consent limitations.

Any limitations placed on the consent to subcontract shall be documented in writing (including supporting facts and rationale), signed by the contracting officer, and included in the contract file.

SUBCHAPTER 1244.3--CONTRACTORS' PURCHASING SYSTEMS REVIEWS

1244.302 Requirements.

The Chief of the Contracting Office (COCO) is the individual authorized to raise or lower the \$25 million review level for a contractors' purchasing system review if it is considered to be in the Government's best interest.

CHAPTER 1245 - GOVERNMENT PROPERTY

SUBCHAPTER 1245.1--GENERAL

1245.102	Policy
1245.103-270	General reporting requirements
1245.105	Contractor's property management system
1245.105-70	Records of Government Property

SUBCHAPTER 1245.3—AUTHORIZING THE USE AND RENTAL OF GOVERNMENT PROPERTY

1245.302	Contracts with foreign governments or international organizations
1245.370	Providing facilities
1245.371	Acquiring special test equipment

SUBCHAPTER 1245.6--REPORTING, REUTILIZATION, AND DISPOSAL

1245.602	Reutilization of government property
1245.602-1	Inventory disposal schedules
1245.602-3	Screening
1245.604-170	Disposal methods for foreign excess personal property
Appendix	Compliance Checklist for Contractors' Property Control System

SUBCHAPTER 1245.1--GENERAL

1245.102 Policy.

(b) When providing Government property to contractors, contracting officers shall document the file that the requirements of [FAR 45.102\(b\)](#) have been met.

1245.105 Contractor's property management system compliance.

(a) The contract file shall contain written evidence that the contractor's property management system was analyzed for conformance with contract requirements and shall identify the official/agency that performed the analysis. When DOT is the agency responsible for contract administration at the contractor's plant or

installation, and the total value of the Government property in the possession of the contractor exceeds \$10 million, the contractor's property management system shall be analyzed periodically to ensure compliance with the terms of the contract.

1245.105-70 Records of Government Property.

(a) Contracting officers shall maintain a file on Government property in the possession of the contractors. As a minimum, the file shall contain the following:

- (1) Copy of the applicable portions of the contract that list the Government-furnished property (GFP);
- (2) Contracting officers letters assigning the Government property administrator to the contract;
- (3) Written evidence that the contractor's property control system was reviewed and approved as required by [FAR 45.102](#);
- (4) If applicable, documentation of the request and approval or denial of the contractor's requests to acquire or fabricate special test equipment.
- (5) The contractor's written notice of receipt of the GFP and any reported discrepancies thereto.
- (6) Any other documents pertaining to or affecting the status of the Government property in the possession of contractors or subcontractors under the contract;
- (7) Documentation of the screening and disposal of all Government property as required by [FAR 45.6](#).

SUBCHAPTER 1245.3—AUTHORIZING THE USE AND RENTAL OF GOVERNMENT PROPERTY

1245.302 Contracts with foreign governments or international organizations.

Contracting officers shall compute rental costs for the use of Government production and research property with foreign governments or international organizations in accordance with [FAR 52.245-9](#), Use and Charges. See also OMB Circular A-25, User Charges for guidance on the establishment of fees to recover costs.

1245.370 Providing facilities.

The Head of the Contracting Activity (HCA), or designee with a rank no lower than that of flag officer or Senior Executive (SES) level, is authorized to issue a Determination and Findings (D&F) (based on the contractor's written assertion of inability to obtain facilities) that the contract cannot be fulfilled by any other practical means or that it is the public interest to provide facilities.

1245.371 Acquiring special test equipment.

Prior to permitting the contractor to acquire or fabricate special test equipment, the contracting officer shall screen existing Government-owned test equipment that may be available within DOT or at other Federal agencies. The OA's property officer, as defined in DOT Order 4410.4 series, Equipment Management and Control, should be contacted for assistance.

SUBCHAPTER 1245.6--REPORTING, REUTILIZATION, AND DISPOSAL

1245.602 Reutilization of Government Property.

1245.602-1 Inventory disposal schedules.

(b)(1) The requirements for inventory disposal under DOT Order 44.10.4 series, Equipment Management and Control, apply.

1245.602-3 Screening.

(a) Screening shall be in accordance with [FAR 45.602-3](#). The contracting officer shall contact the appropriate OA property office for guidance.

(b) Special screening requirements.

(2) Special test equipment with commercial components. The contracting officer shall contact the appropriate OA property office for guidance.

(3) Printing equipment. To ensure compliance with the regulations of the Joint Committee on Printing, Title 44 U.S.C., contracting officers shall report all excess printing equipment to the DOT Publications and Distribution Services, Office of Information Services. This includes all equipment for use in authorized printing plants and auxiliary equipment (i.e., composing machine, process camera folder,

collator, cutter, drill, or other production equipment) for use with duplicators or copying equipment.

(4) *Non-nuclear Hazardous materials, hazardous wastes, and classified items.* These items shall be screened in accordance with the Federal Management Regulation 102-36.425, Hazardous Personal Property.

1245.604-170 Disposal methods for foreign excess personal property.

Contractor inventory located in foreign countries shall be disposed of in accordance with (FPMR) 41 CFR 102-36.390, Disposition of Excess Personal Property.

CHAPTER 1246 --QUALITY ASSURANCE

SUBCHAPTER 1246.3--CONTRACT CLAUSES

1246.316 Responsibility for supplies

SUBCHAPTER 1246.4—GOVERNMENT CONTRACT QUALITY ASSURANCE

1246.401 General

SUBCHAPTER 1246.6--MATERIAL INSPECTION AND RECEIVING REPORTS

1246.601 General

SUBCHAPTER 1246.7—WARRANTIES

1246.702-70 General
1246.703-70 Criteria for use of warranties
1246.704 Authority for use of warranties
1246.708 Warranties of data
1246.710 Contract clauses

SUBCHAPTER 1246.3--CONTRACT CLAUSES

1246.316 Responsibility for supplies.

When the contracting officer deems it necessary, [FAR 52.246-16](#), Responsibility for Supplies, may be used in solicitations and contracts when the contract amount is not expected to exceed the simplified acquisition threshold.

SUBCHAPTER 1246.4--GOVERNMENT CONTRACT QUALITY ASSURANCE

1246.401 General.

(f) The contracting officer should ensure that inspection under DOT contracts is documented in accordance with TAM 1246.6.

SUBCHAPTER 1246.6--MATERIAL INSPECTION AND RECEIVING REPORTS

1246.601 General.

Each Operating Administration (OA) is authorized to use Form DOT F 4220.42, Material Inspection and Receiving Report, and Form DOT F 4220.42a, Continuation Sheet, or a form substantially similar if authorized in accordance with OA procedures.

SUBCHAPTER 1246.7—WARRANTIES

1246.702-70 General.

The following areas should also be addressed by all OAs in relation to the use of warranties in DOT contracts:

(a) Planning is an essential step in obtaining an effective warranty and should begin early enough to address warranty requirements during the development of the item. Therefore, consideration of warranty provisions and their impact shall be included within the comprehensive acquisition planning process required by [FAR Part 7](#) and TAM Chapter 1207.

(b) The acquisition cost of a warranty may be included as part of an item's price when cost or pricing data will clearly define cost of the warranty to the Government, or may be set forth as a separate contract line item.

(c) Each OA shall establish a tracking and enforcement system, as appropriate, to identify items covered, to provide information to Government personnel about enforcing the warranty provisions, and to accumulate data relative to warranty costs.

1246.703-70 Criteria for use of warranties.

(a) Warranties should be obtained only when they are cost beneficial. To determine whether use of a warranty is cost beneficial, an analysis must be performed to compare the benefits to be derived from the warranty with its acquisition and

administration costs. The analysis should examine the procurement's life cycle costs, both with and without a warranty. Where possible, a comparison should be made with the costs of obtaining and enforcing warranties for similar supplies or services. If a warranty is determined to be appropriate, the contract file shall be documented with the reason for inclusion of a warranty and identify the specific parts, subassemblies, systems or contract line item(s) on which a warranty should apply, and shall address why a warranty is appropriate under the criteria set forth in [FAR 46.703](#).

(b) Contracting officers should negotiate a warranty that meets or exceeds the requirements of TAR 1246.706 when it is advantageous.

1246.704 Authority for use of warranties.

The Chief of the Contracting Office (COCO) shall approve the use of a warranty clause in acquisitions when a warranty exceeding the standard industry practices is required.

1246.708 Warranties of data.

The contracting officer shall use the criteria under [FAR 46.703](#) to determine whether data to be delivered under a contract should be warranted.

1246.710 Contract clauses.

DOT approval authority for using the warranty clauses referenced at [FAR 46.710](#) and listed at [FAR 52.246-17](#); [18](#); [19](#); [20](#); and [21](#) is the COCO when a warranty exceeding the standard industry practices is required (see TAM 1246.704).

CHAPTER 1247 – TRANSPORTATION

1247.000 Scope of part

SUBCHAPTER 1247.1—GENERAL

1247.101 Policies

1247.104 Government rate tenders under section 10721 and 13712 of the
Interstate Commerce Act

1247.104-1 Government rate tender procedures

1247.105 Transportation assistance

SUBCHAPTER 1247.2--CONTRACTS FOR TRANSPORTATION OR FOR TRANSPORTATION-RELATED SERVICES

1247.205 Availability of term contracts and basic ordering agreements for
transportation or for transportation-related services

SUBPART 1247.3--TRANSPORTATION IN SUPPLY CONTRACTS

1247.303-17 Contractor-prepaid commercial bills of lading, small
package shipments

SUBCHAPTER 1247.5--OCEAN TRANSPORTATION BY U.S.-FLAG VESSELS

1247.506 Procedures

1247.507 Contract clauses

1247.000 Scope of subpart.

(a)(2) Negotiation of rates under 10721 by transportation officers does not require a contracting officer's warrant (see [FAR 47.000\(a\)\(2\)](#)). However, the binding of the Government through negotiated actions, other than through 49 C.F.R. 10721 and 49 CFR 13712, requires a contracting officer's warrant unless otherwise exempt by executive order, statute, or regulation.

SUBCHAPTER 1247.1—GENERAL

1247.101 Policies.

(b) Contracting officers shall contact their OA transportation office for assistance and expertise in transportation management.

1247.104-1 Government rate tender procedures.

(b) Negotiation of section 10721 and 13712 rates by transportation officers does not require a contracting officer's warrant (see [FAR 47.000\(a\)\(2\)](#) and TAM 1247.000(a)(2)). However, the binding of the Government through negotiated actions, other than through 49 C.F.R. 10721, requires a contracting officer's warrant unless otherwise exempt by executive order, statute, or regulation.

1247.105 Transportation assistance.

(a) Obtain assistance from the GSA Regional Federal Supply Bureau that provides support to the activity or the transportation element of the contract administration office designated in the contract.

SUBCHAPTER 1247.2--CONTRACTS FOR TRANSPORTATION OR FOR TRANSPORTATION-RELATED SERVICES

1247.205 Availability of term contracts and basic ordering agreements for transportation or for transportation-related services.

(a) Contracts or basic ordering agreements awarded by DOT procuring offices for transportation or for transportation-related services greater than the simplified acquisition threshold require approval one level above the contracting officer.

SUBPART 1247.3--TRANSPORTATION IN SUPPLY CONTRACTS

1247.303-17 Contractor-prepaid commercial bills of lading, small package shipments.

(c) The contracting officer shall notify the contractor of any loss or damage to the Government supplies shipped by the contractor under prepaid commercial bills of lading.

SUBCHAPTER 1247.5--OCEAN TRANSPORTATION BY U.S.-FLAG VESSELS

1247.506 Procedures.

(a) Contracting officers requiring the Maritime Administration's (MARAD's) assistance should contact the Director of Cargo and Commercial Sealift (MAR-620), 1200 New Jersey Avenue, SE, Washington, DC, 20590, by telephone at 202-366-4610; by the internet at <http://www.MARAD.DOT.gov/CargoPreference>; or by email at Cargo.MARAD@DOT.gov.

(c) Questions regarding the fairness/reasonableness of ocean transportation rates can be addressed by MARAD's Office of Cargo Preference cited in paragraph (a) of this section.

1247.507 Contract clauses.

(a)(2) When determining when to use the Alternate I to [FAR 52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels, contracting officers shall consult with transportation officers or MARAD as necessary.

(b) DOT has no prescribed standard solicitation provisions or contract clauses.

CHAPTER 1248--VALUE ENGINEERING

SUBCHAPTER 1248.1 -- POLICIES AND PROCEDURES

1248.102	Policies
1248.103	Processing value engineering change proposals
1248.104	Sharing arrangements
1248.104-3	Sharing collateral savings

SUBCHAPTER 1248.2 -- CONTRACT CLAUSES

1248.201	Clauses for supply or service contracts
1248.202	Clause for construction contracts
1248.270	Annual Value Engineering Report

SUBCHAPTER 1248.1--POLICIES AND PROCEDURES

1248.102 Policies.

(a) The Head of the Contracting Activity (HCA), for individual case-by-case exemptions, and the Senior Procurement Executive (SPE), for class exemptions, are authorized under [FAR 48.102\(a\)](#) to exempt contracts from including value engineering procedures and processes.

(b) and (i) The Office of the Senior Procurement Executive is responsible for managing and monitoring value engineering (VE) efforts at DOT (see OMB Circular A-131).

1248.103 Processing value engineering change proposals.

(a) Upon receipt of a value engineering change proposal (VECP), the contracting officer shall promptly forward it to the technical initiator responsible for the contract, indicating:

(1) The date the VECP was received;

- (2) The date by which the contractor must be informed of the Government's acceptance or rejection of the VECP, unless additional time is required for evaluation;
- (3) The date by which the contracting officer must know of the technical officer's decision in order to timely accept or reject the VECP;
- (4) The need for information required to inform the contractor if the VECP is to be rejected or if additional time is needed for evaluating the VECP;
- (5) The potential for awarding concurrent, future, or collateral savings to the contractor, if the VECP is accepted;
- (6) That if the VECP is accepted, precise information will be needed with regard to the type of savings, and Government costs, that can be expected from its acceptance;
- (7) The need for a procurement request setting forth the specification changes to be used in a contract modification accepting the VECP in whole or in part; and
- (8) The need for additional funds, if acceptance of the VECP results in negative instant contract savings.

1248.104 Sharing arrangements.

1248.104-3 Sharing collateral savings.

- (a) The Chief of the Contracting Office (COCO) is the individual authorized under [FAR 48.104-2\(a\)](#) to determine that the cost of calculating and tracking collateral savings will exceed the benefits to be derived.

SUBCHAPTER 1248.2--CONTRACT CLAUSES

1248.201 Clauses for supply or service contracts.

- (a) *General.*

- (6) The HCA (for an individual contract action) and the SPE (for a class of contract actions) are the individuals authorized under [FAR 48.201\(a\)\(6\)](#) to exempt a contract from the requirements of [FAR Part 48](#).

(e) The COCO is the individual authorized under [FAR 48.201\(e\)](#) to determine that the cost of calculating and tracking collateral savings will exceed the benefits to be derived.

1248.202 Clause for construction contracts.

The COCO is the individual authorized under [FAR 48.202](#) to determine that the cost of calculating and tracking collateral savings will exceed the benefits to be derived.

1248.270 Annual Value Engineering Report.

The Office of Management and Budget (OMB), Circular A-131, Value Engineering requires that each agency report the Fiscal Year results of using value engineering annually. HCAs are required to submit a report of value engineering results by December 7th each year to the Senior Procurement Executive. Information for completing the report is available in Circular A-131. SPE will ensure the consolidated DOT report is forwarded to OMB by December 31. Negative reports are required.

CHAPTER 1249—TERMINATION OF CONTRACTS

SUBCHAPTER 1249.1—GENERAL PRINCIPLES

- 1249.106 Fraud or other criminal conduct
- 1249.111 Review of proposed settlements

SUBCHAPTER 1249.4--TERMINATION OF DEFAULT

- 1249.470 Procedure for Default, referral to debarring and suspending official

SUBCHAPTER 1249.1—GENERAL PRINCIPLES

1249.106 Fraud or other criminal conduct.

If the termination contracting officer (TCO) suspect's fraud or other criminal conduct related to the settlement of a terminated contract, the TCO shall discontinue negotiations and report the facts to legal counsel before continuing settlement negotiations.

1249.111 Review of proposed settlements.

All proposed settlement agreements shall be coordinated with legal counsel for legal sufficiency.

SUBCHAPTER 1249.4--TERMINATION OF DEFAULT

1249.470 Procedure for default, referral to debarring and suspending official.

If a contract is terminated either for default or for cause, the Contracting Officer shall review the cause for termination and evaluate whether it falls within one of the areas of [FAR 9.406-2](#), Causes for debarment. If any of the contractor's actions that contributed to the decision to terminate for default or for cause are of the types of action described in [FAR 9.406-2](#) that could lead to debarment, the Contracting Officer shall refer the matter to the OA suspending and debarring official for appropriate action.

The referral shall include all of the pertinent facts, a written recommendation, and other information required under 9.406-3. Each such evaluation shall be prepared in writing and shall be included in the contract file along with the resulting referral (if any), regardless of whether or not the Contracting Officer's evaluation finds that the cause for termination requires referral for suspension or debarment. The Contracting Officer shall document the contract file with the reason(s) for referring or not referring the contractor for suspension or debarment. When past performance evaluation information is required by [FAR 42.15](#) to be reported in the CPARS as designated by the DOT Senior Procurement Executive, the Contracting Officer's evaluation of the termination shall be submitted as part of the past performance evaluation information.

CHAPTER 1250 - EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

SUBCHAPTER 1250.1--EXTRAORDINARY CONTRACTUAL ACTIONS

1250.102	Delegation of and limitations on exercise of authority
1250.102-1	Delegation of authority
1250.102-2	Contract adjustment boards
1250.104	Residual Powers
1250.104-1	Standards for use

SUBCHAPTER 1250.1--EXTRAORDINARY CONTRACTUAL ACTIONS

1250.102 Delegation of and limitations on exercise of authority.

1250.102-1 Delegation of authority.

(a) The authority of the Secretary is retained at the Agency head level.

(d) Except as set forth below, the Secretary has exclusive authority to indemnify contractors against unusually hazardous or nuclear risks, including extending such indemnification to subcontractors. This authority is not delegable regardless of the dollar amount involved in the indemnification.

(1) In the case of a procurement involving any product, service, device, or technology that has been or could be deemed “qualified anti-terrorism technology” pursuant to subtitle G of title VIII of the Homeland Security Act of 2002 (Pub. L. 107-296), the Secretary shall comply with the requirements of [FAR 50.2](#) and not exercise the authority specified in this section unless—

(i) the Secretary of Homeland Security has advised whether the authority provided under subtitle G of title VIII of the Homeland Security Act of 2002 would be appropriate; and

(ii) the Director of the Office of Management and Budget has approved the exercise of the Secretary’s authority under paragraph (d)(1) of this section.

1250.102-2 Contract adjustment boards.

DOT's Contract Adjustment Board is authorized to approve, authorize, and direct appropriate action with respect to requests for extraordinary contractual adjustments and to authorize entering into, amending, and modifying contracts without regard to other provisions of law to facilitate the national defense (except as set forth in TAM 1250.102-1).

1250.104—Residual powers

1250.104-1 Standards for use.

Generally, it is DOT policy not to authorize indemnification to contractors or subcontractors against unusually hazardous or nuclear risks, pursuant to Pub. L. 85-804 (National Defense Contract Authorization Act), as amended, and [FAR 50.4](#). Contracting officers shall not include in solicitations or contracts the clause at [FAR 52.250-1](#), Indemnification Under Pub. L. 85-804, unless specifically authorized by the Secretary. Operating Administrations (OAs) shall direct all requests for indemnification through the OA Office of the Chief Counsel for appropriate coordination with the DOT General Counsel before transmittal to the Secretary.

**CHAPTER 1251 - USE OF GOVERNMENT SOURCES BY
CONTRACTORS (Reserved)**

There is no text implementing or supplementing FAR 51.

**CHAPTER 1252 - SOLICITATION PROVISIONS AND CONTRACT
CLAUSES (Reserved)**

There is no text implementing or supplementing FAR 52.

CHAPTER 1253 – FORMS

SUBCHAPTER 1253.1--GENERAL

1253.105 Computer generation

SUBCHAPTER 1253.2---PRESCRIPTION OF FORMS

1253.203-70	Source selection information.
1253.203-71	Proprietary information.
1253.205-70	Contract award notification.
1253.209-70	Responsibility determination.
1253.211-70	Special priorities assistance.
1253.213-70	Simplified acquisitions.
1253.215-70	Contracting by negotiation.
1253.219-70	Small business programs.
1253.222-70	Summary of underpayments.
1253.223-70	Procedures.
1253.232-70	Contract financing.
1253.236-70	Construction and architect-engineer contracts.
1253.239-70	Documentation of Commercial Non-Availability.
1253.239-71	Documentation of Undue Burden.
1253.239-72	EIT Purchases using the Credit Card
1253.239-73	Checklist for Privacy Compliance.
1253.246-70	Material Inspection and Receiving Report.

SUBCHAPTER 1253.3 – ILLUSTRATION OF FORMS

1253.303 Agency forms.

SUBCHAPTER 1253.1--GENERAL

1253.105 Computer generation.

Operating administrations may computer-generate the forms prescribed in the TAR and this manual. Unless otherwise permitted in this chapter, computer-generated forms shall not change the name, content, or sequence of the data elements and shall carry the assigned number (e.g., Form DOT F 4220.12) and edition date.

SUBCHAPTER 1253.2--PRESCRIPTION OF FORMS

1253.203-70 Source selection information

The following form is prescribed for use in notifying recipients that the document contains source selection information, as specified in TAM 1203.104-4(b)(iii):

Form DOT F 4220.35, Cover Page Source Selection Information. (See TAM 1203.104-4(b)(iii).) Form DOT F 4220.35 is authorized for local reproduction.

1253.203-71 Proprietary information.

The following form is prescribed for use in notifying recipients that the information or portions thereof is proprietary information related to the conduct of a Federal agency procurement, as specified in TAM 1203.104-4(b)(ii):

Form DOT F 4220.36, Cover Page Proprietary Information. (See TAM 1203.104-4(b)(ii).) Form DOT F 4220.36 is authorized for local reproduction.

1253.205-70 Contract award notification.

The following form is prescribed for use for public and Congressional notification of contract awards, as specified in TAM 1205.303(a)(1):

Form DOT F 4220.41, Contract Award Notification. (See TAM 1205.303(a)(1).) Form DOT F 4220.41 is authorized for local reproduction.

1253.209-70 Responsibility determination.

The following form is prescribed for use to make the determination and document that a contractor is/is not responsible, as specified in TAM 1209.105-2:

Form DOT F 4220.1, Responsibility Determination. (See TAM 1209.105-2.) Form DOT F 4220.1 is authorized for local reproduction.

1253.211-70 Special priorities assistance.

The following form is prescribed for use when requesting special priorities assistance, as specified in TAM 1211.603(g)(2):

Form BIS-999, Request for Special Priorities Assistance. (See TAM 1211.603(g)(2).) Form BIS-999 is authorized for local reproduction.

1253.213-70 Simplified acquisitions.

The following form is prescribed for use on simplified acquisition procedure actions, as specified in TAM 1213.101:

Form DOT F 4230.1, Simplified Acquisition Summary. (See TAM 1213.101.) Form DOT F 4230.1 is authorized for local reproduction.

1253.215-70 Contracting by negotiation.

The following forms are prescribed for use in contracting by negotiation:

(a) *Form DOT F 4220.32, Weighted Guidelines Profit/Fee Objective.* Form DOT F 4220.32 shall be used in developing the profit or fee objectives for conducting negotiations. It is authorized for local reproduction.

(b) *Form DOT F 4220.34, Contract Facilities Capital and Cost of Money.* Form DOT F 4220.34 shall be used to complete the Form DOT 4220.34 regarding the amount for capital employed and cost of money. It is authorized for local reproduction.

1253.219-70 Small business programs.

The following DOT forms are prescribed for use in reporting, small business program data requirements as specified in TAM 1219. These forms are authorized for local reproduction.

(a) *Form DOT F 4220.12, DOT Procurement Forecast Form.* Form DOT F 4220.12, DOT Procurement Forecast Form. (See TAM 1219.202-270).

(b) *Form DOT 4250.1 OT Small Business Set-Aside Review Form.* Form DOT 4250.1, Small Business Set-Aside Review Form (See TAM 1219.501(d)).

1253.222-70 Summary of underpayments.

The following form is prescribed for use to support the total number of employees cited on the SF 1446, Labor Standards Investigation Summary Sheet.

Form DOT F 4220.8, Summary of Underpayments. (See TAM 1222.406-8). Form DOT F 4220.8 is authorized for local reproduction.

1253.223-70 Procedures.

(c) The following DOT forms are prescribed for use when requesting waivers. These forms are authorized for local reproduction.

(1) *Form DOT F 4271.1, Recovered Materials Determination Form.* (See 1223.405(c)). DOT F 4271.1 is authorized for local reproduction.

(2) *Form DOT F 4272.1, Request for Waiver.* (See 1223.405(c)). DOT F 4272.1 is authorized for local reproduction.

1253.232-70 Contract financing.

The following forms are prescribed for use when providing funds to procure Departmental goods and services, as specified in TAM 1232.702-70, etal.:

Form DOT F 4200.1, Procurement Request-Process Rapidly, and Form DOT F 4200.2, Procurement Request Continuation Sheet. (See TAM 1232.702-70, etal.). Forms DOT F 4200.1 and DOT F 4200.2 are authorized for local reproduction.

1253.236-70 Construction and architect-engineer contracts.

The following forms are prescribed for use when reporting proposed construction projects to DOL and when holding preconstruction conferences, as specified in TAM 1236.271 and TAM 1236.212(b), respectively:

(a) *Form 4240.1, Annual Outline of DOT Construction Programs..* (See TAM 1236.271.) Form DOT F 4240.1 is authorized for local reproduction.

(b) *Form DOT F 4220.3, Preconstruction Conference Agenda and Checklist.* (See TAM 1236.212(b).) Form DOT F 4220.3 is authorized for local reproduction.

1253.239-70 Documentation of Commercial Non-Availability.

The following DOT forms are prescribed for use when procuring electronic and information technology (EIT).

Form DOT F 4260.1, Section 508 Determination and Certification for EIT Purchase Requests. (See 1239.203-70). DOT F 4260.1 is authorized for local reproduction.

Form DOT F 4261.1, EIT Commercial Non-Availability Certification (See 1239.203-70). DOT F 4261.1 is authorized for local reproduction.

1253.239-71 Documentation of Undue Burden

The following DOT form is prescribed for use when procuring EIT and compliance with the Access Board standards would cause an undue burden.

Form DOT F 4262.1, EIT Undue Burden Exception. (See 1239.204-70). DOT F 4262.1 is authorized for local reproduction.

1253.239-72 EIT Purchases using the Credit Card.

The following form is prescribed for use in obtaining the Chief Information Officer's approval of EIT purchases.

Form DOT F 4263.1, Checklist for EIT Credit Card Purchases, (See 1213 (Appendix B) and 1239.107-70.) Form DOT F 4263.1 is authorized for local reproduction.

1253.239-73 Checklist for Privacy Compliance

The following form is prescribed for use in purchases for information technology systems including the acquisition of databases and the acquisition of web sites that fall under the Privacy Act of 1974 and the E-Government Act of 2002.

Form DOT F 1361, Checklist for Privacy Compliance. (See 1239.105-70 and 1239.107-70.) Form DOT F 1361 is authorized for local reproduction.

1253.246-70 Material Inspection and Receiving Report.

The following forms are prescribed for the use, preparation, and distribution of material inspection and receiving reports and commercial shipping document/packing lists to evidence Government inspection, as specified in TAM 1246.6:

Form DOT F 4220.42, Material Inspection and Receiving Report, and Form DOT F 4220.42a, Material Inspection and Receiving Report - (Continuation Sheet). (See TAM 1246.6.) Form DOT F 4220.42 and Form DOT F 4220.42a are authorized for local reproduction.

SUBCHAPTER 1253.3--ILLUSTRATION OF FORMS

1253.303 Agency forms.

This subchapter contains links to DOT-specific forms used in acquisitions. Most of the DOT forms below can be downloaded for use or are available at <http://autoforms.ost.dot.gov/>.

Form Name	Form Number	Adobe .pdf files	Microsoft Excel files
Procurement Request - Process Rapidly & Continuation Sheet	4200.1 & 4200.2	Not Available	Not Available
Determination of Prospective Contractor Responsibility	4220.1	frm_4220.1	
Preconstruction Conference Agenda & Checklist	4220.3	frm_4220.3	
Summary of Underpayments	4220.8	frm_4220.8	
DOT Procurement Forecast Form	4220.12	frm_4220.12	
Weighted Guidelines Profit/Fee Objective and instructions	4220.32	frm_4220.32	
Contract Facilities Capital and Cost of Money and instructions	4220.34	frm_4220.34	
Cover Page Source Selection	4220.35	frm_4220.35	

Information			
Cover Page Proprietary Information	4220.36	frm_4220.36	
Procurement Integrity Certification - Departing Officials and Employees	4220.38	frm_4220.38	
Contract Award Notification	4220.41	frm_4220.41	
Material Inspection and Receiving Report	4220.42	frm_4220.42	
Material Inspection and Receiving Report - Continuation Sheet	4220.42a	frm_4220.42a	
Simplified Acquisition Summary	4230.1	frm_4230.1	
Simplified Acquisition Summary - Continuation Sheet	4230.1a	frm_4230.1a	
Report of Proposed Federal Construction	DOL-1671	frm_dol-1671	
FSS Publications Mailing List Application	GSA-457	Not Available	Not Available