# Department of Homeland Security Acquisition Manual

**October 2009**

| HSAM - RECORD OF NOTICES<br>October 2009 Edition | | |
|---|---|---|
| **HSAM NOTICE NUMBER** | **DATE OF CHANGE** | **REPLACEMENT PAGES** |
| 2010-01 | October 30, 2009 | Pages 3-5 to 3-7; 4-9; 5-1 to 5-7; 7-3 to 7-4; 15-2 to 15-3; 16-1 to 16-4; 18-1; 19-6; Appendix D through F; and Appendix X. |
| 2010-02 | December 16, 2009 | TOC HSAM Appendices; pages 3-5 to 3-7; 5-7; 9-1 to 9-2.1; and, Appendices E, F, and I. |
| 2010-03 | February 26, 2010 | Pages 9-2 to 9-2.1; 22-1 to 22-2; 22-8; and, 49-1. |
| 2010-04 | March 23, 2010 | Page 49-1 (page 49-2 added). |
| 2010-05 | April 22, 2010 | Pages 5-7 to 5-9; pages 9-2 to 9-2.2; pages 49-1 to 49-2; and, Appendix F. |
| 2010-06 | June 10, 2010 | Pages 16-1 to 16-6 and add new Appendix Y. |
| 2010-07 | August 31, 2010 | Appendices TOC; pages 4-14 to 4-18; pages 5-6 to 5-9; page 9-1; page 9-9; pages 16-4 to 16-6; page 41-1; page 43-1 to 43-2; page 50-1; page 53-2; and, Appendices C and J. |
| 2010-08 | August 23, 2010 | Entire HSAM Chapter 3007 and Appendix H. |
| 2011-01 | November 2, 2010 | Appendices TOC; pages 15-2 through 15-6; and, new Appendix Z |
| 2011-02 | February 28, 2011 | Pages 18-1 to 18-2; pages 22-2 and 22-10; and Appendix A |
| 2011-03 | April 6, 2011 | Appendices TOC; page 30-1; pages 32-6 through 32-9; pages 34-1 through 34-3; pages 39-1 through 39-2; pages 42-1 through 42-9; page 49-2; Appendix V-1 to V-17 (Pages V-5 to V-11 are posed separately at OCPO-APL website0; and, Appendix W-1 through W-8. |

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|---|---|---|
| 2011-04 | April 18, 2011 | Appendices TOC; pages 8-1 through 8-3, 13-1 through 13-4, 15-1 through 15-7, 16-5 through 16-6; and add new Appendix AA. |
| 2011-05 | June 21, 2011 | Appendices TOC; pages 4-1, 4-11 through 4-11.1, 5-4 through 5-9, 6-1 through 6-4, 8-1 through 8-3, 16-4, 19-1, 19-3 through 19-4, 32-8 through 32-10, 36-3, 53-1 through 53-3; and, Appendices A (pg A-1), G (pgs G-1 through G-32), L (new pgs L-4 through L-6), Q (pg Q-2), and U (pgs U-1 through U-11). |
| 2011-06 | June 29, 2011 | HSAM Chapter 3007 (pages 7-1 thru 7-20) and Appendix H (Version 6.1). |
| 2011-07 | August 5, 2011 | Pages 42-1 and 43-1 through 43-2. |
| 2011-08 | September 12, 2011 | Pages 15-1, 15-6 through 15-7, and 42-8 through 42-9. |
| 2012-01 | January 6, 2012 | Entire HSAM Appendix AA, Debriefing Guide. |
| 2012-02 | February 3, 2012 | Pages 19-3, 42-1, 42-5 through 42-10 and global change from “COTR” to “COR”. |
| 2012-03 | February 7, 2012 | Pages 7-3 and 7-9 through 7-11. |
| 2012-04 | March 8, 2012 | Pages 9-2.1 through 9-2.2. |
| 2012-05 | April 17, 2012 | Pages 4-2 through 4-2.1, and 4-13 through 4-19. |
| 2012-06 | May 2, 2012 | Appendices TOC, pages 32-1 through 32-2, 32-5 through 32-11, 33-1 through 33-2, and new Appendix AB (AB-1 through AB-14). |
| 2012-07 | August 15, 2012 | Pages 16-6 through 16-7. |

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| HSAM NOTICE NUMBER | DATE OF CHANGE | REPLACEMENT/REVISED PAGES |
|---|---|---|
| 2012-08 | September, 17 2012 | Appendix H pages H-1, H-6, H-11, H-23, H-30, and H-39. |
| 2012-09 | September 24, 2012 | Pages 41-1 through 41-2. |
| 2012-10 | September 28, 2012 | Appendix I (pages I-1 through I-54). |
| 2013-01 | November 20, 2012 | Appendices TOC, pages 1-2, 1-11, 2-1, 4-11, 4-11.1, 5-3 through 5-9, 7-1 through 7-17, 32-7, 32-8, 42-1 through 42-10, Appendix D, Appendix E, Appendix H (H-1 through H-74), Appendix W (W-1 through W-10), and Appendix AC (AC-1 through AC-4). |
| 2013-02 | December 19, 2012 | Pages 7-2 through 7-3, 7-5, 7-7 through 7-8, and Appendix H (pages H-1 and H-10 only). |
| 2013-03 | January 17, 2013 | Chapter 3007 (pages 7-2 through 7-6) and Appendix H (pages H-1, H-5, and H-10). |
| 2013-04 | February 28, 2013 | Revisions are on pages 5-7, 9-1, 9-2.1, 9-4, 9-5, 9-8, 9-9, and D-1 (Appendix D). |
| 2013-05 | April 30, 2013 | Revisions made to Chapter 3006 (pages 6-1 and 6-2), Appendix B, Appendix G (pages G-8 through G-10, G-20 through G-23, and G-25). |
| 2013-06 | May 31, 2013 | Chapter 3007 (all pages), Appendix C, and Appendix AB (pg AB-2). |
| 2013-07 | July 31, 2013 | Appendices TOC, pgs. 4-16, 4-17, 5-1, 5-3, 17-4, 17-5, 17-7 through 17-10, 17-14 through17-17, Appendix C, and Appendix E. |
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|---|---|---|
| 2013-08 | August 30, 2013 | Chapter 3009 (all pages), Chapter 3018 (pg 18-1), Chapter 3027 (pg 27-1), Chapter 3032 (pgs 32-10 and 32-11), Chapter 3042 (pgs 42-2 through 42-4, 42-6, 42-9 and 42-10), and Appendix S (pgs S-2 through S-6). |
| 2014-01 | November 29, 2013 | Chapter 3007 (pgs 7-8 through 7-10) and Chapter 3025 (pg 25-1). |
| 2014-02 | December 31, 2013 | Revisions are on pages 7-8, 7-17, 19-6, and Appendix X (all pages). |
| 2014-03 | January 31, 2014 | Chapter 3010 (pgs 10-1 through 10-4). |
| 2014-04 | February 28, 2014 | Chapter 3049 (pgs 49-1 through 49-2) and added new Appendix AD. |
| 2014-05 | March 20, 2014 | Chapter 3007 (pgs 7-18 through 7-20). |
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# CHAPTER 3001 FEDERAL ACQUISITION REGULATIONS SYSTEM


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## Subchapter 3001.1 Purpose, Authority, Issuance

### 3001.101 Purpose.

The Department of Homeland Security Acquisition Manual (HSAM) is issued by the Chief Procurement Officer (CPO). It establishes for the Department of Homeland Security uniform department-wide acquisition procedures, which implement or supplement the Federal Acquisition Regulation (FAR) and the Homeland Security Acquisition Regulation (HSAR), and other agency regulations and statutory requirements.

### 3001.102 Statement of guiding principles for the Federal Acquisition System

(a) To create a world class acquisition system that delivers best value products or services to the customer, each Component must follow the DHS Management Directive (MD) Number 0784, Acquisition Oversight Program, to include the four elements of Self Assessment, Acquisition Planning Review, Operational Status Review, and On-site Reviews. This system was developed in partnership with all of the Head of the Contracting Activities (HCAs) and is maintained by the DHS Acquisition Policy and Legislation Branch. Implementation of the MD is the responsibility of the CPO, HCAs and program managers.

### 3001.103 Authority

The HSAM is issued pursuant to the DHS Delegation Number 0702, Delegation to the Senior Procurement Executive and MD Number 0003, Acquisition Line of Business Integration and Management or successor directive.

### 3001.104 Applicability.

All acquisitions within the Department shall follow this manual unless otherwise excluded by the FAR, HSAR, or this manual. Public Law 110-161, the Consolidated Appropriations Act of 2008, division E, Title V, section 568, removed section 114(o) of Title 49 effective June 23, 2008 for Transportation Security Administration (TSA). This section previously exempted the TSA from the FAR and associated departmental acquisition supplements. Accordingly, as a result of Public Law 110-161, the HSAM applies after June 23, 2008 to the TSA. (See HSAR 3001.104(b).)

**3001.105 Issuance.**

**3001.105-170 Publication of HSAM.**

(a) This manual is issued electronically on the Internet at http://www.dhs.gov/hsam.

**3001.105-270 Arrangement of HSAM.**

(b) *Numbering.* (1) This manual conforms to the arrangement and numbering system prescribed by FAR 1.105. HSAM addresses the specific paragraphs for which supplementation or implementation applies. For example, this paragraph supplements FAR 1.105-2(b)(1); therefore, the only paragraphs cited in HSAM 3001.105-270 are paragraphs (b) and (1).

(2) HSAM coverage is identified by the prefix “30” and followed by the complete HSAM cite which may be down to the subparagraph level (e.g., HSAM 3001.105-3).

(3) Coverage in the HSAM that supplements the FAR will use chapter, subchapter, section and subsection numbers ending in "70" through "89" (e.g., HSAM 3001.202-70).

(4) Coverage in the HSAM, other than that identified with a "70" or higher number, that implements the FAR or HSAR will use the identical number sequence and caption of the FAR or HSAR segment being implemented which may be down to the subparagraph level (e.g., HSAM 3001.105-3(a)).

(c) *References and citations.* This manual may be referred to as the Homeland Security Acquisition Manual or the HSAM. Cross references to the FAR, HSAR, or HSAM in this manual will be cited by "FAR", "HSAR", or "HSAM" followed by its numbered cite. As an electronic document, the HSAM contains many links (identified by blue print) to the word or term referenced in the text.

**3001.105-3 Copies.**

(a) The HSAM is issued electronically and a loose-leaf version may be downloaded at http://www.dhs.gov/hsam. No hardcopy distribution will be made.

**3001.106 OMB approval under the Paperwork Reduction Act.**

Prior to obligating funds and entering into a contractual agreement for information collection activities, the contracting officer shall obtain a clearance and approval from the Office of Management and Budget (OMB). The SF-83, Request for OMB Review, shall be used to request OMB's review and approval. Components’ Paperwork Clearance Officers are available to assist in preparing the information collection justification for the SF-83.

(a) *Data collection under proposed contracts.* SF-83s shall be forwarded to the Office of the Chief Information Officer (CIO), for processing to OMB. Early coordination with

Paperwork Clearance Officers prior to release of the solicitation should prevent delays caused by the requirement to obtain OMB approval.

(b) *Data collection under HSAR Supplements.* An SF-83, along with the calculations used to derive the numbers shown on the SF-83, shall be forwarded to the CPO along with the proposed HSAR Supplement coverage (see HSAM 3001.304) for coordination.

## Subchapter 3001.2 Administration

### 3001.202-70 Departmental compliance with the FAR, HSAR, and HSAM.

Personnel with questions concerning the FAR, HSAR, and HSAM may utilize the Acquisition Policy Staff List to identify the appropriate individual to contact within the DHS Office of Chief Procurement Officer (OCPO).

## Subchapter 3001.3 Agency Acquisition Regulations

### 3001.301 Policy.

(a)(1) *Delegations of FAR and HSAR procurement authority.* The following is applicable with respect to delegations of FAR and HSAR procurement authority included in this manual:

(i) *Agency head delegations*. Certain FAR and HSAR functions are non-delegable and reserved by the Secretary. All reserved and delegated functions (either to the Office of the Secretary (OSDHS) or the Components) are indicated in the applicable chapters of this manual. Lower organizational levels for FAR and HSAR agency head functions shall be authorized by the CPO (who will coordinate with other DHS officials as deemed appropriate).

(ii) *Head of the Contracting Activity (HCA) functions.* Certain FAR and HSAR functions which are non-delegable and reserved for the HCA or equivalent organizational level are indicated in the applicable chapter of this manual. For delegable functions, compliance with the level indicated in the applicable chapter of this manual or the HSAR is required unless otherwise authorized by the HCA. The HCA may retain both delegable and non-delegable functions assigned to the HCA. 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 Component. A copy of the delegation shall be submitted to the CPO within 30 days of issuance. The HCA retains authorities in this manual for delegations to the Chief of the Contracting Office (COCO) when COCOs have not been designated within the Component.

(iii) Authorities of this manual, except for those defined in (i) or (ii) above, may be assigned to a higher level within the Component unless specified otherwise. HSAM authorities reassigned or redelegated by a Component pursuant to this subparagraph shall

be in writing and stored in a centralized location within the Component. A copy of the assignment/redelegation shall be submitted to the CPO within 30 days of issuance.

(2) Agency head approval or delegation requests must be prepared in the format established by the DHS Executive Secretary Handbook (ESEC), available at DHSOnline. Components shall ensure proper coordination through their ESEC Component's Liaison official and allow adequate time for processing agency head approval or delegation requests through the CPO as designated in this Manual.

**3001.301-70 Amendment of HSAM.**

(a) HSAM changes may be the result of suggestions by internal DHS personnel, other Government agencies, or the public. Proposed changes to this manual, along with the rationale for the change, shall be submitted to DHS ATTN: Office of the Chief Procurement Officer, Director, Acquisition Policy and Legislation.

(b) Updates to the HSAM will be summarized in a HSAM Notice published on the Intranet under Acquisition Regulations & Policy Info at http://dhsconnect.dhs.gov/org/comp/mgmt/cpo/paw/Pages/AcquisitionPolicyLegislation(APL).aspx. An announcement of the HSAM Notice issuance will be made to the HCAs. This announcement is used as the mechanism to alert users that the HSAM has changed. When the HSAM Notice is issued, the electronic HSAM is updated to incorporate the changes.

(c) The HSAM is maintained by OCPO in electronic form. Maintenance of the HSAM will be made through the HSAR/HSAM change process.

(1) *HSAM Chapters*. This manual will contain internal DHS acquisition procedures within chapters which supplement or implement FAR and HSAR material. Chapters are normally coordinated through the HSAR/HSAM change process prior to issuance.

(2) *HSAM Notices.*

(i) HSAM Chapters will be amended by issuance of a HSAM Notice; and

(ii) HSAM Notices are: (A) used to disseminate information that is relevant to the HSAM; and (B) normally integrated into the HSAM. HSAM Notices may occasionally contain new material that shall be issued quickly without going through the HSAR/HSAM change process before their release. However, subsequent to their issuance, these HSAM Notices will be reviewed using the HSAR/HSAM change process and change pages to the HSAM Chapters will be issued as appropriate.

(3) *HSAM Appendices, Attachments, and Exhibits*. At the end of the HSAM, Notices, and Bulletins, appendices may be used to provide supplementary material not suitable for insertion in the HSAM 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. Both are made part of the appendix.

**3001.301-71 Effective date of HSAM Notice.**

Unless otherwise stated, the following applies--

(a) Statements in HSAM Notices that the content 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 when issuing solicitations, contracts, or modifications thereafter; and

(b) If solicitations are already in process or negotiations complete when the HSAM Notice 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.

**3001.301-72 HSAM Notice numbering.**

HSAM Notices will be numbered consecutively on a fiscal year basis beginning with number "01" prefixed by the fiscal year (e.g., 2010-01).

**3001.304 Agency control and compliance procedures.**

(a) DHS's goal is to ensure the HSAR and HSAM are consistent with FAR unless the FAR prescribes otherwise. Due to the leadtime necessary to implement FAR changes, conflict or inconsistency may exist. In those cases, the FAR takes precedence over the HSAR and HSAM.

(b) *Component acquisition regulations* shall:

(1) Be incorporated into the HSAR as a supplemental regulation;

(2) Be coordinated in accordance with Component internal procedures (including review by legal counsel) to ensure compliance with FAR 1.301 before submission to the CPO;

(3) Be submitted to the CPO for review and approval by a transmittal letter signed by no lower than the HCA at the initial stages of the regulatory process (i.e., before proceeding to the public comment process); include a Paperwork Reduction Act (see HSAM 3001.404(a)(2)) and Regulatory Flexibility Act analysis, as appropriate; and be supported by a justification of need for the regulation;

(4) Be integrated within the HSAR with access on the Internet at http://www.dhs.gov/publication/hsar; and

(5) Pertain only to that Component.

(c) *Component acquisition procedures* shall:

(1) Contain no material which duplicates unless necessary for clarity (this is expected to be minimally required), paraphrases, or is inconsistent with the contents of the FAR, HSAR, and this manual;

(2) Be consistent with the policies and procedures of the FAR, HSAR, this manual, and other Departmental guidance and follow the format, arrangement, and numbering system specified in HSAM 3001.105-270 and HSAM 3001.301-70 to the extent practicable; and

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

(i) Components shall provide an electronic version of promulgated Component-wide acquisition guidance implementing or supplementing this manual.

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

## Subchapter 3001.4 Deviations from the FAR, HSAR, and HSAM

### 3001.403 Individual deviations.

(a) The HCA, without delegation, is authorized to grant individual deviations, except when this authority has been otherwise assigned by regulation (See FAR 1.405 regarding requests for deviations from treaty requirements), statute (e.g., most Cost Accounting Standards (CAS) deviations must be granted by the CAS Board) or this manual. All deviations shall:

(1) Be coordinated with legal counsel (include evidence of coordination with the record);

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

(3) Set forth the nature of the deviation;

(4) State the reasons for the action requested; and

(5) State the known impact of the deviation.

(b) A copy of approved individual deviations shall be provided to the CPO within 5 working days of approval.

### 3001.404 Class deviations.

(a) The CPO is authorized to approve class deviations unless FAR 1.405(e) is applicable. Requests for class deviations to the FAR, HSAR, and this manual shall be endorsed by the HCA before submitting the request to the DHS OCPO, Director, Policy and

Acquisition Workforce for processing and approval by the CPO**.** Submit all requests using the format at HSAM Subchapter 3001.403.

(2) Suggested changes to the FAR, HSAR, and this manual should be transmitted to the DHS, OCPO, Director, Policy and Acquisition Workforce, after review and approval of the HCA requesting the change. Recommended FAR changes determined appropriate by the CPO will be forwarded by the CPO to the Civilian Agency Acquisition Council (CAAC).

**Subchapter 3001.6 Career Development, Contracting Authority, and Responsibilities**

**Subchapter 3001.601 General.**

The CPO, without delegation, is authorized to establish a new contracting activity at DHS Headquarters and delegate authority to manage functions within the activity. The Secretary, Under Secretary of Management, CPO, and HCAs are considered contracting officers within DHS by virtue of their positions; no Certificate of Appointment (see HSAM 3001.603-3) is required.

**3001.601-70 Designation of the Head of Contracting Activities and Chiefs of Contracting Offices.**

(a) The CPO is delegated the authority to appoint HCAs. The Component shall nominate the individual in writing to the CPO by providing a copy of the individual's resume or other selection document which outlines the candidate's experience, education and training. The DHS HCA listing is available at Appendix A.

(b) HCAs, without redelegation, shall designate individuals as COCOs.

**3001.602 Contracting officers.**

**3001.602-2 Responsibilities.**

Contracting officers may delegate limited responsibilities to an authorized representative(s) (e.g., Governmentwide commercial purchase card recipient, Contracting Officer's Representative (COR), etc.). Any delegation of responsibility shall be in writing to specified individuals (by name, not position) and clearly enumerate the delegated responsibilities and any limitations attached thereto. COR selection, training, certification, and appointment are discussed in HSAM 3042.70 and in Component policy.

**3001.602-3 Ratification of unauthorized commitments.**

(a) *Definitions.*

(1) "Ratifying official" means the individual having the authority to authorize the issuance of 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 may delegate the authority to ratify unauthorized commitments to no lower than the COCO.

(c) *Limitations.*

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

(i) It is the responsibility of the individual who made the unauthorized commitment to provide the following information to the ratifying official:

(A) A discussion describing the circumstances causing the unauthorized commitment;

(B) Reasons why normal procurement procedures were not followed;

(C) What bona fide Government requirement necessitated the commitment;

(D) Whether any benefit was received;

(E) The dollar value of the commitment and an evaluation of the contractor's effort in terms of appropriateness of the hours expended, type of labor used, and other costs expended;

(F) Rationale for the contractor selected and identification of other sources considered;

(G) Status of performance;

(H) Any other pertinent facts including invoices, receiving report, or other documentary evidence of the transaction;

(I) The signature, following the above information, of the employee who created the unauthorized commitment certifying to the accuracy of the information provided;

(J) Recommendations, signed by the employee's second level supervisor, for corrective action to preclude the situation from recurring; and

(K) A complete procurement request (i.e., DHS Form 700-20, Procurement Request or Component authorized funding document), including a certification that the funds included in the purchase request for the ratifying action were available at the time the unauthorized commitment occurred.

(ii) If the individual who made the unauthorized commitment is not available, the office responsible for the commitment shall provide the information described in subparagraph (i) above with the name (vice signature) of the individual who made 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, on a case-by-case basis, shall decide if a contract or other written means would be appropriate for a particular situation. Such factors as the furnishing of Government property, promise of product delivery, dispute over invoiced prices, etc., are to be considered when determining if a contract will or will not be used.

(A) The complete file containing all the ratification documentation requirements of subparagraph (c)(7)(i) (also see (B) below), shall be provided to the ratifying official for a determination to ratify or not to ratify the action.

(B) Before ratification of an action, a letter requesting payment or an invoice from the contractor who provided the supply or service shall be received. If not already received, the contracting officer shall obtain an invoice after ratification for submission to the finance office.

(C) A memorandum signed by the contracting officer who approves the invoice shall be sent to the finance office along with the invoice. The original certified DHS Form 700-20, Procurement Request, (covering the total amount of the invoice), a copy of the ratifying official's ratification, and the document confirming the ratification (see subparagraph (iii) above), shall be attached to the memorandum.

(D) A copy of the memorandum, DHS Form 700-20, invoice, and original ratification documentation shall be retained in the contract office file.

(E) 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 system to ensure those actions for which a ratification was requested can be identified with the documentation below in paragraphs (A) through (G). Each ratification request included in the office file shall 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 office file pertaining to a ratification action shall contain the following:

(A) The name of the office and person that made the unauthorized commitment;

(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 (nonratifiable), the contracting officer shall promptly notify the individual who made the unauthorized commitment, in writing, stating the reasons for disapproval and recommending the individual obtain legal advice. The contracting officer shall also advise the individual that the nonratifiable commitment will not be paid in accordance with prescribed contracting methods of payment. If the unauthorized commitment involves the Governmentwide commercial purchase card or payment has already been made via the SMART PAY program, the responsible individual may be billed or other reimbursement action taken.

**3001.603 Selection, appointment, and termination of appointment.**

**3001.603-1 General.**

The HCA, with authority to redelegate to no lower than the COCO, is delegated authority to select, appoint, and terminate the appointment of contracting officers.

**3001.603-2 Selection.**

Acquisition Workforce Policy Number 064-04-011, Contracting Officer Warrant Program, establishes DHS policy and procedures on obtaining and maintaining contracting officer warrants.

**3001.670 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, shall support the contracting officer in ensuring that:

(1) Advanced Acquisition/Forecasts and Acquisition Plans are completed, as required;

(2) Requirements are clearly defined and specified;

(3) Competitive sources are solicited, evaluated, and selected;

(4) Quality standards are prescribed and met;

(5) Performance or delivery is timely;

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

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

**3001.671 Selection, Appointment and Termination of Non-Warranted Ordering Officials.**

**3001.671-1 General.**

This policy applies only to non-warranted, non GS-1102 ordering officials placing orders in excess of the micro-purchase threshold. Contracts must have established fixed terms and prices, as ordering officials are not authorized to negotiate, determine price reasonableness or determine best value.

**3001.671-2 Selection.**

HCA (or written designee) must ensure that nominated ordering officials possess the necessary skills and abilities to successfully perform the assigned duties. DHS MD Number 0783, Ordering Official Certification, details the requirements for the DHS ordering officials.

**3001.671-3 Procedures.**

(a) Authority of ordering officials. If the HCA (or written designee) determines that the appointment of ordering officials is essential for the operation of the contracting mission, the following situations are authorized:

(1) For contract actions deemed appropriate, a DHS non-warranted federal employee may be appointed as an ordering official to place delivery orders for supplies under DHS Electronic Mall (EMALL).

(2) For contract actions deemed appropriate, a DHS non-warranted federal employee may be appointed as an ordering official to place delivery orders for supplies against indefinite delivery contracts and blanket purchase agreements (BPAs), that were awarded

by DHS contracting officers, provided the contract terms permit placement of the orders and orders placed are within monetary limitations specified in the contract.

(b) Appointment of ordering officials.

(1) Documentation. The HCA (or written designee) shall maintain a file of appointments, including waivers for temporary appointment and terminations, for all ordering officials.

(2) Qualifications. Appointees shall have sufficient knowledge and experience to perform ordering official duties. Appointees shall hold a DHS certification for ordering officials and must acknowledge the requirement to attend skills currency training during the appointment duration to maintain certification. Appointees shall be familiar with and comply with appropriate DHS regulations and be responsible for identifying any potential conflict of interests relating to their appointment.

(3) Appointment. Each ordering official shall be issued a unique appointment letter that delegates authority to the ordering official and that delineates his or her duties, responsibilities, and limitations of authority. The delegated authority may not be redelegated by the ordering official. The duties of the ordering official should be considered when determining the appropriate dollar level for the ordering authority. The written appointment must be signed and shall not contain authority to sign contractual documents, order contract changes, modify contract terms, or create any commitment or liability on the part of the Government different from that set forth in the contract.

(4) Upon receipt of the appointment, the ordering official shall advise the appointing authority in writing that he or she accepts the responsibilities. After acceptance of the appointment, the contractor (if appropriate), disbursing officers and other interested personnel are to be provided written notification of the name of the ordering official appointed to place orders, unless the ordering official is named in the contract.

(c) Termination of ordering official appointment. In accordance with DHS MD Number 0783, Section VI. B. Procedures, 2. Certification Application, states, “The Acquisition Certification Board will issue certifications, which will remain valid for four (4) years from the date issued, provided annual skills currency requirements are maintained.”

(1) The ordering official appointment shall remain in effect until terminated by the HCA (or a designee identified in writing). Terminations of appointments shall be made in writing, except for terminations that result when contracts expire. Ordering officials shall acknowledge the appointment termination in writing. The HCA (or designee) is responsible for ensuring appointments are terminated when they are no longer valid or required.

(2) After termination of the appointment, the contractor, disbursing officers and other interested personnel shall be provided written notification of the name of the ordering

official who has been terminated and the name of the replacement ordering official, if available.

**3001.671-4 Specialized Training.**

The HCA (or designee identified in writing) has the authority to require an eligible ordering official to complete additional specialized training, which is considered relevant to a particular contract for assignment. This specialized training is in addition to the certification requirements and may be required for the ordering official to meet the needs of the appointment.

**3001.671-5 Temporary Appointment.**

Individuals may be temporarily appointed as ordering officials prior to receiving acquisition certification and training under the following conditions:

(a) Certification lacking. Individuals who previously completed initial training, procurement ethics training and specialized training (if required), but who lack certification, may be temporarily appointed as an Ordering Official without a waiver.

(b) Training lacking. Individuals unable to complete initial training, procurement ethics training and specialized training (if required) prior to their ordering official appointment may obtain temporary appointments through a waiver. The HCA (or a designee identified in writing) is authorized to issue one-time waivers for temporary appointments of ordering officials prior to completion of procurement ethics training and specialized training (if required) in unusual and compelling circumstances. In addition, the following conditions must be met:

(1) The ordering official shall complete the Federal Acquisition Institute (FAI) on-line course “Contracting Orientation” (or equivalent) prior to temporary appointment. The procurement ethics training and specialized training (if required) must be completed within 60 days or the ordering official’s temporary appointment shall be terminated.

(2) One-time waivers may not be extended or reissued beyond the initial 60-day period without CPO approval.

(c) Individual receiving temporary appointments must apply for ordering official certification within 60 days of temporary appointment. If the ordering official does not submit his or her acquisition certification application to the HCA (or a designee identified in writing) within 60 days of temporary appointment, or the application is denied, the temporary appointment shall be terminated.

**3001.671-6 Surveillance of ordering officials.**

(a) The HCA (or designee identified in writing) shall provide technical supervision of ordering officials and shall:

(1) Annually review activities of ordering officials by physical inspection of purchase documents and records to ensure compliance with policies and demonstration of sound judgment.

(2) Perform an inspection and document specific comments as to whether the ordering official is operating within the scope and limitations of authority delegated.

(3) Maintain copies of inspection and review findings for three years in the files of ordering officials and of reviewers.

(4) If it is discovered that an ordering official is not properly performing assigned duties or is failing to take prompt action to correct deficiencies noted in inspections or reviews, the ordering officer's appointment shall be promptly terminated.

# CHAPTER 3002 DEFINITION OF WORDS AND TERMS

**Subchapter 3002.1 Definitions**
3002.101 Definitions.

## 3002.1 Definitions.

## 3002.101 Definitions.

*"Acquisition Plan (AP)"* is a written document used to fulfill the acquisition planning requirements of FAR Parts 7 and 34. This includes all acquisitions, including contracts, task orders or delivery orders under Indefinite Delivery Vehicles, Federal Supply Schedules, Government-wide Agency Contracts, Blanket Purchase Agreements, and inter- and intra-agency acquisitions.

*"Balanced Workforce Strategy (BWS)"* is a systematic approach for determining the appropriate mix of federal employees and contractors to perform DHS work functions under service contracts. The BWS analysis is managed by the Chief Human Capital Office (OCHCO) in conjunction with program managers. The analysis uses a specifically designed tool to analyze DHS service contracts. See the following link for the OCHCO BWS Policy and Guidance (http://dhsconnect.dhs.gov/org/comp/mgmt/dhshr/mgr/Pages/BWF.aspx.

*"Competitive Sourcing Official"* is an inherently governmental agency official responsible for the implementation of the OMB Circular No. A-76 within DHS in accordance with HSAM Chapter 3007.

*"Component-wide contract"* means any contract vehicle or agreement established for use by a single DHS Component.

*"Department-wide contract"* means any contract vehicle or agreement established for use by DHS and its Component organizations. The terms is used synonymously with "Strategic Sourcing" contract.

*"DHS Executive Agent"* means a designee of authority by DHS to one of its Component organizations to act on behalf of the Department for the development, award and administration of a Department-wide contract. The scope of the delegated authority is documented in the Executive Agent Designation Letter. A sample letter is available on the Strategic Sourcing Program Office (SSPO) intranet at http://dhsconnect.dhs.gov/org/comp/mgmt/cpo/oss/Pages/StrategicSourcing.aspx.

*"DHS Head of the Contracting Activity (HCA) Council"* is an advisory body comprised of: the Chief Procurement Officer (CPO); Deputy CPO; OSDBU; Division Directors of Policy and Acquisition Workforce, Oversight & Strategic Support, Cost Analysis, Chief

of Staff, and Acquisition Program Management; and the Heads of the Contracting Activity (or designee) from each Component. The DHS HCA Council Charter establishes the role of the Council and the HCA members, who are listed at HSAM Appendix A.

*"DHS Integrated Project Team"* means any subset team of a commodity working group established with a concentrated focus on a specific Department-wide initiative identified by the DHS Commodity Working Group.

*"Strategic Sourcing"* means a collaborative and structured process to critically analyze DHS's procurement spending and using an enterprise approach to make business decisions about acquiring and managing commodities and services more efficiently.

# CHAPTER 3003 IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST


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| | 3003.104-5 | Disqualification. |
| | 3003.104-7 | Violations or possible violations. |
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| | 3003.602 | Exceptions. |
| **Subchapter** | **3003.7** | **Voiding and Rescinding Contracts** |
| | 3003.704 | Policy. |
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| | 3003.806 | Processing suspected violations. |
| **Subchapter** | **3003.9** | **Whistleblower Protections for Contractor Employees** |
| | 3003.905 | Procedures for investigating complaints. |
| | 3003.906 | Remedies. |
| | 3003.907 | Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (the Recovery Act). |
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| | 3003.907-6 | Remedies and enforcement authority. |
| **Subchapter** | **3003.10** | **Contractor Code of Business Ethics and Conduct** |
| | 3003.1003 | Requirements. |

## Subchapter 3003.1 Safeguards

### 3003.104 Procurement integrity.

### 3003.104-1 Definitions.

The designated agency ethics official for DHS is in the Office of General Counsel. The deputy ethics officials are the Component's Chief Counsels or designees.

### 3003.104-4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(a) The contracting officer is delegated this authority.

(b) Individuals having access to documents which contain proprietary or source selection information shall:

(i) Ensure that the information is marked as required by FAR 2.101 (under the definition for "Source selection information") and FAR 3.104-4;

(ii) Use DHS Form 700-14, 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;

(iii) Use DHS Form 700-13, Cover Page Source Selection Information, and comply also with the requirements of FAR 3.104-4(c) with respect to the marking of pages, to notify the recipient that the document contains source selection information;

(iv) Ensure that the information is secured and protected both during and after working hours;

(v) Ensure interoffice security mailing of the information; and

(vi) Ensure strict control over where discussions regarding the information or related acquisition are held.

### 3003.104-5 Disqualification.

(c)(2) *Resumption of participation in a procurement.* The Chief of the Contracting Office (COCO), without redelegation, is delegated this authority.

### 3003.104-7 Violations or possible violations.

(a)(1) The COCO is the reviewing official for processing violations.

(b)(5) The Head of the Contracting Activity (HCA) shall make the recommendation to the Chief Procurement Officer (CPO).

(c) The HCA should consult the appropriate criminal investigative agency (e.g., the Department of Justice) and obtain guidance from legal counsel and the OIG prior to taking any action.

(d)(2)(ii)(B) The CPO shall make this determination.

(f) The contracting officer shall prepare a memorandum of the facts and circumstances for the HCA's signature, and place the signed document in the contract file. The HCA shall notify the CPO before authorizing the contracting officer to make award or execute a modification.

**3003.104-570 Information security.**

Each contracting office and individual having access to contractor bid or proposal information, source selection information, or other sensitive procurement information must take the steps necessary to ensure that the integrity of the procurement process is not compromised by the unauthorized disclosure of this information. Particular attention should be paid to visitors, contract file security, data security, and transmission of sensitive procurement information.

## Subchapter 3003.6 Contracts with Government Employees or Organizations Owned or Controlled by Them

**3003.602 Exceptions.**

The HCA, without redelegation, is delegated this authority.

## Subchapter 3003.7 Voiding and Rescinding Contracts

**3003.700 Scope of subpart.**

(a)(2) The CPO shall make the required determination.

**3003.703 Authority.**

(a) The HCA is the individual to declare void and rescind contracts and other transactions described in Public Law 87-849 (18 U.S.C. 218).

**3003.704 Policy.**

(a) The HCA shall provide written notification to the CPO, prior to voiding or rescinding a contract or other transaction as enumerated in 18 U.S.C. 218.

**3003.705 Procedures.**

The HCA is delegated the responsibilities at FAR 3.705. The HCA shall submit copies of all written decisions and notifications to the OCPO.

## Subchapter 3003.8 Limitation on the Payment of Funds to Influence Federal Transactions

### 3003.804 Policy.

Contracting officers shall forward a copy of all contractor disclosures through the HCA to the Office of the Chief Procurement Officer (OCPO).

### 3003.806 Processing suspected violations.

Contracting officers shall report suspected violations of the requirements of 31 U.S.C. 1352 to the DHS Office of the Inspector General, Washington, DC 20528.

## Subchapter 3003.9 Whistleblower Protections for Contractor Employees

### 3003.905 Procedures for investigating complaints.

The HCA is delegated the responsibilities at FAR 3.905.

### 3003.906 Remedies.

The HCA is delegated the authorities at FAR 3.906**.**

### 3.907 Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (the Recovery Act).

### 3003.907-2 Policy.

The HCA is designated as "the head of a Federal agency" for purposes of FAR 3.907-2.

### 3003.907-3 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 DHS Office of Inspector General, Office of Investigations, and notify and coordinate with:

(i) The Component HCA and Component legal counsel;

(ii) If the complaint of reprisal applies to additional DHS contracts, the Component HCA responsible for those contracts; and

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

**3003.907-6 Remedies and enforcement authority.**

The HCA is delegated the head of agency authorities identified in FAR 3.907-6.

**3003.907-7 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/Contact/ReportFraud/Documents/WhistleblowerPoster.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.

**Subchapter 3003.10 Contractor Code of Business Ethics and Conduct**

**3003.1003 Requirements**

(a) Contractor requirements.

(3)(i) "Significant overpayment" is not limited to dollar value alone and depends on the circumstances of the overpayment 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.

(ii) 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 Component HCA and Component 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 overpayments 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 DHS Office of Inspector General, Office of Investigations;

(B) The Component HCA and Component legal counsel;

(C) If the violation applies to additional DHS contracts, the Component 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 DHS 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, DHS 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. DHS 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 DHS Office of Inspector General, Office of Investigations;

(B) The Component HCA and Component legal counsel;

(C) If the violation applies to additional DHS contracts, the Component 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.

# CHAPTER 3004 ADMINISTRATIVE MATTERS


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## Subchapter 3004.1 Contract Execution

### 3004.101 Contracting officer's signature.

### 3004.101-70 Contract execution in contract writing systems.

The act of "releasing" a contract is equivalent to signing a hard copy contract. Only a warranted contracting officer or non-warranted ordering official, appointed in accordance with HSAM 3001.671, may create an actual award obligation by "releasing" a contract.

## Subchapter 3004.2 Contract Distribution

### 3004.202 Agency distribution requirements.

(a) In addition to the distribution requirements of FAR 4.201, the contracting officer, as appropriate, shall distribute one executed copy of all types of awarded procurement instruments to the following:

(1) The Component 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 2.101;

(2) The requiring office; and

[Intentionally Left Blank, this section continues on 4-3]

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

(b) The distribution copy is necessary to enable the recording and control of Government property, as required by DHS Management Directive (MD) 0565, Personal Property Management. If a Component uses an integrated system for maintaining Government property records which are automatically updated upon award, the hard copy distribution is not required to be furnished to the property system personnel.

**3004.203 Taxpayer identification number information (TIN).**

(b) For DHS, payment offices obtain the taxpayer identification number and type of organization from the Central Contractor Registration (CCR) database (unless the Component retrieval of the TIN is obtained from an integrated finance and procurement system) when the contract includes the FAR clause, 52.204-7, Central Contractor Registration.

**Subchapter 3004.4 Safeguarding Classified Information Within Industry**

**3004.403 Responsibilities of contracting officers.**

(a) *Presolicitation phase.* DHS 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 DHS Office of Security or the Component's 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 (see the DHS Acquisition Planning Guide). 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) DHS MD 11035, Industrial Security Program;

(3) DHS MD 11045, Protection of Classified National Security Information: Accountability, Control and Storage;

(4) Department of Defense (DOD) 5220.22-M, National Industrial Security Program Operating (NISPOM); and

(5) FAR Subpart 4.4.

(b) *Solicitation phase.* Contracting officers shall ensure that classified acquisitions are conducted as required by the NISP. When handling classified information, contracting officers shall also comply with DHS MD 11035, Industrial Security Program and MD

Number 11045, Protection of Classified National Security Information: Accountability, Control, and Storage, and any Component implementing procedures. A DD Form 254, Contract Security Classification Specification, is required and completed if an offeror will need access to classified information to prepare their proposals. Contracting officers shall contact their cognizant DHS Security Office in accordance with MD 11035, Industrial Security Program, when preparing contract security specifications and processing DD-254 requirements for contractor or facility security clearances for classified acquisitions.

(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. (A DD 254 may 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.

**Subchapter 3004.470 Security requirements for contractor access to unclassified facilities, IT resources, and sensitive information.**

(a) The following DHS MDs apply to acquisitions that require recurring contractor employee access to DHS facilities or contractor employees access to sensitive but unclassified information or IT resources:

(1) DHS MD Number 4300.1, Information Technology (IT) Systems Security, the DHS Sensitive Systems Policy Directive 4300A, and the accompanying handbook, DHS Sensitive Systems Handbook;

(2) DHS MD Number 11042.1, Safeguarding Sensitive But Unclassified (For Official Use Only) Information;

(3) DHS MD Number 11053, Security Education, Training and Awareness Program Directive; and

(4) DHS Directive Number 121-01 and Instruction Handbook Number 121-01-007, the Department of Homeland Security Personnel Suitability and Security Program.

**3004.470-1 Responsibilities.**

(a) The requiring office is responsible for determining if contractor employee access to unclassified Government facilities, IT resources, or sensitive but unclassified information will be required during contract performance. The DHS Headquarters or Component 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 DHS OPO procurements that require contractor employees to have access to DHS facilities, sensitive information and/or resources shall be coordinated with the DHS Headquarters Office of Security prior to release of the solicitation. Contracting officers and requiring officials shall coordinate the requirements for access investigations with the cognizant Component Security Office.

(b) In addition to incorporating the clauses as required by HSAR 3004.470-3, contracting officers are responsible for ensuring that solicitations, contracts, and orders identify the documentation contractor employees must complete for determining contractor suitability.

**3004.470-2 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 the DHS Non-disclosure Agreement (NDA), DHS Form 11000.6, before starting work under the contract.

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

**Subchapter 3004.5 Electronic Commerce in Contracting**

**3004.502 Policy.**

(b) The Chief Procurement Officer (CPO) is delegated, after consulting with the Administrator of Office of Federal Procurement Policy (OFPP), the authority to ensure that information systems, technologies, procedures, and processes used by the Department of Homeland Security to conduct electronic commerce standards are met as specified by FAR 4.502(b)(1) to (5).

(c) The CPO 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.

**3004.502-70 Acquisition-Related Systems**

**3004.502-7000 User account maintenance responsibilities for acquisition-related systems.**

It is the responsibility of each DHS Acquisition Systems Governance Board (ASGB) representative to ensure that user accounts in acquisition-related systems are promptly terminated upon the resignation or reassignment of users within their respective organization.

## Subchapter 3004.6 Contract Reporting

### 3004.603 Policy.

(a) All DHS Components are required to report contract/procurement actions, with the exception of Governmentwide commercial purchase card transactions directly to Federal Procurement Data System (FPDS), see HSAM 3004.605. The FPDS, which is operated, updated and maintained by the General Services Administration (GSA), meets the requirements of FAR 4.6 and also has the capability to generate query reports. The FPDS collects and reports data on all reportable procurement actions. The FPDS is the primary source of procurement data from DHS contracting offices. All data submitted to FPDS by DHS Components shall be subject to verification and validation by the CPO and the Chief Acquisition Officer (CAO). (See FAR 4.604 and HSAM 3004.604).

(c) The following table provides the 4-digit codes from the National Institute of Standards and Technology (NIST) Special Publication 800-87, "Codes for the Identification of Federal and Federally Assisted Organizations" for DHS Components with contracting authority for use to enter data or extract FPDS reports:

| DEPARTMENT OF HOMELAND SECURITY | |
|---|---|
| 7001 | Office of the Secretary, Department of Homeland Security (Office of Procurement Operations) |
| 7003 | Citizenship and Immigration Services (Office of Procurement Operations) |
| 7008 | U.S. Coast Guard |
| 7009 | U.S. Secret Service |
| 7012 | U.S. Immigration and Customs Enforcement (ICE) |
| 7013 | Transportation Security Administration (TSA) |
| 7014 | U.S. Customs and Border Protection (CBP) |
| 7015 | Federal Law Enforcement Training Center (FLETC) |
| 7022 | Federal Emergency Management Agency (FEMA) |

### 3004.604 Responsibilities.

(a) When requested by the CPO, the Component HCAs are responsible for submitting an annual confirmation that the FPDS data has been reviewed for completeness and accuracy. The confirmation shall be accompanied by a statement describing, as a minimum:

(1) The methods used to review the data;

(2) Any actions taken to correct data previously submitted; and

(3) Measures implemented for process improvement, such as training and periodic internal reviews.

(b)(6) A completed printed version of the information entered into FPDS for each action shall be included in the contract file. FPDS shall also be included as a "Contract File

Checklist" item for all contract actions, regardless of dollar value, in accordance with Components' standard operating procedures.

**3004.605 Procedures.**

(a) *Procurement Instrument Identifier (PIID).* This subsection, regarding elements of DHS PIID and Supplemental PIID, (SPIIDs) is mandatory for all DHS Components. Alphanumeric characters, other than those prescribed in this subchapter, shall not be used as a part of the PIID or SPIIDs. If additional identification is needed by the Component for internal reasons, it shall be placed on the procurement instrument in such a location as to separate it from the PIID/SPIID. The contracting officer shall assign a PIID/SPIID to each type of instrument as described below. The number shall be retained for the life of the instrument to which it is assigned. The PIID shall consist primarily of 13 to 15 alphanumeric characters. (Dashes may be used at the discretion of the Component by inserting the dashes between: positions six and seven; positions eight and nine; and positions nine and ten.) The alphanumeric characters shall be positioned as follows:

(1) *Positions one and two*. A two-digit alphabetic code that identifies the procuring agency. This code shall always be "HS", which means the Department of Homeland Security.

(2) *Positions three and four*. A two-digit alphabetic code that identifies the Component within DHS:

| **Positions 3 and 4** | **DHS Components** |
|---|---|
| BP | U.S. Customs and Border Protection |
| CE | U.S. Immigration and Customs Enforcement |
| CG | U.S. Coast Guard |
| FE | Federal Emergency Management Agency |
| FL | Federal Law Enforcement Training Center |
| HQ | DHS Office of Procurement Operations |
| SA | DHS Office of Selective Acquisitions |
| SC | U.S. Citizenship and Immigration Services |
| SS | U.S. Secret Service |
| TS | Transportation Security Administration |

(3) *Positions five and six.* A two-digit unique alphanumeric or alpha code that identifies the sub organization/contracting office of the Component that issued the procurement instrument. See subparagraph (b) of this section for an example. Each Component will assign and maintain the two digit unique suborganization/contracting office codes (positions five and six). Each Acquisition Systems Governance Board representative is responsible for providing the Components' assigned office codes list and any changes to the DHS OCPO, Chief, Acquisition Systems Branch, within ten days of the code creation or change.

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

(5) *Position nine*. A one-digit alphabetic code, in the table below, identifies the type of procurement instrument (e.g., agreement, sealed bidding, contracts, etc.):

| Letter | Purpose |
|---|---|
| **A** | ***Agreement***: Use for a basic agreement, basic ordering agreement (BOA), or blanket purchase agreement (BPA) as defined under FAR 13.3, 16.7, and Federal Supply Schedules. Do NOT use for Cooperative Agreements. |
| **B** | ***Sealed Bidding***: Use for solicitations as defined under FAR 14.2. (*Character "B" use is at the Component's discretion.*) |
| **C** | ***Contracts:*** Use for all contracts (e.g., letter, 8(a), etc.) Also, includes 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** | ***Task or Delivery Order Contracts:*** Use for Indefinite Quantity, Definite Quantity, and Requirements contracts as defined under FAR 16.5. |
| **F** | ***Task or Delivery Orders:*** Use when placing orders against (1) a contract administered by another Government agency or department e.g., General Services Administration (Federal Supply Schedule), the Department of Veterans Affairs, or the Office of Personnel Management, (2) contracts administered by agencies other than DHS including the National Industries for the Blind, National Industries for the Severely Handicapped, and the Federal Prison Industries (UNICOR). (Also see HSAM 3004.605(a)(8)(i) and (ii).) |
| **G** | ***Reserved.*** |
| **H** | ***Reserved.*** |
| **I** | ***Request for Information:*** Use when placing an announcement in FedBizOpps for informational purposes. |
| **J** | ***Task or Delivery Orders:*** Use when placing orders against DHS contracts. This does not include Component BPA orders placed under GSA Schedules. (Also see HSAM 3004.605(a)(8)(i)and (ii.) |
| **K** | ***Land Purchases and Condemnations:*** 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** | ***Lease Agreement***: 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. Do NOT use this code for Interagency Agreements. |
| **N** | ***Construction or Service Purchase Orders:*** Use only when contracting officer approval is necessary before contractor payment. |
| **P** | ***Purchase Orders:*** 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** | ***Request for Quotation:*** Use when the procedures under FAR Part 13 are followed. |
| **R** | ***Request for Proposal:*** Use when the procedures under FAR Part 15 are followed. (*Character "R" use is at the Component's discretion.*) |
| **S** | ***Sales Contract:*** Use for sales and other disposal of real and personal property. |
| **U** | ***Utilities:*** Use for contracts for electric, telephone, water, natural gas, and other utilities. |
| **X** | ***Interagency Agreements***: Use when placing an order with any other Government agency or Component 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. |
| | Use of the letters E, M, T, Y and Z is retained by the OCPO. |

(6) *Positions ten through fifteen*. Components may use four to six characters in this field.

(7) *Illustration of the PIID.* An example of a PIID is illustrated in the below chart. The PIID HSCG23-08-B-00001 identifies a sealed bid issued by the Department of Homeland Security, United States Coast Guard, Headquarters Contracts Office, Washington, D.C., issued in Fiscal Year 2008.

| **Position** | **Identification** | **Code** |
|---|---|---|
| 1-2 | Agency | HS |
| 3-4 | Component | CG |
| 5-6 | Sub organization/contracting office of the Component | 23 |
| 7-8 | Fiscal Year in which the PIID is assigned to the procurement instrument. | 08 |
| 9 | Type of procurement instrument | B |
| 10-15 | Unique identifiers of the procurement instrument | 0001, 00001, 000001, A001, AB001, ABC001 |

(8) *Supplementary Procurement Instrument Identifiers (SPIIDs).* SPIIDs shall be used in conjunction with the PIID to identify the following:

(i) *Orders issued under other Federal agencies' indefinite-delivery contracts, BOAs, and BPAs.* The ordering office shall use the 13 to 15 character number specified with instrument code "F" for task or delivery orders under HSAM 3004.605(a)(5), as the SPIID. For example, this includes orders/calls issued against a DHS BPA awarded under a GSA Schedule.

(ii) *Orders issued under DHS Component indefinite-delivery contracts, BOAs, and BPAs.* The ordering office shall use the 13-15 character number specified with instrument code "J" for task or delivery orders under HSAM 3004.605(a)(5), as the SPIID, except for call orders placed under Component awarded BPAs where the individual call amount is not directly reported into the FPDS. Components shall establish an internal numbering process for the call orders with retrieval purchase descriptions, date of purchase, amounts and vendor source.

(9) For DHS acquisitions, other identifiers relating to PIIDs and SPIIDs shall be used as follows:

(i) *Amendments to Solicitations.* Amendments shall be assigned a four-position numeric serial number always sequentially beginning with 0001.

(ii) *Modifications to Contracts, Agreements, and Orders.* Modifications to contracts, agreements, and orders shall be numbered sequentially with a six-position alphanumeric serial number beginning with either A00001 or P00001. If the principal procuring office retains contract administration, the numeric serial number shall be prefaced with a "P". If administration is delegated to a contract administration office, such as a Project Resident Office (PRO) or the Defense Contract Management Agency (DCMA), the modifications issued by the administration office shall be prefaced with an "A".

(b) Certain exceptions, FAR 4.605(b)(1) and (2) and FAR 4.1102, provide relief from requirement that prospective contractors be registered in the Central Contractor Registration (CCR) (which also requires a Data Universal Numbering System (DUNS) number), prior to award of contracts. Among these exceptions are contracts awarded by "contracting officers in the conduct of military, humanitarian, or peacekeeping operations, particularly overseas and in foreign ports," or "contracting officers in the conduct of emergency operations, particularly under the Robert T. Stafford Disaster Relief and Emergency Assistance Act." Notwithstanding the requirements of HSAM Subchapter 3004.9, if it is impractical to obtain a DUNS number from a prospective contractor under one of the allowable exceptions of FAR 4.605(b)(1) and (2), and FAR 4.1102, contracting officers may use the following list of "Generic DUNS numbers," which are registered and listed in the CCR system for these purposes when reporting procurement actions to FPDS.

| DUNS | Description-Name |
|---|---|
| 123456787 | Miscellaneous Foreign Contractors |
| 136666505 | Spouses of Service Personnel |
| 136721201 | Governmentwide Commercial Purchase Card Small Business |
| 136721250 | Governmentwide Commercial Purchase Card Large Business |
| 136721292 | Governmentwide Commercial Purchase Card Foreign Business |
| 153906193 | Foreign Utilities |
| 167445928 | Student Workers in Laboratories |
| 167445977 | Governmentwide Commercial Purchase Card Small Disadvantaged Business (SDB) |
| 167445993 | Governmentwide Commercial Purchase Card Javits-Wagner-O'Day (JWOD) |
| 167446025 | Governmentwide Commercial Purchase Card Service Disabled Vet Owned SB (SDVOSB) |
| 167446058 | Governmentwide Commercial Purchase Card HUBZone SB |
| 167446116 | Governmentwide Commercial Purchase Card Women-Owned SB |
| 167446249 | Navy Vessel Purchases in Foreign Ports |
| 790238638 | Domestic Contractor (Undisclosed) |
| 790238851 | Foreign Contractor (Undisclosed) |

### 3004.606 Reporting Data.

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

### 3004.670 Acquisition related reporting requirements.

Unless otherwise advised by the CPO or the HCA, the Chief of Contracting Office (COCO) shall ensure that each report found in Appendix B is submitted to the required location by the due date.

## Subchapter 3004.8 Government Contract Files.

**3004.801 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 Component is designated as the head of the office performing paying functions.

**3004.803-70 Contents of contract files.**

(a) There shall be an official contract file folder for every contract awarded, order issued, or agreement entered into by DHS Components. Each contract file shall be organized by sections with an applicable contract file checklist. 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 requirement in the Federal Acquisition Regulation, HSAR, HSAM, and other DHS Directives as applicable. Each Component shall develop policies and procedures for ensuring that the appropriate check list is completed and placed in each contract file.

(b) The contract, order or agreement file should contain, as applicable:

- (i) The records described at FAR 4.803;
- (ii) COR nomination package, including the documentation described in Appendix W, Contracting Officer's Representative (COR) Nomination and Appointment Correspondence;
- (iii) The COR appointment letter
- (iv) The COR Supervisor notification letter.

**3004.804 Closeout of contract files.**

**3004.804-1 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 Component 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.

**3004.804-170 Monitoring contract closeouts.**

(a) *Policy.* Contracting officers responsible for contract administration shall 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., cognizant 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 or orders.* The contracting officer shall ensure that closeout actions (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 must 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, HSAR 3004.8, 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.

**3004.804-5 Procedures for closing out contract files.**

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

**3004.805 Storage, handling, and disposal of contract files.**

(a) Contract and order files shall be disposed of in accordance with DHS MD Number 0550.1, Records Management. Contracting officers shall seek the guidance of their Component's Records Manager or their Records Coordinator for additional information concerning the requirements. In no case may the files be destroyed before the timeframes specified in FAR 4.805. The 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/locations/index.html**.

(b) Files sent to a Federal Records Center (FRC) shall 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 4.805.

(c) Prior to disposal of a file, it may become necessary to retrieve a file from the FRC; therefore, contracting officers should ensure that the Records Manager or Records Coordinator maintains a record of the files sent to the FRC.

**3004.805-70 Storage, handling and disposal of Governmentwide commercial purchase card records.**

Governmentwide commercial purchase cards records at or below the simplified acquisition threshold for other than construction orders shall be retained for three years after final payment. Governmentwide commercial purchase card records for construction shall be retained for six years and three months.

**Subchapter 3004.9 Taxpayer Identification Number Information**

**3004.903 Reporting contract information to the IRS.**

(a) The CPO is delegated authority to report certain information to the IRS.

**3004.904 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. This means that any contractor who paid $600 or more a year must be reported to the IRS.

**3004.11 Central Contractor Registration**

**3004.1102 Policy.**

If an acquisition meets one of the exceptions at FAR 4.1102, the contracting officer should obtain the Tax Identification Number (TIN) from the contractor by oral or written request for submission to the finance or payment office.

**3004.1103 Procedures.**

(e) Contracting officers shall ensure each contract document transmitted to the payment office includes the DUNS number or, if applicable, the DUNS + 4 number assigned by Dun and Bradstreet Information Services, within the award document in accordance with FAR 52.204-7(b)(2). Also see HSAM 3004.605(b) regarding generic DUNS numbers for specialized reporting to FPDS.

**3004.13 Personal Identity Verification**

**3004.1301 Policy.**

(a) Homeland Security Presidential Directive-12 (HSPD-12), entitled, "Policy for a Common Identification Standard for Federal Employees and Contractors," was issued to enhance security and reduce identity fraud related to contractor physical access to Federally-controlled facilities and/or logical access to Federally-controlled information systems consistent with OMB Guidance No. M-11-11 dated February 3, 2011.

(b) The HSPD-12 requirements apply to all solicitations, contracts, or orders for services, including services incidental to supply contracts and orders where the contractor will require routine, recurring, or continuous physical access to DHS controlled facilities and/or logical access to DHS controlled information systems.

(c) The DHS Office of the Chief Security Officer (OCSO), Identity Management Division (IMD) and the DHS Office of Chief Information Officer (OCIO) have joint responsibility for agency-wide implementation of the HSPD-12 initiative.

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

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

**3004.1301-70 Definition.**

"*Logical access*" means providing an authorized user the ability to access one or more computer system resources such as a workstation, network, application, or database through automated tools. A logical access control system (LACS) requires validation of an individual's identity

through some mechanism such as a personal identification number (PIN), PIV card, username and password, biometric, or other token. The system has the capability to assign different access privileges to different persons depending on their roles and responsibilities in an organization.

**3004.1301-71 Other officials' responsibilities.**

(a) DHS Components must develop processes and procedures to ensure compliance with the DHS implementing guidelines set forth by the OCSO - IMD, and OCIO. At a minimum, such procedures shall include:

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

(2) requiring 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;

(3) ensuring that contractors adhere to FAR 4.1301(d) regarding securing the return of DHS PIV cards.

(b) Component procedures should be consistent with DHS security requirements for contractor access (e.g., physical or logical), which are contained in DHS Directive Number 121-01 and Instruction Handbook Number 121-01-007, the Department of Homeland Security Personnel Suitability and Security Program as well as MD 140-01 Information Technology System Security as implemented in DHS 4300A Sensitive Systems Policy documentation. For additional information regarding security requirements, requiring office responsibilities, security office responsibilities and contracting officer responsibilities, see HSAR and HSAM 3004.470. The DHS HSPD-12 guidance and reference tools can be found on the DHS HSPD-12 webpage: http://dhsconnect.dhs.gov/org/comp/mgmt/cso/imd/Pages/default.aspx
Further guidance related to MD 140-01 can be found at:
http://dhsconnect.dhs.gov/policies/Pages/directives.aspx DHS 4300A Policy guidance can be found at:
http://dhsconnect.dhs.gov/org/comp/mgmt/cio/iso/Pages/sspolicy.aspx

**3004.1302 Acquisition of approved products and services for personal identity verification.**

(b) DHS contracting officers shall not procure HSPD-12 related products and services, available by the GSA Federal Supply Schedule 70 or through open market acquisitions, without the coordination of the DHS OCSO - IMD. The approved list of products and services is provided on the DHS HSPD-12 webpage. Additional information may also be obtained from the OMB Memorandum No. M-06-18, Acquisition of Products and Services for Implementation of HSPD-12 and website:
http://www.whitehouse.gov/sites/default/files/omb/assets/omb/memoranda/fy2006/m06-18.pdf.

**3004.1303 Contract clause.**

The contracting officer shall follow the requirements at HSAR 3004.470-3(b) for inclusion of HSAR clause 3052.204-71 in solicitations and contracts when contract performance requires contractors to have routine physical access to a Federally-controlled facility and/or logical access to a Federally-controlled information system.

**3004.15 American Recovery and Reinvestment Act-Reporting Requirements**

**3004.1501 Procedures.**

(b) Any DHS HCA responsible for the obligation of American Recovery and Reinvestment Act (Recovery Act) funds must ensure that these (Recovery Act) funds are separately tracked and reported for projects through final payment and close-out (i.e., the financial system as well as any related procurement system must be able to separately track and report Recovery Act funds through contract closeout). In DHS, contracting officers must issue a discrete contract action (new award, order, or modification as appropriate) for any procurement using Recovery Act funds.

**Subchapter 3004.70 Review and Approval of Proposed Contract Actions**

**3004.7000 Scope.**

(a) This subchapter establishes the review and approval requirements for the following contract actions when the value of the acquisition (inclusive of options) exceeds the simplified acquisition threshold as follows:

(1) Proposed solicitations, contracts, and contract modifications issued and awarded (including those awarded under a Basic Ordering Agreement (BOA)) pursuant to Federal Acquisition Regulation (FAR) Parts 12, 13.5, 14, 15 or 16;

(2) Proposed solicitations, orders, Blanket Purchase Agreements (BPAs), and modifications to such orders and BPAs issued and awarded pursuant to FAR Part 8.4, when using Statements of Work, Statements of Objectives, Performance Work Statements, or requiring licenses;

(3) Proposed solicitations, orders, BPA's, and modifications to such orders or BPA's, issued and awarded against a single award or a multiple award indefinite delivery or indefinite quantity contract or BPA pursuant to:

- Subpart 8.4 (when not covered by paragraph (2) above) or
- FAR Part 13 or
- FAR Part 16;

(4) Letter contracts (of any dollar value) in accordance with HSAM Subchapter 3016.603;

(5) Written determinations that none of the functions to be performed are inherently governmental pursuant to FAR 7.503(e) and contractor assessments pursuant to Acquisition Alert 11-30;

(6) Pre-negotiation objectives and the documentation of negotiation (see FAR 15.406-3) for actions using FAR Part 15; and,

(7) Justifications and Approvals (J&As) for Other Than Full And Open Competition.

(b) Specific exceptions to the review and approval requirements are provided for in HSAM Subchapters 3004.7002 and 3004.7003.

(c) The approval requirements under this subchapter are in addition to other approval requirements prescribed by the FAR, HSAR, and HSAM (e.g., HSAM 3005.303, Announcement of contract awards, 3007.1, Acquisition Plans, etc.)

**3004.7001 Definitions.**

The following definitions are only applicable to HSAM 3004.70:

(a) "Legally sufficient" means that the document has been reviewed by an attorney in the DHS Headquarters (HQ) or Component legal office, and determined to be in compliance with applicable statutes, regulations, policies, and procedures.

(b) “Level above Approval” means approval after a review of the action by a procurement professional at least one supervisory level above the contracting officer responsible for the action.

(c) "Review" means to scrutinize the document before its release 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.

**3004.7002 Component Internal review and approval procedures.**

(a) Component review procedures: HCAs shall establish procedures for conducting the internal reviews (e.g., level above approval, coordination with a contract review board, quality assurance personnel, operational users, etc.) to ensure the requirements of this subchapter are met. An action over $500,000, but not greater than $1 million, need not be reviewed at a level above the contracting officer at a remote contracting office when the contracting officer is the sole contracting official. The HCA is required to address review and level above approval requirements in their internal procedures for actions over $1 million at remote contracting offices with limited contracting personnel.

(b) Review and Approval Requirements: Appendix C, Review and Approval Matrix lists the review and approval requirements for the actions listed in subchapter 3004.7000. All Component

reviews, comments, approvals, and resolution of comments shall be documented in writing and maintained in the contract file. If the award approving official conditionally approves the award, the contracting officer must include in the contract file a written determination (signed and dated) indicating that all of the conditions (e.g., corrections, deletions, additions, changes, etc.) were satisfied prior to award.

(1) Review comments. Official review comments shall be designated as either "Mandatory Change/Actions" or "Recommendations." The disposition of comments for the review and approval official and legal counsel are as follows:

(A) Mandatory Changes/Actions. These comments must be incorporated into the acquisition documentation in order for the action to be completed. Without these changes, the document or action would be considered either unacceptable or legally insufficient.

(B) Recommendations. These comments are suggestions that the reviewer believes will improve the document. These comments can be accepted or rejected by the acquisition originator.

(c) Cognizant technical/program review: The contracting officer shall ensure that all proposed solicitations, awards, and modifications are coordinated as necessary with the cognizant technical/program office prior to issuance or award.

(d) Exceptions: Exceptions to the approval requirements specified above in subparagraph 3004.7002(b) include unilateral modifications that do not require a proposal from or negotiations with the contractor (or from the servicing agency for inter/intra-agency agreements.) For example, approval is not required for modifications to provide incremental funding, the exercise of options, and those actions listed in HSAM Subchapter 3004.7003(b).

**Subchapter 3004.7003 Legal review.**

(a) Basic Rule for Legal Review: Legal counsel shall review the contract actions listed in subchapter 3004.7000(a)(1) through (5) expected to exceed $500,000 (inclusive of optional amounts and periods) for legal sufficiency. Legal counsel shall review J&As for Other Than Full And Open Competition (3004.7000(a)(7)) expected to exceed the simplified acquisition threshold (also see DHS J&A Guide). The contract action submitted for review shall be accompanied by the contract file, which must contain all documentation necessary to support the proposed action, including documentation of all contracting office reviews, approvals, and resolution of all issues and comments (unless parallel reviews are authorized in accordance with the HSAM and HCA procedures.) The HCA, with the concurrence of the Component's legal counsel, may adjust the $500,000 threshold. For the DHS HQ Office of Procurement Operations (OPO), the HCA must obtain the concurrence of the DHS Headquarters Office of General Counsel."

(b) Exception to Basic Rule for Legal Review: When legal counsel has previously reviewed a contract, BPA, order, or inter/intra-agency agreement, legal review of certain modifications to those contractual instruments is not required. Such modifications include, but are not necessarily

limited to: administrative modifications; modifications to add funding that do not increase scope; and, modifications to exercise options.

(c) Documentation: Incomplete documentation will not be reviewed until the complete file is submitted, and may be returned without review at the discretion of the legal counsel. For documentation to be complete, it must include all properly executed supporting documents, including those required by the FAR, the HSAM and applicable Department and Component directives necessary to support the contract action.

(d) Additional Requirements for Legal Review:

(1) Any contract action involving private sector financing, see HSAM 3032.702-71, regarding legal review and approval.

(2) Any contract action, including orders under indefinite quantity contracts or GSA FSS contracts, specifying cancellation or termination fees shall be reviewed by legal before execution. (Note: Provisions for cancellation or termination fees are commonly found in lease and licensing agreements.)

(3) Any contract action, including orders under indefinite delivery contracts and GSA FSS contracts, in which the Government agrees to indemnify the contractor. (Note: Provisions for indemnity are commonly found in contract provisions offered by contractors proposing terms consistent with "commercial practices.")

(d) Availability of Legal Counsel Review at any Dollar Value: Some issues may warrant legal review regardless of the dollar value. Contracting officers may request legal review due to the complexity or sensitivity of issues of the acquisition, notwithstanding that the dollar threshold has not been reached. For example, contracting officers should feel free to request legal assistance and guidance at critical junctures in the acquisition life cycle, such as for: difficult down-select or competitive range determinations, the clearance of acquisition plans for important acquisitions, questions as to the scope of an existing contract, and the issuance of cure notices or show cause letters.

(e) Documentation: The documentation of legal comments received or a statement from legal counsel that the procurement document has been reviewed and found to be legally sufficient must be placed in the contract file. The contracting officer is responsible for assuring that all legal comments are responded to and documented in the contract file. Any disagreements between the contracting officer and the reviewing attorney shall be forwarded to the COCO for resolution. The COCO may delegate this function in accordance with Component procedures.

**Subchapter 3004.7004 Office of Chief Procurement Officer (OCPO) review and approval.**

(a) The OCPO may require review of any DHS contract action, including modifications to awarded actions, during the acquisition process to ensure that sound business practices are being used; actions are in compliance with applicable laws, executive orders, and acquisition regulations; and actions serve the Government's best interest.

(1) Specific actions requiring approval.

(i) The OCPO will identify specific solicitations and contracts actions for review during its review of Acquisition Plans submitted as specified in HSAM Subchapter 3007.1.

(ii) In accordance with DHS Directive Number 125-01, Interagency Agreements and FAR 17.503(c), CPO approval is required prior to issuance (as the requesting agency) of any inter/intra-agency agreement to an agency not covered by the FAR.

(b) Information required for OCPO review.

(1) General.

(i) Reviews required by HSAM Subchapters 3004.7002 and 3004.7003 shall be obtained prior to transmittal to OCPO, including evidence of review and resolution of Component comments. The HCA memorandum transmitting the request for review and approval shall identify the action submitted, the documents provided, and any peculiar or extraordinary circumstances relating to the action which needs to be taken into consideration.

(ii) Documents submitted must be sufficient to allow for a comprehensive review. Documents submitted for review which include proprietary information or source selection information shall be marked and protected in accordance with FAR 3.104-5 and HSAM Subchapter 3003.104-5.

**3004.7005 Periodic compliance reviews.**

Periodic oversight reviews (e.g., an established procurement management review program, review of selected procurement actions by Headquarters, etc.) of solicitations, pre-negotiation objectives, documentation of negotiations, contract awards, and contract modification awards must be conducted by Components. All reviews must be documented in writing.

# CHAPTER 3005 PUBLIZING CONTRACT ACTIONS


| | | |
|---|---|---|
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## Subchapter 3005.000 Scope

## Subchapter 3005.003 Governmentwide point of entry (GPE).

Use of online procurement services for open market procurements, such as reverse auction, does not fulfill the responsibility to disseminate information as required by FAR Part 5.1. Some of these online procurement service tools provide for automatic notification or optional dissemination to the GPE. Contracting professionals and ordering officials shall ensure that all required information, such as the brand name justification or documentation (See FAR Part 5.102(a)(6)), is included for the GPE, if the acquisition is expected to exceed $25,000.

## Subchapter 3005.1 Dissemination of Information

### 3005.102 Availability of solicitations.

(a)(1) For DHS acquisitions expected to exceed $25,000, all solicitations including brand name specifications (when authorized) and their justification or documentation (see FAR Part 5.102(a)(6)) shall be made available via the internet at http://www.fbo.gov, unless an exception at FAR Part 5.102(a)(5) applies.

(4) DHS Management Directive No. 11042.1, Safeguarding Sensitive But Unclassified (For Official Use Only) Information, established DHS policy regarding the identification and safeguarding of Sensitive But Unclassified (SBU) information. All SBU acquisition information used during the solicitation and/or proposal phase of the procurement cycle will be protected through the enhanced controls of the GPE. The determination of sensitivity is the responsibility of the requiring activity. SBU acquisition materials may include information related to operations, systems, structures, individuals and services essential to the security and management of a facility, including telecommunications, electrical power, building facility structural layout, gas and oil storage and/or transportation, water supply, emergency services, and the continuity of operations.

## Subchapter 3005.2 Synopses of Proposed Contract Actions

### 3005.202 Exceptions.

(b) The Chief Procurement Officer (CPO) will make the written determination after consultation with the Office of Federal Procurement Policy (OFPP) and the Small Business Administration (SBA).

### 3005.207 Preparation and transmittal of synopses.

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

(5) CLASSIFICATION CODE. The FedBizOpps staff is not authorized to determine the classification code for any FedBizOpps notice. Because a misclassified contract action fails to notify the firms most likely to respond and therefore may violate the Competition in Contracting Act, the contracting officer is held responsible for correctly classifying a FedBizOpps notice. A 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 3005.3 Synopses of Contract Awards

### 3005.301 General.

The contracting officer must document the contract file with the reason(s) why a contract award was not synopsized.

**3005.303 Announcement of contract awards.**

(a) Public announcement. Contract actions valued in excess of $1 million; or task or delivery orders using multi-year DHS funds in excess of $10 million, or in any amount if an order causes cumulative obligations in a single account to exceed 50 percent of the total amount appropriated, shall not be awarded or distributed, nor any information released to any source outside of DHS (except as described in FAR 15.503(a)), until the requirements of HSAM 3005.303-70 have been accomplished. Neither contracting officers nor any other DHS employee shall issue an award synopsis, public announcement, or any press release until the requirements in this subsection have been satisfied, when applicable.

(b) Local announcement. The timing of any local announcement must be consistent with the requirements of Congressional notification in HSAM 3005.303-70.

**3005.303-70 Congressional notification of contract actions.**

(a) In accordance with Section 508 of Division E of Public Law 110-161; Section 507 of Division D of Public Law 110-329, Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009; Section 507 of Title V of Public Law 110-83, the FY 2010 DHS Appropriations Act; Section 507 of Division D of Public Law 112-74, Consolidated Appropriations Act, 2012; and subsequent similar Appropriations Act provisions, Components are required to provide Congressional notification as follows:

(1) For any contract award, including letter contracts and awards to small businesses, in excess of $1 million;
(2) For task and delivery orders made under DHS multiple award contracts using FY 2010 and later appropriated funds with similar provisions;
(3) For task or delivery orders using FY 2012 and FY 2013 multi-year DHS funds in excess of $10 million; and
(4) For task or delivery orders, in any amount, that causes cumulative obligations in a single FY 2012 and FY 2013 multi-year account to exceed 50 percent of the total amount appropriated. In this instance, a collaborative effort between Budget, Program, and Procurement personnel is required to ensure that proper Congressional notification is accomplished.

The contract and order notification procedures contained in the successor DHS Directive to DHS Management Directive (MD) Number 2140.1, Congressional Notification of Contract Awards, this subsection, and Component supplementary procedures, shall be used to transmit the required contract or order information on actions in excess of the thresholds identified above.

Appendix D, Congressional Notification Requirements, identifies both covered and not covered actions.

(b) Contracts and orders obligating FY 2010 and later appropriated funds under DHS multiple award contracts, valued in excess of $1 million or using FY 2012 and FY 2013 multi-year DHS funds in excess of $10 million or in any amount, if an order causes cumulative obligations in a single account to exceed 50 percent of the total amount appropriated shall not be awarded, issued

or distributed, nor any information released to any source outside of DHS (except as described in FAR 15.503(a)), until the requirements of this subsection have been accomplished. Neither contracting officers nor any other DHS employee shall issue an award synopsis, public announcement, or any press release until the requirements in this subsection have been satisfied, when applicable.

(c) The DHS Office of Legislative Affairs will use the information contained on the DHS Form 2140-01 to notify Senate and House of Representative Appropriations Committees at least three (3) full business days prior to making contract award or issuance of orders in accordance with legislative provisions. The DHS Office of Legislative Affairs may also elect to have the Component's Office of Legislative Affairs provide required information to Congress.

(d) Announcement and notification procedures.

(1) Contracting officers or other officials designated by the Component shall prepare and submit (after internal Component coordination as required) DHS Form 2140-01 via electronic mail to Contracts@hq.dhs.gov at least five (5) full business days prior to the planned award of a covered contract or issuance of a covered order. The business day begins at 9:00 a.m. Eastern Time (ET). For notifications received after 9:00 a.m. ET, the first full business day will be the day following receipt. For example, if a contract or order is planned to be awarded/issued on a Friday, DHS Form 2140-01 must be received by DHS Office of Legislative Affairs no later than 9:00 a.m. the previous Friday. This requirement also applies to Interagency Agreements for Assisted Acquisitions. The following or similar language shall be incorporated in the terms and conditions of Interagency Agreements for Assisted Acquisitions -

***In accordance with Section 508 of Division E of Public Law 110-116; Section 507 of Division D of Public Law 110-329, Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009; Section 507 of the FY 2010 DHS Appropriations Act; Section 507 of Division D of Public Law 112-74, Consolidated Appropriations Act, 2012; and subsequent similar Appropriations Act provisions, DHS Components are required to ensure that Congressional notification is provided for the following types of actions if they are accomplished on behalf of DHS through an assisted acquisition:***

- ***Any contract award including new contract actions being awarded on behalf of DHS by a Servicing Agency through an assisted acquisition in excess of $1 million (including the base value and all options).***
- ***Any modification in excess of $1 million for additional supplies or services that were not covered in the Congressional notification for the award of the contract or task or delivery order.***
- ***Any task or delivery order using FY 2012 and FY 2013 multi-year DHS funds in excess of $10 million.***
- ***Any task or delivery order, in any amount, that causes cumulative obligations in a single FY 2012 and FY 2013 multi-year account to exceed 50 percent of the total amount appropriated.***

***Failure to properly make Congressional notice may result in a violation of the Anti-Deficiency Act. DHS Form 2140-01Congressional Award Notification is attached.***

***The contracting officer or other official of the Servicing Agency shall prepare and submit Form 2140-01 at least five full business days prior to the planned award of the contract action via electronic mail to:***

***Contracts@hq.dhs.gov***
***Contracting Officer (name)***

***The business day begins at 9:00 a.m. Eastern Time (ET). For notifications received after 9:00 a.m. ET, the first full business day will be the day following receipt. For example, if a contract or order is to be awarded on a Friday, DHS Form 2140-01 must be received by Contracts@hq.dhs.gov (DHS Office of Legislative Affairs) no later than 9:00 a.m. the previous Friday.***

Note: The DHS contracting officer should fill-in as much information on the Form 2140-01 as possible prior to forwarding it as an attachment to the Servicing Agency for completion and submission.

(2) The contracting officer shall complete a separate DHS Form 2140-01 for each covered contract or order. Multiple actions on the same DHS Form 2140-01 will not be accepted without the prior agreement of the DHS Office of Legislative Affairs.

(3) Contracting officers shall note the anticipated date of award with the transmission of DHS Form 2140-01 (i.e., in the body of the email message), which shall be at least five (5) full business days after DHS Form 2140-01 is transmitted to Contracts@hq.dhs.gov. The contracting officer, or the official who transmitted DHS Form 2140-01, will receive confirmation that notification has been made and may proceed with awarding of the contract or issuing of the order and posting to FedBizOpps and public announcement when these procedures are applicable.

(4) In cases where it is determined Congressional notification would compromise national security, DHS Form 2140-01 shall include as much information as possible without compromising national security along with instruction on how to obtain additional information under an appropriate security clearance. Classified and sensitive unclassified information in the DHS Form 2140-01 and related documents must be appropriately marked and handled.

(e) Discretionary notification. HCAs are authorized to provide discretionary Congressional notification when otherwise not required if it is determined the action is of special interest. Discretionary Congressional notification shall be made under the same procedures and timeframe as required Congressional notification. HCAs or their designated representative must coordinate with the DHS Office of Legislative Affairs prior to submission of DHS Form 2140-01 to the electronic mailbox.

(f) Contracts Using FY2008 Funds – No Waiver. Congressional notification to the Committees of Appropriations of the Senate and House of Representatives for covered contracts being

awarded using FY 2008 funds may not be waived and the notification must occur at least three (3) full business days prior to contract award.

(g) Contracts Using FY 2009 and Subsequent Years' Funds – Limited Waiver. Congressional notification to the Committees of Appropriation of the Senate and House of Representatives for covered contract actions using FY 2009 or subsequent years' appropriations may be waived only in very limited circumstances. Those circumstances are limited to those situations where compliance with Congressional notification procedures prior to contract award would pose a substantial risk to human life, health, or safety. Notification should be made concurrent (or immediately thereafter) with awarding a contract or issuing an order. If a contracting officer determines substantial risk to human life, health, or safety exists, the following procedures apply:

(1) The Component HCA must advise the DHS Chief Procurement Officer or Deputy Chief Procurement Officer of the intent to award a covered contract or order without Congressional notification prior to awarding the contract or issuing the order in accordance with paragraph (g) above.

(2) The contracting officer must advise the DHS Office of Legislative Affairs as soon as he or she knows that an award of a covered contract or issuance of a covered order is being contemplated based on a situation where compliance with Congressional notification in accordance with paragraph (d) above would pose a substantial risk to human life, health or safety.

(3) DHS Form 2140-01 must clearly indicate that Congressional notification is being made concurrent (or immediately thereafter) with awarding of the contract or issuance of the order because delay of the contract action would pose a substantial risk to human life, health, or safety.

(4) The description of the work to be performed contained in DHS Form 2140-01 must clearly demonstrate that delay of the contract action would pose a substantial risk to human life, health, or safety.

(h) To promote compliance and clarify the relationship of DHS-specific Congressional notifications to other contract action announcements, Appendix E provides a summary of FAR and DHS award notice requirements.

## Subchapter 3005.4 Release of Information

### 3005.401 General.

After consultation with legal counsel or personnel from the Freedom of Information Act (FOIA) office (as applicable), the contract file must be documented to provide the rationale for withholding information other than that permitted to be withheld in FAR 5.401(b).

### 3005.403 Requests from Members of Congress.

(a) *Individual requests.* When DHS receives a request from a Member of Congress for information regarding a particular contract:

(1) The HCA is delegated the authority of the agency head under FAR 5.403. The contracting officer shall refer the proposed reply, with full documentation, to the HCA.

(2) The HCA shall notify the DHS Office of Legislative Affairs immediately upon receipt of a request from a Member of Congress for information regarding any contract**,** solicitation, or any procurement sensitive information. A copy of the request should also immediately be provided to the OCPO through PROCUREMENTSUPPORT@hq.dhs.gov and to the Component legislative affairs office. If the request is from a Member of Congress acting in any capacity other than as the Chairman of a Committee or Subcommittee, Speaker of the House, President of the Senate, or Majority Leader of the Senate, the Component Freedom of Information Act Officer and legal counsel must also be notified.

(3) The response to the Member of Congress must be coordinated through the DHS Office of Legislative Affairs. The DHS Office of Legislative Affairs may also elect to have the Component's Office of Legislative Affairs provide the requested information to Congress. A copy of the response to Congress should be provided to OCPO through PROCUREMENTSUPPORT@hq.dhs.gov.

**3005.404 Release of long-range acquisition estimates.**

**3005.404-1 Release procedures.**

(a) and (b) The authorities under FAR 5.404-1 are delegated to the contracting officer. The contracting officer shall ensure that the conditions set forth at FAR 5.404-1(b) are adequately addressed. Contracting officers must comply with the security requirements set forth under HSAM 3004.4 concerning the release of classified information.

(c) Long range acquisition estimates are contained in the Acquisition Planning Forecast System (APFS). The APFS provides the annual DHS procurement forecast.

## Subchapter 3005.5 Paid Advertisements

### 3005.502 Authority.

Publication of paid advertisements must be approved one level above the contracting officer.

## Subchapter 3005.7 Publicizing Requirements under the American Recovery and Reinvestment Act of 2009

### 3005.701 Scope.

Appendix F provides a summary of publicizing requirements that apply to actions funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act).

### 3005.705 Announcement of contract awards.

(a) Congressional and Office of Management and Budget (OMB) notification of contract actions.

(1) As provided under HSAM 3005.303-70(f), DHS has determined that it will make discretionary Congressional notifications for all contract actions, regardless of type, funded by the Recovery Act valued at more than $1 million. In addition, DHS retains the discretion to issue Congressional notifications for actions funded by the Recovery act valued at less than $1 million on a case-by case basis. Pre-award notification of Recovery Act funded awards to the Office of Management and Budget (OMB) and Congressional notifications are not required for purchase card transactions at or below the micro-purchase threshold.

(2) In addition, the OMB must approve all announcements of Recovery Act contract actions prior to submission to the Appropriations committees.

(3) The following procedures apply for all contract actions funded in whole or in part by the Recovery Act.

(i) The contracting officer prepares the DHS Form 2140-1.

(ii) The HCA (or a designee identified in writing) must submit the DHS Form 2140-1 to Erin.Cummings@hq.dhs.gov.

(iii) The contracting officer or other official designated by the Component must submit the DHS Form 2140-1 to Erin.Cummings@hq.dhs.gov and cc: contracts@hq.dhs.gov.

(iv) Erin Cummings or other OCPO designee will forward the Congressional notification to OMB for approval to release.

(v) For actions valued in excess of $1 million, OMB review and approval may extend the normal processing time for Congressional notification beyond the customary five full business

days. The contracting officer must not make award until the Office of Legislative Affairs (OLA) confirms that the Congressional notification has been submitted to the Senate and House of Representatives Appropriations Committees. OLA's confirmation will provide the date that award can be made.

(vi) For actions valued at $1 million or less, Erin Cummings or other OCPO designee will notify the contracting officer or other official designated by the Component when DHS has received OMB approval and provide the date that award can be made. When DHS uses its discretion to make Congressional notification, the requirement for advance submission to the Senate and House of Representatives Appropriations Committees does not apply.

(vii) If the contracting officer has any questions on the status of OMB's response, he/she should coordinate, through the HCA or a designee identified in writing, with Erin.Cummings@hq.dhs.gov.

**3005.771 Interagency Agreements.**

(a) If a Component uses Recovery Act funds in an interagency agreement, the agreement must spell out the assignment of agency roles and responsibilities, including reporting and posting requirements necessary to fulfill the unique requirements of the Recovery Act in accordance with FAR Part 5, sections 5.704 and 5.705. This applies to any contracts, orders, or modifications resulting under the interagency agreement.

(b) OMB must approve announcements of Recovery Act interagency agreements prior to award. This applies both to the award of the interagency agreement and to subsequent contracts and orders awarded by the servicing agency. Congressional notification continues to apply only to the subsequent contracts and orders awarded by the servicing agency. The following procedures apply for all interagency agreements funded in whole or in part by the Recovery Act.

(i) The contracting officer prepares award information, providing the same data elements that appear on the DHS Form 2140-01.

(ii) The HCA (or a designee identified in writing) must submit the award information to Erin.Cummings@hq.dhs.gov.

(iii) Erin Cummings or other OCPO designee will forward the award information to OMB for approval to release to the Appropriations committees.

(v) Upon notification of approval from OMB, Erin Cummings or other OCPO designee will forward the approval to the HCA (or designee identified in writing).

(vi) The contracting officer must not make award until Erin Cummings or other OCPO designee confirms that DHS has received OMB approval.

(vii) If the contracting officer has any questions on the status of OMB's response, he/she should coordinate, through the HCA, with Erin.Cummings@hq.dhs.gov.

# CHAPTER 3006 COMPETITION REQUIREMENTS


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|---|---|---|
| **Subchapter** | **3006.1** | **Full and Open Competition** |
| | 3006.102 | Use of competitive procedures. |
| **Subchapter** | **3006.3** | **Other than Full and Open Competition** |
| | 3006.302 | Circumstances permitting other than full and open competition. |
| | 3006.302-1 | Only one responsible source and no other supplies or services will satisfy agency requirements. |
| | 3006.302-2 | Unusual and compelling urgency. |
| | 3006.303 | Justification. |
| | 3006.303-1 | Requirements. |
| | 3006.303-2 | Content. |
| | 3006.304 | Approval of the justification. |
| | 3006.304-70 | Legal review. |
| | 3006.305 | Availability of the justification. |
| **Subchapter** | **3006.5** | **Competition Advocates** |
| | 3006.501 | Requirement. |
| | 3006.502 | Duties and responsibilities. |
| | 3006.570 | Competition advocates for the procuring activity. |


## Subchapter 3006.1 Full and Open Competition

### 3006.102 Use of competitive procedures.

(b) If only one responsible offer is received from the release of a competitive solicitation, the contracting officer should 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 3006.3 Other Than Full and Open Competition

### 3006.302 Circumstances permitting other than full and open competition.

### 3006.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements.

(b)(4) The CPO will make the determination.

### 3006.302-2 Unusual and compelling urgency.

(d)(1)(ii) The HCA is the approval authority for the written determination.

**3006.303 Justification.**

**3006.303-1 Requirements.**

(a) DHS Justification and Approval (J&A) Guide for Other than Full and Open Competition, Version 2.2, located at http://dhsconnect.dhs.gov/org/comp/mgmt/cpo/paw/Pages/AcquisitionPolicyLegislation(APL).aspx, provides additional requirements and guidance, including a sample format for J&As.

**3006.303-2 Content.**

(a)(9)(iv) For a proposed contract subject to the restrictions of HSAR 3006.302-270 and where FAR 6.302-2 is cited as the authority, the exceptional circumstances allowing for an award for a period of performance in excess of 150 days.

**3006.304 Approval of the justification.**

(c) Class justifications shall be approved by the same approval authority as for individual justifications (see FAR 6.304(a) and the DHS J&A Guide). Class Determinations and Findings, and justifications for contracts proposed for award under the authority at FAR 6.302-7, Public Interest, are prohibited.

(e) All justification and approvals for other than full and open competition submitted to OCPO for approval (see HSAM 3006.302-1 and section (VI)(C) of the DHS J&A Guide) shall be accompanied by the approved acquisition plan. Any previous justification and approval for other than full and open competition shall also be submitted.

**3006.304-70 Legal review.**

Legal counsel shall review justifications for other than full and open competition for legal sufficiency if the contract value, inclusive of options, exceeds the simplified acquisition threshold consistent with the requirement at HSAM 3004.7003.

**3006.305 Availability of the justification.**

(a) Except for paragraph (b) of this subchapter, Components shall ensure that the justifications required by FAR 6.303-1 are made publicly available within 14 days after contract award at the GPE: www.fedbizopps.gov. Justifications must remain posted for a minimum of 30 days in accordance with FAR 6.305(d)(3). (However, see FAR 5.102(a)(6) and 6.302-1(c) for justification posting requirements at the time of solicitation when acquiring brand name items.) A DHS-wide link providing public access to the justifications posted to the GPE is accessible at the Doing Business with DHS – Contract Opportunities website (Public Disclosure section) at: http://www.dhs.gov/contract-opportunities.

(b) In the case of a contract award permitted under FAR 6.302-2, Unusual and compelling urgency, the justification shall be posted to www.fedbizopps.gov within 30 days after contract award.

## Subchapter 3006.5 Competition Advocates

### 3006.501 Requirement.

The Component is authorized to designate Procuring Activity Competition Advocates (PACAs) subject to OCPO review and concurrence. Designation memoranda should be forwarded to the DHS Competition Advocate through the Component HCA. In order to qualify as a PACA, an individual must have a thorough knowledge of the Federal acquisition system; not be assigned any duties or responsibilities that are inconsistent with FAR 6.501; and have access to functional specialists in areas such as contracting, engineering, legal, security, and utilization of small business concerns, as may be necessary to effectively carry out his/her competition advocacy duties and responsibilities.

### 3006.502 Duties and responsibilities.

(b)(2) As a basis for the Departmental Competition Advocate's annual report to the CPO and CAO in accordance with FAR 6.502(b)(2), Procuring Activity Competition Advocates shall prepare and submit an annual Component Competition Report to the Departmental Competition Advocate on or before December 20th of each year for the preceding fiscal year. Component Competition Reports should be submitted to the Departmental Competition Advocate through PROCUREMENTSUPPORT@hq.dhs.gov.

### 3006.570 Competition advocates for the procuring activity.

A listing with point of contact information for the Department Competition Advocate and Procuring Activity Competition Advocates is maintained by the CPO on the Doing Business with DHS page, and is accessible at:
Competition Advocates and Task-Order and Delivery Order Ombudsman | Homeland Security.

# CHAPTER 3007 ACQUISITION PLANNING


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|---|---|---|
| **Subchapter** | **3007.1** | **Acquisition Plans** |
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| | 3007.102 | Policy. |
| | 3007.103 | Agency-head responsibilities. |
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## Subchapter 3007.1 Acquisition Plans

### 3007.101 Definitions.

*Acquisition Decision Event (ADE)* means a predetermined point within the acquisition phases at which the investment will undergo a review prior to starting the next phase. The ADE is formerly known as the Key Decision Point.

*Consolidated Acquisition Plan* means a written acquisition plan (AP) that includes more than one contract action. For example, a Component may have several different individual contract actions that further its mission or an executive agent may cover all orders within the AP for the strategic sourcing contracts. Combining them into a single AP would conserve resources by eliminating redundant AP development and AP review/approval/update processes.

### 3007.102 Policy.

(a) In addition to promoting full and open competition to the maximum extent practicable, as well as promoting the acquisition of commercial items, acquisitions shall be planned such that the appropriate contract types are selected and such that all technical, business, management, and other significant considerations are addressed as prescribed by FAR Part 7 and as supplemented herein.

(b) Reserved.

(c) All inter and intra-agency acquisitions (IAA) shall be planned. See HSAM 3017 for a discussion of direct and assisted IAAs. Acquisition planning requirements for IAAs are as follows:

(1) For an assisted acquisition:

The requesting agency (DHS or other agency) may delegate preparation of an AP to the servicing agency (DHS or other agency), but the requesting agency shall provide support and assistance as needed. Either the requesting or the servicing agency may prepare and approve the AP in accordance with the applicable interagency agreement (IA). If the IA states that DHS shall prepare the AP, the AP shall be completed in accordance with this Chapter. See HSAM 3017.501-72 for the policy if an agency other than DHS prepares the AP.

(2) For a direct acquisition:

The requesting agency (DHS or other agency) prepares the AP for the IAA.

(3) IAA documentation requirements:

(i) For intra-agency acquisitions, a copy of the AP shall be maintained in the DHS contract file.

(ii) For interagency acquisitions, the IA shall state where the AP is maintained.

(d) When an AP is required, a solicitation shall not be issued until an AP has been completed and approved. See exceptions in paragraph (g). See the AP Matrix in HSAM 3007.103(e)(5).

(e) A consolidated AP may be prepared for Department-wide vehicles when practicable. When a consolidated AP is feasible, it shall include planning for all task/delivery orders and calls to be placed against the vehicle. Evidence of planning includes the task or delivery orders and calls that meet the maximum ceiling price, maximum contract value, or total estimated value of the contract or agreement and the language in the AP shall specifically state that the AP covers all task and/or delivery orders or calls up to the total contract value. When a consolidated AP for a Department-wide vehicle does not cover the task/delivery orders or calls, an AP shall be prepared in accordance with the AP Matrix in HSAM 3007.103(e)(4).

(f) Each major system as defined in HSAM 3034 shall have one consolidated AP for the system.

(g) Written APs are required for procurements that meet the criteria and thresholds in HSAM 3007.103(e) with the following exceptions:

(1) Agreements between DHS and another federal agency that are not interagency acquisitions per FAR 17.500(c);

(2) Transactions under which all work is performed by DHS personnel.

(3) Emergency acquisitions. An acquisition is considered an emergency acquisition when the need for the supplies/services is of such unusual and compelling urgency that the Government would be seriously injured if the supplies/services were not immediately acquired. The contract file for the emergency acquisition, however, shall document the basis for determining contract type and the appropriate certification level of the Contracting Officer's Representative (COR), if one is named.

(4) Task or Delivery Orders where written APs have been approved at the base contract level (e.g., indefinite delivery vehicle (IDV) or consolidated AP) and the approved AP includes planning for all task or delivery orders issued after award. For example, the task or delivery orders shall be included in the total estimated value or ceiling price and the language in the AP shall specifically state that the AP covers all orders issued under the IDV.

(5) Orders/calls under Basic Ordering Agreements (BOAs) or Blanket Purchase Agreements (BPAs) where written APs have been approved prior to award of the initial BOA or BPA and the AP includes planning for orders/calls issued after award. For example, the orders shall be included in the total estimated value, ceiling price, or maximum value and the language in the AP shall specifically state that the AP covers all orders issued after award.

(6) Contracts awarded as a result of a Broad Agency Announcement (BAA) where a written AP has been approved prior to issuing the BAA and the AP addresses the total value of all awards to be made as a result of the BAA; the types of awards to be made, e.g., firm-fixed price, time and materials, cost reimbursement, etc.; and the AP specifically states that the AP covers all awards made as a result of the BAA.

(7) Actions such as orders, calls, contracts or modifications to orders, calls or contracts occurring subsequent to an approved AP have already been included as part of the AP revision.

(8) Individual procurements under an approved consolidated AP.

(9) Procurements conducted under the Small Business Innovative Research Program (SBIR).

(10) Individual procurements in support of construction projects if the procurements are covered in the construction project plan.

**3007.103 Agency-head responsibilities.**

(e) Criteria and Thresholds.

(1) The requirement for a written AP does not satisfy the requirement for an Advance Acquisition Plan (AAP). AAPs shall be developed for all acquisitions over the simplified acquisition threshold (SAT) and entered into the Acquisition Planning Forecast System (APFS) database available at http://apfs.dhs.gov/Login/Login.aspx.

(2) When an AP is not required, acquisition planning is still required by the FAR. The requisitioner shall include the following affirmative statement that acquisition planning was done. "Acquisition planning was coordinated with the contracting officer and appropriate subject matter experts and completed on month/day/year with all parties in agreement." This statement shall be included in the purchase request (PR) package.

(3) Delivery or Task orders issued under Department-wide vehicles may utilize the streamlined AP template for Strategic Sourcing orders (See HSAM 3007.103(e)(5)(iii)), unless a consolidated AP has already covered the orders.

(4) APs for supplies and services shall be prepared in accordance with the following AP Matrix:

| Acquisition Plan Matrix | | |
|---|---|---|
| **Threshold** | **Contract Type** | **Type of AP** |
| > SAT* to < $10M | FFP** | No written AP requirement (See 3007.103(e)(2)) |
| ≥ $10M for non-Major System Acquisitions | FFP** | Streamlined or Streamlined for Strategic Sourcing Orders |
| > SAT* for non-Major System Acquisitions up to designation as a Major System Acquisition | OTFFP*** | Streamlined or Streamlined for Strategic Sourcing Orders |
| All Major System Acquisitions (Level 1,2 or as designated by the Deputy Secretary, Chief Acquisition Officer, or ADA) | ALL | Formal |

*SAT: Simplified Acquisition Threshold; See FAR 2.101 for current thresholds.
**FFP: Firm-Fixed-Price
***OTFFP: Other than Firm-Fixed-Price actions include all other contract types listed under FAR Part 16 that are not FFP. OTFFP actions include: fixed price contracts with economic price adjustment, fixed price incentive contracts, fixed price contracts with prospective price redetermination, fixed price ceiling price contracts with retroactive price determinations, fixed price level of effort term contracts, cost reimbursement contracts, incentive contracts, time-and-material contracts, labor-hour contracts and letter contracts.

Note: See DHS Directive Number 102-01, Acquisition Management Directive Revision 1 at http://dhsconnect.dhs.gov/policies/Instructions/102-01_Acquisition_Management_Directive_Rev01.pdf and Revision 2 http://dhsconnect.dhs.gov/policies/Instructions/102-01_Acquisition_Management_Directive_Rev02.pdf which together constitutes Directive 102-01. DHS Directive Number 102-01 provides the acquisition level thresholds and definitions.

(5) There are three types of AP templates:
(i) Formal;
(ii) Streamlined; and
(iii) Streamlined for Strategic Sourcing/Department-wide orders.

All AP templates can be accessed at the following link: http://dhsconnect.dhs.gov/org/comp/mgmt/cpo/paw/Acquisition%20Templates/Forms/AllItems.aspx.

(6) For orders/calls where written APs have been approved at the base contract level (e.g., IDV or consolidated AP), BOA or BPA:

(i) If the orders/calls were not included prior to award, the AP may be revised after award to include such orders/calls, provided the appropriate justifications have been prepared and approved to support the increase in the total estimated value, ceiling price, or maximum value.

(ii) In instances where a revised AP exceeds an approval threshold, the AP shall be submitted for approval in accordance with the approval requirements set forth herein.

(iii) AP revisions are subject to the same review and signature process as the original document. Revisions may be made with change pages or by complete revision of the AP. The AP shall receive a revision number.

(iv) This subsection also applies to contracts awarded as a result of a BAA.

(j) Review and Approval of APs.

(1) Review:

(i) All APs shall be reviewed by at least the acquisition planner (See 3007.103-70(a)), small business specialist (See HSAM 3007.104(d)) and the contracting officer. The Head of the Contracting Activity (HCA) may require additional reviews.

(ii) For sole source procurements the cognizant Procuring Activity Competition Advocate (PACA) within the Component shall review APs, which includes Limited Sources Justification, Fair Opportunity Exceptions or Justification for Other Than Full and Open Competition, with estimated values exceeding $50M (except when the Public Interest exception at FAR 6.302-7 is used).

(2) Approval:

(i) Unless Chief Procurement Officer (CPO) approval is required:

(a) For FFP acquisitions:

(1) All APs less than $50 million shall at a minimum be approved by the contracting officer.

(2) All APs above $50 million, the HCA shall designate the appropriate level of approval based on the value, complexity and risk of the acquisition (unless CPO approval is required).

(b) For OTFFP acquisitions:

(1) HCA procedures shall ensure that the AP is approved at least one level above the contracting officer pursuant to FAR 7.103(j) regardless of the dollar value.

(ii) APs requiring CPO approval shall be properly coordinated with pertinent functional office/stakeholders prior to submission to the CPO for approval and shall be reviewed and concurred upon by the Component HCA. All APs that require CPO approval shall comply with the following procedures:

(a) CPO approval is required for the following:

(1) For program acquisitions with a life cycle cost of $300 million or more;

(2) For service acquisitions with an annual expenditure level of $100 million or more; and

(3) Any other AP designated by the CPO.

(b) For APs below the designated threshold of this section, approval shall be in accordance with HCA procedures, unless the CPO specifically designates that the AP requires CPO approval.

(c) In those instances where the initial AP was approved below the CPO approval threshold, but a revised AP is subsequently prepared that meets the threshold, the revised plan shall be approved by the CPO.

(d) If an AP requires CPO approval, the HCA shall submit the AP to the CPO for approval not later than 45 days prior to the scheduled Acquisition Review Board (ARB). If an ARB is anticipated but has not been scheduled, the AP shall be submitted for review not later than 30 days prior to the issuance of the solicitation. If an ARB is not required, the plan shall still be submitted for review not later than 30 days prior to the issuance of the solicitation. APs shall be submitted for CPO approval through the Director, Oversight & Strategic Support Division (OSS) at: PROCUREMENTSUPPORT@HQ.DHS.GOV.

(e) In those instances where the AP was recently approved and/or is current, it shall still be submitted with the other documents required for the ARB. If the AP is current and no substantial changes have been made, it does not require another CPO approval.

(f) The HCA may request a waiver from the requirement for CPO approval of an AP. Any such waiver request shall be submitted by the HCA through the Director, OSS at: PROCUREMENTSUPPORT@HQ.DHS.GOV. Waiver requests shall be in writing and contain sufficient detail to clearly demonstrate the basis for the request. Waivers for major system acquisitions of services and supplies shall be reviewed by the appropriate Acquisition Decision Authority (ADA) and shall not be considered unless the ADA concurs with the waiver.

(g) Classified or Sensitive APs that require CPO approval shall be coordinated with the Director, OSS (See (f) above) or the Director, Procurement Support Branch (PSB). Either the OSS or PSB Director must be aware that the document and any supporting documentation require review and approval. Those documents marked classified or sensitive shall not be forwarded to the procurement support email inbox because it is not a classified system. Those APs and supporting documentation, if classified or sensitive, shall be hand carried or appropriately couriered to the OSS or PSB Director for review, coordination and approval.

(h) The CPO re-delegated the approvals of APs to the Deputy Chief Procurement Officer (DCPO). Therefore, all APs for CPO approval shall have the name of the DCPO, instead of the CPO, in the signature block for approval.

**3007.103-70 Other officials' responsibilities.**

(a) *Acquisition planner/Technical official*. The acquisition planner, who can be the requisitioner, technical official, program manager, end user, shall develop and annually update the AP. The acquisition planner shall be a government employee who works for the requiring agency if outside of DHS or within the requiring component if within DHS. The acquisition planner shall ensure timely development and completion of the AP such as the history, requirement, quality, quantity, delivery, budget and cost estimates. Among other functions identified in FAR 7.103 and 7.106, and as appropriate to the acquisition, the acquisition planner shall:

(1) Coordinate with an acquisition planning team comprised of personnel responsible for significant aspects of the AP such as the contracting officer, COR, as well as personnel responsible for fiscal, legal, small business, technical, security and logistics, environmental, energy, safety, earned value management (EVM), personnel security, information technology (IT), security and enterprise architecture issues. (Also See HSAM 3007.104(b));

(2) Perform cost estimating, as it is a critical step in acquisition planning. Cost estimating helps decision makers evaluate resource requirements at milestones and other important decision points. Through this evaluation, decision makers are better equipped to make affordability and requirements tradeoff decisions. Additionally, cost estimating ensures more credible and realistic cost estimates are developed; provides insight into whether adequate funding is available; and establishes and defends budgets, thereby aiding in budgeting and reserving funds for future requirements. The Program Accountability and Risk Management (PARM) office has developed the following resources to assist in the development of cost estimates. While the guidance primarily focuses on life cycle cost estimates, the procedures are also applicable to the development of IGCEs.

(i) Appendix I of Management Directive 102-01 available at http://mgmt-parm-sp.dhs.gov/Acquisition%20Portfolio%20Status%20db/Forms/AllItems.aspx and

(ii) DHS Cost Estimating Handbook available at http://coe.dhs.gov/CE_A_COE/Shared%20Documents/DHS%20Cost%20Estimating%20Handbook%201%20May%202013.pdf.

(3) Document the IGCE. IGCEs shall be fully documented so that contracting officials can understand the basis of the estimate and can use the estimate in later steps of the acquisition process. A fully documented estimate also increases information sharing. A well-documented estimate shall be supported by detailed documentation that describes

how it was derived, capturing the source of the data used and the assumptions underlying the estimate.

(4) Document lessons learned from acquisition history, which includes knowledge gained from previous contracts, or potential issues that should be addressed in the new contract because lessons learned from previous contracts improve acquisition planning for new requirements. Knowledge gained from prior acquisitions can be used to further refine requirements and acquisition strategies. The lessons learned shall be documented in the AP, market research plan or a separate memo which is attached to the purchase request package. If acquisition history is not reviewed, the rationale for not doing so shall also be attached to the purchase request package and provided to the Contracting Officer.

(5) Provide input to the AP as necessary;

(6) Obtain applicable concurrences such as small business office concurrence, etc., as necessary;

(7) Route the AP through the approval process;

(8) Review the AP on an annual basis in conjunction with the contracting officer. As appropriate, the AP shall be revised following each review to reflect the occurrence or need for a major program change, or other significant change to the approved plan. Generally, a change is significant if there is an alteration in the acquisition strategy, including the contract type or method of procurement; a change in scope; and/or a change in the dollar value of the item procured. AP revisions are subject to the same review and signature process as the original document. Revisions may be made with change pages or by complete revision of the AP. The AP shall receive a revision number; and

(9) Ensure the planning includes nominating at least one qualified COR as early as practicable in the acquisition process for all acquisitions valued above the SAT and for smaller acquisitions if the contracting officer indicates a COR is desired. For IDVs, the planner may choose to nominate the COR at the order level instead of the contract level, in which case a planner should ensure the contracting officer receives the COR nomination package prior to issuance of the order. See Office of Management and Budget Memorandum entitled, "Revisions to the Federal Acquisition Certificate for Contracting Officer's Representatives (FAC-COR)" dated September 26, 2011 (http://www.whitehouse.gov/sites/default/files/omb/procurement/revisions-to-the-federal-acquisition-certification-for-contracting-officers-representatives.pdf) and Department-wide policies and procedures, including HSAM 3042.270 to determine the required qualifications for the nominated COR.

(b) *Contracting officer*. The contracting officer, as a member of the acquisition planning team, shall provide applicable input for the plan such as the type of contract to be used, setting procurement milestones, and on set-aside considerations. Among his or her acquisition planning duties, the contracting officer shall document in the AP the rationale for the selection of other than a FFP contract type such as cost-reimbursement, labor hour, or time and material contract type, etc. In addition, the contracting officer shall:

(1) Coordinate with the small business specialist for acquisitions that may involve bundling, coordinate with the Component, DHS Office of Small Business Utilization (OSDBU), and the Small Business Administration (SBA), as appropriate, in accordance with the review and approval requirements of FAR 7.107(c);

(2) For acquisitions in support of disaster or emergency relief activities, consult the Disaster Response Registry at https://www.sam.gov/portal/public/SAM/, when contracting for debris removal, distribution of supplies, reconstruction, and/or other disaster or emergency relief activities. The registry contains information on contractors who are willing to perform disaster or emergency relief activities within the United States and its outlying areas. (See FAR 7.103(y) and FAR 26.205).

(3) Verify that all IGCEs have supporting documentation that describes how the estimate was derived, capturing the source of the data used and the assumptions underlying the estimate. A copy of the supporting documentation shall be kept in the contract file.

**3007.104 General procedures.**

(a) In accordance with FAR 7.104(a), acquisition planning should begin as soon as the agency need is identified. Planners shall pay close attention to the procurement administrative lead time (PALT) needed to award complex procurements using various methods of procurement and contract types, taking into consideration the need for vendor engagement, and the need to conduct the analysis required by HSAM 3007.503. Early formation of the acquisition planning team shall ensure that the appropriate subject matter experts described at HSAM 3007.103-70 and FAR 7.104 are involved in the development of the AP; that there is sufficient time to ensure that the contracting officer complies with all requirements of law, executive orders, regulations, and all other applicable procedures, including clearances; and that goods and services are procured in a timely manner and at a reasonable price to meet mission needs.

(b) The acquisition planner shall integrate the efforts of all personnel in accordance with FAR 7.102(b). Also see HSAM 3001.103-70(a). The team shall include at a minimum the contracting officer and small business specialist. It may also include security, environmental, privacy, logistics and end user personnel. The contracting officer, as the developer of the procurement strategy to be deployed, shall play a key role in the planning. Working together, the acquisition planner and the team shall prepare and execute the AP.

(c) Reserved.

(d) Planners shall ensure APs are coordinated with the appropriate small business specialist in accordance with the threshold at FAR 7.104(d)(2).

(e) Reserved.

(f) Allow adequate time for the procurement process. Acquisition planners shall assess all requirements to ensure applicable projects and requirements are planned. HCAs should issue instructions establishing PALT and cut-off dates to assist planners and reduce end of year rushed procurements. When establishing PALT and cut-off dates, HCAs shall remain cognizant of

federal holidays and their possible impact to the procurement process. Acquisition planners in conjunction with their contracting officer shall set realistic procurement-specific milestones that take into account federal holidays as non-business days for contracting staff and industry partners. Contractors shall be given a reasonable amount of time to prepare submissions assuming no work is performed on Federal holidays.

(g) Complex procurements that require a balanced workforce analysis and vendor engagement require significant lead-time. Planners shall include sufficient time in the schedule for each step in the procurement process in order to comply with law, regulation and DHS policy and ensure the end user receives the required good or services at a fair and reasonable price.

**3007.105 Contents of written acquisition plans.**

(c) Refer to HSAM 3007.103(e)(6) to access the three AP templates. The streamlined (MS Word version or APFS version) and formal AP (DHS Acquisition Planning Guide) can be tailored to meet the specific needs of the requirement. Template sections shall not be deleted. If a section does not apply, planners shall insert "N/A" and the basis for non-applicability. Planners shall ensure that due diligence is performed to support an N/A response. If there is additional information that needs to be added to the template based on the requirement, Components have the flexibility to tailor the templates to add the additional information.

(d) Major systems shall include a vendor engagement strategy and non-major systems are encouraged to include a vendor engagement strategy in the AP or separate contract file memorandum that:

(1) includes at least one industry day, a pre-solicitation or pre-proposal conference, or the issuance of a Request for Information (RFI); and

(2) allows for a reasonable amount of one-on-one engagement; and

(3) allows time for discussions, as needed and in accordance with FAR Part 15, during the proposal evaluation process; or

(4) provide a written justification in this section of their AP as to why those steps are unnecessary (applies only to major systems APs).

**3007.106 Additional requirements for major systems.**

(e) In addition to the information required in FAR 7.105, the AP for major systems shall:

(1) Be tailored to a particular major acquisition program;

(2) Include significant/major program contractual actions including inter- and intra-agency acquisitions appropriate to the particular ADE or program phase; and

(3) Provide the program manager's overall plan for satisfying the mission need in the most effective, economical, and timely manner through one major or a portfolio of multiple acquisitions. (The information provided in APs for major system acquisitions

evolves and becomes more detailed as more information becomes available and planning progresses in later program phases.)

**3007.107 Additional requirements for acquisitions involving bundling.**

(a) The acquisition planner shall conduct market research to determine whether bundling is necessary and justified. See FAR 10.001(a)(2)(iv), FAR 10.001(a)(3)(vi), FAR 10.001(c) and HSAM 3010.001(c) for additional requirements.
(b) Reserved

(c) The DHS Deputy Secretary, without redelegation, shall determine that bundling is necessary and justified under the circumstances at FAR 7.107(c). When the contracting officer believes these circumstances apply to the acquisition, the HCA shall forward the following to the CPO:

(1) A copy of the approved AP required by FAR 7.105 and FAR 7.107;

(2) A copy of the SBA representative's (e.g., Procurement Center Representative) concurrence with the bundling of requirements or the decision of the HCA (see HSAM 3019.505); and

(3) A copy of the contracting officer's calculations showing how the expected benefits below the monetary thresholds under FAR 7.107(b) were derived. The documents shall be submitted via email to the Director, OSS, for CPO approval at PROCUREMENTSUPPORT@HQ.DHS.GOV. The CPO shall review the information. If the CPO proposes to recommend disapproval to DHS Deputy Secretary, the reasons for disapproval shall be discussed and resolved at a managerial level within the Component. The CPO findings on any unresolved issues shall be forwarded by the CPO to the Deputy Secretary for a final decision.

**3007.170 Reserved.**

**3007.171 Reserved.**

**3007.172 Advance acquisition plans.**

(a) Procurement forecast data is entered into the APFS in accordance with HSAM 3019.202-270 via an AAP. AAPs shall be developed for all acquisitions over the SAT and input into the APFS database available at http://apfs.dhs.gov/Login/Login.aspx. IAA AAP requirements are as follows:

(1) For intra-agency assisted acquisitions, an AAP is required for all acquisitions over the SAT.

(2) For interagency assisted acquisitions where DHS is the servicing agency an AAP is required over the SAT.

(3) An AAP is not required for interagency assisted acquisitions where DHS is the requesting agency. The servicing agency shall forecast the opportunity based on their agency policy.

(b) AAPs shall be developed on a fiscal year basis and shall be modified as necessary throughout the acquisition cycle using APFS. At a minimum, the information in the APFS shall be reviewed and updated on a semi-annual basis.

(c) The AAP contains the integrated/coordinated efforts of all personnel engaged in managing the acquisition process. APFS ensures that the effort is coordinated between the program office and procurement office. Program Offices enter the detailed AAP into the APFS database and electronically route the plan via APFS to the appropriate contracting office. Contracting Officers review, approve, or reject AAPs and route them to the AAP/Small Business (SB) coordinators for action.

(d) The Component AAP/SB Coordinators shall review approved AAPs in the APFS from their respective Component, ensure they are accurate and mark them complete. This will result in the AAPs being published in APFS. The Component AAP/SB Coordinators shall ensure that their respective Components update and validate the AAPs on or before the DHS due dates. The DHS AAP Coordinator shall work closely with the DHS OSDBU and shall provide the due dates to the Component AAP/SB Coordinators. The DHS AAP/SB Coordinator and DHS OSDBU shall also provide assistance to the Component AAP/SB Coordinators to ensure timely and accurate submissions.

(e) The contracting officer shall not release a solicitation until the AAP is approved. AAPs shall be reviewed by the contracting officer for accuracy prior to the release of a solicitation.

(f) In the event of an emergency acquisition, AAPs shall be prepared and approved as soon as practicable.

(g) No later than October 15 of each year, the Office of the Chief Procurement Officer (OCPO) will establish Component-specific acquisitions to be reviewed and notify each HCA. The HCA shall notify the specific contracting office of the required annual review and approvals as established by the OCPO.

(h) AAPs created and managed in the APFS shall not contain Classified or Sensitive Information. DHS Management Directive 11042.1, Safeguarding Sensitive but Unclassified (For Official Use Only) Information, limits the disclosure of information obtained or developed in carrying out certain security or research and development activities to the extent it has been determined that disclosure of the information would be an unwarranted invasion of personal privacy; reveal a trade secret or privileged or confidential commercial or financial information; or be detrimental to the safety of passengers in transportation. Prior to entering certain acquisition data in the APFS database, program personnel and contracting officers should consult with appropriate representatives from the Legal Counsel, Privacy Office, Security Office, and Freedom of Information Act Office regarding any questions or concerns they may have regarding the sensitivity of information. If the information is not determined to be sensitive, an AAP shall be prepared in the APFS database.

## Subchapter 3007.2 Planning for the Purchase of Supplies in Economic Quantities.

### 3007.204 Responsibilities of contracting officers.

(a) Reserved

(b) Before continuing with the negotiation or award of the acquisition, the contracting officer shall decide, in conjunction with the program manager, if continuing outweighs the potential cost saving benefits of delaying the acquisition.

### 3007.270 Additional requirements for acquisitions involving strategically sourced commodities.

### 3007.270-1 Scope.

This section describes the roles and responsibilities related to planning Department-wide contracts, and DHS' role in Federal Strategic Sourcing Initiatives (FSSI).

### 3007.270-2 Definitions.

*Business Case* means a document used for capturing the business rationale and strategy decisions for a department-wide contract. It addresses the business need, alternatives, anticipated risks, expected cost, measurements, benefits, and acquisition strategy. The business case templates (Streamlined and Full) are available on the Strategic Sourcing Program Office (SSPO) Intranet at: http://dhsconnect.dhs.gov/org/comp/mgmt/cpo/oss/Pages/StrategicSourcing.aspx.

*DHS Commodity Council* means a cross-Component working group comprised of executive or senior leadership who approve commodity strategies for Department-wide initiatives and appoint or recommend Component representatives for the DHS Commodity Working Group.

*DHS Commodity Working Group (CWG)* means a cross-component working group comprised of Component subject matter experts, program/project managers, and procurement personnel that identify a strategic sourcing opportunity within a set of related commodities and conducts detailed analysis of component level budget, spend, and acquisition practices to develop the necessary documentation required for the procurement.

*Government-wide contract* means any contract vehicle available for use by Federal Agencies and includes FSSI, Government-wide Acquisition Contracts (GWACs), BPAs, and Multi-agency contracts.

### 3007.270-3 General requirements.

(a) The DHS SSPO shall implement the Department-wide approaches to acquiring goods and services. The SSPO shall collaborate with stakeholders to develop and deploy sourcing strategies that enhance mission performance and improve acquisition efficiency utilizing a structured, phased-oriented framework identified in the SSPO Concept of Operations available at http://dhsconnect.dhs.gov/org/comp/mgmt/cpo/oss/Pages/StrategicSourcing.aspx.

(b) Components shall involve the SSPO during the requirement identification and definition phases of an acquisition to determine if an existing Department-wide contract is in place or is anticipated, and to determine if the requirement lends itself to the establishment of a Department-wide contract.

(c) When developing Component-wide contracts, Components shall coordinate with the SSPO to determine if another Component(s) has requirements for similar goods and/or services. If requirements are similar, the Component(s) shall work to provide information to assist with the development of a Department-wide contract and shall assist with such responsibilities as identifying common requirements, current prices, existing contractual agreements, and required terms and conditions; providing future requirements and spend forecasts, establishing ordering procedures; determining contract management and administrative processes; developing a methodology for calculating savings; and establishing reporting procedures to track purchase volume, spend, and savings.

(d) Prior to pursuing an acquisition outside of a Strategic Sourcing vehicle notwithstanding any exceptions identified in HSAM Section 3007.271-2, Components shall review the published listing of Department-wide contracts available on the SSPO Intranet (http://dhsconnect.dhs.gov/org/comp/mgmt/cpo/oss/Pages/StrategicSourcing.aspx) to determine if the requirement can be met through a current or planned Department-wide contract.

**3007.271 Department-wide contracts.**

**3007.271-1 General requirements.**

(a) Before establishing a Department-wide contract, it shall be supported by a written business case. If the acquisition is below the Office of Management and Budget (OMB) threshold (See HSAM 3007.271-1(c)(2)) a streamlined business case shall be prepared. At a minimum all business cases shall meet the following requirements:

(1) Demonstrate the value of establishing a new Department-wide contract vehicle versus establishing a Government-wide or Component-wide vehicle;

(2) Identify any existing Government-wide, Department-wide or Component-wide contracts that would satisfy the need;

(3) Describe the reason(s) why a new Department-wide contract should be established in lieu of using an existing Government-wide contract;

(4) Discuss the DHS customer(s) and the steps being taken to reflect any anticipated or future change conditions; and

(5) Evaluate the factors considered in reaching a conclusion that a Department-wide contract is consistent with and beneficial to the DHS mission.

(b) The program office shall prepare the business case. The SSPO will assist with the preparation of the business case and will submit the document for CPO approval.

(c) Guidance in this section applies to planned Department-wide vehicles meeting the criteria described in (c)(1) and the thresholds of (c)(2). A full business case shall be developed when:

(1) The preliminary business case for GWACs, Multi-Agency Contracts and BPAs shall be developed consistent with the SSPO business case template and posted to the OMB MAX system upon request or if the thresholds in (c)(2) applies.

(2) The criteria and estimated dollar threshold set forth in the Office of Federal Procurement Policy Memorandum, "Development, Review and Approval of Business Cases for Certain Interagency and Agency-Specific Acquisitions," dated September 29, 2011 and available at: http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/development-review-and-approval-of-business-cases-for-certain-interagency-and-agency-specific-acquisitions-memo.pdf requires Department-wide business cases meeting the thresholds in the table below to be uploaded to the OMB MAX "Business Case Community Page" during the advance acquisition planning phase for a minimum of 15 days to permit review by interested Federal stakeholders. The OMB MAX system is available at: https://max.omb.gov/community/x/b5G8IQ.

| **Acquisition Vehicle** | **Anticipated Solicitation Release Date** | **Business case is required when the estimated value of the proposed acquisition vehicle is equal to or greater than…** |
|---|---|---|
| Government-wide Acquisition Contract | — | All GWACS regardless of estimated value |
| Covered Multi-Agency Contract or Multi-Agency Blanket Purchase Agreement | — | $250 Million |
| | FY13 | $100 Million |
| Covered Agency-Specific Contract or Agency-Specific Blanket Purchase Agreement | FY14 | $50 Million |

(3) Based on Federal stakeholder feedback, a determination shall be made to either proceed with a new procurement (finalize) or to cancel the business case of which the status shall be updated in OMB MAX system.

(4) When establishing or renewing a GWAC, at a minimum, Section 2: Scope and Section 4: Potential Duplication of the business case shall be reviewed and approved using the OMB MAX "Business Case Community Page."

(5) The SSPO shall formally submit the approved business case to OMB as a part of the request by the agency head or deputy to the OMB Director, requesting executive agent designation to award and manage the GWAC.

(d) OSDBU and the DHS Office of the Chief Information Officer (information technology acquisitions only) shall approve the business case prior to submitting the business case for CPO approval.

(e) The CPO shall approve the designation of an acquisition as a Department-wide contract and as mandatory with exceptions based on review and approval of the business case. Written approval by the CPO shall be received prior to issuing a pre-solicitation synopsis or other public notice.

(f) If not approved in the business case a separate request for Executive Agent Designation shall be developed by the SSPO. The HCA shall review the Executive Agent Designation and submit for CPO approval through the Director, OSS via the following email address: SSPO@hq.dhs.gov.

(g) The approved business case shall be maintained as a part of the contract file.

**3007.271-2 Use of department-wide contracts.**

See HSAM 3017.7102 for the requirements, procedures and exceptions for use of Department-wide vehicles.

**3007.271-3 Source selection evaluation for department-wide contract vehicles.**

(a) In accordance with Department of Homeland Security Memorandum, Source Selection Evaluators for the Department of Homeland Security Wide Contract Vehicles, dated October 24, 2011, DHS Components and Headquarter offices shall nominate at least one person to serve as an evaluator to support source selection efforts for Department-wide contract vehicles. The memorandum is available at:

http://dhsconnect.dhs.gov/org/comp/mgmt/cpo/oss/Documents/Strategic%20Sourcing/Strategic%20Sourcing%20Policy%20Links/USM%20Borras%20signed%20memo%20Source%20Selection%20Evaluators%20DHS%20Wide%20Contract%20Vehicles%2010.24.11.pdf.

(b) Evaluators shall meet the necessary qualifications as specified in the request by SSPO.

(c) Request for exception to this requirement requires OCPO approval and shall be submitted to Director, OSS via the following email address: SSPO@hq.dhs.gov.

**3007.271-4 Post-award notification.**

(a) The HCA shall notify the CPO once the Department-wide contract is awarded in order to distribute and post information about the contract on the SSPO intranet site. See HSAM 3005.303-70 for requirements/procedures.

(b) The contracting officer shall provide the SSPO electronic copies of all contract modifications and other documentation, i.e., ordering guide, contract overview, and vendor contact information.

**3007.272 Federal Strategic Sourcing Initiatives (FSSI).**

The primary goals of FSSI are to strategically source across federal agencies; establish mechanisms to increase total cost savings, value, and socio-economic participation; collaborate with industry to develop optimal solutions; share best practices; and create a strategic sourcing community of practice. FSSI solutions provide DHS with access to vehicles that meet OMB's goal for cross-government participation.

**3007.272-1 General.**

Reserved.

**3007.272-2 Definition.**

*Federal Strategic Sourcing Initiative (FSSI)* is a government-wide commodity working group chartered under the purview of the Federal Government's Chief Acquisition Council, led by the General Services Administration, to encourage cross-government collaboration, identification of commodities and services common to all agencies, and adoption of industry best practices for strategic sourcing initiatives.

**3007.272-3 Procedures.**

(a) DHS participates in FSSI initiatives that collectively achieve DHS and FSSI goals.

(b) The OCPO shall serve as the DHS interface through active participation in the FSSI Working Group by assisting, when necessary, in the planning, development, and execution of government-wide solutions.

(c) Components shall provide subject matter expertise and requirements upon request of the OCPO.

**Subchapter 3007.4 Equipment Lease or Purchase.**

**3007.401 Acquisition considerations.**

The contracting officer shall make any required comparison and document the contract file. See FAR 7.401 for factors that should be considered.

**Subchapter 3007.5 Inherently Governmental Functions**

**3007.502 Applicability.**

This subchapter applies to all contracts and orders for services pursuant to FAR 7.502.

**3007.503 Policy.**

(a) The program manager (PM)/requirements official and contracting officer shall ensure inherently governmental functions are reserved exclusively for performance by Federal employees pursuant to FAR 7.503.

(b) The PM/requirements official shall include a statement that none of the functions to be performed are inherently governmental in each procurement request for services that is transmitted to the contracting office. The statement shall be supported by a balanced workforce assessment. Review FAR 7.503(c) for examples of functions considered inherently governmental and FAR 7.503(d) for examples of functions generally not considered inherently governmental. If the PM/requirements official is unsure whether the function is inherently governmental, the PM/requirements official should request assistance from the contracting officer and/or legal counsel.

(c) The contracting officer shall independently review the statement of work (SOW) or performance work statement (PWS) prior to awarding the contract or issuing the order to independently verify that none of the functions to be performed are inherently governmental. If the PM/requirements official and the contracting officer disagree as to whether a function is inherently governmental, the Head of the Contracting Activity or designee shall make the determination with advice from legal counsel.

**3007.503-70 General.**

(a) The Strategic Workforce Planning and Analysis (SWPA) Division in the Office of the Chief Human Capital Officer, implements the Department's Balanced Workforce Strategy (BWS) program. Information outlining the Department's BWS program is located at the following link: http://dhsconnect.dhs.gov/org/comp/mgmt/dhshr/mgr/Pages/BWF.aspx.

(b) The Balanced Workforce Assessment Tool (BWAT) is an enterprise-wide online questionnaire used to analyze proposed requirements for services and recompeted work functions. The BWAT's implementation and mandatory use memorandum dated January 7, 2014, signed by the Under Secretary for Management, is located at the following link: http://dhsconnect.dhs.gov/org/comp/mgmt/dhshr/mgr/Documents/USM%20Borras%20signed%20memo%20to%20Distro%201%207%2014%20(2).pdf.

(c) BWS/BWAT Frequently Asked Questions, which is interim guidance until the issuance of the revised BWS guidance, are located at the following link: http://dhsconnect.dhs.gov/org/comp/mgmt/dhshr/mgr/Documents/Balanced%20Workforce%20Strategy%20Frequently%20Asked%20Questions%20%20Feb%206%202014.pdf.

**3007.503-71 Procedures.**

(a) The PM/requirements official or other designated Component employee outside the contracting office is responsible for entering data into the BWAT. Contractors are not authorized to use the BWAT.

(b) A solicitation for services valued at $150,000 or more shall not be issued by a Contracting Activity without supporting documentation that a BWAT analysis was performed or that an exception to the requirement to perform the analysis applies. BWAT applicability and exceptions are detailed in the BWS/BWAT Frequently Asked Questions at the following link:

http://dhsconnect.dhs.gov/org/comp/mgmt/dhshr/mgr/Documents/Balanced%20Workforce%20Strategy%20Frequently%20Asked%20Questions%20%20Feb%206%202014.pdf.

(c) Coding FPDS-NG: On or after March 1, 2012, contracting officers shall insert one of the following codes at the beginning of the description field in FPDS-NG, in the exact format shown in the following table, for all service contracts (i.e., awards with a product service code (PSC) beginning with a letter), regardless of dollar amount. This includes procurements awarded as task orders, purchase orders, or call orders. Failure to input the codes in the exact format provided will result in an FPDS-NG validation error that will prevent the action from being released in the contract writing system.

| **Insert the following codes:** | **If the requirement is:** |
|---|---|
| IGF::CL::IGF | Closely associated with an inherently governmental function |
| IGF::CT::IGF | A critical function but not closely associated with an inherently governmental function |
| IGF::OT::IGF | Neither a critical function nor closely associated with an inherently governmental function (i.e., Other Function) |
| IGF::CL,CT::IGF | Closely associated with an inherently governmental function and is also a critical function |
| IGF::CT,CL::IGF | A critical function that is also closely associated with an inherently governmental function |

(1) Proposed requirements for services supported by an affirmative statement that no inherently governmental functions are contained therein, or are below the SAT, shall be reported to FPDS-NG as IGF::OT::IGF.

(2) This coding is not applicable to actions awarded before March 1, 2012. A code cannot be reported in the description field of FPDS-NG for modifications issued against a base award that was issued prior to this date.

# CHAPTER 3008 REQUIRED SOURCES OF SUPPLIES AND SERVICES


| | | |
|---|---|---|
| **Subchapter** | **3008.000** | **Scope of part.** |
| | 3008.002 | Standards of conduct. |
| **Subchapter** | **3008.4** | **Federal Supply Schedules** |
| | 3008.405 | Ordering procedures for supplies and services. |
| | 3008.405-2 | Ordering procedures for services requiring a statement of work. |
| | 3008.405-3 | Blanket Purchase Agreements (BPAs). |
| | 3008.405-6 | Limited sources justification and approval. |
| **Subchapter** | **3008.8** | **Acquisition of Printing and Related Supplies** |
| | 3008.802 | Policy. |
| | 3008.870 | Acquisition of DHS employee business cards. |
| **Subchapter** | **3008.11** | **Leasing of Motor Vehicles** |
| | 3008.1102 | Presolicitation requirements. |
| **Subchapter** | **3008.90** | **Purchase of Motor Vehicles** |
| | 3008.9000 | General. |


## Subchapter 3008.000 Scope of part.

### 3008.002 Priorities for use of Government supply sources.

(a) In accordance with HSAM 3007.270-3, the contracting officer or ordering official shall review the commodities list in DHS Management Directive (MD) Number 0731, Strategically Sourced Commodities Policy and Procedures, prior to making a purchase using commercial sources. An acquisition should be made from a DHS-wide contract vehicle (IDIQ contract or BPA) before considering other commercial sources of supply. If a DHS-wide contract vehicle is available, but not being used, the contracting officer shall document the basis for the decision in the contract file.

## Subchapter 3008.4 Federal Supply Schedules

### 3008.405 Ordering procedures for supplies and services.

### 3008.405-2 Ordering procedures for services requiring a statement of work.

(d) When an offeror requests information on an award that was based on factors other than price alone, or when the contracting officer is considering an optional explanation of the basis of the award, the contracting officer should consult the information in the Debriefing Guide located in Appendix AA for guidance on the explanation of the basis for award process and appropriate timely information to provide to the offeror.

### 3008.405-3 Blanket Purchase Agreements (BPAs).

(a) *Establishment.*
(3)(ii) All determinations for any single award blanket purchase agreement (BPA) exceeding $103 million required under FAR 8.405-3(a)(3)(ii) shall be made by the DHS Chief Procurement Officer (CPO). A written determination is required whether the solicitation will be issued competitively or non-competitively. Components shall submit the determination for CPO approval to the Director, Oversight & Strategic Support Division via PROCUREMENTSUPPORT@hq.dhs.gov not later than 14 days *prior* to issuance of the solicitation. The determination must be signed by the Component HCA as *"Recommended for Chief Procurement Officer Approval"*. The determination should be accompanied by such background information as will allow evaluation of the proposed determination, including, without limitation, any related justification and approval for other than full and open competition or separate determination for advisory and assistance services under FAR 8.4. Determinations shall be submitted in the format provided at Appendix L. All determinations submitted for CPO approval shall be accompanied by the approved acquisition plan.

**3008.405-6 Limited sources justification and approval.**

(b) When an order for a Federal Supply Schedule (FSS) contains brand name specifications, ordering activities and ordering officials shall coordinate the written justification or documentation with the ordering activity contracting officer for further processing and approval as designated in subparagraph (d) of this subchapter. The ordering activity contracting officer for the action shall ensure the request for quotation (RFQ) is posted with the approved brand name justification or documentation in "e-Buy" as required by FAR Parts 8.402(d) and 8.405-6.

(b)(1) For proposed FSS orders expected to exceed $25,000 and up to the simplified acquisition threshold, the contracting officer is the approval official for the brand name documentation. The justification and approval requests for the use of brand name and limited sources for FSS as described in FAR Parts 8.405-6(b)(2) and (d) shall be submitted to the DHS, or the Component Competition officials, designated at HSAM Chapter 3006 and the DHS Justification and Approval (J&A) Guide for Other than Full and Open Competition.

(b)(3)(ii)(C) Waiver of e-Buy posting requirement for brand name item. The Component HCA shall transmit a determination, supported by rationale, for the approval and signature of the Chief Procurement Officer prior to soliciting offers if an order for a brand name item is needed and access through e-Buy is determined not to be in the Government's interest.

## Subchapter 3008.8 Acquisition of Printing and Related Supplies

### 3008.802 Policy.

(b) The DHS Chief Administrative Services has been designated as the Department's central printing authority for DHS. Each Component has appointed a printing control point. Approval must be obtained prior to acquiring **in any manner** any of the supplies or services delineated in FAR Part 8.802(b).

### 3008.870 Acquisition of DHS employee business cards.

(a) The purchase of business cards for official use by DHS employees whether by the use of appropriations or by the employee's own funds will be made in accordance with DHS MD Number 0570, Acquisition of Department of Homeland Security Employee Business Cards.

## Subchapter 3008.11 Leasing of Motor Vehicles

### 3008.1102 Presolicitation requirements.

(a)(2) The DHS Chief Administrative Services, is the certifying official under FAR 8.1102(a)(2) as designated in DHS MD Number 0510, Motor Vehicle Fleet Management.

## Subpart 3008.90 Purchase of Motor Vehicles.

### 3008.9000 General.

(a) Section 1343(b)2 of Title 31 United States Code requires that agency appropriations must authorize the purchase or lease of passenger motor vehicles.

# CHAPTER 3009 CONTRACTOR QUALIFICATIONS


| | | |
|---|---|---|
| **Subchapter** | **3009.1** | **Responsible Prospective Contractors** |
| | 3009.104 | Standards. |
| | 3009.104-5 | Certification regarding responsibility matters. |
| | 3009.104-6 | Federal Awardee Performance and Integrity Information System. |
| | 3009.105 | Procedures. |
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| | 3009.171 | Prohibition on Federal Protective Service guard services contracts with business concerns owned, controlled, or operated by an individual convicted of a felony |
| **Subchapter** | **3009.2** | **Qualification Requirements** |
| | 3009.202 | Policy. |
| | 3009.204 | Responsibilities for establishment of a qualification requirement. |
| | 3009.206 | Acquisitions subject to qualification requirement. |
| | 3009.206-1 | General. |
| **Subchapter** | **3009.3** | **First Article Testing and Approval** |
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| | 3009.306 | Solicitation requirements. |
| **Subchapter** | **3009.4** | **Debarment, Suspension, and Ineligibility** |
| | 3009.402 | Policy. |
| | 3009.405 | Effect of listing. |
| | 3009.405-1 | Continuation of current contracts. |
| | 3009.405-2 | Restrictions on subcontracting. |
| | 3009.406 | Debarment. |
| | 3009.406-1 | General. |
| | 3009.407 | Suspension. |
| | 3009.407-1 | General. |
| **Subchapter** | **3009.5** | **Organizational and Consultant Conflicts of Interest** |
| | 3009.501 | Reserved. |
| | 3009.503 | Waiver. |
| | 3009.570 | Limitations on Lead System Integrators. |
| | 3009.570-1 | Reserved. |
| | 3009.570-2 | Reserved. |
| | 3009.570-3 | Procedures. |

## Subchapter 3009.1 Responsible Prospective Contractors

### 3009.104 Standards.

### 3009.104-5 Certification regarding responsibility matters.

(a)(2) An affirmative certification provided by an apparent awardee indicating the existence of an indictment, charge, conviction, or civil judgment, or Federal tax delinquency in an amount that exceeds $3,000, shall be promptly transmitted by the contracting officer to the Suspension & Debarment Official (SDO) or to the Office of the Inspector General prior to proceeding with contract award. The SDO shall ensure that the certification provides an explanation of the details and factors affecting responsibility and a conclusion regarding the decision about the offeror's responsibility for the acquisition and contract award.

### 3009.104-6 Federal Awardee Performance and Integrity Information System.

(c)(2) When performing a responsibility determination, if the contracting officer identifies information in the Federal Awardee Performance Information System (FAPIIS) that is appropriate for the SDO's consideration, the contracting officer shall notify the SDO prior to proceeding with award.

### 3009.105 Procedures.

### 3009.105-2 Determinations and documentation.

(a) *Determinations*. (1) The contracting officer shall promptly provide a copy of the nonresponsibility determination to the prospective contractor and a copy to the SDO.

(b) *Support documentation*. (1) For all contract awards, the contracting officer shall include the System for Award Management (SAM) Exclusions and the Federal Awardee Performance and Integrity Information System (FAPIIS) screen shots in the contract file to establish that the information regarding the awardee and applicable key personnel was reviewed.

(2)(i) The contracting officer shall document the determination of nonresponsibility directly in FAPIIS and this function is not delegable. For access to FAPIIS, contact the Component Focal Point for the Contractor Performance Assessment Reporting System (CPARS) as described at HSAM 3042.1503(a) (4).

(ii) The contracting officer shall submit a copy of each nonresponsibility determination documented in FAPIIS to the SDO.

(3) *Task and Delivery Orders*. A responsibility determination is not required when placing orders under indefinite delivery contracts, including orders placed under the GSA Federal Supply Schedule. However, the contracting officer shall check SAM to verify contractor exclusion prior to: placing an order exceeding the guaranteed minimum under an indefinite quantity contract; placing an order under a 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 (See FAR 9.405-1(b)).

**Subchapter 3009.171 Prohibition on Federal Protective Service guard services contracts with business concerns owned, controlled, or operated by an individual convicted of a felony.**

The contracting officer's determination that a contractor is not eligible for award under HSAR 3009.171, shall be documented in a determination of nonresponsibility. If the subject business concern is a small business, the determination of nonresponsibility must be approved by the Chief of the Contracting Office (COCO).

**Subchapter 3009.2 Qualification Requirements**

**3009.202 Policy.**

(a)(1) The Head of Contracting Activity (HCA) is delegated the authority at FAR 9.202. The cognizant technical office shall prepare and submit a written justification to the contracting officer. The contracting officer shall submit the justification for coordination and signature of the Component competition advocate and approval by the HCA.

(b) The cognizant 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 Component 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 andsignature of the Component competition advocate, and approval by the HCA.

**3009.204 Responsibilities for establishment of a qualification requirement.**
(a)(2) A written determination shall be completed and placed in the contract file. At a minimum, the determination shall include the name of the firm for which the qualification tests will be performed, the amount of increased competition expected, and the dollar value of anticipated future requirements for the qualified product. The cognizant technical office shall assist the contracting officer in preparing the determination.

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

**3009.206 Acquisitions subject to qualification requirements.**

**3009.206-1 General.**

(b) The authorities at FAR 9.206-1 are delegated to the HCA. The cognizant technical

office shall prepare and submit a written justification for the emergency to the contracting officer, who shall coordinate the justification through the Component competition advocate for the HCA for approval.

## Subchapter 3009.3 First Article Testing and Approval

### 3009.302 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.

### 3009.306 Solicitation requirements.

The clauses at FAR 52.209-3 and 52.209-4 do not cover all the solicitation requirements described in FAR 9.306. For instance, if a solicitation contains a testing and approval requirement, the contracting officer shall address the requirements in FAR 9.306(d) and (f) through (j) in the solicitation's Section H, special contract requirements.

## Subchapter 3009.4 Debarment, Suspension, and Ineligibility

### 3009.402 Policy.

(c) Components shall follow the DHS Management Directive (MD) 146-01 and DHS Instruction Number 146-01-001 concerning procedures, documentation, and process for each referral to consider for potential suspension and/or debarment. Referrals for contractor suspension and debarment and possible criminal or fraudulent activities shall be made to the Office of the Inspector General.

### 3009.405 Effect of listing.

(a) The Chief Procurement Officer (CPO) shall approve the compelling reason determination under FAR 9.405(a), (d)(2), and (d)(3). This authority is not delegable below the Deputy Chief Procurement Officer. The contracting officer shall submit the compelling reason determination to the Component HCA [See format at HSAR 3001.7, Determinations and Findings (D&F)]. The compelling reason determination shall include a legal sufficiency review by the responsible Component Legal Counsel. If the HCA concurs, the compelling reason determination shall be submitted through the OCPO Director, Oversight & Strategic Support Division via PROCUREMENTSUPPORT@hq.dhs.gov to the CPO for approval. The CPO will then promptly forward the compelling reason determination to the SDO. Award to the debarred or suspended contractor shall be considered only in those emergency circumstances in which the contractor is able to timely provide the supplies or services or when national security is an overriding consideration.

### 3009.405-1 Continuation of current contracts.

The CPO is the approval authority for the compelling reason determination under FAR 9.405-1(a) and (b). This authority is not delegable below the Deputy Chief Procurement Officer. (See HSAM 3009.405(a)).

**3009.405-2 Restrictions on subcontracting.**

The CPO is the approval authority under FAR 9.405-2(a). This authority is not delegable below the Deputy Chief Procurement Officer. (See HSAM 3009.405(a)).

**3009.406 Debarment.**

**3009.406-1 General.**

(c) The CPO is the approval authority under FAR 9.406-1(c), except under FAR 23.506(e). This authority is not delegable below the Deputy Chief Procurement Officer. (See HSAM 3009.405(a)).

**3009.407 Suspension.**

**3009.407-1 General.**

(d) The CPO is delegated the authority under FAR 9.407-1(d). This authority is not delegable below the Deputy Chief Procurement Officer. However, see HSAR 3023.506(e) regarding waivers to debarment or suspension determinations for actions under FAR Subpart 23.5, Drug-Free Workplace. For procedures on preparing a compelling reason determination, see HSAM 3009.405(a).

**Subchapter 3009.5 Organizational and Consultant Conflicts of Interest**

**3009.501 Reserved.**

**3009.503 Waiver.**

The HCA is delegated the authority under FAR 9.503, except that the waiver authority does not extend to limitations on Lead System Integrators (See HSAM 3009.570).

**3009.570 Limitations on Lead System Integrators.**

**3009.570-1 Reserved.**

**3009.570-2 Reserved.**

**3009.570-3 Procedures**

(c)(1)(iii)(B) To process an exception under HSAR 3009.570-2(b)(1), the contracting officer shall submit the request and appropriate documentation through the HCA to Office of the Chief Procurement Officer (OCPO) at PROCUREMENTSUPPORT@hq.dhs.gov. The contracting officer shall not award a contract to the affected offeror until notified by the OCPO procurement analyst that the exception has been approved and transmitted to Congress.

| | | |
|---|---|---|
| **CHAPTER** | **3010** | **MARKET RESEARCH** |
| **Subchapter** | **3010.000** | **Scope of part.** |
| | **3010.001** | **Policy.** |
| | **3010.001-70** | **Responsibilities.** |

## Subchapter 3010.000 Scope of part.

## 3010.001 Policy.

(a) The program office with the requirement or need has overall responsibility for market research. However, the expertise of all members of an acquisition team/Integrated Project or Product Team (IPT) should be utilized for conducting market research. The contracting officer shall provide advice and research initiatives that can only be overseen by a contracting officer such as issuing "Sources Sought" synopses, requests for information, and pre-solicitation notices. Even with these contracting officer-led segments, the acquisition team/IPT shall remain the major contributor to market research activities which, as documented, form a key component of a complete procurement request package prepared and submitted by the program office. Once the solicitation is issued, all communications with industry shall be directed to the contracting officer. At that point, the program office's direct involvement in market research or interaction with industry shall cease.

The DHS Market Research Guide at this link under "Guides" provides additional Department-wide guidance on the conduct of market research. Attachment C, Market Research Report Template, of the DHS Market Research Guide provides a sample market research report template that can be tailored to specific market research needs.

(b) Market research shall be conducted throughout the acquisition process (from pre-award through post-award) beginning with the mission needs statement. The level of specificity and scope varies, but market research shall be a continuous process. The acquisition team/IPT shall review HSAM 3008.002, Priorities for use of Government supply sources, early in the planning process and also consult with the DHS Strategic Sourcing Program Office (SSPO) to verify whether a strategic sourcing contract or order is appropriate.

(c) Contract requirements that are bundled, or for which significant bundling is anticipated, must be coordinated with Component, and, as appropriate, DHS small business representatives, and the Small Business Administration, in accordance with the requirements of HSAM 3007.107, and FAR 7.104(d)(1) and (2) and FAR 10.001(c).

(d) The acquisition team/IPT shall use market research information to:

(1) Refine a requirement to maximize the benefit of competitive market forces;

(2) Review a requirement if it is determined that a commercial item may not satisfy the agency's needs to determine if modifying the requirement may meet mission needs as well as allow a

commercial item to be acquired; and perform trade-off analysis to determine if the modification is in the best interest of the Government;

(3) Establish the most suitable approach to acquiring, distributing, and supporting products and services from the best available source (including new entrants into Government contracting);

(4) Ensure compliance with Government policies, such as socio-economic contracting goals;

(5) Support price reasonableness determinations;

(6) Avoid potential problems associated with contingencies and minimize the risk of doing business for the Government and the contractor; and

(7) Effectively identify the capabilities of small businesses and new entrants into Federal contracting that are available in the marketplace for meeting the requirements of the agency.

(e) Components shall promote increased communication with industry during the acquisition process and shall comply with DHS's Vendor Communication Plan available at http://www.dhs.gov/vendor-communication-plan. Requirements for inclusion of vendor engagement strategies in acquisition planning are listed in HSAM 3007.105(d). The Office of Federal Procurement Policy's memorandum dated February 2, 2011 entitled "Myth-Busting: Addressing Misconceptions to Improve Communication with Industry during the Acquisition Process," is available at http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/Myth-Busting.pdf and provides useful information for communicating with industry.

(f) Requirement-specific market research efforts and results are required prior to issuance of the solicitation and shall be clearly documented and included in the contract file. A market research report is required for contract actions awarded above the simplified acquisition threshold (SAT) and shall provide, at a minimum, the following information:

(1) Participants in the market research effort and responsibilities of team members;

(2) Market research methods used; and

(3) Outcome of the market research identifying potential sources and findings that impact the procurement, e.g., any actions taken as a result of the market research such as re-evaluation of the requirement to determine whether the need can be restated to permit commercial or non-developmental items to satisfy the agency's needs; and solicitation and award of resultant contract using policies and procedures in FAR Part 12 - Acquisition of Commercial Items. (See FAR 10.002(c) and (d).)

There are no mandatory formats or requirements for documenting the results of on-going market research. A sample market research report template is included in the current version of the DHS Market Research Guide at this link under "Guides". On-going market research being conducted as part of an acquisition shall be documented in accordance with Component or program requirements but should be documented annually. Examples of on-going market research include vendor outreach sessions and general market research such as reviewing industry publications.

**3010.001-70 Responsibilities.**

The roles and responsibilities for conducting market research in the acquisition process are as follows:

(a) *Acquisition Team.* The acquisition team shall assist the program office in conducting and documenting the market research necessary to develop the acquisition strategy and pre-award acquisition documentation. An acquisition team may be composed of some or all members of an integrated project team (IPT).

(b) *Contracting Officer*. The contracting officer shall:

(1) Provide advice to the program office and IPT regarding the extent of the research and the level of documentation needed for an acquisition based on factors such as urgency, estimated dollar value, complexity, and past performance.

(2) Provide advice and support to the program office and its IPT throughout the acquisition lifecycle, ensuring that market research is documented prior to the release of the solicitation for acquisitions exceeding the SAT. This includes documenting vendor engagement to ensure that potential sources of information are explored to the maximum extent practicable.

(3) Approve the market research report and ensure that appropriate market research documentation is included in the official contract file.

(c) *Integrated Product/Project Team*. The IPT members shall work together to build successful and balanced programs, identify and resolve issues, and make sound and timely decisions based on timely input from the entire team, when appropriate. A typical IPT includes representation from contracting, legal, Office of Small and Disadvantaged Business Utilization (OSDBU), and the program (i.e., those who ultimately require the product or services) to define the need, plan the procurement, and construct the statement of work/performance work statement.

(d) *Program Office*. The program office shall identify and define the Government's requirement by describing the needs, skills, options, qualities, and other pertinent information required of an item or service. The program office has overall responsibility for market research, including:

(1) Preparing a complete description of program requirements in the context of available goods or services in the marketplace.

(2) Conducting and coordinating market research utilizing as many techniques as possible as identified in FAR 10.002(b)(2) and the current version of the DHS Market Research Guide at this link under "Guides".

(3) Seeking advice from the contracting officer, small business specialist, and, as appropriate, the DHS Strategic Sourcing Program Office to ensure that potential sources of information are explored to the fullest extent practicable, including existing contract vehicles, small businesses, and new entrants to Government contracting.

(4) Determining if commercial items or non-developmental items are available that meet the Government's requirement.

(5) Serving as the primary point of contact in meetings with potential vendors to ascertain additional market research information.

(6) Ensuring that all vendors contacted understand that the reason they are being contacted is for market research purposes only and that no orders are being placed at that time.

(7) Requesting vendors to provide their standard publicly and commercially available literature and capability documents in response to market research inquiries.

(8) Writing the market research report.

(9) Providing copies of all market research documentation as part of the procurement request package.

(e) *Small Business Specialist*. The small business specialist shall participate in the acquisition planning process to help program offices identify requirements for small businesses. Participation includes the review of each proposed acquisition exceeding the SAT for potential inclusion into the socioeconomic program, assisting in identifying alternative strategies that would reduce or minimize acquisition strategies involving substantial bundling, and the coordination of the procurement forecast of expected contract opportunities.

(f) *Strategic Sourcing Program Office (SSPO).* The SSPO shall provide DHS stakeholders economic and performance benefits through collaboration, application of sound analysis, and enterprise planning for acquisition initiatives. The SSPO collaborates with stakeholders to develop, deploy, and maintain strategic sourcing strategies that enhance mission performance and optimize commodity management. The SSPO provides support to acquisition teams on Department-wide or multi-Component contracting initiatives.

# CHAPTER 3011 DESCRIBING AGENCY NEEDS

**Subchapter 3011.1 Selecting and developing requirement documents**
**3011.105 Items peculiar to one manufacturer.**

**Subchapter 3011.2 Using and Maintaining Requirements**
**3011.202 Maintenance of standardization documents.**

**Subchapter 3011.6 Priorities and Allocations**
**3011.602 General.**

## Subchapter 3011.1 Selecting and developing requirement documents.

### 3011.105 Items peculiar to one manufacturer.

(a)(2)(i) Justification and approval requests for proposed acquisition shall be submitted to the DHS approval officials as designated in HSAM and as indicated in the DHS Justification and Approval (J&A) Guide for Other than Full and Open Competition.

(ii) Supporting documentation prepared by the requirements official shall be submitted to the contracting officer for approval as designated in HSAM 3013.106-1(b) and posting if required by FAR Part 5.102(a)(6).

(b) For multiple award schedule orders, see HSAM Subchapter 3008.405-6 for DHS processing requirements and approval officials.

## Subchapter 3011.2 Using and Maintaining Requirements Documents

### 3011.202 Maintenance of standardization documents.

(a) All recommendations for changes to standardization documents must be submitted through the Chief Procurement Officer (CPO).

## Subchapter 3011.6 Priorities and Allocations

### 3011.602 General.

(c) For the purposes of the Defense Priorities and Allocations System (DPAS), Components that meet the definition of a delegated agency shall establish internal procedures for placing rated orders. (See HSAR 3011.602(c)).

# CHAPTER 3012 ACQUISITION OF COMMERCIAL ITEMS

**Subchapter 3012.1 Acquisition of Commercial Items-General**
**3012.102 Applicability.**

**Subchapter 3012.3 Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items**
**3012.301 Solicitation provisions and contract clauses for the acquisition of commercial items.**
**3012.302 Tailoring of provisions and clauses for the acquisition of commercial items.**

## Subchapter 3012.1 Acquisition of Commercial Items-General

### 3012.102 Applicability.

(f)(1) The Head of the Contracting Activity (HCA), without further delegation, shall determine the supplies and service that are to be treated as a commercial item(s).

## Subchapter 3012.3 Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

### 3012.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(b)(4) See HSAM 3025.1001(a)(2)(iii) for the approving authority to waive the examination of records clause.

### 3012.302 Tailoring of provisions and clauses for the acquisition of commercial items.

(c) An individual waiver shall be approved by the Chief of the Contracting Office (COCO) and a class waiver by the HCA. The waiver shall be reviewed by legal counsel.

# CHAPTER 3013 SIMPLIFIED ACQUISITION PROCEDURES


| | | |
|---|---|---|
| **Subchapter** | **3013.1** | **Procedures** |
| | 3013.101 | General. |
| | 3013.106 | Soliciting competition, evaluation of quotations or offerors, award, and documentation. |
| | 3013.106-1 | Soliciting competition. |
| | 3013.106-3 | Award and documentation. |
| **Subchapter** | **3013.2** | **Actions At or Below the Micro-Purchase Threshold** |
| | 3013.201 | General. |
| **Subchapter** | **3013.3** | **Simplified Acquisition Methods** |
| | 3013.301 | Governmentwide commercial purchase card. |
| | 3013.301-70 | Acquisitions involving strategically sourced commodities. |
| | 3013.302 | Purchase orders. |
| | 3013.302-3 | Obtaining contractor acceptance and modifying purchase orders. |
| | 3013.303 | Blanket purchase agreements (BPAs). |
| | 3013.303-3 | Preparation of BPAs. |
| | 3013.303-370 | Modification of a BPA. |
| | 3013.303-6 | Review procedures. |
| | 3013.303-670 | Review responsibility. |
| | 3013.305 | Imprest funds and third party drafts. |
| | 3013.305-2 | Agency responsibilities. |
| | 3013.305-3 | Conditions for use. |
| | 3013.306 | SF44, Purchase Order--Invoice--Voucher. |
| **Subchapter** | **3013.5** | **Test Program for Certain Commercial Items** |
| | 3013.501 | Special documentation requirements. |


## Subchapter 3013.1 Procedures

### 3013.101 General.

Except for acquisitions of $25,000 or less, DHS Form 700-16, Simplified Acquisition Summary, should be used or a form substantially similar if authorized in accordance with Component procedures and contains the same elements to document purchases covered by FAR Part 13. The documentation should be placed in the order file.

### 3013.106 Soliciting competition, evaluation of quotations or offerors, award, and documentation.

### 3013.106-1 Soliciting competition.

(b) The requirements official for the proposed acquisition shall prepare the supporting

documentation for soliciting from a single source. The ordering activity contracting officer for the action is the approval official for proposed actions exceeding $25,000 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 ordering activity contracting officer shall ensure the request for quotation (RFQ) is posted with the brand name documentation in FedBizOpps as required by FAR Part 5.102(a)(6).

**3013.106-3 Award and documentation.**

(d) If a supplier requests information on the basis of an award that was based on factors other than price alone or the contracting officer is considering an optional explanation of the basis of the award, the contracting officer should consult the information in the Debriefing Guide located in Appendix AA for guidance on the explanation of the basis for award process and appropriate timely information to provide to the supplier.

**Subchapter 3013.2 Actions At or Below the Micro-Purchase Threshold**

**3013.201 General.**

(c) Purchase cardholders shall be authorized and trained in accordance with DHS Management Directive (MD) Number 0760, Government Purchase Card Program.

**Subchapter 3013.3 Simplified Acquisition Methods**

**3013.301 Government-wide commercial purchase card.**

(b) DHS policies and procedures for the use of the DHS Purchase Card Program are contained in the DHS MD Number 0760, Government Purchase Card Program.

**3013.301-70 Acquisitions involving strategically sourced commodities.**

Prior to making a purchase with the purchase card, regardless of value, the contracting officer or ordering official shall review DHS MD Number 0731, Strategically Sourced Commodities Policy and Procedures.

**3013.302 Purchase orders.**

**3013.302-3 Obtaining contractor acceptance and modifying purchase orders.**

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

**3013.303 Blanket purchase agreements (BPAs).**

**3013.303-3 Preparation of BPAs.**

**3013.303-370 Modification of a BPA.**

The SF 30 shall be used to modify a BPA.

**3013.303-6 Review procedures.**

**3013.303-670 Review responsibility.**

(a) The contracting officer or the designated representative of the contracting officer is responsible for the review of all calls placed under the BPA.

**3013.305 Imprest funds and third party drafts.**

**3013.305-2 Agency responsibilities.**

Head of the Contracting Activities (HCAs), in conjunction with the Component Chief Financial Officer or other appropriate authorized financial official, shall establish procedures for designation of personnel authorized to approve requisitions and make purchases using imprest funds. HCAs may require that only contracting officers approve requisitions using imprest funds.

**3013.305-3 Conditions for use.**

(a) The Component Chief Financial Officer or other appropriate authorized financial official, with coordination through the HCA, is delegated the authority to approve the imprest fund transaction limit.

**3013.306 SF 44, Purchase Order--Invoice--Voucher.**

(a)(1) Fuel and lubricant purchases for USCG cutters and aircraft are permitted up to a limitation of $25,000.

(d) Components are responsible for establishing procedures to control the use of SF 44s and to account for all purchases made using the form, including:

(1) Maintenance of a list of designated individuals authorized to make purchase using the form;

(2) Controls for issuance of the form to authorized individuals; and

(3) Review of purchase transactions using the form to assure compliance with authorized procedures.

## Subchapter 3013.5 Test Program for Certain Commercial Items

### 3013.501 Special documentation requirements.

(a)(2)(1) The justification and approval requests for the use of sole source (including brand name) as described in FAR 13.501(a)(1) and (2) shall be submitted to the DHS or Component Competition officials designated at HSAM Chapter 3006.

# CHAPTER 3014 SEALED BIDDING


| | | |
|---|---|---|
| **Subchapter** | **3014.1** | **Use of Sealed Bidding** |
| | 3014.101 | Elements of sealed bidding. |
| | 3014.101-70 | Independent Government estimates. |
| **Subchapter** | **3014.2** | **Solicitation of Bids** |
| | 3014.201 | Preparation of invitations for bids. |
| | 3014.201-7 | Contract clauses. |
| | 3014.202 | General rules for solicitation of bids. |
| | 3014.202-4 | Bid samples. |
| | 3014.202-5 | Descriptive literature. |
| **Subchapter** | **3014.4** | **Opening of Bids and Award of Contract** |
| | 3014.404 | Rejection of bids. |
| | 3014.404-1 | Cancellation of invitations after opening. |
| | 3014.407 | Mistakes in bids. |
| | 3014.407-3 | Other mistakes disclosed before award. |


## Subchapter 3014.1 Use of Sealed Bidding

### 3014.101 Elements of sealed bidding.

### 3014.101-70 Independent Government Cost Estimates.

The requirements for an Independent Government Cost Estimate (IGCE) found at HSAM 3015.404-70 also apply to this subchapter.

## Subchapter 3014.2 Solicitation of Bids

### 3014.201 Preparation of invitation for bids.

### 3014.201-7 Contract clauses.

(b)(2) and (c)(2) Chiefs of the Contracting Office (COCOs) are authorized to waive, in writing, inclusion of FAR 52.214-27 and 52.214-28.

### 3014.202 General rules for solicitation of bids.

### 3014.202-4 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; however, each justification must receive written concurrence from the contracting officer.

### 3014.202-5 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; however, each justification must receive written concurrence from the contracting officer.

## Subchapter 3014.4 Opening of Bids and Award of Contract

### 3014.404 Rejection of bids.

### 3014.404-1 Cancellation of invitations after opening.

COCOs, without power of redelegation, are authorized to make the written determinations at (c), (e) and (f).

### 3014.407 Mistakes in bids.

### 3014.407-3 Other mistakes disclosed before award.

COCOs, without power of redelegation, are authorized to make the written determinations at (a), (b), (c), and (d).

# CHAPTER 3015 CONTRACTING BY NEGOTIATION


| | | |
|---|---|---|
| **Subchapter** | **3015.2** | **Solicitation and Receipt of Proposals and Information** |
| | 3015.204 | Contract format. |
| | 3015.207 | Handling proposals and information. |
| | 3015.209 | Solicitation provisions and contract clauses. |
| **Subchapter** | **3015.3** | **Source Selection** |
| | 3015.303 | Responsibilities. |
| | 3015.303-70 | Responsibilities (Competitive Sourcing). |
| | 3015.304 | Evaluation factors and significant subfactors. |
| | 3015.305 | Proposal evaluation. |
| **Subchapter** | **3015.4** | **Contract Pricing** |
| | 3015.400-70 | Scope of subpart. |
| | 3015.404 | Proposal analysis. |
| | 3015.404-2 | Information to support proposal analysis. |
| | 3015.404-4 | Profit. |
| | 3015.404-70 | Independent Government estimate. |
| | 3015.406 | Documentation. |
| | 3015.406-170 | Prenegotiation objectives. |
| | 3015.406-370 | Documenting the negotiation. |
| | 3015.404-70 | Independent Government estimate. |
| | 3015.407 | Special cost or pricing areas. |
| | 3015.407-1 | Defective certified cost or pricing data. |
| | 3015.407-4 | Should-cost review. |
| **Subchapter** | **3015.5** | **Preaward, Award, and Postaward Notifications, Protests, and Mistakes** |
| | 3015.505 | Preaward debriefing of offerors. |
| | 3015.506 | Postaward debriefing of offerors. |
| **Subchapter** | **3015.6** | **Unsolicited Proposals** |
| | 3015.606-70 | Agency procedures. |


## Subchapter 3015.2 Solicitation and Receipt of Proposals and Information.

### 3015.204 Contract format.

(e) The Chief of the Contracting Office (COCO) is delegated authority to exempt contracts from the uniform contract format.

### 3015.207 Handling proposals and information.

(a) Proposals and information received in response to a request for information shall be

marked in accordance with HSAM 3003.104-4, as applicable.

**3015.209 Solicitation provisions and contract clauses.**

(b)(4) See HSAM 3025.1001(a)(2)(iii) for the approving authority to waive the examination of records clause.

**Subchapter 3015.3 Source Selection**

**3015.303 Responsibilities.**

(a) The authority given to the agency head is hereby delegated to the Head of the Contracting Activity (HCA).

**3015.303-70 Responsibilities (Competitive Sourcing).**

(a) Competitive Sourcing. A solicitation shall not be issued that increases, conveys, or places additional risk on one offeror over another; violates industry service or service grouping norms; omits statutory obligations; or regulatory requirements. The solicitation shall be open to innovative approaches for accomplishing the work and, while it may offer the use of existing Government facilities and equipment, the DHS Chief Procurement Officer (CPO) shall approve mandatory use. The Component Competitive Sourcing and Privatization Official (CSPO) shall: (1) determine if existing Government assets are to be provided to all offerors and, if only provided to the Most Efficient Organization, and (2) justify the long-term benefits to the Government in the Agency Management Plan.

**3015.304 Evaluation factors and significant subfactors.**

(c)(3)(i) DHS 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 selections.

(c)(70) 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 HSAM 3023.4).

**3015.305 Proposal evaluation.**

(a)(4) *Cost information.* Cost information may be provided to members of the technical evaluation team as the Source Selection Authority deems necessary.

**Subchapter 3015.4 Contract Pricing**

**3015.400-70 Scope of subpart.**

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.

**3015.404 Proposal analysis.**

**3015.404-2 Information to support proposal analysis.**

*(a) Price Fighters Field pricing assistance.*
(1) The memorandum of Agreement (MOA) at HSAM Appendix Z, NAVICP Price Fighters – DHS Memorandum of Agreement, enables DHS Components to obtain, when appropriate, source selection services, engineering analysis, and cost and pricing evaluation services in support of DHS contracts from NAVICP Price Fighters. The Price Fighters mission is to provide responsive, value analysis, technical assistance, and pricing validation support to buyers, managers and users of equipment, material, services, supplies, spare parts and weapon systems in an accurate, cost effective and unbiased manner. Obtaining services under the MOA will require that the requisition agency (DHS) and the servicing agency (NAVICP) execute an Interagency Agreement or a Military Interdepartmental Purchase Agreement that describes the specific services to be provided in order to support a binding agreement and record an obligation. See the MOA at Appendix Z for details on the particular requirements for the Interagency Agreement to obtain this assistance.

(2) All requests for NAVICP Price Fighters services shall be made directly by the cognizant contracting officer to the appropriate NAVICP Price Fighters point of contact (see Appendix 1 of the MOA under Price Fighters Code 078). When requesting NAVICP Price Fighters services, DHS contracting professionals shall follow the procedures outlined in section 4, Procedural Arrangements, of the MOA.

(3) The contracting officer shall ensure that each order for NAVICP Price Fighters services adheres to DHS directive 125-02 and DHS Instruction 125-02-001 concerning procedures, documentation, and process flow for Interagency Agreements under the Economy Act and that it is supported by an Economy Act determination and finding as required by FAR Subpart 17.5, prior to issuing orders under the MOA.

(c)(1) Audit Assistance for prime contractors or subcontracts. Pursuant to the Memorandum of Understanding (MOU) among Defense Contract Audit Agency (DCAA) and U.S. Department of Homeland Security Chief Procurement Officer, all requests for DCAA audit services shall be made directly by the cognizant contracting officer to the cognizant DCAA Office. When requesting DCAA audit services, DHS contracting professionals shall follow the procedures outlined in the MOU. A copy of that MOU is incorporated at Appendix U, Contract Audit Services Memorandum of Understanding. Where the contracting officer determines that DCAA audit support at negotiations would

be beneficial, requests for such support should be directed to the cognizant DCAA Field Audit Office Manager.

(2) For each audit report that is received, the contracting officer shall provide the cognizant DCAA office a copy of the price negotiation memorandum promptly after contract award. If the contractor for which the audit was provided is not the awardee, the contracting officer shall notify DCAA in writing of this fact. The price negotiation memorandum and/or the notification serve as the basis for DCAA disposition of the audit findings.

(3) Copies of Audit Reports. Contracting officers shall provide a copy of the audit report to OCPO for the following reviews:

(i) Contractor System Reviews (accounting system reviews, estimating system reviews, compensation reviews, etc.);

(ii) Audits of Compliance with Cost Accounting Standards- Audits of Cost Impact of Cost Accounting Standards (changes in cost accounting practice and/or non-compliances); and

(iii) Defective Pricing Audits (Reviews for Compliance with the Truth in Negotiation Act).

**3015.404-4 Profit.**

(b) *Policy.*

(1) Pursuant to FAR 15.404-4, DHS has established a structured approach for determining the profit or fee objective.

(i) The contracting officer shall use the DHS structured approach (DHS Form 700-17, Weighted Guidelines Profit/Fee Objective) or a form substantially similar if authorized according to Component procedures, to determine the profit or fee objective before conducting negotiations for those acquisitions that require cost analysis. DHS Form 700-17 shall be made a part of the prenegotiation memorandum.

(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) Cost-plus-award-fee contracts; and
(G) Contracts having unusual pricing situations

(d) Profit-Analysis Factors.

(1) Appendix J, Structured Approach for Profit or Fee Objective cites elements which should be considered when completing DHS form 700-17.

(2) *Additional factors.* Factors to be considered for nonprofit organizations also are contained in Appendix J.

**3015.404-70 Independent Government Cost Estimate.**

(a) The requiring office shall provide an Independent Government Cost Estimate (IGCE) for proposed negotiated acquisitions, unless exempted by HSAM 3015.404-70(c).

(b) The IGCE 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 also should be provided with the IGCE.

(c) Unless the contracting officer requires otherwise, an IGCE 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) Proposed acquisitions for items that meet the commercial item definition in FAR Part 2; and

(6) When prices for the supplies or services are set by law or regulation.

**3015.406 Documentation.**

**3015.406-170 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 amount.

(b) The Prenegotiation Memorandum shall be signed by the contracting officer and approved in accordance with the requirements of HSAM 3004.70.

**3015.406-370 Documenting the negotiation.**

(a) See HSAM 3004.70 for the review and approval of the document described at FAR 15.406-3.

**3015.407 Special cost or pricing areas.**

**3015.407-1 Defective certified cost or pricing data.**

(d) The contracting officer is the Assessing Official per 3042.1503 for defective pricing issues in the Contractor Performance Assessment Reporting System and shall comply with the requirements of FAR 42.1503(f). This responsibility is not delegable.

**3015.407-4 Should-cost review.**

(b) *Program should-cost review*.

(4) The should-cost review team report shall include the following:

(a) 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. Do not accumulate the dollar value of individual recommendations into a recommended total price. 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 3015.5 Preaward, Award, and Postaward Notifications, Protests, and Mistakes**

**3015.505 Preaward debriefing of offerors.**

(a)(1) If an offeror requests a preaward debriefing, the contracting officer should consult the information in the Debriefing Guide located in Appendix AA for guidance on the debriefing process and appropriate timely information to provide to the offeror.

**3015.506 Postaward debriefing of offerors.**

(a)(1) If an offeror requests a postaward debriefing or the contracting officer is considering an optional postaward debriefing, the contracting officer should consult the information in the Debriefing Guide located in Appendix AA for guidance on the debriefing process and appropriate timely information to provide to the offeror.

**Subchapter 3015.6 Unsolicited Proposals.**

**3015.606-70 Agency procedures.**

Unsolicited Proposals are not marketing of advertising materials, product catalogs, or commercial item offers submitted either on the initiative of a vendor of a vendor or at the request of a DHS employee conducting market research. Appendix K provides DHS procedures, presented in the form of a multi-level flow chart, for the review, evaluation and disposition of unsolicited proposals. Appendix K must be used in conjunction with FAR Subpart 15.6 and HSAR Subpart 3015.6.

# CHAPTER 3016 TYPES OF CONTRACTS


| | | |
|---|---|---|
| **Subchapter** | **3016.4** | **Incentive Contracts** |
| | 3016.401 | General. |
| **Subchapter** | **3016.5** | **Indefinite-Delivery Contracts** |
| | 3016.501-2 | General. |
| | 3016.504 | Indefinite-quantity contracts. |
| | 3016.505 | Ordering |
| **Subchapter** | **3016.6** | **Time-And-Materials, Labor-Hour, and Letter Contracts** |
| | 3016.601 | Time-and-material contracts. |
| | 3016.602 | Labor-hour contracts. |
| | 3016.603 | Letter contracts. |
| | 3016-603-2 | Application. |
| | 3016.603-3 | Limitation. |


## Subchapter 3016.4 Incentive Contracts

### 3016.401 General.

(d) *Limitations on award-fee contracts.* An award-fee contract may be awarded only if:

(1) The award-fee plan includes award-fee criteria related at a minimum to cost, schedule and performance; and

(2) Award fee is earned for successful outcomes;

(i) No award fee may be earned against cost, schedule or performance criteria that are ranked below "*successful*" or "*satisfactory*" during an award-fee evaluation of contractor performance.

(ii) A base-fee amount fixed at contract inception is not considered part of an award fee.

(3) *Award Fee determination and findings*. No award fee contract or order may be awarded until the determination and findings (D & F) required by FAR 16.401(d) is approved by the HCA. This approval may not be delegated. The D&F must address all of the elements required by FAR 16.401(e)(1) and (5), as described in the D&F outline provided in HSAM Appendix Y.

(4) *Incentive contract determination and findings.* FAR 16.401(d) requires that no incentive contract or order may be awarded until the determination and findings (D & F) required by FAR 16.401(d) is approved by the HCA. The chief of the contracting office is delegated the authority to make this approval for incentive contracts and orders that do not contain an award fee.

(e) If the potential for an award fee is provided for in combination with a fixed fee, incentive fee or profit, the contract shall not include a base fee.

(f) Reporting of Award Fee and Incentive Fee information to OCPO. Components shall report information to OCPO on the award of each contract or order that provides for either an award fee or a performance incentive (FAR 16.402-2) or a delivery incentive (FAR 16.402-3). Information on the actual incentive or award fee amounts earned under such contracts and orders shall also be reported. The reports shall include the information listed in paragraphs (1) and (2) of this subsection.

(1) Information on each award of a contract or order containing either an Award Fee, a performance incentive, or a delivery incentive shall be reported to OCPO within 30 days after award of a covered contract or order as follows:

(i) Award Fee contracts/orders:
A. PIID number.
B. Contract/order Number.
C. Contract Type (FPAF or CPAF).
D. Current contract value, base and exercised options.
E. Ultimate contract value, base and all options.
F. Description of Cost, Schedule and Performance goals.
G. Base Fee - Dollar Amount.
H. Base Fee - Percentage of Cost (if CPAF) Percentage of Price (if FPAF).
I. Maximum Award Fee Pool - Dollar Amount.
J. Maximum Award Fee - Percentage of Cost/Price.
K. Total Fee - Dollar Amount (include fixed fee, etc. if AF is combined with other type of contract).
L. Total Fee - Percentage of Cost/Price (include fixed fee, etc. if AF is combined with other type of contract).
M. List all scheduled Award Fee Evaluation dates.
N. Signed Award Fee Plan.
O. A short description of the behavior the plan is intended to motivate (expressed in terms of cost, schedule, and/or performance).
P. For each award fee period, the maximum available Award Fee, dollar amount and percent of cost (or percent of price if FPAF). Include the beginning and end dates of each period.
Q. Baseline – What total fee would have been if award fee was not used (e.g., total fixed fee (CPAF) or Profit (FPAF) using structured profit method).

(ii) Incentive contracts/orders that include a performance or delivery incentive (do not report award fee awards or those that include only a cost incentive):
A. PIID number.
B. Contract/order Number.
C. Contract Type (CPIF, FPI).
D. Current contract value, base and exercised options.
E. Ultimate contract value, base and all options.
F. A copy of the performance/ delivery incentive clause.
G. Description of Performance and/or Schedule goals. Provide a short description of the behavior the incentive(s) is intended to motivate.
H. Incentive Target - Dollar Amount at time of award of contract/order.
I. Incentive Maximum - Dollar Amount at time of award of contract/order.
J. Incentive Minimum - Dollar Amount at time of award of contract/order.

K. Incentive Target – Percent of contract cost (or of price if FPI) at time of award of contract/order.
L. Incentive Maximum - Percent of contract cost (or of price if FPI) at time of award of contract/order.
M. Incentive Minimum - Percent of contract cost (or of price if FPI) at time of award of contract/order.

(2) Information on each award fee and performance/ delivery incentive final determination shall be reported within 30 days of the determination to OCPO as follows:

(i) Award Fee contracts/orders. Report to OCPO within 30 days of the completion of each award fee determination for each award fee period:
A. PIID number.
B. Contract/order Number.
C. Contract Type (FPAF or CPAF).
D. Copy of signed award fee determination.
E. Award fee period (beginning and end dates for the period).
F. Total Award fee granted for the rating period, dollar amount and percent of total contract or order cost (or percent of price if FPAF).
G. Weighted average adjectival rating for all rated award fee categories.
H. Description of how the use of award fee did or did not motivate the contractor's overall cost, schedule, and technical performance as measured against contract requirements in accordance with the criteria stated in the award-fee plan.
I. Comparison of the contractor's evaluated performance to the performance anticipated in the determination and findings FAR 16.401(d).

(ii) Contracts/orders that include a performance or delivery incentive (do not report award fee actions or awards that include only a cost incentive). Report to OCPO within 30 days of the final incentive determinations:
A. PIID number.
B. Contract/order Number.
C. Contract Type (CPIF, FPI).
D. Total value of the awarded action.
E. Ultimate value of the contract, including all options.
F. Incentive period (beginning and end dates for the period).
G. Combined dollar amount of all incentives earned (excluding cost incentives).
H. Assessment of success of the incentive to achieve the behaviors described in the originally reported description of the behavior the incentives were intended to motivate.

(3) Component single point of contact: Each component shall designate a single point of contact (POC) responsible for the timeliness and accuracy of award fee and incentive information reported to OCPO. Unless advised otherwise by the component, the POC is the chief of the procurement policy function within the component.

(4) Report format. Each report shall be submitted on the form provided by OCPO/APL. When available, the report shall be submitted using the automation tool provided by OCPO/OSS.

## Subchapter 3016.5 Indefinite-Delivery Contracts

### 3016.501-2 General.

(a) For the U. S. Coast Guard (USCG), see HSAM Subchapter 3017.204(e)(1) for the limitation on the period of task order or delivery orders contracts awarded by USCG pursuant to 10 U.S.C 2304a.

(b)(2) The procurement request initiator must prepare a written statement outlining the basis and methodology for determining the estimated quantity under an indefinite-quantity contract and a requirements contract. Whenever possible and appropriate, all procurement offices must coordinate their indefinite delivery contract requirements with procurement offices of other Components.

### 3016.504 Indefinite-quantity contracts.

(c)(1)(ii)(D)(1) All determinations for any single award task or delivery order contract exceeding $103 million required under FAR 16.504(c)(1)(ii)(D)(1) shall be made by the DHS Chief Procurement Officer (CPO). A written determination is required whether the solicitation will be issued competitively or non-competitively. Components shall submit the determination for CPO approval to the Director, Oversight & Strategic Support Division via PROCUREMENTSUPPORT@hq.dhs.gov not later than 14 days *prior* to issuance of the solicitation. The determination must be signed by the Component HCA as *"Recommended for Chief Procurement Officer Approval"*. The determination should be accompanied by such background information as will allow evaluation of the proposed determination, including, without limitation, any related justification and approval for other than full and open competition or separate determination for advisory and assistance services under FAR 16.504(c)(2)(i)(A)-(C). Determinations shall be submitted in the format provided at Appendix L. All determinations submitted for CPO approval shall be accompanied by the approved acquisition plan.

(2) The notification to Congress required by FAR 16.504(c)(1)(ii)(D)(2) for single award task or delivery order contracts exceeding $103 million awarded on the basis that it is in the public interest to award the contract to a single source due to exceptional circumstances shall be made by the DHS CPO. The Component making the award shall provide a draft notice to the OCPO, Director, Oversight & Strategic Support Division via PROCUREMENTSUPPORT@hq.dhs.gov concurrent with submission of the draft CPO determination citing FAR 16.504(c)(1)(ii)(D)(1)(iv).

### 3016.505 Ordering.

(a) *General*.

(1) For orders valued in excess of $1 million under a DHS multiple award contract, the Congressional notification procedures of HSAM subsection 3005.303-70 apply. Prior to issuing such an order, the contracting officer must comply with the Congressional

notification requirements. This does not create a requirement to synopsize the order (see FAR 5.202(a)(6)).

(b) *Orders under multiple award contracts.*

(4) *Postaward Notices and Debriefing of Awardees for Orders Exceeding $5 million.* If an offeror requests a postaward debriefing on orders valued at more than $5 million or the contracting officer is considering an optional postaward debriefing, the contracting officer should consult the information in the Debriefing Guide located in Appendix AA for guidance on the debriefing process and appropriate timely information to provide to the offeror.

**Subchapter 3016.6 Time-And-Materials, Labor-Hour, and Letter Contracts**

**3016.601 Time-and-materials contracts.**

(c)(1)(i) *Government Surveillance*. DHS surveillance of time-and-materials (T&M) and labor-hour contracts shall include monitoring and verification of contract performance and approval of vouchers. To assist contracting officers with these contract oversight functions, the contracting officer shall appoint a contracting officer's representative (COR) in writing and specify the duties to be performed for orders or contracts expected to exceed $100,000. Appropriate use of sampling for review and monitoring of contractor performance is encouraged.

(ii) For T&M and labor-hour contracts, the COR duties for monitoring contract performance should include at a minimum verifying:

(A) If the work performed is consistent and conforms with the Statement of Work;

(B) The appropriateness of the categories of labor used;

(C) The reasonableness of the number of hours worked, including any approved overtime,

(D) The reasonableness of materials used; and

(E) The hours worked against the hours billed for the invoice period.

(iii) Duties for processing vouchers for T&M and labor-hour contracts are contained in HSAM 3032.7002(d).

(d) *Limitations.* When making the required determination and findings, the contracting officer must use a format substantially the same as the format found in Appendix M.

**3016.602 Labor-hour contracts.**

(a) Determination and Findings. When making the required determination and findings, the contracting officer must use a format substantially the same as the format found in Appendix M.

(b) Disallowing material costs under labor-hour contracts.

(1) FAR 48 CFR 32.111(a)(7) was amended, effective August 2012, to remove the requirement to insert Alternate I of 52.232-7, Payments under Time-and-Materials and Labor-Hour Contracts, in contracts designated as a labor-hour type contract. Alternate I had made it clear that the contractor was not to be paid for any costs for material under the labor-hour contract and that the contractor would only be paid for labor hours.

(2) Because Alternate I of 52.232-7, Payments under "Time-and-Materials and Labor-Hour Contract, is no longer present in the FAR, the remainder of the clause required to be used in a labor-hour contract includes terms and conditions that might be misinterpreted as authorizing payment for materials under a labor-hour contract. In order to ensure that the FAR clause is not misinterpreted, the contracting officer shall include a clear statement in each contract and order that contains a labor-hour item that the contract includes a line item that has been designated as a labor-hour contract type item and no amounts will be paid for material under labor-hour items in the contract (or order).

**3016.603 Letter contracts.**

**3016.603-2 Application.**

(c) Chiefs of the Contracting Offices (COCOs) are authorized to approve a contracting officer's determination of a reasonable price or fee for a letter contract. Extensions to the definitization of a letter contract must be approved by the COCO. See HSAM 3043.70 for other requirements applicable to letter contracts as undefinitized contract actions.

**3016.603-3 Limitations.**

The use of letter contracts will be authorized in accordance with HSAM 3043.7002-1. Letter contracts must contain the appropriate sections of the uniform contract format as discussed FAR 15.204-1 as practicable. Profit or fee under letter contracts must not be paid until after definitization of the letter contract (see HSAR 3052.216-74). Requests for authority to issue a letter contract 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)

# CHAPTER 3017 SPECIAL CONTRACTING METHODS


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## Subchapter 3017.1 Multi-Year Contracting

### 3017.104 General.

(b) The Chief Procurement Officer (CPO) is delegated authority to modify requirements of a multi-year contract and clause 52.217-2.

### 3017.105 Policy.

### 3017.105-1 Uses.

(b) For the Coast Guard, the Head of the Contracting Activity (HCA) is delegated authority to enter into a multi-year contract if all the requirements in FAR 17.105-1(b)(1) through (5) are met.

### 3017.106 Procedures.

### 3017.106-3 Special procedures applicable to DoD, NASA, and the Coast Guard.

(e) *Recurring costs in cancellation ceiling.* The authority to approve inclusion of recurring costs in the cancellation ceiling FAR 17.106-3(e) is delegated to the HCA.

(f) *Annual and multi-year proposals*. The Chief of the Contracting Office (COCO) is delegated the authority under FAR 17.106-3(f).

(g) *Level unit prices.* The Chief of the Contracting Office (COCO) is delegated the authority under FAR 17.106-3(g).

### 3017.108 Congressional notification.

(a) and (b) The Chief Procurement Officer (CPO) is delegated authority to provide all Congressional notifications of proposed contracts and proposed cancellation ceilings for those contracts. DHS Components shall prepare the written notification of the proposed contract and proposed cancellation ceiling and forward through the HCA to the CPO.

## Subchapter 3017.2 Options

### 3017.204 Contracts.

(e) Except for task or delivery order contracts awarded by the USCG, DHS COCOs may approve, without redelegation, total contract periods exceeding five years. Documentation shall include rationale describing circumstances that warrant a period longer than five years, the results of market research, benefits to the Government and how price risks normally associated with a long performance period are being mitigated.

(1) The ordering period of a task or delivery order contract awarded by USCG pursuant to 10 U.S.C. 2304a—

(i) May be for any period up to 5 years;

(ii) May be subsequently extended for one or more successive periods in accordance with an option provided in the contract or a modification of the contract; and

(iii) Shall not exceed 10 years unless the HCA determines in writing that exceptional circumstances require a longer ordering period.

(2) Paragraph (e)(1) of this section—

(i) Also applies to information technology task or delivery order contracts;

(ii) Does not apply to contracts, including task or delivery order contracts, awarded under other statutory authority; and

(iii) Does not apply to the following:

(A) Advisory and assistance service task order contracts (authorized by 10 U.S.C. 2304b that are limited by statute to 5 years, with the authority to extend an additional 6 months (see FAR 16.505(c)).

(B) Definite-quantity contracts.

(C) GSA schedule contracts.

(D) Multi-agency contracts awarded by agencies other than NASA, DoD, or the Coast Guard.

(3) Obtain approval from the HCA before issuing an order against a task or delivery order contract subject to paragraph (e)(1) of this section if performance under the order is expected to extend more than 1 year beyond the 10-year limit or extended limit described in paragraph (e)(1)(iii) of this section (see FAR 37.106 for funding and term of service contracts).

**3017.207-70 Exercise of options.**

In addition to the requirements at FAR 17.207(c), a contracting officer shall exercise an option only after determining that the contractor's record in the System for Award Management (SAM) database is active and that the contractor's Data Universal Numbering System (DUNS) number, Commercial and Government Entity (CAGE) code, name, and physical address are accurately reflected in the contract file.

## Subchapter 3017.5 Interagency Acquisitions

### 3017.500 Scope of subchapter.

This subchapter establishes DHS policy and procedures to ensure the appropriate and consistent use of interagency acquisitions (IAA) as prescribed by FAR 17.5.

### 3017.501-70 Definitions.

*Business-case analysis or Business Case* - See HSAM 3007.270.

*Interagency agreement (IA)* means the written agreement between two or more agencies containing the terms and conditions that govern the services that a servicing agency will provide a requesting agency in connection with an IAA under FAR 17.5.

*Intra-governmental Payment and Collection (IPAC)* means the U.S. Department of Treasury's system used by most Federal agencies for interagency payments.

### 3017.501-71 Responsibilities.

To ensure sound management and use of interagency acquisitions and maximize their impact on agency effectiveness, DHS must establish clear lines of responsibility for each step in the acquisition lifecycle, from planning to contract closeout. Components shall follow the guidance in Appendix 1 of the Office of Federal Procurement Policy's (OFPP) *Guide on Interagency Acquisitions* (dated June 2008 and available at: http://www.whitehouse.gov/sites/default/files/omb/assets/procurement/iac_revised.pdf). The requesting and servicing agency shall clearly set forth the roles and responsibilities in an IA for an assisted acquisition so that accountability is effectively established.

In addition to the roles and responsibilities listed in OFPP's *Guide on Interagency Acquisitions*, listed below are roles and responsibilities for DHS personnel:

(a) *Budget Officer.* The budget officer (who may be in a program office or in the Office of the Chief Financial Officer (OCFO), depending on the Component) is responsible for identifying the availability of funding (e.g., certifying funds) for all IAAs when DHS is the requesting agency; determining indirect cost rates; adhering to all the requirements of the appropriate legal authority for the action (Economy Act or other specified authority); monitoring and reconciling costs in accordance with the operating plan and agreement authority; ensuring the IAA is within apportioned limits; and deficit management. Program office budget officers are also responsible for monitoring and reconciling costs in accordance with the operating plan and notifying their CFO budget officer in advance when a need to enter into an IAA arises (so the CFO/Financial Office (FO) budget officer can ensure available apportionment ceilings are sufficient).

(b) *Contracting Officer.* The contracting officer is a Federal employee with the authority to enter, administer, and/or terminate contracts and orders and is the designated signatory for the execution of IAAs. The contracting officer is responsible for ensuring that

required review and approvals have been met prior to execution of an IAA; and ensuring that the roles and responsibilities associated with the IAA as the requesting agency or servicing agency have been met prior to signature. The contracting officer shall:

(1) Ensure the documentation submitted by the program office or requesting agency for the IAA being executed is accurate and complete;

(2) Prepare the required documentation, when applicable, for the IAA being executed;

(3) Execute IAAs only if they are in the best interest of the Government;

(4) Review and approve the determination of best procurement approach and the determination and findings (D&F) (if under Economy Act authority per FAR 17.502-2), as applicable; and

(5) Accurately report contract awards made as a result of an IAA in the Federal Procurement Data System – Next Generation (FPDS-NG).

(c) *Legal Counsel*. Legal counsel is responsible for providing legal review and advice for assisted acquisitions prior to signature in accordance with HSAM Chapter 3004, unless specifically waived or exempted by Headquarters or Component counsel.

(d) *Program Office*. The program office is responsible for nominating, as applicable, the Contracting Officer's Representative (COR) with the appropriate level of training and experience; and ensuring that required acquisition planning is accomplished. The program/project manager (PM)/requirements official (RO) resides in the program office. The program office shall:

(1) Conduct and document market research before developing new requirements documents for an IAA (see HSAM Chapter 3010);

(2) Before preparing a purchase request (PR), ensure the requirement is valid. Consult with OCFO or cognizant Component budget officer to determine that the available funds are proper as to purpose, time and amount. Consult with the respective contracting office as soon as the requirement is identified to ensure that filling the requirement through an interagency acquisition is in the best interest of the Government.

(3) Prepare the documentation (e.g., PR, statement of work, Independent Government Cost Estimate (IGCE), determination of best procurement approach), as required, for the IAA being executed.

(4) After award, as requested by the contracting officer, monitor performance and progress under the IAA and ensure proper administration.

(e) *Requesting Agency*. The requesting agency is the Government agency with the requirement.

(1) When DHS is the requesting agency, it is responsible for compliance with OFPP memorandum entitled *"Improving the Management and Use of Interagency Acquisitions,"* dated June 6, 2008, including ensuring a clear statement of requirements and terms and conditions; developing a determination of best procurement approach; providing accurate and complete funding citations; and conducting performance and cost monitoring, as applicable.

(2) When DHS is the requesting agency for an assisted acquisition, the DHS contracting officer, in coordination with the DHS program office and the servicing agency, shall complete Parts A and B of OFPP's *Guide on Interagency Acquisitions*, or an equivalent form, that includes all the elements listed in Parts A and B.

(f) *Servicing Agency*. The servicing agency is the agency providing the acquisition support. When DHS is the servicing agency, it is responsible for compliance with OFPP's memorandum entitled *"Improving the Management and Use of Interagency Acquisitions,"* dated June 6, 2008.

**3017.501-72 Policy.**

(a) Statutory Authority. All IAAs must be authorized by statute and the IAA must be within the scope of the applicable statute and regulations.

(b) Proper Use. DHS shall not use an interagency acquisition to circumvent conditions and limitations imposed on the use of funds.

(c) Appropriations Principles. The appropriated funds used to pay for goods or services obtained by means of an interagency acquisition must:

(1) Meet an existing *bona fide* need of the fiscal year in which goods or services are acquired;

(2) Be properly obligated before the expiration of available funds; and

(3) Comply with any other applicable appropriations law principles.

(d) Agency Funds. Funds used to pay servicing agencies are subject to applicable DHS restrictions and limitations.

(e) DHS Components shall satisfy all the applicable requirements of FAR 17.5.

(1) Components shall follow the guidance in OFPP's memorandum entitled "*Improving the Management and Use of Interagency Acquisitions"* dated June 6, 2008 (available at: http://www.whitehouse.gov/sites/default/files/omb/assets/procurement/iac_revised.pdf) for an assisted acquisition to the extent it is consistent with FAR 17.5. If there are any inconsistencies between the two, the FAR governs.

(f) DHS requires that the obligation of fiscal year funds for assisted acquisitions is valid, that the servicing agency is authorized to provide the stated goods or services, that the stated requirements are consistent with DHS's mission responsibilities, and that each IAA complies with applicable laws and regulations.

(g) Review and Approvals. Review and approvals shall be in accordance with HSAM subchapter 3004.70, as applicable. Once the IA is finalized, approval must be conveyed to the requesting agency and the servicing agency by signing the agreement (Part A and Part B, or equivalent).

(h) Announcement and Notification Requirements. Announcement and Congressional Notification requirements in HSAM Chapter 3005 apply to IAAs. The terms and conditions of the IA for an assisted acquisition shall include Congressional Notification as a requirement. A copy of the notification shall be provided to all parties to the IA whether issued by the servicing or requesting agency.

(i) COR Certification Requirements. For direct and assisted acquisitions, if a Contracting Officer's Representative (COR) is nominated and appointed, the COR shall be certified in accordance with the Office of Management and Budget (OMB) memorandum entitled, *"Revisions to the Federal Acquisition Certification for Contracting Officer's Representatives (FAC-COR)"* dated September 6, 2011, and Department-wide policies and procedures (available on DHS Connect), including HSAM 3042.270. DHS personnel may be required to comply with any additional certification and training requirements imposed by a servicing agency.

(j) Acquisition Planning. Acquisition planning is necessary whether DHS is the requesting agency and will be receiving acquisition services or whether DHS is the servicing agency and will be providing acquisition services. The acquisition plan (AP) shall be developed at the program level and begin as early as possible. For an assisted acquisition, either the requesting agency or the servicing agency may prepare and approve the AP in accordance with the applicable IA. If the IA states that DHS shall prepare the AP, the AP shall be completed in accordance with HSAM Chapter 3007. The IA will state where the AP is maintained. For direct acquisitions, DHS shall prepare the AP for the IAA in accordance with the Acquisition Plan Matrix included in HSAM Chapter 3007.

(k) Contractor Versus Government Performance and Balanced Workforce Strategy.

(1) An IAA is not exempt from the requirements of FAR Subpart 7.3, Contractor Versus Government Performance. Thus, OMB Circular A-76 applies to IAAs. Requirements of OMB Circular A-76 shall be followed when there is a conversion from performance by Government personnel to contractor performance.

(2) For IAAs for assisted acquisitions, either the requesting agency or the servicing agency may make the determination that the statement of work in the resulting contract action does not contain inherently governmental work. In accordance with OMB policy, the same determination should also assess whether the work is critical to the control of

either the requesting agency's mission or the servicing agency's mission. If DHS is making these determinations, the Component shall follow HSAM 3007.5 Inherently Governmental Functions, to document the determination. If an agency outside of DHS is making the determination, the DHS documentation for inherently governmental functions is not required. However, the servicing agency determination should be consistent with FAR 7.503(e) and should also include the critical function analysis, as applicable. A copy of the determination or documentation showing that the determination for inherently governmental and critical functions, as applicable, was requested but not received shall be maintained in the DHS contract file.

(l) When DHS is the requesting agency, assisted acquisitions shall be reviewed in accordance with the DHS Acquisition Review and Investment Review Board requirements, unless otherwise stated in the IA.

(m) Payments/Billing Instructions. The DHS contracting officer, with the participation of the DHS program office and budget office, shall ensure that the funding information includes standard billing instructions to ensure timely and accurate accounting for intra-governmental exchanges of funds. These instructions must be sufficient to facilitate exchange of transactions and reporting between agencies and should comply with the billing requirements of the Department of Treasury, Financial Management Service (FMS). In summary these requirements include:

(1) The primary system to settle intra-governmental exchange transactions is the Intra-Governmental Payment and Collection (IPAC) System (see Treasury Financial Manual, Part 6 -- Chapter 4000, Section 4015). The IPAC System shall be used whenever possible for processing payments to reimburse the servicing agency. All IAs shall include instructions to use the IPAC system for exchange of transactions. If IPAC is not an available billing method, a mutually agreeable alternative shall be negotiated before acceptance of the IA and documented in the IA whether IPAC or an alternative method will be used. If an alternate method is used, the alternate method should be reviewed regularly to ensure the billing method is changed to IPAC when IPAC is available.

(2) When DHS is the requesting agency, the IA shall identify the DHS funding codes and obligating document number (also referred to as the contract number or Procurement Instrument Identifier (PIID)) and shall instruct the other agency to include the DHS obligating document number on all documentation related to the agreement. When DHS is the servicing agency, the requesting agency funding information is used.

(3) When DHS is the requesting agency and when using IPAC, the DHS obligating number shall serve as the common agreement number required by Department of the Treasury, Financial Management Service, Treasury Financial Manual Volume 1, Part 2 (Transmittal Letter (T/L) 663), revised by Bulletin No. 2011-08, or its successor version, Appendix 10 Intragovernmental Business Rules. The DHS obligating document number should be included as the purchase order number or obligating document number of the IPAC.

(n) Security Requirements. The IAA shall address security requirements and the roles and responsibilities of the requesting and servicing agency. For IAAs that require the services of contractor employees with security clearances and/or a contractor facility clearance, PM/ROs, CORs, and contracting officers are required to: 1) provide the DHS Office of Security (OS) with the pertinent documentation for each acquisition, including the type of IAA—e.g., assisted and direct acquisitions, etc.; and 2) follow the OS security procedures.

(o) Modifications. Modifications can be issued for changes that fall within the original scope of work (i.e., delivery dates, change in quantity, annual funding, etc.). Changes to IAs that are outside the scope of the original statement of work must be treated as new actions.

(p) Contents of the IA. In addition to the requirements set forth elsewhere in this subchapter, the contents of an IA shall contain the following information:

(1) Name and contact information for the requesting and servicing agency;

(2) Funds Certification (e.g, purchase request);

(3) Independent Government Cost Estimate (IGCE) or cost proposal, as appropriate;

(4) Statement of Work/Performance Work Statement or contract reference information if purchasing an item that is already fully described in a contract; and

(5) Parts A and Part B of the "*Model Interagency Agreement for an Assisted Acquisition*" in OFPP's *Guide on Interagency Acquisitions*, or an equivalent form that includes the allocation of work between the requesting and the servicing agency to perform:

(i) Acquisition Planning;

(ii) Balanced Workforce Assessment, if necessary;

(iii) Acknowledgement that the resulting contract action will go through the DHS Congressional Notification process unless it is a DoD acquisition being serviced by DHS using solely DoD funding;

(iv) Contract execution including Source Selection or Fair Opportunity to be considered support documentation;

(v) Contract administration including allocation of all applicable functions under FAR 42.3 and designation of staff to perform functions;

(vi) Evidence of legal review by legal counsel, as required in the HSAM;

(vii) Participation in processing protests or contract claims;

(viii) Contractor Performance Assessments;

(ix) Method for the ultimate user to receive the results of the acquisition if not directly receiving the supplies or services; and

(x) Closeout of the IA and the resulting contract action. (Ensure the file is retained in accordance with applicable Records Retention Schedule).

(6) Amount to be obligated under the contract action;

(7) The estimated cost of providing acquisition services under the IAA;

(8) Payments/Billing Instructions to include, at a minimum, the following: funding codes and obligating document number, Agency Location Code (ALC), office address and other information for direct fund citation, as applicable, Appropriation Number, Common Accounting Number (CAN), Treasury Account Symbol (TAS), Business Event Type Code (BETC), Business Partner Network (BPN) number (usually the Data Universal Numbering System (DUNS) number), line of accounting, and contracting and accounting points of contact; and

(9) Applicable Homeland Security Acquisition Regulation (HSAR) clauses.

(10) Documentation of review and approval shall be in accordance with the terms of the IA. Since IAAs result in a contractual action, there must be a proposal by an agency and acceptance by another.

(11) Determination of Best Procurement Approach, as applicable; and

(12) Determination and Findings, as applicable (for IAs under Economy Act authority).

**3017.501-73 Assisted acquisitions with DHS as the servicing agency.**

(a) DHS shall not agree to provide acquisition services if:

(1) Accepting the request will prevent DHS from fulfilling its mission; or

(2) The requesting agency does not provide all appropriate supporting information, such as acquisition planning, market research, determination of best procurement approach, statement of work, an IGCE, servicing agency's unique terms, conditions, clauses, and information for a justification for other than full and open competition, etc. DHS shall not accept an IA that lacks information or specificity to such a degree that is not feasible to award or modify a contract or task/delivery order (i.e., "contractually obligate") within a reasonable time.

(b) When DHS agrees to provide acquisition services, the DHS contracting officer shall process the procurement request for the resulting acquisition in accordance with DHS procurement policies and procedures. When DoD is the requesting agency, DHS shall comply with DoD procurement requirements.

(c) When DHS is the servicing agency for an interagency assisted acquisition, the DHS contracting officer shall:

(1) Assist in the preparation of the IA, in coordination with the requesting agency, in accordance with FAR 17.502-1(b). Review the requesting agency's documentation to include a copy of their acquisition plan (if prepared by the requesting agency) and Parts A and B of the *"Model Interagency Agreement for an Assisted Acquisition"* in OFPP's *Guide on Interagency Acquisitions*, or an equivalent form that includes all the elements listed in Parts A and Part B, and assist the requesting agency in drafting the IA, as needed. DHS prohibits IAAs undertaken to circumvent any agency's regulations, policies, and/or procedures.

(2) Review and negotiate (if necessary) the requesting agency's written determination of best procurement approach showing the concurrence of the requesting agency's responsible contracting office prepared in accordance with FAR 17.502-1(a)(1) and place a copy in the contract file.

(3) Ensure that Part A is clear and complete and includes, at a minimum, the following:

(i) The signature of the requesting agency official authorized to approve the IA;

(ii) A termination provision for the IA;

(iii) Identification of the contractor and contract number (as applicable);

(iv) A statement of work and the estimated cost (IGCE);

(v) Provisions for inspection and acceptance of the contractor's work;

(vi) Intellectual property provisions, if applicable;

(vii) Unique terms and conditions required by the requesting agency, if applicable;

(viii) Unique or specific security requirements;

(ix) Roles and responsibilities regarding contract functions, including contract administration; and

(x) A positive affirmation that the requesting agency is not circumventing their own policy, procedures, and/or regulations by contracting with DHS.

(4) Ensure that the requesting agency complies with all legal and regulatory requirements applicable to the contract action, including, but not limited to:
(i) Performing acquisition planning (if completed by the requesting agency) to include any applicable clearance reviews in accordance with established approval thresholds;

(ii) Ensuring proper statutory authority for the contractual action;

(iii) Compliance with competition requirements of FAR Part 6;

(iv) Compliance with requirements under small business set-asides in FAR Subpart 19.5; and

(v) Performing contract administration (if performed by the requesting agency) duties such as preparing a quality assurance plan, voucher examination and past performance data collection and reporting as required by FAR 42.1502.

(5) The DHS contracting officer shall ensure that Part B includes, at a minimum, the following:

(i) Billing data with the names and mailing addresses of both agencies' accounting offices;

(ii) A citation of the requesting agency's funding and appropriation data and validation of statutory or regulatory use of the funds, including disclosure of any special restrictions;

(iii) A statement that the terms and conditions in Part A are incorporated by reference or attached to Part B. Work requested under an on-going contract must be within the scope of the contract. When DHS is the servicing agency, each procurement action executed in support of the IA must either include or incorporate by reference Part A of the IA and forward a copy of Part B to the applicable DHS or Component budget office. The requesting agency's program office and financial/budget office shall maintain a copy of Part B; and

(iv) Any other documents necessary to support the statutory authority for the funds.

(6) As needed, the DHS contracting officer shall coordinate with the requesting agency on proposal revisions.

(i) When the requesting agency's requirement results in the award of a DHS contract, a delivery/task order, or a purchase order, the action will be processed by the DHS contracting officer like any other procurement action in PRISM/FPDS-NG or Component's contract writing system.

**3017.502 Procedures.**

**3017.502-1 General.**

(a) Determination of best procurement approach.

(1) *Assisted acquisitions*. The DHS PM/RO shall prepare a determination of best procurement approach and forward it to the DHS contracting officer for review and

approval. The DHS PM/RO shall use the determination of best procurement approach template in Appendix A to the DHS Interagency Acquisitions (IAA) Guide at this link under "Guides". The PM/RO shall obtain concurrence from their contracting office to use the acquisition services provided by a contracting office outside of the requesting agency before a servicing agency conducts an acquisition on behalf of DHS. The HCA makes the determination if serving as the contracting officer.

(i) The rationale and analysis supporting the determination of best procurement approach shall be approved at least one level higher than the contracting officer in accordance with the dollar thresholds established for review of contract actions in HSAM 3004.7002.

(ii) The DHS CPO shall approve the determination of best procurement approach if the servicing agency is not subject to the FAR.

(2) *Direct acquisitions*. The DHS PM/RO shall prepare a determination of best procurement approach and forward it to the contracting officer for review and approval before the contracting officer places an order against another agency's indefinite-delivery vehicle such as GSA Federal Supply Schedule orders over $500,000, Government-wide Acquisition Contracts (GWACs), multi-agency contracts (MACs), etc. The DHS PM/RO shall use the determination of best procurement approach template in Appendix A of the DHS IAA Guide available at this link under "Guides". The HCA makes the determination if serving as the contracting officer.

(i) The rationale and analysis supporting the determination of best procurement approach shall be approved at least one level higher than the contracting officer in accordance with the dollar thresholds established for review of contract actions in HSAM 3004.7002.

(ii) The DHS CPO shall approve the determination of best procurement approach if the servicing agency is not subject to the FAR.

(b) Written agreement on responsibility for management and administration.

(1) *Assisted acquisitions.*

(i) Before a request for an assisted acquisition is sent outside of the requesting agency, the Component program office shall notify its internal contracting office that the request for assisted acquisition services is being considered by the program office. The program office shall obtain concurrence from its internal contracting office to use the acquisition services provided by a contracting office outside of the requesting agency.

(ii) Both the requesting and servicing agency shall sign a written agreement of responsibility for management and administration of the assisted acquisition in the format as shown in Appendix 3 of OFPP's *Guide on Interagency Acquisitions*, or in an equivalent format that contains all the elements listed in Parts A and B. When DHS is the requesting agency, Parts A and Part B of the "*Model Interagency Agreement for an Assisted Acquisition"* in OFPP's *Guide on Interagency Acquisitions* shall be prepared by

DHS in coordination with the servicing agency. The DHS contracting officer prepares Part A, in coordination with the DHS PM/RO and the servicing agency. The DHS PM/RO prepares Part B, in coordination with the DHS contracting officer and the servicing agency. For an IA, Part A will be created in support of the initial requisition. If there are subsequent requisitions for an established IA, there shall be a separate Part B for each requisition. Each requisition shall reference and/or attach the original IA.

(iii) Maintaining Parts A and B. Performance under the IA shall be reviewed periodically to determine if the requirements of the agreement are being met. Documentation of the summary of this assessment for the IA is required. If the agreement period is longer than one year to include any amendments, the terms and conditions shall be reviewed annually. Unless otherwise approved by the HCA, the agreement period shall not exceed five years. If the agreement period is approved to exceed five years during the effective period of the IA, the agreement period will need to be amended to reflect this change. The file must be documented that the HCA approved the agreement period if it exceeds five years.

When DHS is the requesting agency, the DHS PM/RO will maintain (in coordination with the servicing agency) Part B for DHS. Each procurement action executed in support of the IA must either include or incorporate by reference Part A of the IA and forward a copy of Part B to the applicable financial office.

(iv) Regardless of the dollar value, all assisted acquisitions must be supported by an IA. All IAs must cite the statute upon which the agreement is based. Each IA may rely upon only one statute. The Economy Act should be used as the statutory authority for an IA only when a more specific authority is not available.

(v) An IA is prepared and signed in advance by an authorized official of each of the requesting and the servicing agencies concerned. Within DHS, a warranted contracting officer signs IAs for all assisted acquisitions.

(vi) Each IA shall identify the supplies and services to be provided and shall indicate the cost of providing acquisition services under the IAA. The description of supplies or services must be specific, definite, and clear in order to support a binding agreement that will be recorded as an obligation. The estimated cost for providing acquisition services under the IAA shall be captured in Part B (or equivalent) of the IA, Section B.10. Fees, separately from the funding of the resulting contract or order.

(vii) Supplies or services shall not be provided or accepted until the completed IA is executed by both the requesting agency and servicing agency. The funded amount of each executed IA must be recorded as an obligation in the requesting agency's financial system.

(viii) The period of availability of the requesting agency’s funds that are obligated under an IA does not change except as specifically authorized by law. Under the Economy Act, 31 U.S.C. § 1535, a requesting agency deobligates any fixed year funds at the end of their

period of availability to the extent that the servicing agency did not perform or incur valid obligations under an IA. When a requesting agency validly obligates its funds through an IA not governed by the Economy Act, the requesting agency does not have to deobligate its funds at the end of their period of availability.

(ix) The DHS PM/RO and contracting officer shall include in the IA's terms and conditions a requirement for the servicing agency to enter the DHS Funding Agency and Funding Office Identification Codes in the FPDS-NG when reporting any contract or order which results from the IA.

(2) *Direct acquisitions.*

(i) Direct acquisitions shall be executed properly in accordance with the servicing agency's instructions. The parties are encouraged to execute an agreement (this is not required by FAR 17.5, but including an agreement is in DHS's interest) that specifies the requesting agency representatives authorized to place orders, the limitations on the number and dollar value of the orders to be placed, if any, the costs charged by the servicing agency for using their contract, and the points of contact of the parties. If the IAA is authorized by the Economy Act, the applicable requirements in FAR 17.502-2 must be followed.

(ii) Prior to placing an order against another agency's indefinite-delivery vehicle, the DHS contracting officer shall review materials about the other agency's contract before placing an order. The DHS contracting officer's signature is required on the IAA. The DHS's OCFO or cognizant Component budget officer will not obligate or transfer funding to the servicing agency without the contracting officer's signature.

(iii) For indefinite delivery vehicles awarded and managed by a DHS Component, the HCA of the Component shall post information on use of the vehicle, make training available to requesting agency users, as necessary, and provide sufficient points of contact to address questions from users in a responsive and timely manner.

(c) *Business-case analysis requirements for multi-agency contracts and governmentwide acquisition contracts*. The business case, including the HCA recommendation and contracting activity legal counsel concurrence, and related acquisition documents, shall be forwarded to the Director, Office of Strategic Sourcing, Office of the Chief Procurement Officer, for approval. Business cases shall be approved by the agency's Senior Procurement Executive (SPE), following coordination with the agency's Director of the Office of Small and Disadvantaged Business Utilization (OSDBU) and – if the acquisition involves information technology – the agency's Chief Information Officer. The contracting activity shall indicate whether the business case has been approved or canceled. For additional information on development of a business case, see DHS's Office of Chief Procurement Officer's (OCPO) Office of Strategic Sourcing at: http://dhsconnect.dhs.gov/org/comp/mgmt/cpo/oss/Pages/StrategicSourcing.aspx.

**3017.502-2 The Economy Act.**

(c) *Requirements for determinations and findings*. The determination and findings (D&Fs) shall be prepared in the format as shown in Appendix C of the DHS IAA Guide available at this link under "Guides".

(2) The HCA is delegated the authority to designate other authorized officials to approve D&Fs; however, only DHS contracting officers may approve D&Fs in support of assisted acquisitions.

**3017.70 RESERVED**

**3017.71 Requirements for Acquisitions Involving Strategically Sourced Commodities**

**3017.7100 Scope**.

This section describes the use of Department-wide contract vehicles.

**3017.7101 Definitions.**

*Component-wide contract* means a contract that has been established for use by a single Component.

*Department-wide contract* means a contract that has been established for use by multiple DHS Components to acquire goods or services. Department-wide contract vehicles are also known as strategic sourcing contract vehicles.

*Strategic Sourcing* means a collaborative and structured process of critically analyzing DHS's procurement spending and using an enterprise approach to make business decisions about acquiring and managing commodities and services more efficiently and effectively.

**3017.7102 Using department-wide contract vehicles.**

(a) DHS policy is to use Department-wide contracts unless one of the exceptions in (b) applies.

(b) Exceptions. If available, the contracting officer shall use a Department-wide contract vehicle unless he or she obtains approval for an exception. The contracting officer shall obtain approval from an official at least one level above the contracting officer. Documentation shall be maintained in the contract or purchase file that demonstrates one of the following exceptions are applicable:

(1) Where savings from use of a non-Department-wide contract exceed the savings of a Department-wide contract vehicle.

(2) Emergency operations where use of a Department-wide contract would harm the mission.

(3) Purchases where use of a Department-wide contract would reduce or compromise national security.

(4) Law, regulation, or order of precedence (per FAR Part 8) requires procuring from another source.

(5) Purchases made from remote locations, where the use of a strategic sourcing vehicle would result in higher cost or delays.

(c) Procedures. Using Department-wide contract vehicles constitutes an intra-agency acquisition. Procedures for intra-agency acquisitions are contained in HSAM 3017.70.

(d) Documentation of Exceptions. For any purchases made in excess of the simplified acquisition threshold that rely on any of these exceptions, the contracting officer shall provide a copy of the documentation of the exception to the OCPO's Strategic Sourcing Program Office (SSPO) at: SSPO@dhs.gov.

**3017.7103 Post-award notification.**

(a) The HCA must notify and provide contract and other supporting documentation to the OCPO, within ten (10) business days following the award of a Department-wide contract so that information about the contract can be distributed and posted on the SSPO intranet site.

(b) Congressional notification requirements apply for orders with a dollar value that exceeds $1 million issued against awarded Department-wide multiple award contracts as well as those using multi-year funds. See HSAM 3005.303-70 for requirements and procedures.

**3017.7104 Office of Management and Budget (OMB) reporting for department-wide contract vehicles.**

OCPO's SSPO shall consolidate data on all Department-wide contract vehicles and summarize the results for reporting to the OMB or other Government agencies, as appropriate.

# CHAPTER 3018 EMERGENCY ACQUISITIONS

**Subchapter 3018.2 Emergency Acquisition Flexibilities**
3018.201 Contingency operation.
3018.202 Defense or recovery from certain attacks.
3018.203 Emergency declaration major disaster declaration.

## Subchapter 3018.2 Emergency Acquisition Flexibilities

### 3018.201 Contingency operation.

(b) The Chief Procurement Officer (CPO) or designee shall make the required determination to increase the micro-purchase threshold to support a contingency operation.

(c) The CPO or designee shall make the required determination to increase the simplified acquisition threshold to support a contingency operation.

### 3018.202 Defense recovery from certain attacks.

(a) The CPO or designee shall make the required determination to increase the micro-purchase threshold to support defense against or recovery from nuclear, biological, chemical, or radiological attack.

(b) The CPO 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.

### 3018.203 Emergency declaration or major disaster declaration.

(a) DHS Components 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 HSAM 3005.303 regarding Congressional notifications of covered contract actions (limited waiver). See

HSAR 3006.303 and HSAM 3006.303 for competition authorities. See HSAM Chapters 3026.202 and 3026.203 for guidance regarding local area set-aside preference and transition of work approval requirements.)

# CHAPTER 3019 SMALL BUSINESS PROGRAMS


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| | 3019.202 | Specific policies. |
| | 3019.202-270 | Procurement forecast. |
| | 3019.202-271 | DHS Small Business Review Form. |
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| | 3019.704 | Subcontracting plan requirements. |
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| | 3019.705 | Responsibilities of the contracting officer under the subcontracting assistance program. |
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| | 3019.800 | General. |
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| | 3019.810 | SBA appeals. |
| | 3019.811 | Preparing the contracts. |
| | 3019.811.1 | Sole source. |
| | 3019.812 | Contract administration. |


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**3019.201 General policy.**

(d)(7) and (8) The Head of the Contracting Activity (HCA) is delegated the authority of the Director Office of Small and Disadvantaged Business Utilization (OSDBU) to assign a small business technical advisor (i.e., small business specialist) to each contracting activity within the agency to which the Small Business Administration (SBA) has assigned an SBA procurement center representative. A copy of the written assignment to the advisor must be provided to the Director, OSDBU.

(d)(9) The cognizant Component small business specialist acting on behalf of the OSDBU must review each procurement request to comply with the requirements of FAR 19.

(e) The HCA must appoint small business specialists in accordance with HSAM 3019.201(d)(7). The specialist must:

(1) Ensure that all small businesses are given an equal opportunity to compete for DHS acquisitions;

(2) Assist contracting officers in locating small businesses to participate in DHS acquisitions;

(3) Assist the Director, OSDBU in carrying out the purpose of the Small Business Act, particularly Sections 8 and 15;

(4) Cooperate with the SBA representatives in carrying out their assignments and responsibilities as related to DHS acquisitions;

(5) Seek alternatives to the practice of contract bundling and help mitigate the effects of any necessary and justified contract bundling;

(6) Participate in the evaluation of prime contractor's small business subcontracting programs;

(7) Assure that records are maintained and accurate reports prepared concerning small business participation in acquisition programs;

(8) Act as liaison with appropriate SBA office or representative on connection with set-asides, certificates of competency, size classification, and any other matter concerning the small business programs; and

(9) Participate in business opportunity, Federal procurement and other Government-industry conferences and meetings as required.

(f)(1) The Director, OSDBU, is the agency designee responsible for making the determination that there is an undue burden on non-Small Disadvantaged Business (SDB)

firms in one of the major industry groups and regions identified by the Department of Commerce. The HCA must 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 (iv). The HCA or designee is encouraged to discuss specific situations of burden with OSDBU prior to submitting a formal notice to the OSDBU.

**3019.202 Specific policies.**

**3019.202-270 Procurement forecast.**

(b) Purpose. The purpose of the 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 Component. The following requirements apply:

(1) Responsibility. The HCA or designee (written delegation required) must ensure the forecast and any updates to it are prepared for those expected contract opportunities valued over the simplified acquisition threshold which are proposed to result in contracts issued by DHS contracting officers. The forecast data collection and the Advance Acquisition Plan (AAP) are combined and captured in an electronic data system available under http://APFS.DHS.GOV (see HSAM Subchapter 3007.172).

(2) Preparation and approval. The forecast (combined with the AAP) must be completed the year prior to the fiscal year in which the procurement action will be initiated. In addition, the forecast should be updated throughout the fiscal year, as needed. As a minimum, the forecast shall be reviewed and updated semi-annually.

(c) Reporting. DHS OCPO will provide the initial forecast and any updates to it to the Administrator of the SBA and to small businesses as required by Public Law 100-656.

**Subchapter 3019.202-271 DHS Small Business Review Form.**

(a) Purpose. The DHS Form 700-22, Small Business Review, documents efforts 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, Components shall use the DHS Form 700-22 to comply with the small business review requirements and to document considerations and recommendations for applicable acquisitions prior to synopsis or solicitation release. This requirement is exclusive of EMALL use. The form shall be used as follows and dollar values include both base and option periods:

(1) Review for small business considerations in all open market actions over the simplified acquisition threshold (see FAR Part 19) and;

(2) Review for substantial bundling for all procurements of $2,000,000 or more planned under open market procurement as well as for pre-existing contract vehicles (e.g., Multiple Award Schedules (MAS), including GSA Federal Supply Schedules (FSS) delivery and task orders, Multi-Agency Contracts (MACs), Governmentwide Acquisition Contract (GWACs), DHS-wide contracts, multiple award contracts, and Blanket Purchase Agreements (BPAs). (See FAR 7.104(d), FAR 7.107 and FAR 19.202-1, and HSAM 3007.107 for bundling considerations and approval requirements.)

(c) Preparation and Approval. The small business specialist (SBS) and the SBA Procurement Center Representative (PCR) respectively shall complete the review process within 2 business days. The completed DHS Form 700-22, Small Business Review, shall be placed in the solicitation file.

## Subchapter 3019.5 Set-Asides for Small Business

### 3019.501 General.

(c) Each DHS proposed acquisition exceeding the simplified acquisition threshold must be reviewed by the cognizant Component small business specialist prior to synopsizing the requirement and the results documented in the file. The requirement must be reviewed for potential inclusion in the socio-economic programs. The Chief of the Contracting Office (COCO) must resolve any disagreement between the specialist and the contracting officer on the determination. Disagreement between the contracting officer and personnel from the Small Business Administration will be resolved in accordance with FAR 19. The COCO must furnish a copy of the determination to the OSDBU.

### 3019.502 Setting aside acquisitions.

### 3019.502-3 Partial set-asides.

(a)(5) The COCO is authorized to make the determination.

### 3019.505 Rejecting Small Business Administration recommendations.

(b) and (d) The COCO is delegated the authority to make the decision and forward the justification for its decision to the agency head.

### 3019.506 Withdrawing or modifying small business set-asides.

(b) The COCO is responsible for resolution of disagreements between the contracting officer and the Component small business specialist, in coordination with the OSDBU.

## Subchapter 3019.6 Certificates of Competency and Determinations of Responsibility

**3019.602 Procedures.**

**3019.602-1 Referral.**

(a)(2) The contracting officer shall forward to the OSDBU, a copy of the notice of nonresponsibility determination sent to SBA.

**3019.602-3 Resolving differences between the agency and the Small Business Administration.**

When following the procedures under FAR 19.602-3, the contracting officer shall coordinate through the HCA and the OSDBU prior to SBA taking a final action on a Certificate of Competency.

The designated official is the COCO. The COCO shall provide copies of all SBA correspondence to the OSDBU.

**Subchapter 3019.7 The Small Business Subcontracting Program**

**3019.704 Subcontracting plan requirements.**

**3019.704-70 Reporting requirements.**

Any contractor that meets the statutory requirements at FAR 19.702 shall submit subcontracting accomplishments on the Individual Subcontract Report (ISR) and the Summary Subcontract Report (SSR) by using the web-based Electronic Subcontracting Reporting System (eSRS) at http://www.esrs.gov.

**3019.705 Responsibilities of the contracting officer under the subcontracting assistance program.**

**3019.705-2 Determining the need for a subcontracting plan.**

A copy of the determination that there are no subcontracting opportunities (see FAR 19.705-2(c)) shall be provided to the Director, OSDBU.

**3019.705-470 Reviewing the subcontracting plan.**

The individuals responsible for the subcontracting plan review process include the contracting officer, the Component small business specialist (SBS), and the SBA's Procurement Center Representative (PCR). The approval authority for the subcontracting plan is the contracting officer, with the SBS and the SBA PCR providing support in advisory and assistance roles in accordance with FAR 19.705-4(d)(7).

(a) The checklist for documenting the review process, Subcontracting Plan Review Checklist, DHS Form 700-23, is mandatory for all DHS Subcontracting Plan reviews.

The SBS assists with the overall review of the contractor's plan by initiating the checklist process, records the plan information in the DHS Subcontracting Plan Review Checklist, DHS Form 700-23 and obtains the PCR's advice or recommendations. The contracting officer approves the subcontracting plan if the contractor has satisfactorily addressed the 11 elements of FAR 19.704 and the subcontracting plan demonstrates a good faith effort in utilizing small businesses as subcontractors. After all signatures have been documented, the form shall be placed in the contract file.

(b) The SBS and SBA PCR review process and recommendations for the subcontracting plan should be completed within 3 working days of receipt of the plan from the contracting officer. The Government's objective is to approve or negotiate subcontracting plans that demonstrate the prime contractor's best efforts to subcontract with small business (SB), HUBZone small business (HUBZone), small disadvantaged business (SDB), women-owned small business (WOSB), veteran-owned small business (VOSB), and service disabled veteran-owned small business (SDVOSB) to the maximum extent practicable.

**3019.705-6 Postaward responsibilities of the contracting officer.**

A copy of the approved small business subcontracting plan shall be provided to the Director, OSDBU.

**Subchapter 3019.8 Contracting with the Small Business Administration (The 8(A) Program)**

**3019.800 General.**

(b) The current DHS and SBA Partnership Agreement (PA) was executed on October 23, 2012 and has no expiration date. The PA is applicable to all new DHS acquisitions under the 8(a) Program. The PA amends and in some cases, supersedes certain requirements in FAR 19.8. The PA delegates to DHS HCAs the authority to contract directly with firms under the SBA 8(a) Program, on behalf of the SBA. The HCA may redelegate this authority to Component contracting officers, who must be designated as the "agency contracting officer." The current DHS and SBA PA is Appendix X of this Manual.

**3019.804 Evaluation, offering, and acceptance.**

**3019.804-3 SBA acceptance.**

(d)(2) The HCA is delegated this authority.

**3019.804-470 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, OSDBU, in accordance with Component procedures. The clearance shall be obtained prior to any public notice or solicitation of the requirement.

**3019.810 SBA appeals.**

The HCA is delegated this authority.

**3019.811 Preparing the contracts.**

**3019.811-1 Sole source.**

(a) The contract to be awarded shall be prepared in accordance with the PA according to HSAM 3019.800(b).

**3019.812 Contract administration.**

(d) The COCO is delegated this authority.

CHAPTER 3020
(RESERVED)

CHAPTER 3021
(RESERVED)

**There is no text implementing or supplementing FAR Parts 20 and 21.**

# CHAPTER 3022 APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS


| | | |
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| | 3022.101 | Labor relations. |
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| | 3022.101-3 | Reporting labor disputes. |
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| | 3022.103 | Overtime. |
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| **Subchapter** | **3022.3** | **Contract Work Hour and Safety Standards Act** |
| | 3022.302 | Liquidated damages and overtime pay. |
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| | 3022.404 | Davis-Bacon Act wage determinations. |
| | 3022.404-1 | Types of wage determinations. |
| | 3022.404-6 | Modifications of wage determinations. |
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| | 3022.1408 | Contract clauses. |
| **Subchapter** | **3022.15** | **Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor** |
| | 3022.1503 | Procedures for acquiring end products on the List of Products requiring contractor certification as to forced indentured. |
| **Subchapter** | **3022.18** | **Employment Eligibility Verification** |
| | 3022.1802 | Policy. |
| **Subchapter** | **3022.90** | **Local Hire (USCG)** |
| | 3022.9000 | Policy (USCG). |


## Subchapter 3022.0 Scope

### 3022.001 Definition.

For the purpose of DHS, the term "contracting agency," wherever it appears under FAR Part 22 , means the Component.

## Subchapter 3022.1 Basic Labor Policies

### 3022.101 Labor relations.

### 3022.101-1 General.

(e) The Head of the Contracting Activity (HCA) authority under FAR 22.101-1(e) is not redelegable.

**3022.101-170 DHS Procurement Labor Advisor.**

(a) The Procurement Labor Advisor for DHS is a member of the Acquisition Policy and Legislation Branch, Policy and Acquisition Workforce Division, Office of the Chief Procurement Officer.

(b) Each Component may appoint a labor advisor at the Headquarters level. If one is appointed, the Components shall advise, in writing, the contracting offices under their cognizance of the appointment. The labor advisor is responsible for coordinating and obtaining advice from the DHS Procurement Labor Advisor on contracting matters when deemed appropriate or as may be required by this chapter.

**3022.101-3 Reporting labor disputes.**

(a) Contracting officers shall report to their labor advisor or the DHS Procurement Labor Advisor if a Component labor advisor does not exist, any potential or actual labor disputes (e.g., strike) that may have a serious impact on the Department's programs. The following information shall be provided to the advisor:

(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 (e.g., construction site);

(2) The date the strike began or is expected to 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 cognizant Component labor advisor or DHS Procurement Labor Advisor when the strike is terminated and the work has resumed under the contract.

**3022.101-4 Removal of items from contractors' facilities affected by work stoppages**

(a) If the decision is made to remove items or materials from the contractor's/subcontractor's facility, the contracting officer shall follow the below procedures:

(1) Contact the Component's labor advisor or DHS Procurement Labor Advisor and apprise that person of the decision;

(2) Obtain a list of the contracts the contractor has with other Government agencies or DHS Components. If contracts of the agency or Component are or may become involved in the removal of items, advise the applicable contracting office of the decision to remove items and ensure proper coordination of actions; and

(3) Unless otherwise advised by the Component labor advisor or DHS Procurement Labor Advisor, 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 (i.e., color, weight, dimensions, etc.), quantity, contract/subcontract number, contract line item number, etc.; and

(iii) A decision on whether personnel of the Government or contractor/subcontractors will remove the items from the location, and the mode of transportation and destination, if 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 shall 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 DHS Labor Advisor/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.

**3022.103 Overtime.**

**3022.103-4 Approvals.**

(a) An official at one level above the contracting officer is designated to sign the D&F required by FAR 22.103-4. The D&F shall be written, in the format of Appendix N, and placed in the contract file.

(b) Approval of the use and total dollar amount of overtime must be obtained from the Contracting agency approving official designated in (HSAM) 3022.103-4 (a) above prior to including an amount in paragraph (a) of the clause at FAR 52.222-2, Payment for Overtime Premiums.

(f) If, during contract performance, the contracting officer receives a contractor request for overtime exceeding the amount indicated in paragraph (a) of the clause at FAR 52.222-2, and determines that the requested overtime should be approved in whole or in part, the contracting officer shall obtain approval from the designated Contracting agency approving official prior to modifying paragraph (a) to include the revised overtime amount.

**Subchapter 3022.3 Contract Work Hours and Safety Standards Act**

**3022.302 Liquidated damages and overtime pay.**

(c) The contracting officer is delegated authorities under FAR 22.302(c)(1) and (2). The contracting officer's recommendation in FAR 22.302(c)(3) shall be transmitted to the Secretary of Labor by the HCA.

(d) The contracting officer shall provide instructions 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 3022.4 Labor Standards for Contracts Involving Construction**

**3022.404 Davis-Bacon Act wage determinations.**

**3022.404-1 Types of wage determinations.**

(a)(2) Wage determinations are available via the Internet at **www.wdol.gov.**

**3022.404-6 Modifications of wage determinations.**

(b)(6) The contracting officer is delegated this authority.

**3022.404-10 Posting wage determinations and notice.**

The contracting officer shall mail a copy of Department of Labor (DOL) Publication WH-1321 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, N.W., Washington, DC, 20210, Attn: Wage and Hour-ESA Forms and Publications, Room S-3028. The poster is also available via the Internet at http://www.dol.gov/esa/whd/contracts/dbra.htm (Click on "Davis-Bacon Poster (Government Construction)") or by calling 1-866-4-USA-DOL.

**3022.406 Administration and enforcement.**

**3022.406-2 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, U.S. Department of Labor, Employment Standards Administration, Washington, DC 20210. The contracting officer shall advise interested parties of DOL's determination within 10 working days after receipt of the determination.

**3022.406-8 Investigations.**

(d) *Contracting officer's report.* The COCO is authorized to receive from the contracting officer the report of violations regarding labor standards. The contracting officer may use DHS Form 700-19, Summary of Underpayments or a form substantially similar if authorized according to Component procedures, to support the total number of employees cited on 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 DHS Office of the General Counsel.

**3022.406-9 Withholding from or suspension of contract payments.**

(c) *Disposition of contract payments withheld or suspended.*

(4) *Liquidated damages.* The contracting officer shall provide instructions 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.

**3022.406-13 Semiannual enforcement reports.**

Each Component shall submit the semiannual report by April 25 and October 25 of each calendar year to DOL by email at Helm.Timothy@dol.gov and Dixon.Crystal@dol.gov. The format and instructions for the semiannual report are provided at Appendix O. Negative reports are required to be submitted.

**Subchapter 3022.6 Walsh-Healey Public Contracts Act**

**3022.604 Exemptions.**

**3022.604-2 Regulatory exemptions.**

(b)(1) The HCA is authorized to request the Secretary of Labor to exempt a specific contract.

**3022.608 Procedures.**

(a) *Award.* The contracting officer shall mail a copy of DOL Publication WH-1313 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 via the Internet at http://www.dol.gov/esa/whd/contracts/pca.htm (under "Workplace Posters" click on "Service Contract Act/Walsh-Healy Public Contracts Act") or by calling 1-866-4-USA-DOL.

(b) *Breach of stipulation.* Unless otherwise specified by Component procedures, the contracting officer shall submit written notice of any violations to the applicable DOL region.

**Subchapter 3022.8 Equal Employment Opportunity**

**3022.803 Responsibilities.**

(d) The contracting officer shall obtain the assistance of the Component's legal counsel on matters concerning the applicability of E.O. 11246. If further assistance is required, the matter shall be referred to the nearest DOL Office of Federal Contracts Compliance Programs (OFCCP). (The OFCCP Nationwide Office Directory is accessible via the Internet at: http://www.dol.gov./esa/ofccp/contacts/ofnation2.htm.) Questions concerning the implementation of the E.O. in the FAR or DHS guidance shall be referred to the Chief Procurement Officer (CPO).

**3022.804 Affirmative action programs.**

**3022.804-2 Construction.**

(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/.

**3022.805 Procedures.**

(a) *Preaward clearances for contracts and subcontracts of $10 million or more (excluding construction).*

(1) Contracting officers may conduct an initial search of a contractor's compliance records via the Internet at: http://www.dol-esa.gov/preaward/.

(6) The contracting officer shall prepare a letter request in substantially the same format as Appendix C, in strict accordance with the instructions, to prevent premature disclosure of the proposed contractor, subcontractor, if any, and the amount of the award. Because

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. (A listing of OFCCP regional offices is accessible via the Internet at: http://www.dol.gov/esa/ofccp/contacts/ofcpkeyp.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.

(8) The HCA authority is not redelegable.

(b) *Furnishing posters.* The contracting officer may order 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 at http://www.dol.gov/esa/ofccp/regs/compliance/posters/ofccpost.htm.

**3022.807 Exemptions.**

(a)(1) The HCA, without redelegation, is authorized to determine for a contract, that national security precludes compliance with all or part of the requirements of E.O. 11246. A justification shall be in substantially the same format as Appendix N.

(c) The justification shall be in substantially the same format as Appendix N. All requests for exemptions shall be submitted via the HCA to the CPO for the Deputy Assistant Secretary's approval.

**Subchapter 3022.10 Service Contract Act of 1965, as Amended**

**3022.1003 Applicability.**

**3022.1003-4 Administrative limitations, variations, tolerances, and exemptions.**

(a) The contracting officer shall submit requests for limitations, variations, tolerances, and exemptions under FAR Subpart 22.10 to the Wage and Hour Administrator via the Component labor attorney.

**3022.1003-7 Questions concerning applicability of the Act.**

Contracting officers may request written or oral advice from the Component labor attorney. Any Component requests or questions to the Administrator, Wage and Hour Division shall be submitted in writing with a copy provided to the Director, Acquisition Policy and Legislation Branch, Policy and Acquisition Workforce, Office of the Chief Procurement Officer.

**3022.1008 Procedures for obtaining wage determinations.**

**3022.1008-1 Obtaining wage determinations.**

(f) Contracting officers should request advice from the Component labor advisor, or if unavailable, the DHS Procurement Labor Advisor.

**3022.1008-2 Section 4(c) successorship with incumbent contractor collective bargaining agreement.**

(d)(3) Contracting officer should request advice from the Component labor advisor, or if unavailable, the DHS Procurement Labor Advisor.

(e)(2) Contracting officer should request advice from the Component labor advisor, or if unavailable, the DHS Procurement Labor Advisor.

**3022.1013 Review of wage determination.**

Contracting officer should request advice from the Component labor advisor, or if unavailable, the DHS Procurement Labor Advisor.

**3022.1021 Request for hearing.**

**3022.1021-70 Additional hearings data.**

(a) Contracting officers will forward requests for hearings to the Administrator, Wage and Hour Division, DOL, through their Component labor advisor or labor attorney, with a copy submitted to OCPO via the email address, PROCUREMENTSUPPORT@hq.dhs.gov. In addition to the requirements 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 shall 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 exist, 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.

**3022.1022 Withholding of contract payments.**

Contracting officers will coordinate with the cognizant finance office regarding placement of any withheld funds in an agency-established deposit fund, and, upon order from appropriate parties (see (FAR 22.10), their transfer to DOL for disbursement.

**Subchapter 3022.13 Equal Opportunity for Veterans**

**3022.1305 Waivers.**

(a)(1) For a request for exemption under FAR 22.1305(a)(1), the signatory authority is the HCA, without authority to redelegate.

(a)(2) For a request for exemption under FAR 22.1305(a)(1), the signatory authority is the CPO.

(b) The HCA, without redelegation, may waive this requirement.

(c) The contracting officer shall prepare a D&F setting forth clear and convincing reasons why an exemption will be necessary. D&Fs shall be in substantially the same format as Appendix N.

**3022.1308 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's Veterans' Employment and Training Service. (A directory of Veterans' Employment and Training Service Regional and State offices is available by Internet 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.

**3022.1310 Solicitation provision and contract clauses.**

(a)(1)(ii) See HSAM 3022.1305(b) for the waiver authority granted to the HCA.

## Subchapter 3022.14 Employment of Workers with Disabilities

### 3022.1403 Waivers.

(a)(1) The HCA is delegated this authority.

(a)(2) The CPO is delegated this authority.

(b)(1) The HCA is delegated this authority.

(c) The contracting officer shall prepare a D&F setting forth clear and convincing reasons for the exemption. The D&F shall be in substantially the same format as Appendix N.

### 3022.1406 Complaint procedures.

When oral complaints are received, contracting officers shall request that the nature of the complaint (e.g., by whom, against whom, the reason, etc.) signed by the plaintiff be submitted in writing directly to the OFCCP. Written complaints received by contracting officers shall be forwarded to the OFCCP by letter.

### 3022.1408 Contract clause.

(a)(2) See HSAM 3022.1403(a)(1), (a)(2) or (b)(1) for waiver authorities granted to specific individuals.

(b) See HSAM 3022.1403(a)(1), (a)(2) or (b)(1) for waiver authorities granted to specific individuals.

## 3022.15 Prohibition Of Acquisition Of Products Produced By Forced Or Indentured Child Labor

### 3022.1503 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 DHS, Office of General Counsel.

## Subchapter 3022.90 Local Hire (USCG)

### 3022.9000 Policy (USCG).

(a) The Coast Guard HCA is authorized to waive the inclusion of HSAR 3052.222-90, Local Hire (USCG), in contracts for construction or services to be performed in whole or in part in a State that has an unemployment rate in excess of the National average rate of unemployment (as determined by the Secretary of Labor).

(b) Waiver requests shall be submitted to Commandant (CG-85) for processing to the Coast Guard HCA. Any request must describe the acquisition and clearly explain the reasons why it is in the interest of national security or economic efficiency to exclude the Local Hire clause.

# CHAPTER 3023 ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG FREE WORKPLACE


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|---|---|---|
| **Subchapter** | **3023.2** | **Energy and Water Efficiency and Renewable Energy** |
| | 3023.203 | Energy-efficient products. |
| | 3023.204 | Procurement exemptions. |
| | 3023.205 | Energy-savings performance contracts. |
| **Subchapter** | **3023.4** | **Use of Recovered Materials and Biobased Products** |
| | 3023.404 | Agency affirmative procurement programs. |
| | 3023.405 | Procedures. |
| **Subchapter** | **3023.7** | **Contracting for Environmentally Preferable Products and Services** |
| | 3023.703 | Policy. |
| | 3023.705 | Electronic products environmental assessment tool (EPEAT). |


## Subchapter 3023.2 Energy and Water Efficiency and Renewable Energy

### 3023.203 Energy-efficient products.

(b) In addition to the ENERGY STAR® and Federal Energy Management Program (FEMP) websites, the DHS Affirmative Procurement Plan at Appendix Q, provides the Department's established affirmative program plan and policies for use in acquisition planning, solicitations and contract administration.

### 3023.204 Procurement exemptions.

DHS and Components 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 product is cost effective over the life of the product taking energy cost savings into account, is the DHS Office of Occupational Safety and Environmental Programs. The contracting officer must coordinate the written approval when the purchase of non-ENERGY STAR® or FEMP-designated products meet the exemptions at FAR 23.204 and this paragraph. This approval document must be coordinated through the appropriate DHS Component's Environmental Program Office for technical review. The approved document shall be maintained in the contract file.

### 3023.205 Energy-savings performance contracts.

(c) DHS and its Components may enter into Energy Savings Performance Contracts (ESPC) under 42 U.S.C. 8287, as amended, subject to the requirements of 10 CFR Part 436. The Component contracting officer shall submit the Department of Energy (DOE)

schedule and the Measurement & Verification (M&V) protocols for any ESPC actions or order to: DHS Energy Program Manager, Office of Occupational Safety and Environmental Programs. The purpose of early notification is to provide DHS Office of Occupational Safety and Environmental Programs the opportunity to provide assistance and guidance to the contracting activity and program officials.

## Subchapter 3023.4 Use of Recovered Materials and Biobased Products

### 3023.404 Agency Affirmative procurement programs.

(a) The DHS's *Affirmative Procurement Plan (APP)* is provided as Appendix Q and must be used by DHS and Components.

### 3023.405 Procedures.

(a)(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. The EPA designated items include:

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|---|---|
| Paper and paper products | Vehicular products |
| Construction Products | Transportation products |
| Park and recreation products | Landscaping products |
| Non-paper office products | Floor tiles and patio blocks |
| Shower and restroom dividers/partitions | Reprocessed and consolidated latex paints |
| Parking stops | Channelizers and delineators |
| Plastic fencing | Garden and soaker hoses |
| Lawn and garden edging | Printer ribbons |
| Plastic envelopes | Pallets |

(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/DesignationItemList.aspx for a list of designated biobased preferred products.

(b)(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. The contracting officer must coordinate the determination and justification with the DHS Office of Occupational Safety and Environmental Programs or the Component Environmental Program Office before granting an exemption.

## Subpart 3023.7 Contracting for Environmentally Preferable Products and Services

### 3023.703 Policy.

(b)(2) Where applicable, DHS and Components 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 DHS Affirmative Procurement Plan at Appendix Q 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.

### 3023.705 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 DHS Environmental Program Manager, in the DHS Office of Occupational Safety and Environmental Programs or the Component Environmental Program Office before granting an exception. The exception shall be documented and placed in the contract file.

# CHAPTER 3024
# PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

## (RESERVED)

There is no text implementing or supplementing FAR Part 24.

# CHAPTER 3025 FOREIGN ACQUISITION


| | | |
|---|---|---|
| **Subchapter** | **3025.0** | **Scope of Part** |
| | 3025.001 | General |
| **Subchapter** | **3025.1** | **Buy American Act-Supplies** |
| | 3025.103 | Exceptions. |
| | 3025.104 | Nonavailability of articles. |
| | 3025.105 | Determining reasonableness of cost. |
| **Subchapter** | **3025.2** | **Buy American Act—Construction Materials** |
| | 3025.202 | Exceptions. |
| | 3025.204 | Evaluating offers of foreign construction material. |
| **Subchapter** | **3025.10** | **Additional Foreign Acquisition Regulations** |
| | 3025.1001 | Waiver of right to examination of records. |


## Subchapter 3025.000 Scope of Part

### 3025.001 General

(c)(3) Components shall ensure that the information reported in FPDS data field 9H for the procurement of end products accurately reflects the place of manufacture of the end product and the associated exception category. Only those acquisitions that are predominantly for the acquisition of manufactured end products shall be reported. Exception categories are: Use Outside of the U.S; Resale; Commercial Information Technology; Public Interest Determination; Trade Agreements; Domestic Nonavailability; and Unreasonable Cost.

## Subchapter 3025.1 Buy American Act—Supplies

### 3025.103 Exceptions.

(a) *Public Interest.* The Head of the Contracting Activity (HCA) is delegated this authority.

(b) *Nonavailability.*

(2)(i) The Chief of the Contracting Office (COCO) is delegated this authority.

(b)(2)(ii) Determinations required shall be submitted to the Chief Procurement Officer (CPO).

### 3025.104 Nonavailability of articles.

(b) Documentation shall be submitted to the CPO.

**3025.105 Determining reasonableness of cost.**

(a)(1) The COCO is delegated this authority. Determinations shall be sent to the CPO.

**Subchapter 3025.2 Buy American Act—Construction Materials**

**3025.202 Exceptions.**

(a)(1) The HCA is delegated this authority.

**3025.204 Evaluating offers of foreign construction material.**

(b) The HCA is delegated this authority.

**Subchapter 3025.10 Additional Foreign Acquisition Regulations**

**3025.1001 Waiver of right to examination of records.**

(a)(2)(iii) The HCA, without redelegation, is authorized to make the determination.

# CHAPTER 3026 OTHER SOCIOECONOMIC PROGRAMS

**Subchapter 3026.2 Disaster or Emergency Assistance Activities**
3026.202 Local area preference.
3026.202-2 Evaluation preference.
3026.203 Transition of work.

## Subchapter 3026.2 Disaster or Emergency Assistance Activities

### 26.202 Local area preference.

### 26.202-2 Evaluation preference.

DHS Components may establish additional 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.

### 3026.203 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.

# CHAPTER 3027 PATENTS, DATA, AND COPYRIGHTS

**Subchapter 3027.2 Patents and Copyrights**
3027.201 Patent and copyright infringement liability.
3027.201-2 Contract Clauses.

**Subchapter 3027.3 Patent Rights Under Government Contracts**
3027.302 Policy.
3027.303 Contract clauses.
3027.304 Procedures.
3027.304-1 General.
3027.305 Administration of patent rights clauses.
3027.305-4 Protection of invention disclosures.

## Subchapter 3027.2 Patents and Copyrights

### 3027.201-2 Contract clauses.

(e) The authority to approve the use of the Waiver of Indemnity clause in DHS is delegated to the Chief of the Contracting Office (COCO) upon coordination of the Assistant General Counsel of Intellectual Property.

## Subchapter 3027.3 Patent Rights Under Government Contracts

### 3027.302 Policy.

(a)(4) The Head of the Contracting Activity (HCA) is responsible for promoting commercialization.

### 3027.303 Contract clauses.

(b)(3) and (e)(1)(ii). The HCA is delegated the authority to make these determinations. However, the Secretary may redelegate this authority in a Determination of Exceptional Circumstances (see 37 CFR 401.1(2)(e).

### 3027.304 Procedures.

### 3027.304-1 General.

(a), (b)(1), (c)(1)-(4) and (g). The COCO is delegated this authority, after coordination with legal counsel.

### 3027.305 Administration of patent rights clauses.

### 3027.305-4 Protection of invention disclosures.

(b) When a contractor discloses an invention under a contract, the contracting officer shall consult with the Component Patent Counsel to determine the proper action to be taken. Components without Patent Counsels should contact the DHS Office of General Counsel, Intellectual Property Attorney.

# CHAPTER 3028 BONDS AND INSURANCE

**Subchapter 3028.1 Bonds and Other Financial Protections**
3028.101 Bid guarantees.
3028.101-1 Policy on use.
3028.105 Other types of bonds.
3028.106 Administration.
3028.106-2 Substitution of surety bonds.
3028.106-6 Furnishing information.

**Subchapter 3028.2 Sureties and Other Security for Bonds**
3028.202 Acceptability of corporate sureties.
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3028.203-7 Exclusion of individual sureties.
3028.204 **Alternatives in lieu of corporate or individual sureties.**
3028.204-1 United States bonds or notes.

**Subchapter 3028.3 Insurance**
3028.305 Overseas workers' compensation and war-hazard insurance.
3028.307-2 Liability.

## Subchapter 3028.1 Bonds

### 3028.101 Bid guarantees.

### 3028.101-1 Policy on use.

(c) The Head of the Contracting Activity (HCA) is authorized to approve a class waiver.

### 3028.105 Other types of bonds.

The contracting officer is delegated this authority.

### 3028.106 Administration.

### 3028.106-2 Substitution of surety bonds.

(a) The contracting officer is delegated this authority.

### 3028.106-6 Furnishing information.

(c) The contracting officer is delegated this authority after consultation with legal counsel. 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.

## Subchapter 3028.2 Sureties and Other Security for Bonds

### 3028.202 Acceptability of corporate sureties.

(d) Department of the Treasury's Listing of Approved Sureties (Department Circular 570) is available at http://www.fms.treas.gov/c570/index.html.

### 3028.203 Acceptability of individual sureties.

(g) Contracting officers, after consultation with the Component legal counsel, shall refer evidence through the HCA to the Office of Inspector General (OIG), or other investigatory organization, with a copy to the Chief Procurement Officer (CPO). The OIG shall provide a report of findings to the Debarring and Suspension official.

### 3028.203-7 Exclusion of individual sureties.

(a) The HCA is delegated this authority.

(d) Justifications shall be prepared by the contracting officer and forwarded to the Debarring and Suspension official for approval.

### 3028.204 Alternatives in lieu of corporate or individual sureties.

(a) HCAs shall establish required safeguards to protect against the loss of the security.

### 3028.204-1 United States bonds or notes.

(b) HCAs shall establish procedures consistent with Treasury Department Circular No. 154 for bonds and notes received by contracting officers located outside of the District of Columbia.

## Subchapter 3028.3 Insurance

### 3028.305 Overseas workers' compensation and war-hazard insurance.

(d) The HCA shall make the recommendation to the Secretary of Labor.

### 3028.307-2 Liability.

(b)(2) HCAs may establish special circumstances and coverage limits, after consultation with Component legal counsel, when determined to be in the best interest of the Component.

(e) HCAs shall establish, in conjunction with Component legal counsel, appropriate and adequate vessel collision liability and protection and indemnity liability insurance coverage limits.

# CHAPTER 3029 TAXES

**Subchapter 3029.1 General**
3029.101 Resolving tax problems.

**Subchapter 3029.3 State and Local Taxes**
3029.303 Application of State and local taxes to Government contractors and subcontractors.

## Subchapter 3029.1 General

### 3029.101 Resolving tax problems.

(a) The agency designated legal counsel is the Component legal counsel. Any recommended changes to DHS policy or procedures concerning taxes resulting from consultation with Component legal counsel, shall be transmitted by the Head of the Contracting Activity (HCA) to the Chief Procurement Officer (CPO).

(1) All problems forwarded to the Component's legal counsel for review and/or resolution shall be accompanied by:

(i) A copy of the contract, when applicable;

(ii) A comprehensive statement of the facts, any substantiating documents or correspondence, the legal issues, and recommended course of action, if any; and

(iii) 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.

## Subchapter 3029.3 State and Local Taxes

### 3029.303 Application of State and local taxes to Government contractors and subcontractors.

(a) The HCA is delegated authority, without redelegation, to review this designation. The HCA shall coordinate with the Component's legal counsel. The HCA shall provide a copy of the review documentation and designation to the Office of the Chief Procurement Officer (OCPO).

# CHAPTER 3030 COST ACCOUNTING STANDARDS ADMINISTRATION

**Subchapter 3030.2 CAS Program Requirements**
3030.201 Contract requirements.
3030.201-5 Waiver.
3030.201-7 Cognizant Federal agency responsibilities.
3030.202 Disclosure requirements.
3030.202-2 Impracticality of submission.
3030.202-6 Responsibilities.
3030.202-8 Subcontractor disclosure requirements.

## Subchapter 3030.2 CAS Program Requirements

### 3030.201 Contract requirements.

### 3030.201-5 Waiver.

(a) Requests for waiver of applicability of Cost Accounting Standards (CAS) under the conditions of FAR 30.201-5(b) shall be coordinated by the Head of the Contracting Activity (HCA) and forwarded to the Office of Chief Procurement Officer (OCPO) for review and approval.

(d) Requests for waiver of applicability of CAS under 48 CFR 9903.205-5(e) by the CAS Board shall be submitted to the OCPO through the HCA. OCPO will forward request to the Secretary for signature and subsequent submission to the Cost Accounting Standards Board (CASB).

### 3030.201-7 Cognizant Federal agency responsibilities.

Contracting officers should not individually administer CAS on a contract-by-contract basis. Accordingly, administration of CAS should be delegated to the cognizant Federal agency responsible for a particular contractor organization or location, which is usually the Federal agency responsible for negotiating indirect cost rates on behalf of the Government. Contracting officers will ensure that coordinated administrative actions provide assurances that individual contractors follow their cost accounting practices consistently under all their CAS-covered contracts and that change in cost accounting practices or CAS noncompliance issues are resolved, equitably, in a uniform overall manner.

### 3030.202 Disclosure requirements.

### 3030.202-2 Impracticality of submission.

The agency head authority determination is not delegable. All requests should be submitted using the procedures and format at HSAR 3001.7.

**3030.202-6 Responsibilities.**

(b) HCAs shall submit requests for the Secretary's approval to award a contract without obtaining submission of the required Disclosure Statement (See 48 CFR 9903.202-2) to the OCPO for coordination. The request shall include a description of the circumstances under which the award must be made, indicate coordination and agreement by the Cognizant Federal Agency Official (CFAO), and include a date by which a determination of adequacy is expected to be obtained. OCPO will staff the request through the appropriate DHS Headquarters' offices and submit it to the Secretary**.**

**3030.202-8 Subcontractor disclosure statements.**

HCAs shall follow the procedures in HSAM 3030.202-6 when requesting the Secretary's approval to award a subcontract without obtaining submission of the required Disclosure Statement.

# CHAPTER 3031 CONTRACT COST PRINCIPLES AND PROCEDURES

**Subchapter 3031.1 Applicability**
3031.101 Objectives.
3031.109 Advance agreements.

**Subchapter 3031.2 Contracts with Commercial Organizations**
3031.205 Selected costs.
3031.205-6 Compensation for personal services.
3031.205-32 Precontract costs.

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## Subchapter 3031.1 Applicability

### 3031.101 Objectives.

Requests for individual and class deviations concerning cost principles shall be submitted to the Office of Chief Procurement Officer (OCPO) for processing. The Chief Procurement Officer (CPO) is delegated the authority to grant individual deviations. The CPO will forward requests for class deviations to the Civilian Agency Acquisition Council (CAAC) for approval.

### 3031.109 Advance agreements.

See HSAM 3031.205-32.

## Subchapter 3031.2 Contracts with Commercial Organizations

### 3031.205 Selected costs.

### 3031.205-6 Compensation for personal services.

(g)(6) The Head of the Contracting Activity (HCA) is delegated, without redelegation, authority to waive the cost allowability limitations.

### 3031.205-32 Precontract costs.

(b) To the extent practical, precontract costs should be addressed by establishing advance understandings as contemplated by FAR 31.109. When the contracting officer determines in writing that it is necessary to incur precontract costs to meet the proposed cost-reimbursable contract's delivery schedule, the determination shall be approved by the Chief of the Contracting Office (COCO) and include the following:

(1) Identification of the requirement and a brief description of the work for which precontract costs are necessary;

(2) A statement that all statutory and regulatory actions required to justify source

selection have occurred;

(3) Name of the prospective contractor;

(4) Total amount of precontract 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 precontract costs;

(6) Discussion of reasons justifying the need for the contractor to proceed prior to contract award; and

(7) A signed agreement between the contracting officer and the prospective contractor that incurrence of precontract costs is solely at its own risk and in the event negotiations do not result in a contract, the Government shall be under no obligation to reimburse the contractor for precontract costs.

(c) Retroactive precontract cost authorization and the predating of contractual agreements shall not be used.

(d) Precontract cost authorizations shall not authorize the delivery or furnishing of any goods or services from a contractor until after the contract is executed.

# CHAPTER 3032 CONTRACT FINANCING


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|---|---|---|
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| **Subchapter** | **3032.1** | **Non-Commercial Item Purchase Financing** |
| | 3032.102 | Description of contract financing methods. |
| | 3032.113-70 | Customary contract financing. |
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**Subchapter 3032.000 Scope**

**3032.003 Simplified acquisition procedures financing.**

Where appropriate, the Chief of Contracting Office (COCO) may determine that contract financing for commercial items may be provided for purchases made under FAR Part 13. A written determination must be prepared detailing the rationale supporting the decision.

**Subchapter 3032.1 Non-Commercial Item Purchase Financing**

**3032.102 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 must ensure that the payments are commensurate with the work and that the work meets the contract requirements. When contracting officers propose to make these types of payments under other contracts, a written Determination & Finding (D&F) in the format provided at Appendix R must be signed by the Head of the Contracting Activity (HCA). The D&F must provide the reasons that progress payments based on costs cannot be possible and why it is feasible to administer progress payments based on a percentage or stage of completion.

**3032.113-70 Customary contract financing.**

(a) It is DHS's expectation that contracts will be fully funded except as permitted by FAR 32.703.

(b) Financing of contracts and requirements using other than progress payments or performance-based payments requires:

(1) HCA approval and review; and

(2) Legal counsel review and approval for legal sufficiency.

**3032.114 Unusual contract financing.**

Authority to approve unusual contract financing is delegated to the HCA.

**Subchapter 3032.2 Commercial Item Purchase Financing**

**3032.202-4 Security for Government financing.**

(a)(2) The required determination shall be in writing, reviewed by legal counsel, and retained in the contract file.

**3032.206 Solicitation provisions and contract clauses.**

(g) The HCA is authorized to develop procedures under FAR 32.206.

(g)(2) The HCA is authorized to develop procedures under FAR 32.206.

**Subchapter 3032.4 Advance Payments for Non-Commercial Items**

**3032.402 General.**

(c)(1)(iii) The authority to make the determination prescribed in FAR 32.402(c)(1)(iii) is delegated, without power of re-delegation, to the HCA.

(e)(2) When the contracting officer proposes to provide advance payments to a contractor, the requisitioning office, legal counsel, and finance office shall be consulted prior to approving the D&F. The D&F shall be written in the format of FAR 32.410.

**3032.404 Exclusions.**

(a)(9) Unless otherwise approved by the Chief Procurement Officer (CPO), no other types of transactions are excluded from the requirements of FAR 32.4.

**3032.409 Contracting officer action.**

**3032.409-1 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 HSAM 3032.402) 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.

**3032.409-2 Recommendation for disapproval.**

Contracting officers shall transmit the information required through appropriate office(s) to the approving official under HSAM 3032.402 for approval of the recommendation to disapprove the request for advance payment.

**Subchapter 3032.5 Progress Payments Based On Costs**

**3032.501 General.**

**3032.501-2 Unusual progress payments**.

(a)(3) The Chief of the Contracting Office (COCO) is delegated authority to approve the contractor's request for unusual progress payments.

**3032.502 Preaward matters.**

**3032.502-2 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) From the COCO, to provide a progress payment rate higher than the customary rate (see FAR 32.501-1);

(b) From the COCO, to deviate from the progress payment terms prescribed in FAR Part 32; and

(c) When providing progress payments to a contractor--

(1) From the COCO (with advice from Component legal counsel), when the contractor's financial condition is in doubt;

(2) From the COCO (with advice from Component legal counsel), when the contractor has had an advance payment request or loan guarantee denied for financial reasons (or approved but withdrawn or lapsed) within the previous 12 months; and

(3) From the HCA (with advice from Component legal counsel), when the contractor is named in the consolidated list of contractors indebted to the United States (known commonly as the "Hold-up List").

**3032.504 Subcontracts under prime contracts providing progress payments.**

(c) The contracting officer shall obtain approval from the COCO to authorize contractors to make unusual progress payments to subcontractors. 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 3032.6 Contract Debts

### 3032.602 Responsibilities.

Contracting officers shall administer the collection of contract debts and applicable interest in accordance with DHS MD Number 1180.1, Collections and Deposits Processing as implemented by Component procedures, if any. If Component procedures do not exist, contracting officers shall consult with their finance office concerning debt collection. The contracting officer has primary responsibility for identifying and demanding payment of contract debts except those resulting from errors made by the payment office.

### 3032.604 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 HSAM Appendix AB, 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.

(b) 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 HSAM Appendix AB. If the contractor appeals the final decision to the Board of Contract Appeals, the contracting officer must notify the component's payment office that an appeal has been filed.

### 3032.607 Installment payments and deferment of collection.

(a) The contracting officer is not authorized to approve or deny either a request for installment payments or a 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 will all other data required by FAR 32.607) to the component Chief Financial Officer (CFO) for a decision of whether the request should be approved.

**3032.608-1 Interest charges.**

(a) The contracting officer shall consult with the Component's finance office concerning contractor's debts that may be exempt from interest charges. If the contract under which a debt is created does not include a clause requiring the contractor to pay interest on an unpaid debt, DHS procedures authorized by 31. U.S.C. 3717 require collection of interest, penalties and fees on an unpaid debt (see Chapter 3 of the DHS CFO Financial Policy Manual). DHS contracts that include a requirement for a contractor to pay a specific rate of interest on an unpaid debt (such as by the clause at FAR 52.232-17, Interest) are exempt from the DHS CFO Financial Policy Manual policies on payment of interest, penalties and fees for that debt. Demand for payment templates at HSAM Appendix AB are available to be applied to either situation.

(b) The component'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.

**3032.610 Compromising debts.**

Contracting officers are not authorized to compromise debts.

**Subchapter 3032.7 Contract Funding**

**3032.702 Policy.**

(c) Additionally, all contracts and requirements using private sector financing shall be approved by the Office of Chief Procurement Officer (OCPO). The HCA shall submit the action, including legal counsel review and approval for legal sufficiency, to the OCPO for approval.

(d) The minimum guaranteed quantity specified under indefinite delivery indefinite quantity contracts must be fully funded (obligated at the time of contract award.)

(e) To avoid violating the Anti-Deficiency Act, fixed-price, labor-hour, and the time portion of time-and-material contracts shall not be incrementally funded. Cost-type contracts and the material portion (including, if appropriate, material handling costs as part of material costs) of time-and-material contracts may be incrementally funded provided such contracts include FAR Clause 52.232-22, Limitation of Funds, as appropriate.

**3032.702-70 Procurement requests.**

(a) Acceptance of electronically submitted fund documents. The contracting officer shall accept certified funds submitted electronically via Component approved financial and procurement systems. The contracting officer may require a hardcopy procurement request only from units exempt from the use of Component approved financial and procurement systems.

(b) The requisitioning office/program office is responsible for nominating a qualified Federal employee to serve as a contracting officer's representative (COR), who is trained and certified

according to the DHS Acquisition Workforce Policy, number 064-04-003, Federal Acquisition Certification for Contracting Officer's Representatives and Appointment and Revocation or any successor. A procurement request submission for a new procurement lacking a COR nomination package (see HSAM 3004.803-70) unless otherwise exempted by HSAM 3042.270-1 may result in rejection as an incomplete acquisition/procurement request, unless the complete COR nomination package was submitted prior to the procurement request.

(c) Treasury Account Symbol (TAS).

(1) The DHS Office of the Chief Financial Officer issued guidance to Component Budget Directors and Chief Financial Officers on March 18, 2008 mandating inclusion of the Fiscal Year and Treasury Account Symbol on all Procurement Requests (PR) prior to submission to the contracting office for action. The guidance stipulates that as of April 15, 2008, a PR will not be considered complete unless and until this funding information is included in the PR. Failure to include the Fiscal Year and Treasury Account Symbol on the PR constitutes grounds for the contracting office to reject the PR until such time as the information has been entered.

(2) Treasury Account Symbols were selected as the format for submission in order to be consistent with the Office of Management and Budget (OMB) guidance requiring agencies to migrate to Treasury Account Symbols for agency financial-reporting purposes (OMB Memorandum M-09-19 dated June 1, 2009, Guidance on Data Submissions under the Federal Funding Accountability and Transparency Act).
Accordingly, TAS submissions are necessary for Federal Procurement Data System (FPDS) reporting (see FAR 4.6 and HSAM 3004.6) and DHS Congressional Notification requirements (see HSAM 3005.303-70). Specific laws, such as the American Recovery and Reinvestment Act (Recovery Act) require reporting of transactions to include TAS data in accordance with FAR 4.605 and FAR 4.1501 (also see HSAM 3004.1501).

**3032.702-71 Use of private sector financing.**

All proposed contract actions, including orders under GSA FSS contracts and orders under indefinite delivery contracts, that use private sector financing shall be approved by the Office of Chief Procurement Officer (OCPO). The HCA shall submit the action, including legal counsel review and approval for legal sufficiency, to the OCPO for approvals.

**3032.703-3 Contracts crossing fiscal years.**

(b) The COCO is authorized to approve the award of contracts, options, or orders under contracts for severable services for a period beginning in one fiscal year and ending in the next, provided the period of the basic contract, option or order does not exceed one year. Documentation of the approval shall be retained in the contract file.

**Subchapter 3032.8 Assignment of Claims**

**3032.802 Conditions.**

(e)(1) The contracting officer is the designated recipient of the document.

**3032.803 Policies.**

(d) By Memorandum dated October 3, 1995, the President delegated the authority to determine whether to include a no-setoff commitment in any contract, except a contract under which full payment has been made, to the head of the agency. In addition, the memorandum states that the authority could be further delegated. The HCA is authorized, with further authority to redelegate, to determine whether to include a no-setoff commitment in any contract, except a contract where full payment has been made.

**Subchapter 3032.9 Prompt Payment**

**3032.903 Responsibilities.**

The Chief Financial Officer (CFO) is delegated the authority to prescribe policies and procedures for prompt payment.

**3032.904 Determining payment due dates.**

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 Act, contracting officers shall consult with their cognizant finance office.

**3032.906 Making payments.**

(b) The contracting officer is delegated authority to determine whether to make invoice and contract financing payments earlier than 7 days prior to the due dates specified in the contract.

**Subchapter 3032.11 Electronic Funds Transfer**

**3032.1107-70 Payment Information.**

DHS has established with the Department of Treasury Regional Financial Center, Kansas City, MO, an electronic communication connection for payments via the Automated Clearinghouse (ACH) (a nationwide electronic payments network). DHS finance offices shall use the information in the Central Contractor Registration database to make EFT payments to contractors.

**Subchapter 3032.70 Contract Payments**

**3032.7000 Scope of subchapter.**

This subchapter prescribes policies and procedures for the submission, review, and approval of payments under contracts and orders as defined under FAR Part 16.

**3032.7001 Policy.**

It is the policy of DHS to perform an in-depth review of all invoices and vouchers submitted by contractors under contracts; therefore, the COCO must ensure that the requirements of this subchapter are met.

**3032.7002 Invoice and voucher review and approval.**

(a) Contracting officers are ultimately responsible for the review and approval of each invoice and/or 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 must provide a copy of the approved invoice and supporting documents to the contracting officer for the contract file. When invoices and vouchers are reviewed, the extent of the review is dependent upon the terms and conditions of the contract. Appropriate use of sampling is encouraged. The following list is representative of the 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 Part 31 and any other terms and conditions of the contract;

(4) Ensure that evidence of receipt, inspection, and acceptance of the supplies or services has been received from a Government representative (this may be done electronically);

(5) Ensure that the contractor's progress under the contract is commensurate with the payment requested (i.e., the unliquidated progress payments do 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 (i.e., progress payment liquidation, percentage of fixed fee, etc.).

(b) Cost-reimbursement contracts.

(1) When cost-reimbursement payments will be made under the contract, the contracting officer shall obtain the recommendation of Government personnel (e.g., 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 either the COR or to the Defense Contract Audit Agency. Circumstances that would support delegating the voucher processing to DCAA would include situations where DCAA already audits the contractor. In such cases, it is typically more efficient to use DCAA to process vouchers.

(i) If DCAA is identified in a contract as the cognizant audit office, they are delegated responsibility to review vouchers per the MOU at HSAM Appendix U. The contracting officer shall require that the contractor submit vouchers directly to the cognizant DCAA auditor at the same time as the original is sent to the COR/contracting officer.

(ii) DCAA will review all vouchers in excess of $1 million and review all first vouchers submitted under the contract or delivery order. However, for any particular voucher, the contracting officer can request a DCAA review of that specific voucher if the contracting officer has concerns.

(c) If the contracting officer determines the amount billed is allocable and allowable, he/she shall furnish the designated payment office with written approval of the amount to be paid the contractor. (See Appendix S for a sample format).

(d) Time-and-materials and labor-hour contracts.

(1) When processing vouchers (or commercial invoices submitted per FAR 52.212-4 Alternate I) for payment under time-and-materials (T&M) or labor-hour contracts, appropriate use of sampling is encouraged for verifying the adequacy of supporting information for the voucher/commercial invoice. The checklist at Appendix S, or a component authorized form that is substantially similar, should be used as a basis for the review. The responsible Government official should verify:

(i) That the employees meet the qualifications for the labor categories to which they are being billed;

(ii) That the hourly rates for each category on the voucher match the rates specified in the contract for the period being invoiced;

(iii) That the material costs included in the voucher/commercial invoice are adequately supported by invoices and/or evidence of payment to vendors;

(iv) The accuracy of the mathematical calculations contained in the voucher; and

(v) That the hours worked match the hours billed.

(2) The responsibility for reviewing and recommending approval of vouchers or commercial invoices on T&M and labor-hour contracts may be delegated by the contracting officer to either the COR or to the Defense Contract Audit Agency (DCAA) or both. Circumstances that would support delegating the voucher processing to DCAA would include situations where DCAA already audits the contractor. In such cases, it is typically more efficient to use DCAA to process vouchers.

(i) If DCAA is identified in a contract as the cognizant audit office, it is delegated responsibility to review vouchers per the MOU at HSAM Appendix U. The contracting officer shall require that the contractor submit vouchers directly to the cognizant DCAA auditor at the same time as the original is sent to the COR/contracting officer.

(ii) DCAA will review all vouchers in excess of $1 million and review all first vouchers submitted under the contract or delivery order. However, for any particular voucher, the contracting officer can request a DCAA review of that specific voucher if the contracting officer has concerns.

(3) The responsibility for review and approval of interim payment vouchers/commercial invoices on T&M and labor-hour contracts or orders may be delegated by the contracting officer only to the COR.

(i) If the contracting officer delegates review and approval of vouchers/commercial invoices to the COR or if the contracting officer retains authority for approval of vouchers/commercial invoices:

(A) The contracting officer shall direct the contractor to support each voucher/commercial invoice such as with the information addressed in the sample letter at Appendix S.

(B) The contracting officer or, if delegated, the COR is responsible to verify that the hours worked by the contractor match the hours billed through use of an appropriate sampling plan or other verification process.

(C) The contracting officer or, if delegated, the COR is required to accomplish the verifications required by paragraph (d)(1) of this subsection.

(*1*) Review of information provided by the contractor per direction of the contracting officer's letter at Appendix S is adequate for this purpose. The accuracy of this information should be verified by the COR at appropriate intervals.

(*2*) If the contractor fails to provide the supporting information directed by the contracting officer to support a voucher/commercial invoice, the voucher/commercial invoice should be rejected as an improper invoice.

(*3*) The contracting officer may negotiate an advance agreement with a contractor on reduced or streamlined information support requirements under special circumstances, such as when the contractor has been approved for direct billing by the Defense Contract Management Agency.

(D) If the contracting officer delegates the authority to approve interim payment vouchers/commercial invoices, the authority shall not include authority to approve the final payment for the completion invoice or voucher.

**3032.7003 Record of payment.**

(a) The contracting officer shall establish a record (either hard copy or electronic) of payment file for each contract. The file must provide evidence of the amount paid; any amounts disallowed or withheld, and the rationale for the disallowances or withholdings; balance

available for payment under the contract after the invoice or voucher has been paid, and any correspondence to the contractor concerning the payments.

# CHAPTER 3033 PROTESTS, DISPUTES, AND APPEALS

**Subchapter 3033.1 Protests**
3033.102. General.
3033.103 Protests to the agency.
3033.104 Protests to the Government Accountability Office (GAO).

**Subchapter 3033.2 Disputes and Appeals**
3033.101 Definitions.
3033.203 Applicability.
3033.209 Suspected fraudulent claims.
3033.210 Contracting officer's authority.
3033.211 Contracting officer’s decision.
3033.212 Contracting officer's duties upon appeal.
3033.215 Contract clause.

## Subchapter 3033.1 Protests

### 3033.102 General.

(b) The contracting officer may make the determination.

### 3033.103 Protests to the agency.

(d)(4) Procedures shall be developed by each Component. Such procedures must consider the use of Alternative Disputes Resolution (ADR) in all protest actions.

### 3033.104 Protests to the Government Accountability Office (GAO).

(a) *General procedure.* The Chief of the Contracting Office (COCO) shall prepare and provide to the GAO the required agency report. The agency report shall be coordinated with legal counsel before the report is signed and sent to GAO.

(a)(3)(iv)(B) If the protest is made before an award, the agency report shall contain either a statement regarding any urgency for the acquisition and the extent to which a delay in award may result in significant performance difficulties and/or additional Government expense, or, an estimate of the length of time an award may be delayed without difficulty in performance or significant expense.

(a)(4)(i) The protestor's copy shall be hand-carried or express mailed. (Regular mail delivery will not suffice.)

(b) *Protests before award.* The written finding shall be coordinated with legal counsel. A copy of the signed written finding and the signed written notice to GAO shall be provided to the Chief Procurement Officer (CPO) within 2 working days after documents are sent to GAO. In

addition, the applicable Congressional and Public Affairs offices shall be informed of this action in accordance with Component policies and procedures.

## Subchapter 3033.2 Disputes and Appeals

### 3033.201 Definitions.

*Agency Board of Contract Appeals* (effective January 6, 2007) means the Civilian Board of Contract Appeals (CBCA), and replaces the previous, Department of Transportation Board of Contract Appeals (DOTBCA). The CBCA is the authorized representative of the Secretary of Homeland Security in hearing, considering, and determining all appeals of decisions of contracting officers filed by contractors pursuant to FAR Subpart 33.2.

### 3033.203 Applicability.

(b)(2) The Head of the Contracting Activity (HCA) shall make the determination that the application of the Contract Disputes Act (CDA) of 1978 to any contract with (1) a foreign government or agency of that government, or (2) an international organization or a subsidiary body of that organization would not be in the public interest. The Transportation Security Administration (TSA) will use the CBCA for CDA matters.

### 3033.209 Suspected fraudulent claims.

Chiefs of the Contracting Office (COCOs) shall refer these matters to the Office of the Inspector General (OIG) or other appropriate investigative organizations.

### 3033.210 Contracting officer's authority.

It is the DHS's policy to encourage the use of ADR procedures. A decision to use ADR procedures requires review and approval by legal counsel.

### 3033.211 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, HSAM 3032.604 and HSAM Appendix AB.

### 3033.212 Contracting officer's duties upon appeal.

Upon receipt of notice of appeal by a contractor, the contracting officer will notify Component legal counsel, who will appoint an attorney to represent the Government before the CBCA.

### 3033.213 Contract clause.

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 3034 MAJOR SYSTEMS ACQUISITION

**Subchapter 3034.0 General**
3034.002 Policy.
3034.004 Acquisition strategy.

**Subchapter 3034.2 Earned Value Management System**
3034.200 General.
3034.201 Policy.
3034.202 Integrated Baseline Reviews.
3034.204 Procedures.
3034.205 Application of EVMS to other than major system acquisition.

## 3034.0 General

### 3034.002 Policy.

Refer to HSAM Chapter 3007 and DHS Directive, 102-01, Acquisition, (previously MD Number 1400, Investment Review process) review and approval requirements for major systems acquisitions.

### 3034.004 Acquisition strategy.

For the purposes of this section, acquisition strategies means acquisition plans for major system acquisitions. Acquisition plans for major system acquisitions shall be in writing and prepared in accordance with FAR Subpart 7.1, HSAM Chapter 3007, the DHS Acquisition Planning Guide, and DHS Directive 102-01, Acquisition Management Directive.

## 3034.2 Earned Value Management System

### 3034.200 General.

(a) Authority.

(1) Title V of the Federal Acquisition Streamlining Act of 1994 (FASA) requires agency heads to approve or define the cost, performance, and schedule goals for major acquisitions and achieve, on average, 90% of the cost, performance and schedule goals established.

(2) The Clinger-Cohen Act of 1996 requires the Director of Office of Management and Budget (OMB) to develop, as part of the budget process, a process for analyzing, tracking, and evaluating the risks and results of all major capital investments for information systems for the life of the system.

(3) OMB Circular No. A-11, Part 7, Planning, Budgeting, Acquisition, and Management of Capital Assets and its supplement, Capital Programming Guide, were written to meet the requirements of FASA and the Clinger Cohen Act. In addition, OMB Circular No. A-11 requires the use of an Earned Value Management System (EVMS) that meets the American National Standards Institute (ANSI)/Electronics Industries Alliance (EIA) Standard - 748 for both Government and contractors.

**3034.201 Policy.**

(a) This subchapter provides the policies and procedures for incorporating an Earned Value Management System (EVMS) in DHS contracts in accordance with OMB Circular No. A-11, Part 7 and DHS Guidance on EVMS. Earned Value Management (EVM) integrates the statement of work, schedule, and cost to create an aggregate picture of performance, which helps ensure that day-to-day decisions on performance for development efforts are consistent with program objectives. EVM can help to identify cost and/or schedule overruns and to provide a forecast of final cost and schedule outcomes.

(1) The policies and procedures set forth in this subchapter apply to all DHS programs. The program manager and contracting officer shall collaborate when incorporating EVMS in acquisitions as described in this subchapter. The contracting officer shall include the EVM requirements on all development contracts with a total contract value over $20 million regardless of contract type if there is a significant amount of cost, schedule or performance risk associated with the development. In addition, the DHS programs that meet the definitions in (i) or (ii) below shall include EVM in all development contracts regardless of the total contract value.

(i) Major system, as defined in HSAR 3002.101;

(ii) Major acquisitions or investments. As defined in OMB Circular No. A-11, Part 7, a major acquisition/investment means a system or project requiring special management attention because of its importance to the mission or function of the agency, a component of the agency or another organization; is for financial management and obligates more than $500,000 annually; has significant program or policy implications; has high executive visibility; has high development, operating, or maintenance costs; or is defined as major by the agency's capital planning and investment control process. For DHS programs, the DHS Chief Financial Officer and Chief Information Officer have implemented this to include Level 1, Level 2, and Level 3 investments, as defined in DHS Directive 102-01, Acquisition, and supplemental instructions.

(iii) EVMS may be used at the discretion of the program manager for contracts on programs meeting the criteria in 3034.201(a)(1) that are valued at less than $20 million but greater than $5 million, and on other than major systems acquisition for developmental contracts valued at less than $20 million but greater than $5 million. The program manager's decision shall be risk-based. A cost-benefit analysis shall be

conducted before deciding to implement EVM in contracts that are valued at less than $20 million.

(b) DHS will determine the adequacy of the contractor's proposed EVMS plan in accordance with the DHS Earned Value Management System Guidance version in effect at time of award.

(c) The contracting officer shall include a requirement for the prime contractor to report EVM data to the program office in accordance with the DHS Earned Value Management System Guidance version in effect at the time the solicitation is prepared.

**3034.202 Integrated Baseline Reviews.**

(d)(i) Integrated Baseline Reviews (IBR) are normally conducted after award. The program manager shall conduct the IBR in accordance with the DHS Earned Value Management System Guidance. Post-award IBRs shall be completed within ninety days of contract award.

(ii) If approved by the HCA, IBRs may be conducted before award. Pre-award IBRs are appropriate only when the IBR results are essential for the source selection process and the program has adequate funding to conduct IBRs.

**3034.204 Procedures.**

(a) When EVMS is included on a contract with a total contract value greater than $50 million, the DHS program office is responsible for verifying the adequacy of the EVMS plan for contracts in this category and for performing EVMS surveillance. Descriptions of EVM verification and surveillance procedures are described in the Office of Chief Information Officer's (OCIO's) EVM Guidance. If the contractor does not have a verified system at time of contract award, the contractor's EVM plan will be evaluated for approval prior to award.

(b) When EVMS is included on a contract with a total contract value greater than $20 million but less than $50 million, the contractor is responsible for verifying the adequacy of the EVMS plan for contracts in these categories, and the Government is responsible for performing surveillance. Descriptions of EVM verification and surveillance procedures are described in the OCIO's EVM Guidance. If the contractor does not have a verified system at time of contract award, the contractor's EVM plan will be evaluated for approval prior to award.

(c) Program managers and contracting officers shall collaborate to identify contracts for which EVMS will apply within programs and projects and to ensure that the following requirements are met:

(1) Adequate budget authority is provided for the conduct of the EVMS review, if required, and the Integrated Baseline Review (IBR);

(2) EVMS requirements are addressed appropriately in the Statement of Work and Contract Deliverables; using language substantially the same as the language provided in the DHS EVMS Earned Value Management System Guidance; and

(3) Acquisition planning is accomplished in accordance with FAR Part 7, HSAM Subchapter 3007.1 and the DHS Acquisition Planning Guide.

(d) DHS will determine the adequacy of the contractor's proposed EVMS plan in accordance with DHS Earned Value Management Guidance, version in effect at time of award.

(e) For contracts which contain EVM, the contracting officer shall include the requirement that the prime contractor submit EVM reports in accordance with DHS Earned Value Management Guidance version in effect at time of the solicitation. These reporting requirements shall be included as contract data deliverables in the applicable solicitation and contract.

**3034.205 Application of EVMS to other than major systems acquisitions,**

(a) EVMS is mandatory on other than major systems acquisition for developmental contracts greater than $20 million but less than $50 million. The contractor is responsible for verifying the adequacy of the EVMS plan for contracts in this category, and the Government is responsible for performing surveillance. Descriptions of EVM verification and surveillance procedures are described in the OCIO's EVM Guidance. If the contractor does not have a verified system at time of contract award, the contractor's EVM plan will be evaluated for approval prior to award.

(b) EVMS may be used at the discretion of the program manager on other than major systems acquisition for developmental contracts valued at less than $20 million but greater than $5 million. The program manager's decision shall be risk-based. A cost-benefit analysis shall be conducted before deciding to implement EVM in low value contracts.

# CHAPTER 3035 RESEARCH AND DEVELOPMENT CONTRACTING

**Subchapter 3035.0 Scope**
3035.017 Federally Funded Research and Development Centers (FFRDC).
3035.017-2 Establishing or changing an FFRDC.

## Subchapter 3035.0 Scope.

### 3035.017 Federally Funded Research and Development Centers.

### 3035.017-2 Establishing or changing an FFRDC.

(j) The Secretary, acting through the Under Secretary for Science and Technology is authorized to establish or change the basic purpose and mission of an FFRDC under FAR 35.017-2(j).

# CHAPTER 3036 CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS


| | | |
|---|---|---|
| **Subchapter** | **3036.2** | **Special Aspects of Contracting for Construction** |
| | 3036.203 | Government estimate of construction costs. |
| | 3036.206 | Liquidated damages. |
| | 3036.208 | Concurrent performance of firm-fixed-price and other types of construction contracts. |
| | 3036.209 | Construction contracts with architect-engineer firms. |
| | 3036.212 | Preconstruction orientation. |
| | 3036.212-70 | Contracting with the National Institute of Building Sciences. |
| | 3036.213 | Special procedures for sealed bidding in construction contracting. |
| | 3036.213-2 | Presolicitation notices. |
| | 3016.213-70 | Report of proposed federal construction. |
| **Subchapter** | **3036.6** | **Architect-Engineer Services** |
| | 3036.602 | Selection of firms for architect-engineer contracts. |
| | 3036.602-1 | Selection criteria. |
| | 3036.602-2 | Evaluation boards. |
| | 3036.602-3 | Evaluation board functions. |
| | 3036.602-4 | Selection authority. |
| | 3036.602-5 | Short selection process for contracts not to exceed the simplified acquisition threshold. |
| | 3036.603 | Collecting data on and appraising firms' qualifications. |
| | 3036.605 | Government cost estimate for architect-engineer work. |
| | 3036.606 | Negotiations. |
| | 3036.606-70 | General. |
| | 3036.609 | Contract clauses. |
| | 3036.609-1 | Design within funding limitations. |


## Subchapter 3036.2 Special Aspects of Contracting for Construction

### 3036.203 Government estimate of construction costs.

(a) The Government estimate must be designated "For Official Use Only" unless the nature of the information therein requires a security classification, in which event it shall be handled in accordance with applicable security regulations. The "For Official Use Only" designation must be removed only when the estimate is made public in accordance with the instructions below.

(b) If the acquisition is by sealed bidding, a sealed copy of the detailed Government estimate must be filed with the bids until bid opening. After the bids are read and

recorded, the "For Official Use Only" designation must be removed and the estimate 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 must not be disclosed prior to award;

(2) At the time of award, the "For Official Use Only" designation on the Government estimate must be removed; and

(3) After award, the Government estimate may be revealed, upon request.

**3036.206 Liquidated damages.**

Liquidated damages provisions are generally appropriate in construction contracts in accordance with the provisions of FAR 11.500.

**3036.208 Concurrent performance of firm-fixed-price and other types of construction contracts.**

The Chief of the Contracting Office (COCO) is delegated the authority 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.

**3036.209 Construction contracts with architect-engineer firms.**

The Head of the Contracting Activity (HCA) or designee no lower than a Senior Executive Service (SES) or flag officer level may approve the award of a contract for the construction of a project to the firm that designed the project or its subsidiaries or affiliates. COCOs must submit requests to include: (1) the reason(s) why award to the design firm is required; (2) an analysis of the facts involving potential or actual organizational conflicts of interest, including benefits and detriments to the Government and prospective contractor; and (3) measures to be taken to avoid, neutralize, or mitigate conflicts of interest.

**3036.212 Preconstruction orientation.**

(b) DHS Form 700-11, "Preconstruction Conference Agenda and Checklist," or a similar checklist, must be used as the agenda of, or checklist for, the preconstruction conference.

**3036.212-70 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 Public Law 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 synopses requirements at FAR 5.2 are applicable unless a waiver is granted pursuant to FAR 5.202(b).

**3036.213 Special procedures for sealed bidding in construction contracting.**

**3036.213-2 Presolicitation notices.**

(a) The COCO may waive the requirement to send pre-solicitation notices to prospective bidders on any construction requirement when the proposed contract is expected to equal or exceed the simplified acquisition threshold.

**3036.213-70 Report of proposed Federal construction.**

(a) Section 1.4 of the Davis-Bacon Procedural Rules, 29 CFR 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) Components shall include the anticipated types and locations for proposed construction projects in the DHS electronic Acquisition Planning Forecast System (APFS) database detailed at HSAM Subchapter 3007.172 and available at http://APFS.DHS.GOV. The OCPO will consolidate the Component reported data and transmit a collective report to DOL.

## Subchapter 3036.6 Architect-Engineer Services

### 3036.602 Selection of firms for architect-engineer contracts.

### 3036.602-1 Selection criteria.

(b) The COCO is authorized to approve the use of design competition. Approval must be obtained prior to soliciting proposals.

### 3036.602-2 Evaluation boards.

The COCO must establish one or more ad hoc Architect-Engineer (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 FAR 36.602-2:

(a) The A-E evaluation board(s) must be composed of the following members:

(1) One member with experience in acquisition of A-E services (normally the contracting officer or contract specialist/negotiator);

(2) 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);

(3) One member with technical knowledge of the functional (user) requirements of the project; and

(4) Other special members as are deemed necessary.

(b) 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.

### 3036.602-3 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 must 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 Standard Form (SF) 330, Architect-Engineer Qualifications.

(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 330s 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 preselection 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 SFs 330 that 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 preselection 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 program and 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 preselection 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 330s for other experience and qualification data for each firm on the preselection 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 preselection 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 (i) of this section;

(iii) Recommendations; and

(iv) Considerations on which the recommendations are based.

(d) The COCO is delegated the authority to receive the report prepared by the evaluation

board.

**3036.602-4 Selection authority.**

(a) The COCO is authorized to make the final selection of the most highly qualified firms.

(b) The recommendations of the evaluation board will normally be approved, unless the report does not adequately support the recommendations. If recommendations are not approved, the A-E evaluation board shall be required to reconvene until an acceptable set of recommendations is agreed upon. The approved report serves as authorization for the contracting officer to commence negotiations with the A-E firm ranked number one by the A-E evaluation board.

**3036.602-5 Short selection process for contracts not to exceed the simplified acquisition threshold.**

Components 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.

**3036.603 Collecting data on and appraising firms' qualifications.**

Because it is DHS policy to establish ad hoc evaluation boards instead of a permanent board to select A-E firms, each Component must establish or designate an office or offices to meet the requirements of FAR 36.603(a).

**3036.605 Government cost estimate for architect-engineer work.**

(b) Contracting officers may release Government estimates on an as-needed basis.

**3036.606 Negotiations.**

**3036.606-70 General.**

The limitation on A-E fees of six percent of the estimated construction cost (see FAR 15.404-4(c)(4)(i)(B)) applies to all services that are an integral part of the production and delivery of plans, designs, drawings and specifications of a construction project. The limitation, however, does not apply to the cost of investigative and other services including but not limited to the following:

(a) Development of program requirements (scope of work);

(b) Determination of project feasibility;

(c) Preparation of drawings of an existing facility, where current drawings are not available;

(d) Subsurface investigations (soil borings);

(e) Structural, electrical and mechanical investigations of an existing building, where current information is not available;

(f) Surveys: topographic, boundary, utility;

(g) Preparation of models, color renderings, photographs or other presentation materials;

(h) Travel and per diem for special presentations;

(i) Supervision and inspection of construction;

(j) Preparation of operating and maintenance manuals; and

(k) Master planning.

**3036.609 Contract clauses.**

**3036.609-1 Design within funding limitations.**

(c) The HCA may determine in writing not to include clause FAR 52.236-22, Design within Funding Limitations, in fixed-priced A-E contracts because: (1) cost limitations are secondary to performance consideration and additional project finding 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.

# CHAPTER 3037 SERVICE CONTRACTING


| | | |
|---|---|---|
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| | 3037.601 | General. |


## Subchapter 3037.1 Service Contracts-General

### Subchapter 3037.103 Contracting officer responsibility.

(a) Ensure that procurement requests for Departmental branding strategies, seals and logos or similar services are consistent with guidance and policy contained in the Management Directive (MD) 0030, Use of Department of Homeland Security Seal.

(e) Consistent with FAR 7.503, contracting officers must review all requirements for services to ascertain whether a prohibition on contractor support in drafting congressional testimony, responses and reports (or other prohibitions identified in FAR 7.503(c)(20)) should be included within any resultant solicitation, contract or order. For those requirements identified by the contracting officer as requiring such a prohibition: ensure that all solicitations, contracts and orders for services include a prohibition against any form of contractor support in the preparation of congressional testimony, responses and reports (or other prohibitions identified in FAR 7.503(c)(20); further, ensure that all interagency agreements that may result in assisted acquisitions contain an identical prohibition with respect to any contracts or orders for services to be awarded by a servicing agency on behalf of DHS.

### Subchapter 3037.104 Personal services contracts.

**Subchapter 3037.104-70 Personal services contracts.**

(b) The Department of Homeland Security was given the Personal Services Contracting (PSC) authority in the Homeland Security Act (HSA) Section 832(1) and (2).

(1) The rate of pay for services rendered by an expert or consultant cannot exceed the daily equivalent of the maximum rate payable for a senior-level position under 5 U.S.C. 3109 for PSCs authorized under the Homeland Security Act (HSA) Section 832(1). If the services are determined to be necessary due to urgent homeland security needs under HSA Section 832(2) and justified in a Determination and Findings (D&F), pay limitations do not apply (See 5 U.S.C. 5376).

(2) The duration of the PSC must conform to one of the following scenarios:

(i) HSA Section 832(1): The duties are of a temporary nature and the consultant will work on a full-time basis for a maximum of 2 years, an initial appointment not to exceed one year and a possible reappointment (option) not to exceed 1 additional year; or, the duties are of an intermittent or part-time nature and the total time will not exceed the 2 year limitation or the cumulative earnings will have a lifetime limit of twice the maximum annual rate payable under the annualized basic pay limitations of 5 U.S.C.3109 and 5 U.S.C. 5376.

(ii) HSA Section 832(2): The duties are in response to an urgent homeland security need, will not exceed an initial one year period, but may have a possible reappointment (option) not to exceed one additional year and the pay limitations of 5 U.S.C. 3109 are waived.

(3) The following are requirements that must be satisfied to use the authority.

(i) Verify it would not be practicable to obtain such services by other means (See FAR 37.104 for the definition of a PSC).

(ii) Verify that the contract will not involve the following:
(A) A position requiring Presidential appointment;
(B) A Senior Executive Service Position;
(C) Performance of managerial or supervisory work;
(D) Work currently being performed by your regular employees;
(E) Filling in for staffing shortages; and
(F) Providing that individual a career appointment.

(iii) Prepare a determination and findings (D&F) in accordance with FAR 1.7 and include a determination that states the following:

(A) The duties are of a temporary nature and the consultant will work on a full-time basis for a maximum of 2 years, an initial appointment not to exceed one year and a reappointment not to exceed one additional year; or, the duties are of an intermittent nature or part-time nature and the total time will not exceed the 2 year limitation or the

cumulative earnings will have a lifetime limit of twice the maximum annual rate payable under the annualized basic pay limitations of 5 U.S.C. 3109 and 5 U.S.C. 5376; or, HSA Section 832(2): The duties are in response to an urgent homeland security need, will not exceed an initial one year period, but may have a possible reappointment (option) not to exceed one additional year and the pay limitations of section 3109 are waived.

(B) DHS personnel with necessary skills are not available;

(C) The contract will not fill a staffing shortage;

(D) Excepted appointment cannot be obtained;

(F) A non-personal services contract is not practicable;

(G) If the pay limitation of 5 U.S.C. 3109 is exceeded, the D&F supports the rationale and includes the finding that the services are necessary due to urgent homeland security needs; and

(H) Any other determination required by statues has been made.

(iv) Coordinate benefits, taxes, personnel ceilings, or conflict of interest matters with the cognizant civilian personnel office.

(4) Legal Review: Legal review is required for personal services contracts in accordance with FAR 37.104(e).

(5) Approval: The Chief of the Contracting Office (COCO) shall approve the required D&F unless the personal services contract for experts and consultant services are acquired without regard to the pay limitation of 5 U.S.C. 3109 in which case, the Head of the Contracting Activity (HCA) shall approve.

(6) Additional Considerations: The contract may provide for the same per diem and travel expenses authorized for a Government employee, including actual transportation and per diem in lieu of subsistence for travel between home or place of business and official duty station and only for travel outside the local area in support of the statement of work.

(7) Reporting Requirements: In accordance with 5 U.S.C. 3109, each agency shall report to the Office of Personnel Management on an annual basis with respect to:

(i) The number of days each expert or consultant employed by the agency during the period was so employed; and

(ii) The total amount paid by the agency to each expert and consultant for such work during the period.

(iii) In order to comply with this requirement, each Component shall maintain a record of the above information for inclusion in a consolidated agency report.

**3037.106 Funding and term of service contracts.**

(b) The Chief of the Contracting Office (COCO) is delegated this authority.

**3037.112 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 Homeland Security or designee. A recurring, cyclical peak workload, by itself, is not a critical need.

"*Federal supervisor*" means an individual employed by DHS to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment.

"*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 is 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) For the work of or to fill an Senior Executive Service (SES) employee or 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 CFR 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 T, with the procurement request (PR) for temporary help services. The entire checklist must be completed, including the certification of the regulatory requirements by the Chief Human Capital Officer or Component servicing Human Resource Official.

(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 HSAM 3037.112(a), initially for more than 120 workdays. However, if the Government employee's absence or DHS’s 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 Component 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 Component personnel office for approval. The Component 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 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.

**3037.112-70 Stenographic reporting services.**

(a) The contracting officer is delegated authority under 5 U.S.C. 3109 to procure stenographic services by contract.

**3037.113-1 Waiver of cost allowability limitations.**

(a) The Head of the Contracting Activity (HCA) is delegated this authority.

**Subchapter 3037.2 Advisory and Assistance Services**

**3037.203 Policy.**

**3037.203-70 Services of individual experts and consultants.**

(a) The Chief of the Contracting Officer (COCO) is delegated authority 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).

(b) 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 41 CFR, Subpart 101-6.10.

(c) Because the statutes governing the acquisition of and rate of pay for these services are subject to change, the contracting officer must seek the advice of the Component's legal counsel prior to taking action on the procurement request for such services.

**3037.203-71 Third party benefits.**

When a contract calls for providing technical assistance or advice that will benefit a third party, these services are advisory and assistance 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 being acquired to accomplish the program objectives of DHS.

**3037.204 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 and HSAR 3052.209-70 are met regarding potential organizational and consultant conflicts of interest.

**3037.205 Contracting officer responsibilities.**

In addition to the requirement of FAR 37.205, the contracting officer must ensure that the requirements of FAR 9.5 and HSAR 3052.209-70 are met regarding potential organizational and consultant conflicts of interest.

**Subchapter 3037.5 Management Oversight of Service Contracts**

**3037.503 Agency-head responsibilities.**

(a) and (b) The contracting officer must ensure that requirements for services are clearly defined, appropriate performance standards are developed, and that service contracts are awarded and administered in a manner that will provide the customer its supplies and services timely and within budget.

(c) and (d) The HCA must ensure that procedures are in place for service contracting to ensure that inherently governmental functions are performed by Government personnel and that appropriate strategies and training are initiated for performance-based acquisitions.

## Subchapter 3037.6 Performance-Based Acquisition

### 3037.601 General.

DHS contracting officers should make use of the web-enabled guide entitled "Seven Steps to Performance-Based Acquisition," currently sponsored by GSA at the following website: http://www.acquisition.gov/comp/seven_steps/home.html.

# CHAPTER 3038

## FEDERAL SUPPLY SCHEDULE CONTRACTING

## (RESERVED)

There is no text implementing or supplementing FAR Part 38.

# CHAPTER 3039 ACQUISITION OF INFORMATION TECHNOLOGY

**Subchapter 3039.1 General**
3039.101 Policy.

**Subchapter 3039.2 Electronic and Information Technology**
3039.203 Applicability.
3039.204 Exceptions.

## Subchapter 3039.1 General

### 3039.101 Policy.

(b)(1) Department of Homeland Security Management Directives (MDs) that apply to the acquisition of Information Technology (IT) and provide policy and guidance for the information resource management and IT program are:

(i) MD Number 4200.1, IT Capital Planning and Investment Control (CPIC) and Portfolio Management;

(ii) DHS Directive 102-01, Acquisition (previously MD Number 1400, Investment Review Process); and

(iii) MD Number 4300.1, Information Technology Systems Security.

(iv) MD Number 4010.2, Section 508 Program Management Office and Electronic and Information Technology Accessibility; and

(v) MD 0007.1, Information Technology Integration and Management.

(2) See HSAM 3004.470 for security requirements for contractor access to unclassified IT resources.

(3) See HSAM 3004.13 for HSPD-12 acquisition guidance. DHS supports continued implementation of HSPD-12 (see OMB Guidance No. M-11-11, dated February 3, 2011).

## 3039.2 Electronic and Information Technology

### 3039.203 Applicability.

(a)(1) Refer to the current version of DHS MD Number 4010, Section 508 Program Management Office & Electronic and Information Technology Accessibility. This MD applies to the acquisition of Electronic Information Technology (EIT). Exception determinations shall be justified in writing by the requiring official, approved in accordance with Component established procedures and forwarded with the Purchase request to the contracting officer to include in the contract file. See HSAM 3039.204(e)

regarding the additional review and approval requirements for the Undue Burden exception.

(2) Contracting offices shall review procurement requests to ensure that documentation required by MD Number 4010.2 is included. Contact the requiring activity to resolve discrepancies.

(3) Additional specific language for identification of applicable exceptions and standards can be obtained in consultation with the DHS Office of Accessible Systems and Technology (OAST) via the DHS Accessibility Help Desk at accessibility@dhs.gov. To implement the Section 508 requirements, requiring and ordering offices shall ensure that statements of work for solicitations of EIT developed, procured, maintained and/or used are in compliance with the "Electronic and Information Technology Accessibility Standards" set forth by the Architectural and Transportation Barriers Compliance Board (also referred to as the "Access Board") in 36 CFR Part 1194. The standards are also set forth in MD Number 4010.2, Appendices A through H. In addition to the FAR requirements for acquisitions to contain specific applicable standards or exceptions delineated, DHS solicitations shall require (where appropriate) that any deliverables produced as a result of a contract of EIT be accompanied by specific Section 508 test results and subject to further evaluation and verification by the Department of Homeland Security prior to final acceptance.

**3039.204 Exceptions.**

Pursuant to MD 4010.2, VI. A., all National Security and Undue Burden exception determinations shall be forwarded to the DHS Office of Accessible Systems and Technology for review and approval. All other exception requests shall be forwarded to the Component-level Section 508 Coordinator for review and approval.

# CHAPTER 3040

## (RESERVED)

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|---|---|---|
| **CHAPTER** | **3041** | **ACQUISITION OF UTILITY SERVICES** |
| **Subchapter** | **3041.1** | **General** |
| | 3041.103 | Statutory and delegated authority. |
| **Subchapter** | **3041.2** | **Acquiring Utility Services** |
| | 3041.201 | Policy. |
| **Subchapter** | **3041.5** | **Solicitation Provision and Contract Clauses** |
| | 3041.501 | Solicitation provision and contract clauses. |

## Subchapter 3041.1 General

### 3041.103 Statutory and delegated authority.

(c) Requests for individual and class 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 referred by the Head of the Contracting Activity (HCA) to the Chief Procurement Officer (CPO) through PROCUREMENTSUPPORT@hq.dhs.gov. As part of the request, HCAs must attest in writing that the Component has:

(1) An established acquisition program. Provide evidence of Component operation as an established acquisition program (e.g., copies of Acquisition Plan, Milestone Decision Document);

(2) Personnel technically qualified to deal with specialized utilities problems. Provide evidence of the technical qualification for the personnel monitoring the utilities contracts over the course of the current performance period (e.g., copies of training certificates, name and contact information of Component Energy Manager, Contracting Officer's warrant); and

(3) The ability to accomplish its own pre-award contract review. Provide evidence of evaluations (e.g., copies of the current Internal Control Plan (ICP) Agreement, copies of most recent compliance reviews conducted).

All certification requests shall receive Office of General Counsel review and coordination prior to submission to CPO. OCPO requires 30 days processing time from receipt of certification requests.

## Subchapter 3041.2 Acquiring Utility Services

### 3041.201 Policy.

(d)(2)(i) The contracting officer is authorized to enter into a contract pursuant to 42 U.S.C. 8287 (which pertains to the subject of shared energy savings including cogeneration).

(d)(3) The contracting officer is delegated the authority for FAR 41.201(d)(3).

**Subchapter 3041.5 Solicitation Provision and Contract Clauses**

**3041.501 Solicitation provision and contract clauses.**

(a) Variations in the provisions and clauses shall be reviewed by counsel for legal sufficiency.

# CHAPTER 3042 CONTRACT ADMINISTRATION AND AUDIT SERVICES


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|---|---|---|
| **Subchapter** | **3042.002** | **Interagency agreements** |
| **Subchapter** | **3042.1** | **Contract Audit Services** |
| | 3042.102 | Assignment of contract audit services. |
| | 3042.170 | Contract audit follow-up. |
| **Subchapter** | **3042.2** | **Contract Administration Services** |
| | 3042.202 | Assignment of contract administration. |
| **Subchapter** | **3042.270** | **Contracting Officer's Representative (COR)** |
| | 3042.270-1 | Policy. |
| | 3042.270-2 | COR nomination process. |
| | 3042.270-3 | COR appointment letter**.** |
| | 3042.270-4 | Procedures for issuance of COR appointment letter. |
| | 3042.270-5 | Procedures for issuance of COR supervisor notification letter. |
| **Subchapter** | **3042.3** | **Contract Administration Office Functions** |
| | 3042.302 | Contract administration functions. |
| | 3042.302-70 | Earned value management. |
| | 3042.302-71 | Trafficking in persons. |
| **Subchapter** | **3042.6** | **Corporate Administrative Contracting Officer** |
| | 3042.602 | Assignment and location. |
| **Subchapter** | **3042.7** | **Indirect Cost Rates** |
| | 3042.703 | General. |
| | 3042.703-1 | Policy. |
| | 3042.703-2 | Certificate of indirect costs. |
| | 3042.705 | Final indirect cost rates. |
| | 3042.705-1 | Contracting officer determination procedures. |
| | 3042.705-3 | Educational institutions. |
| | 3043.708 | Quick-closeout procedures. |
| | 3042.708-70 | DHS quick-closeout procedures. |
| **Subchapter** | **3042.8** | **Disallowance of Costs** |
| | 4032.803 | Disallowing costs after incurrence. |
| **Subchapter** | **3042.15** | **Contractor Performance Information** |
| | 3042.1502 | Policy. |
| | 3042.1503 | Procedures. |
| | 3042.1503-70 | Contractor performance assessments. |

**Subchapter 3042.002 Interagency agreements.**

(c) A Memorandum of Understanding (MOU) and a Memorandum of Agreement (MOA) for audit services and contract administration respectively are established between the Department of Homeland Security and the Department of Defense components. (See Appendix U, Contract Audit Services Memorandum of Understanding and Appendix V, Contract Administration Services Memorandum of Agreement with the Defense Contract Management Agency (DCMA)). See also HSAM 3042.202.

**Subchapter 3042.1 Contract Audit Services**

**3042.102 Assignment of contract audit services.**

(a) Contracting offices shall follow the procedures under the MOU between DHS and the Defense Contract Audit Agency (DCAA) to order audit services. (See Appendix U, Contract Audit Services Memorandum of Understanding.)

**3042.170 Contract audit follow-up.**

OCPO shall be responsible for audit follow-up. This follow-up shall occur on a quarterly basis. OCPO 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 Components. The Components shall provide the status of each audit (e.g., disposition with a copy of the price negotiation memorandum, negotiations in process, etc.) to OCPO within 30 days after the list is provided to the Component. OCPO shall maintain a listing of all open audits older than 90 days and the status of those audits.

**Subchapter 3042.2 Contract Administration Services**

**3042.202 Assignment of contract administration.**

(a) Contracting officers shall comply with FAR 42.202 when ordering contract administration support services from DCMA. Note, the existing MOA with DCMA found in Appendix V will be retired effective November 29, 2013. Each request for contract administration services from DCMA shall be sent via a Letter of Delegation to the cognizant DCMA field office(s). However, prior to formally requesting contract administration support services, contracting officers should contact the Non-DoD Customer Liasion Representative (CLR) at the DCMA Non-DoD Service Portfolio Division, at (703) 647-6058. The CLR will identify the appropriate contract management office and interface with the DHS contracting officer regarding any potential issues in the delegation.

All new contract administration support services work requests should be considered on a case-by-case basis under DCMA's standard policies for accepting new work requests from non-DoD customers.

If DCMA accepts the delegation, follow up with the Component's Chief Financial Officer using the Component's financial transaction process to reimburse DCMA for the services provided.

(c) Delegating additional functions.

(2) The Chief of the Contracting Office (COCO) is authorized to approve the delegation to the contract administration office (CAO)**.**

**3042.270 Contracting Officer's Representative (COR).**

**3042.270-1 Policy.**

(a) DHS Acquisition Workforce Policy, number 064-04-003, Federal Acquisition Certification for Contracting Officer's Representatives and Appointment and Revocation" dated August 8, 2012, or any successor, provides policy and procedures concerning the selection and training, experience, certification, appointment, and termination of a COR. This policy, and any successor acquisition workforce policies, apply to all Components.

(b) In very limited instances a contracting officer may retain and execute the contract administration functions in accordance with FAR Subpart 42.3. This may be appropriate when administration of the contract does not require complex technical knowledge or when the contracting officer has sufficient time and training to personally monitor the contractor's performance. Unless the contracting officer retains and executes all contract administration functions, CORs shall be nominated and appointed as follows:

(1) A Level II or III certified COR shall be nominated and appointed for every firm-fixed price contract or order that exceeds the simplified acquisition threshold, and that is neither a high risk contract/order nor a contract/order for a major investment.

(2) A Level III COR shall be nominated and appointed for every contract or order that is high risk, or a major investment, regardless of value (See HSAI Policy 064-04-003).

(3) A Level II or III COR may be appointed on fixed price contracts or orders below the simplified acquisition threshold if the contracting officer does not perform the inspection and acceptance of the supplies or services.

(c) Note that by statute, no funding made available to DHS shall be available to pay the salary of any employee serving as a COR, or anyone acting in a similar capacity, who has not received COR training.

(d) The COR nomination shall be submitted as soon as practicable, but no later than with the procurement request. (See HSAM 3032.702-70, Procurement requests). The COR will be appointed prior to award of the contract or order.

(d) Technical organizations (requisitioning/program offices) are responsible for:

(1) Ensuring that the individual nominated for the COR position possesses the training and experience requirements (including appropriate level of certification), commensurate with the duties and responsibilities to be delegated (See HSAM 3032.702-70, regarding submission of procurement requests).

(2) Ensuring that the COR's annual performance appraisal includes an evaluation of how well the COR functions are performed.

**3042.270-2 COR nomination process.**

(a) The DHS COR Nomination Letter format in Appendix W shall be used for nominating a prospective COR, except that Components may use their own form if it contains all of the information in the Appendix W format.

(b) Each COR nomination package will include, in addition to the COR Nomination Letter, the documents or information required by Appendix W, as summarized below:

(i) Federal Acquisition Certification for CORs
(ii) Training qualifications which confirm initial COR certification training of at least 40 hours for Level II and 60 hours for Level III and 40 hours continuous learning points (CLPs) earned within the last two years (for either Level II or III). Eight of the CLPs must have been earned in resident or online COR-related classes. One hour of procurement ethics training must have been completed within the past year.
(iii) Technical and experience qualifications
(iv) COR contact information
(v) Other information as appropriate

**3042.270-3 COR appointment letter.**

(a) The DHS COR Appointment Letter Format in Appendix W, shall be used in preparing the DHS COR or Alternate COR appointment letter and for ensuring format/framework consistency throughout the DHS. Supplements to the required COR appointment letters framework elements/content must be established with Component written procedures.

(b) Required key elements for the DHS COR appointment letter are: COR core responsibilities and functions, exclusions, and authority, ethics and training. DHS required elements (see Appendix W, Exhibits 1-3) must be addressed in each COR appointment letter as described below, unless otherwise not applicable or delegated by the contracting officer:

(i) Core COR responsibilities and functions. For DHS, the five core responsibility elements (performing surveillance/inspections/acceptance, monitoring activities including providing input to contractor performance evaluations, making recommendations for invoice and payment, managing Government-furnished property, and managing contractor employee access to facilities or systems) shall be specifically delegated to at least a Level II COR, unless retained by the contracting officer or not applicable (e.g., contract does not include Government-furnished property or security access requirements) or delegated by the contracting officer to a contract administration office. The detailed content instructions for each of these five core elements may

be expressed, altered or varied through Component's written supplement procedures to the extent the variation is substantially the same in nature. (See Appendix W, Exhibit 1, for described duties.) Components must also include the COR performance duties or requirements for certain contract types and functions, see HSAM, 3016.601(c)(1), Time-and-materials (T&M) and labor-hour contracts and HSAM 3032.7002, Invoice and voucher review and approval. Nothing in the HSAM guidance or Component procedures should limit responsibilities and functions that the contracting officers may assign to the COR unless otherwise limited or prohibited by law or acquisition regulation.

(ii) Non-Delegable Functions and Exclusions. Components may supplement the required exclusionary list with appropriate content as needed for their Component's mission. Components may use the "Exclusion" content as provided in Appendix W, Exhibit 2, to establish the required exclusions for their organization.

(iii) Authorities, Ethics, and Training. Components shall establish written procedures identifying their needs and requirements within the categories of authorities, ethics and training. Components may use the content provided in Appendix W, Exhibit 3, to establish uniformity within their organization but must require submission of the OGE 450, Confidential Financial Disclosure Report.

**3042.270-4 Procedures for issuance of COR appointment letter.**

(a) Component administrative processing for issuance of the COR appointment letter must comply with Acquisition Workforce Policy 064-04-003 which provides guidance for COR appointment letters (also see Appendix W), specifically –

(i) Acknowledgement and receipt of the appointment letter;
(ii) Acceptance of the COR appointment letter;
(iii) Appointment of Alternate COR letter; and
(iv) Termination of COR Appointment.

(b) Components must ensure where an individual is appointed as a COR on more than one contract, separate COR and Alternate COR appointment letters shall be issued for each contract.

(c) Component procedures must address the COR appointment letter's distribution requirements unique to the Component needs.

**3042.270-5 Procedures for issuance of COR's Supervisor Notification Letter.**

(a) Concurrent with the issuance of the COR appointment letter, the notification letter to the COR's supervisor will be issued, using the format provided in Appendix W, or a Component format containing the same information.

**Subchapter 3042.3 Contract Administration Office Functions**

**3042.302 Contract administration functions.**

(a)(12) FAR 16.301-3(a)(4) stipulates that a cost–reimbursement contract can be used only when the contractor's accounting system is adequate for determining costs applicable to the contract. The contracting officer is responsible for determining if a contractor's accounting system is adequate. Consult with DCAA or Defense Contract Management Agency (or other cognizant Federal Agency) to see if there is an existing determination that can be used. If not, the DHS contracting officer is responsible for determining whether or not a contractor's accounting system is adequate.

**3042.302-70 Earned value management.**

Responsibility for reviewing Earned Value Management System (EVMS) plans and verifying initial and continuing contractor compliance with Government EVMS criteria and conformity with American National Standards Institute/Electronic Industries Alliance (ANSI/EIA) Standard 748, Industry Guidelines for EVMS, is normally delegated to DCMA when EVMS support is required at a location under DCMA cognizance. Refer to HSAM 3034.204 for guidance relating to identification of contracts that require the application of EVMS. Refer to HSAM 3042.202 for procedures for ordering DCMA services.

**3042.302-71 Trafficking in persons.**

Monitor contractor compliance with the requirements of FAR 52.222-50, Combating Trafficking in Persons. The contracting officer shall include documentation in the contract file that the contractor has informed all employees and subcontractors of the Government policy on combating trafficking in persons. The contracting officer shall also include documentation in the contract file that all subcontractor employees have been informed of the policy. In the event that the contractor or a subcontractor violates FAR 52.222-50, the contracting officer shall document the file and provide the information to the DHS Inspector General for investigation. If a violation has occurred the contracting officer shall document the file and the remedies imposed in accordance with FAR 52.222-50.

**Subchapter 3042.6 Corporate Administrative Contracting Officer (CACO)**

**3042.602 Assignment and location.**

The Head of the Contracting Activity (HCA) or designee no lower than flag officer or Senior Executive Service (SES) level is delegated the authority to assign a CACO.

**Subchapter 3042.7 Indirect Cost Rates**

**3042.703 General.**

**3042.703-1 Policy.**

For forward pricing and billing rates, contracting officers shall utilize the rates in the Forward Pricing Rate Agreement, if one exists. If one does not exist, but there is a Forward Pricing Rate Recommendation, contracting officers should normally use that recommendation as the basis for

negotiating the indirect rates. If the contracting officer negotiates rates that differ from those in the Forward Pricing Rate Recommendation, the contract file must include the rationale for negotiating different rates. If there is no Forward Pricing Rate Agreement or Forward Pricing Rate Recommendation, the contracting officer should normally obtain information from DCAA to assist the contracting officer in negotiating the indirect rates. If the contracting officer negotiates rates that differ significantly from the rate information provided by DCAA, the contracting officer must document the rationale for the differences in the contract file. Where DCAA has an audit presence, DHS will use DCAA unless DCAA agrees otherwise.

**3042.703-2 Certificate of indirect costs.**

(b) *Waiver of certification*. (1) The COCO is delegated this authority.

**3042.705 Final indirect cost rates.**

**3042.705-1 Contracting officer determination procedure.**

(a) *Applicability and responsibility*. The contracting officer is responsible for ensuring that the direct and indirect costs paid under cost reimbursement and T&M contracts are allowable.

(b) DHS Procedures: For final indirect rates, DHS relies on the rates established by the cognizant federal agency, if such rates exist. If the rates are audit determined, DHS relies on the indirect cost rates established by DCAA, unless the DHS and DCAA mutually agree that another agency will be the cognizant audit agency.

(1) DCAA performs contract audits on an annual basis (not on a contract by contract basis). Thus, DCAA notifies contracting officers when an annual audit of a contractor's incurred costs is going to be performed that includes their DHS contract. This notification will request DHS acknowledgement that the DHS contract should be included in the annual audit, and a request for reimbursement to DCAA for the DHS applicable share of the audit cost. Unless there are exceptional circumstances, DHS contacting officers shall obtain these annual incurred cost audits. If the contracting officer decides not to obtain the annual audit of the direct or indirect costs, the contracting officer shall document in the contract file as to why the audit was not obtained. In addition, the contracting officer shall notify OCPO, Director, Oversight & Strategic Support Division via PROCUREMENTSUPPORT@HQ.DHS.GOV of their decision to not obtain the audit. The contract file documentation shall include, as a minimum, a discussion of the reason the audit was not obtained (e.g., small dollar amounts remaining unaudited or unsettled; low dollar value of the contracts; the necessary audit will not be performed for many years and there is an urgency to close the contract).

(2) A copy of the annual audit reports provided by DCAA shall be maintained in the contract file. These reports shall be used to establish the allowable direct and indirect costs under cost reimbursement and T&M contracts, unless there are final rates negotiated by the cognizant federal agency that differ from those shown in the DCAA report. In such cases, the allowable direct and indirect costs shall be determined based on the rates negotiated by the cognizant federal agency.

(3) To mitigate possible overpayments, the contracting officer shall periodically compare the amounts billed under the contract with the allowable costs shown on the summary sheet. If the amounts billed significantly exceed the allowable costs, the contracting officer shall notify the contractor and request a credit adjustment. If the adjustment is not provided promptly, the contracting officer shall issue a demand for payment to recover the overpayments.

**3042.705-3 Educational institutions.**

(b) If DHS is the Cognizant Federal Agency for an educational institution for the purpose of negotiating indirect cost rates, the use of predetermined final indirect cost rates must be approved by the COCO.

**3042-708 Quick-closeout procedure.**

**3042.708-70 DHS quick-closeout procedures.**

The Contracting Officer may:

(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 cognizant 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 cognizant audit activity is unable to provide the information.

(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), the contracting file shall be documented with the findings and rationale.

(e) Final indirect cost rates should be established using one of the following:

(1) Contractor's claimed actual rates adjusted to reflect an appropriate percentage of unallowable costs in prior year claims: or

(2) Recommended actual rates from the cognizant audit agency, the local pricing office, another installation pricing office, or other recognized knowledgeable source.

(f) If an agreement is reached with the contractor, obtain a release of all claims and other applicable closing documents (see HSAR 3004.804-570).

**Subchapter 3042.8 Disallowance of Costs**

**3042.803 Disallowing costs after incurrence.**

(b) *Auditor receipt of vouchers.*

(3)(ii) When the contractor files a claim for unreimbursed costs under the Disputes clause of the contract, contracting officers shall process the claim in accordance with Component procedures.

**Subchapter 3042.15 Contractor Performance Information**

**3042.1502 Policy.**

The HCA shall ensure that contractor performance evaluations are completed to meet the requirements of FAR Subpart 42.15 and reported into the Department of Defense Contractor Performance Assessment Reporting System (CPARS) or other system as designated by the DHS Chief Procurement Officer.

DHS FAR Class Deviation 11-03, applicable to instruments awarded after August 11, 2011, requires evaluations for all supply contracts and orders that exceed $500,000, and for all service contracts and orders that exceed $1,000,000, except as provided in (d) below. Evaluation thresholds for other types of contracts and orders established by FAR 42.15 paragraphs (e) and (f) remain unchanged. For instruments awarded prior to August 11, 2011, evaluations are required for all contracts, including task and delivery orders, which exceed the simplified acquisition threshold, or other thresholds established by FAR 42.15 except as provided in (d) below. Notwithstanding that, however, Components shall prioritize assessments of contracts and orders that: 1) use high-risk vehicles, such as cost-reimbursement, time-and-materials type, or award fee contracts, 2) are complex in nature, such as large construction, architect-engineer, research, software development and implementation contracts, or 3) involve high dollar values or major acquisitions, regardless of the contract type. Interim evaluations shall be performed on contracts and orders exceeding one year in duration (but see FAR 42.1502 (h)) to assist with improving the contractor's marginal performance and identifying any major deficiencies.

(d) (1) Task orders or delivery orders may be combined into one evaluation under certain circumstances. Combining orders is generally not feasible when the requiring activities differ, when contracts are used by multiple activities, or when individual orders could be significantly different. For task order or delivery order contracts and blanket purchase agreements awarded by DHS Offices or Components, contractor performance evaluations for multiple orders may be consolidated, at either the contract level or based on one of the orders, providing that all orders covered by a single evaluation were:

(i) active during the period of evaluation;
(ii) issued by the same office; and

(iii) procuring substantially similar supplies or services.

(2) When a decision is made to consolidate orders, contracting offices shall input the relevant data into the Enterprise Reporting Application under the Contractor Performance tab and shall indicate in CPARS the order numbers covered by the assessment.

**3042.1503 Procedures.**

(a) Component 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, and 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 Component identify a Primary and Alternate FP for each of their contracting activities or sites. FPs can serve as Alternates for more than one contracting activity or site. The Component Focal Point will grant users access to input records via the FAPIIS input module of the Contractor Performance Assessment Reporting System. The FAPIIS input module is located at https://www.cpars.gov.

(5) A CPARS "Senior Command Official" (SCO) will be identified. (SCO is a CPARS term, and is used here even though DHS 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.

(b) Component procedures shall provide that disagreements between the contractor and the Assessing Official regarding the evaluations will be resolved by a Reviewing Official, who shall be at a level above the contracting officer.

(f) The contracting officer shall be the AO for evaluations prepared per FAR 42.1503(h) related to a defective cost or pricing data determination made in accordance with FAR 15.407. This responsibility is not delegable.

**3042.1503-70 Contractor performance assessments.**

Component procedures shall ensure that:

(a) Assessments clearly and completely describe the contractor's performance in the narrative statement, in sufficient detail to justify the rating;

(b) In order to record critical details, performance issues are documented promptly during contract term, as opposed to waiting until the end of the performance period;

(c) Award fee determinations, when required by the contract, are reflected in the contractor's performance assessment;

(d) Narratives are supported by documentation sufficient to support the assigned rating, and should include:

(i) A level of detail and documentation that provides evidence and establishes a basis for the assigned rating;

(ii) An explanation of how problems were resolved and the extent to which solutions were effective;

(iii) Objective, fact based statements, and examples of the contractor's impact on improving or hindering Government performance;

(iv) If a subcontracting plan is required, an assessment of the contractor's performance against, and efforts to achieve, the goals identified in the small business subcontracting plan.

# CHAPTER 3043 CONTRACT MODIFICATIONS


| | | |
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| **Subchapter** | **3043.3** | **Change Orders** |
| | 3043.205 | Contract clauses. |
| **Subchapter** | **3043.70** | **Undefinitized Contract Actions** |
| | 3043.7000 | Definitions. |
| | 3043.7001 | Policy. |
| | 3043.7002 | Limitations. |
| | 3043.7002-1 | Authorization. |
| | 3043.7002-2 | Price Ceiling. |
| | 3043.7003 | Administration of UCAs. |
| | 3043.7004 | UCA monitoring system and report. |


## Subchapter 3043.2 Change Orders

### 3043.205 Contract clause.

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. The contracting file shall be documented with the contracting officer's rationale for this decision.

## Subchapter 3043.70 Undefinitized Contract Actions

### 3043.7000 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; and
(2) Letter Contracts (See HSAM 3016.603).

### 3043.7001 Policy.

Undefinitized actions shall:
(a) Be used only when:

(1) Negotiation of a definitive contract action is not possible in sufficient time to meet the Government's requirements; and
(2) The Government's interest requires that the contractor be given a binding commitment so that contract performance can begin immediately.

(b) Be as complete and definite as feasible under the circumstances.

## 3043.7002 Limitations

### 3043.7002-1 Authorization.

(a) The contracting officer shall obtain prior written approval for use of a UCA as follows:

(1) From the Head of the Contracting Activity (HCA) if the estimated cost of the definitive contract action is expected to exceed $1 million.
(2) From the Chief of the Contracting Office (COCO) if the estimated cost of the definitive contract action is not expected to exceed $1 million.

(b) Modifications that add to the scope of a UCA after performance has begun require approvals from the official specified in (a) (1) or (2) above, as appropriate.

(c) Requests for approval discussed in (a) and (b) above shall fully explain (i) the need to begin performance prior to definitization, and (ii) the adverse impact on agency requirements resulting from delays in beginning performance.

### 3043.7002-2 Price Ceiling.

UCAs shall include a not-to-exceed price.

## 3043.7003 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.

## 3043.7004 UCA monitoring system and report.

DHS uses the Enterprise Reporting Application (ERA) to record and monitor progress on the management of UCAs. ERA includes summary reports of UCAs that reflect the status of UCAs. The COCO shall (a) ensure that all UCAs, except for UCAs on classified contracts, are entered into the ERA under the UCA tab, (b) regularly monitor the ERA reports, and (c) ensure that progress is made to definitize the UCAs within the six-month period (except see FAR 16.603-2 for additional requirements for letter contracts.) Also, see HSAM 3016.603-2(c) for COCO approval to extend the definitization schedule under letter contracts.

# CHAPTER 3044 SUBCONTRACTING POLICIES AND PROCEDURES

**Subchapter 3044.3 Contractors' Purchasing Systems Reviews**
3044.302 Requirements.

## Subchapter 3044.3 Contractors' Purchasing Systems Reviews

### 3044.302 Requirements.

The Chief of the Contracting Office (COCO) is delegated this authority when the contract administration is retained.

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| **CHAPTER** | **3045** | **GOVERNMENT PROPERTY** |
| **SUBCHAPTER** | **3045.1** | **General** |
| | 3045.102 | Policy. |
| | 3045.103 | General. |
| | 3045.105 | Contractors' property management system. |
| **Subchapter** | **3045.3** | **Authorizing the Use and Rental of Government Property** |
| | 3045.302 | Contracts with foreign governments or international organizations. |
| **Subchapter** | **3045.6** | **Reporting, Redistribution, and Disposal** |
| | 3045.602 | Reutilization of Government property. |
| | 3045.602-3 | Screening. |


## Subchapter 3045.1 General

### 3045.102 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.

### 3045.103 General.

### 3045.103-270 General reporting requirements.

Government property reports shall be required in accordance with FAR 52.245-1 Government Property, and Component procedures. Subparagraph (f)(vi), Reports, of the clause at FAR 52.245-1 requires the contractor to have a process to create and provide reports for various specific purposes, and as directed by the contracting officer. Contracting officers shall apply this authority to the extent necessary to ensure that Government property in the possession of contractors is managed in accordance with the clause.

### 3045.105 Contractors' 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 DHS is the agency responsible for contract administration at the contractor's plant or installation, and the total value of 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.

## Subchapter 3045.3 Authorizing the Use and Rental of Government Property

**3045.302 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.

**Subchapter 3045.6 Reporting, Redistribution, and Disposal**

**3045.602 Reutilization of Government Property.**

**3045.602-3 Screening.**

Screening shall be in accordance with FAR 45.602-3. The contracting officer shall contact the appropriate Component property office for guidance.

(b) Special screening requirements.

(2) Special test equipment with commercial components. The contracting officer shall contact the appropriate Component 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 DHS Chief Administrative 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.

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| **CHAPTER** | **3046** | **QUALITY ASSURANCE** |
| **Subchapter** | **3046.3** | **Contract Clauses** |
| | 3046.316 | Responsibilities for supplies. |
| **Subchapter** | **3046.4** | **Government Contract Quality Assurance** |
| | 3046.401 | General. |
| **Subchapter** | **3046.6** | **Material Inspection and Receiving Reports.** |
| | 3046.670 | Inspection and receiving report. |
| | 3046.671 | Acceptance report. |
| | 3046.672 | Inspection, Acceptance and Receiving Report. |
| **Subchapter** | **3046.7** | **Warranties.** |
| | 3046.702 | General. |
| | 3046.703 | Criteria for use of warranties. |
| | 3046.704 | Authority for use of warranties. |
| | 3046.706 | Warranty terms and conditions. |
| | 3046.708 | Warranties of data. |
| **Subchapter** | **3046.790** | **Use of warranties in major systems acquisitions by the United States Coast Guard (USCG)** |
| | 3046.790-5 | Tailoring warranty terms and conditions (USCG). |
| | 3046.790-6 | Warranties on Government-furnished property (USCG). |


## Subchapter 3046.3 Contract Clauses

### 3046.316 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 3046.4 Government Contract Quality Assurance

### 3046.401 General.

(f) Inspection shall be documented as prescribed in HSAM 3046.6.

## Subpart 3046.6 Material Inspection and Receiving Reports

### 3046.670 Inspection and receiving report.

(a) Unless otherwise prescribed by Component procedures, a receiving report statement shall be signed by the authorized Government representative to evidence Government

inspection and receipt, except for simplified acquisitions using OF 347. The receiving report shall be completed at the place(s) specified in the contract for performance of Government quality assurance.

(b) For simplified acquisitions using OF 347, or an equivalent authorized Component form, the receiving report section shall be completed for inspection and receipt and signed by the authorized Government representative.

**3046.671 Acceptance report.**

(a) Unless otherwise prescribed by Component procedures, an acceptance report statement shall be signed by the authorized Government representative to evidence Government acceptance, except for simplified acquisitions using OF 347. The acceptance report shall be completed at the place(s) specified in the contract for Government acceptance.

(b) For simplified acquisitions using OF 347, or an equivalent, authorized Component form, the receiving report section shall be completed for acceptance and signed by the authorized Government representative.

**3046.672 Inspection, Acceptance and Receiving Report.**

All contract and order files shall contain the following information, in a Component authorized form or format, when OF 347, or an equivalent, has not been used:

Date:

Contract number and latest modification number:

Order number and latest modification number:

Report number, e.g. number each report for a given contract or order in series.

Contractor's Name:

Date items received or date recurring payment due:

Location where items were delivered or contractor's performance:

Statements applicable to the respective signature blocks to the effect that the requirements have been inspected, received, and accepted and meet the terms of the contract except as noted below:

List the requirements that were not accepted and/or the deductions made and state the reason why:

Total amount of deductions related to rejected items:

Signature and printed name of authorized Government representative(s):

Title of authorized Government representative(s):

Date(s) signed:

Components are authorized to use DHS 700-21, Material Inspection and Receiving Report, and Continuation Sheet, or a form substantially similar if authorized in accordance with Component procedures.

## Subchapter 3046.7 Warranties

### 3046.702 General.

The following areas shall also be addressed by all Components in relation to the use of warranties in DHS 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, HSAR Part 3007, and HSAM Chapter 3007.

(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 Component 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.

### 3046.703 Criteria for use of warranties.

Warranties should be obtained only when they are cost beneficial. To determine whether use of a warranty is cost beneficial, an analysis shall be performed to compare the benefits to be derived from the warranty with its acquisition and administration costs. The analysis should examine the procurement's life cycle costs, both with and without a warranty. Where possible, a comparison should be made with the costs of obtaining and enforcing warranties for similar supplies or services. If a warranty is determined to be appropriate, the contract file shall be documented with the reason for inclusion of a warranty and identify the specific parts, subassemblies, systems or contract line item(s) on which a warranty should apply, and shall address why a warranty is appropriate under the criteria set forth in FAR 46.703.

**3046.704 Authority for use of warranties.**

Contracting officers are authorized to approve the use of warranties.

**3046.706 Warranty terms and conditions.**

(a) The contracting officer, in developing the warranty terms and conditions, shall consider the following, and, where appropriate and cost beneficial, shall:

(1) Identify the affected line item(s) and the applicable specification(s);

(2) Require that the line item's design and manufacture will conform to: (i) an identified revision of a top-level drawing; and/or (ii) an identified specification or revision thereof;

(3) Require that the system conform to the specified Government performance requirements;

(4) Require that all systems and components delivered under the contract will be free from defects in materials and workmanship;

(5) State that in the event of failure due to nonconformance with specification and/or defects in material and workmanship, the contractor will bear the cost of all work necessary to achieve the specified performance requirements, including repair and/or replacement of all parts;

(6) Require the timely replacement/repair of warranted items and specify lead times for replacement/repair where possible;

(7) Identify the specific paragraphs containing Government performance requirements which must be met;

(8) Ensure that any performance requirements identified as goals or objectives in excess of specification requirements are excluded from the warranty provision;

(9) Define what constitutes the start of the warranty period (e.g., delivery, acceptance, in-service date), the ending of the warranty (e.g., passing a test or demonstration, or operation without failure for a specified time period), and circumstances requiring an extension of warranty duration (e.g., extending the warranty period as a result of mass defect correction during warranty period);

(10) Identify what transportation costs will be paid by the contractor in conjunction with warranty coverage;

(11) Identify any conditions which will not be covered by the warranty, other than the exclusion of combat damage; and

(12) Identify any limitation on the total dollar amount of the contractor's warranty exposure, or agreement to share costs after a certain dollar threshold to avoid unnecessary warranty returns.

(b) Any contract that contains a warranty clause shall contain warranty implementation procedures, including warranty notification content and procedures, and identify the individuals responsible for implementation of warranty provisions. The contract may also permit the contractor's participation in investigation of system failures, providing that the contractor is reimbursed at established rates for fault isolation work, and that the Government receives credit for any payments where equipment failure is covered by warranty provisions.

**3046.708 Warranties of data.**

Warranties of data shall be used only after consultation with legal counsel.

**3046.790 Use of warranties in major systems acquisitions by the United States Coast Guard (USCG)**

**3046.790-5 Tailoring warranty terms and conditions (USCG).**

(a) As the objectives and circumstances vary considerably among major systems acquisition programs, contracting officers shall appropriately tailor the warranty on a case-by-case basis, including remedies, exclusions, limitations and durations, provided the tailoring is consistent with the specific requirements of this subpart and FAR 46.706.

(b) Contracting officers of major systems acquisitions may exclude from the terms of the warranty certain defects for specified supplies (exclusions) and may limit the contractor's liability under the terms of the warranty (limitations), as appropriate, if necessary to derive a cost-effective warranty in light of the technical risk, contractor financial risk, or other program uncertainties.

(c) Contracting officers are encouraged to structure a broader and more comprehensive warranty where such is advantageous. Likewise, the contracting officer may narrow the scope of a warranty when appropriate (e.g., where it would be inequitable to require a warranty of all performance requirements because a contractor had not designed the system).

(d) Contracting officers shall not include in a warranty clause any terms that require the contractor to incur liability for loss, damage, or injury to third parties.

**3046.790-6 Warranties on Government-furnished property (USCG).**

A contractor for a major systems acquisition shall not be required to provide the warranties specified in HSAR 3046.790-1 on any property furnished to that contractor by the Government except for: (a) defects in installation; and (b) installation or modification

in such a manner that invalidates a warranty provided by the manufacturer of the property.

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| **CHAPTER** | **3047** | **TRANSPORTATION** |
| **Subchapter** | **3047.1** | **General** |
| | 3047.101 | Policies. |
| **Subchapter** | **3047.2** | **Contracts for Transportation or for Transportation-Related Services** |
| | 3047.205 | Availability of term contracts and basic ordering agreements for transportation or for transportation-related services. |
| **Subchapter** | **3047.5** | **Ocean Transportation by U.S. – Flag Vessels** |
| | 3047.506 | Procedures. |


## Subchapter 3047.1 General

### 3047.101 Policies.

(b) Contracting officers shall contact their Component transportation office for assistance and expertise in transportation management.

## Subchapter 3047.2 Contracts For Transportation or for Transportation-Related Services

### 3047.205 Availability of term contracts and basic ordering agreements for transportation or for transportation-related services.

(a) Contracts or basic ordering agreements awarded by DHS contracting officers for transportation or for transportation-related services greater than the simplified acquisition limit require approval one level above the contracting officer.

## Subchapter 3047.5 Ocean Transportation by U.S.-Flag Vessels

### 3047.506 Procedures.

(c) Maritime Administration (MARAD) address is: Director, Office of Cargo Preference, U.S. Department of Transportation, Maritime Administration, West Building, Southeast Federal Center, 1200 New Jersey Avenue, SE, Washington, DC 20590.

(d) If no transportation officer is available, the contracting officer shall submit a copy of the rated “on board” bill of lading, for each shipment, no later than 20 days after the vessel’s loading date for exports and 30 days for imports as stated in 46 CFR 381.3. All non-vessel ocean common carrier bills of lading should be accompanied by the underlying carrier’s ocean bill of lading to MARAD. The bill of lading shall contain the following information:

(1) Name of sponsoring Government agency or department;

(2) Name of vessel;
(3) Vessel flag of registry;
(4) Date of loading;
(5) Port of loading;
(6) Port of final discharge;
(7) Commodity description;
(8) Gross weight in kilos;
(9) Total ocean freight revenue in U.S. dollars.

# CHAPTER 3048 VALUE ENGINEERING

**Subchapter 3048.001 Definitions**

**Subchapter 3048.1 Policies and Procedures**
3048.102 Policies.
3048.103 Processing value engineering change proposals.
3048.104 Sharing arrangements.
3048.104-3 Sharing collateral savings.

**Subchapter 3048.2 Contract clauses.**
3048.201 Clauses for supply or service contracts.
3048.202 Clause for construction contracts.

**Subchapter 3048.70 Annual Value Engineering Report**

## 3048.001 Definitions.

For purposes of this manual, the definition at FAR 48.001 also includes:
"Value engineering" includes technology refreshment and technology enhancement.

## Subchapter 3048.1 Policies and Procedures

### 3048.102 Policies.

(a) The Head of the Contracting Activity (HCA) is authorized to grant exemptions on a case-by-case basis. The CPO is authorized to exempt contracts on a class basis. Submit requests per HSAR 3001.7000(a). Exemptions shall be retained in the contract file.

(b) The Chief Procurement Officer (CPO) is responsible for managing and monitoring value engineering (VE) efforts at DHS (see OMB Circular A-131).

### 3048.103 Processing value engineering change proposals.

(a) Component technical personnel are responsible for: conducting a comprehensive review of Value Engineering Change Proposals (VECPs) for technical feasibility, usefulness, and adequacy of the contractor's estimate of cost savings; making a written report; and recommending acceptance or rejection to the contracting officer.

### 3048.104 Sharing arrangements.

### 3048.104-3 Sharing collateral savings.

The Chief of the Contracting Office (COCO) is authorized to make the cost determination at FAR 48.104-2(a).

## Subchapter 3048.2 Contract Clauses

### 3048.201 Clauses for supply or service contracts.

(a) *General.*

(6) The Head of the Contracting Activity (HCA) is authorized to exempt a contract from the requirements of FAR Part 48 under FAR 48.201(a)(6). The CPO is authorized to exempt contract actions on a class basis. Submit requests per HSAR 3001.7000(a). Exemptions will be retained in the contract file.

(e) The COCO is authorized to make the cost determination for an individual contract only at FAR 48.201(e).

### 3048.202 Clause for construction contracts.

The COCO is authorized to make the cost determination for an individual contract only at FAR 48.202.

### 3048.70 Annual Value Engineering Report.

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 Acquisition Program Management Division (APMD), Office of the Chief Procurement Officer (OCPO), with a copy OCPO, Director, Oversight & Strategic Support Division via PROCUREMENTSUPPORT@hq.dhs.gov. Information for completing the report is available in Circular A-131. HCAs should contact APMD to obtain an Excel file that is suitable for the report. APMD will ensure the consolidated DHS report is forwarded to OMB by December 31. Negative reports are required.

# CHAPTER 3049 TERMINATION OF CONTRACTS


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| **Subchapter** | **3049.1** | **General Principles** |
| | 3049.101 | Authorities and responsibilities. |
| | 3049.106 | Fraud or other criminal conduct. |
| | 3049.111 | Review of proposed settlements. |
| | 3049.402-6 | Repurchase against contractor's account. |


## Subchapter 3049.1 General Principles

### 3049.101 Authorities and responsibilities.

(a) Notice to the Office of the Chief Procurement Officer (OCPO). The contracting officer shall provide a copy of all termination notices for anticipated terminations of contracts or orders with a total value exceeding $1 million to the OCPO at least five business days ***prior*** to issuing the notice to the contractor. The contracting officer shall complete the template in HSAM, Appendix AD and shall submit it along with the termination notice to the procurement support mailbox PROCUREMENTSUPPORT@hq.dhs.gov.

(1) As necessary, OCPO's Procurement Support Branch (PSB) shall coordinate with the Component regarding the termination on behalf of OCPO.

(2) Notification to the Suspension and Debarment Official (SDO)**.** For terminations for default or cause, the PSB Director shall send an email to the SDO advising the SDO of the termination with a copy to the Head of Contracting Activity (HCA) and contracting officer.

(b) Components shall follow the DHS Management Directive (MD) 146-01 and DHS Instruction Number 146-01-001 concerning procedures, documentation, and process for each potential suspension and debarment. Referrals for contractor suspension and debarment and possible criminal or fraudulent activities shall be made to the Office of the Inspector General (OIG). The contracting officer shall document the contract file with the reason(s) for referring the contractor for suspension and debarment.

(c) In an assisted acquisition, the interagency agreement shall state whether the requesting or servicing agency is responsible for costs associated with termination, disputes, and protests, including settlement costs. The servicing agency shall obtain approval in writing from the requesting agency to terminate a contract or order five business days prior to terminating a contract or order.

### 3049.106 Fraud or other criminal conduct.

For DHS, the Termination Contracting Officer (TCO) is the contracting officer assigned at the time the decision is made to terminate the contract. The TCO shall submit the

report required by FAR 49.106, along with supporting documentation, to legal counsel and the OIG for review and concurrence.

**3049.111 Review of proposed settlements.**

All proposed settlement agreements shall be reviewed by counsel for legal sufficiency.

**3049.402-6 Repurchase against contractor's account.**

If the contracting officer repurchases against the contractor's account, the contracting officer shall:

(a) Place a brief explanation for the repurchase in the contract file.

(b) If practical, use the original terms, conditions, and specification for the repurchase. Whether or not the original terms are used, obtain the advice of legal counsel, as necessary, before issuing a solicitation for similar supplies or work.

(c) If the reprocurement is delayed, protect the Government's rights to recover reprocurement costs by documenting the file to explain the circumstances of the delay.

# CHAPTER 3050 EXTRAORDINARY CONTRACTUAL ACTIONS


| | | |
|---|---|---|
| **Subchapter** | **3050.1** | **Extraordinary Contract Actions** |
| | 3050.102 | Delegation of and Limitations on Exercise of Authority. |
| | 3050.102-1 | Delegation of authority. |
| | 3050.104 | Residual Powers. |
| | 3050.104-1 | Standards for use. |


## Subchapter 3050.1 Extraordinary Contract Actions

### 3050.102 Delegation of and Limitations on Exercise of Authority

### 3050.102-1 Delegation of authority.

The authority of the Secretary is retained at the Agency head level.

## Subchapter 3050.104 Residual Powers

### 3050.104-1 Standards for use.

Generally, it is DHS policy not to authorize indemnification to contractors or subcontractors against unusually hazardous or nuclear risks, pursuant to Public Law 85-804 (National Defense Contract Authorization Act), as amended, and FAR Subpart 50.1. Contracting officers shall not include in solicitations or contracts the clause at FAR 52.250-1, Indemnification Under Public Law 85-804, unless specifically authorized by the Secretary. Components must direct all requests for indemnification through the Component's Office of the Chief Counsel and forward to the Office of the Chief Procurement Officer for appropriate coordination with the DHS Office of General Counsel before transmittal to the Secretary.

# CHAPTER 3051

## USE OF GOVERNMENT SOURCES BY CONTRACTORS

## (RESERVED)

There is no text implementing or supplementing FAR Part 51.

# CHAPTER 3052

## SOLICITATION PROVISIONS AND CONTRACT CLAUSES

## (RESERVED)

There is no text implementing or supplementing FAR Part 52.

# CHAPTER 3053 FORMS


| | | |
|---|---|---|
| **Subchapter** | **3053.1** | **General.** |
| | 3053.101 | Requirements for use of forms. |
| | 3053.103 | Exceptions. |
| | 3053.105 | Computer generation. |
| **Subchapter** | **3053.2** | **Prescription of Forms** |
| | 3053.203-70 | Proprietary information. |
| | 3053.205-71 | Source selection information. |
| | 3053.209-70 | Determination of prospective contractor Responsibility. |
| | 3053.213-70 | Simplified acquisitions. |
| | 3053.215-70 | Contracting by negotiations. |
| | 3053.219-70 | Small business review. |
| | 3053.219-71 | Subcontracting Plan Review Checklist. |
| | 3053.222-70 | Summary of underpayments. |
| | 3052.232-70 | Contract financing. |
| | 3053.236-70 | Construction and architect-engineering contracts. |
| | 3053.246-70 | Material inspection and receiving report. |


## Subchapter 3053.1 General

### 3053.101 Requirements for use of forms.

Unless the Chief Procurement Officer (CPO) grants an exception or the Component substitutes a form via internal procedures according to HSAM 3053.103(b), the forms prescribed in HSAM Chapter 3053 are required for use by all Components.

### 3053.103 Exceptions.

(a) Requests for exceptions to forms contained in HSAM Chapter 3053 shall be submitted to the CPO. Each request shall: (1) include the substitute format that will be used in place of the HSAM form; (2) include the Component rationale for the exception; and (3) be submitted by the Head of the Contracting Activity (HCA). The following are not eligible for exceptions:
DHS Form 2140-01, Contract Award Notification;
DHS Form 700-12, Determination of Prospective Contractor Responsibility;
DHS Form 700-22, Small Business Review; and
DHS Form 700-23, Subcontracting Plan Review Checklist.

(b) Components may substitute any of the following HSAM forms if authorized in Component procurement procedures:
DHS Form 700-11, Preconstruction Conference Agenda and Checklist;
DHS Form 700-13, Cover Page Source Selection Information;

DHS Form 700-14, Cover Page Proprietary Information;
DHS Form 700-16, Simplified Acquisition Summary and Continuation Sheet;
DHS Form 700-17, Weighted Guidelines Profit/Fee Objective;
DHS Form 700-18, Contract Facilities Capital and Cost of Money;
DHS Form 700-19, Summary of Underpayments;
DHS Form 700-20, Procurement Requests and Continuation Sheet; and
DHS Form 700-21, Material Inspection and Receiving Report and Continuation Sheet.

**3053.105 Computer generation.**

(b) Components may computer-generate the forms prescribed in the HSAR and this manual. Computer-generated HSAM forms shall not change the name, content, or sequence of the data elements and shall carry the assigned number (e.g., DHS Form 700-7) and edition date. The HSAM forms are available electronically on DHS Online at https://dhsonline.dhs.gov/portal/jhtml/general/forms.jhtml.

**Subchapter 3053.2 Prescription of Forms**

**3053.203-70 Proprietary information.**

*DHS Form 700-14, Cover Page Proprietary Information,* shall be used as specified in HSAM 3003.104-4(b)(ii).

**3053.203-71 Source selection information.**

*DHS Form 700-13, Cover Page Source Selection Information,* shall be used as specified in HSAM 3003.104-4(b)(iii).

**3053.205-70 Contract award notification.**

*DHS Form 2140-01, Contract Award Notification,* shall be used as specified in HSAM 3005.303-70(d).

**3053.209-70 Responsibility determination.**

*DHS Form 700-12, Determination of Prospective Contractor Responsibility,* shall be used as specified in HSAM 3009.105-2.

**3053.213-70 Simplified acquisitions.**

*DHS Form 700-16, Simplified Acquisition Summary,* shall be used as specified in HSAM 3013.101.

**3053.215-70 Contracting by negotiation.**

The following forms are prescribed for use as specified in HSAM 3015.404-4:

(a) *DHS Form 700-17, Weighted Guidelines Profit/Fee Objective*.
(b) *DHS Form 700-18, Contract Facilities Capital and Cost of Money*.

**3053.219-70 Small business review.**

*DHS Form 700-22, Small Business Review*, shall be used as specified in HSAM 3019.202-271.

**3053.219-71 Subcontracting Plan Review Checklist.**

*DHS Form 700-23, Subcontracting Plan Review Checklist*, shall be used as specified in HSAM 3019.705-470.

**3053.222-70 Summary of underpayments.**

*DHS Form 700-19, Summary of Underpayments Sheet,* shall be used as specified in HSAM 3022.406-8(d)).

**3053.232-70 Contract financing.**

*DHS Form 700-20, Procurement Request,* and *Procurement Request Continuation Sheet* shall be used as specified HSAM 3032.702-70.

**3053.236-70 Construction and architect-engineer contracts.**

*DHS Form 700-11, Preconstruction Conference Agenda and Checklist*.

**3053.246-70 Material inspection and receiving report.**

*DHS Form 700-21, Material Inspection and Receiving Report, and Material Inspection and Receiving Report - (Continuation Sheet)* should be used as specified in HSAM 3046.672.

# HEADS OF THE CONTRACTING ACTIVITIES

| | |
|---|---|
| DHS OPO | Director, Office of Procurement Operations |
| DHS OSA | Director, Office of Selective Acquisitions |
| FEMA | Director, Office of Acquisition Management |
| FLETC | Chief, Procurement Division |
| TSA | Assistant Administrator for Acquisition |
| US CBP | Executive Director, Procurement |
| USCG | Director of Contracting and Procurement (Commandant (CG-91)) |
| US ICE | Director, Office of Acquisition Management |
| USSS | Chief, Procurement Operations |

## REPORTING REQUIREMENTS

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

| TITLE OF REPORT | REFERENCE | DATE DUE | WHERE |
|---|---|---|---|
| Report of Proposed Federal Construction | HSAM 3036.213-70; 29 CFR 1.4 | Annually, September 30 | OCPO |
| Semi-annual Labor Enforcement Report* | FAR Part 22.406-13; HSAM 3022.406-13; 29 CFR 5.7(b); DOL AAM 189 | Component submission Semi-annually: April 30, October 31 | Department of Labor |
| Use of Project Labor Agreements for Federal Construction Contracts | FAR 22.5; OMB Memorandum M-09-22 | Component submission Quarterly: February 1, May 1, August 1, November 1 | OCPO |
| Sustainable Acquisition | HSAM 3023.2; Appendix Q | Quarterly; semi-annual (Jan/Jun) | OCRSO |
| Undefinitized Contract Action (UCA) Report | HSAM 3043.7004 | Upon issuance of a UCA | DHS Enterprise Reporting Application http://ocpo-sp.dhs.gov/sites/era |
| Value Engineering Report* | OMB Circular A-131 HSAM 3048.7000 | Annually; December 7 | OCPO |
| 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; HSAM 3019.202-270 | Initial – Annually; Update – Semiannually or as needed | OSDBU |
| Sudan Report | Sudan Accountability and Divestment Act of 2007 (Public Law 110-174)§ 6(c)(1) | Semiannually, April 15th, October 15th | OFPP |
| Competition Advocate Report | HSAM 3006.502(b)(2) | December 20 for the preceding year | OCPO |

| TITLE OF REPORT | REFERENCE | DATE DUE | WHERE |
|---|---|---|---|
| Use of Priority Rating Authority in Support of Emergency Preparedness, Response, Recovery, and Mitigation Activities for Homeland Security Technology Programs | DHS Acquisition Alert 10-07 (issued as a result of Executive Order 12919) | Quarterly (submit no later than 10 days after the end of each FY quarter) | OCPO (OCPO sends final report to FEMA) |

For those reports with an (*), if there was no activity for the period being reported, a negative response for the period shall be submitted to the requiring office.

# REVIEW AND APPROVAL MATRIX

| REVIEW TYPE AND THRESHOLDS | | | REVIEW AND APPROVAL LEVELS<br>*OCPO may require review of any DHS contract actions in accordance with HSAM Subchapter 3004.7004.* | | | | |
|---|---|---|---|---|---|---|---|
| | | | Contracting Officer | Level above Contracting Officer Approval | Legal Review | Program Office | Other |
| 1 | Sealed Bids<br>- Solicitation and Award - | <$500,000 | R/A | | D | D | |
| | | >$500,000 | R | R/A | R | D | |
| 2 | Negotiated Procurements –<br>Solicitation & Award | <$500,000 | R/A | | | D | |
| | | >$500,000 | R | R/A | R | D | |
| 3 | Pre-Negotiation or Negotiation Memoranda | Any amount | R | R/A | D | | |
| 4 | Solicitations, Orders, BPAs –<br>Issued and awarded using a SOW, SOO, or PWS, or requiring licenses | <$500,000 | R/A | | D | D | |
| | | >$500,000 | R | R/A | R* | D | |
| 5 | Solicitations & Orders –<br>Issued and awarded IAW FAR Part 16 for ID/IQ contracts, or FAR Part 13 or Subpart 8.4 for orders & BPAs & orders against BOAs | <$500,000 | R/A | | D | D | |
| | | >$500,000 | R | R/A | R* | D | |
| 6 | Letter Contracts - IAW HSAM 3016.603 | All | R | R | R | D | COCO – R/A |
| 7 | Modifications to the above actions - Items 1-6 | <$500,000 | R/A | | D | D | |
| | | >$500,000 | R | R/A* | R* | D | |
| **ADDITIONAL REQUIREMENTS FOR LEGAL REVIEW** | | | | | | | |
| 8 | Private Sector Financing | | | | All | | |
| 9 | Agreement with Termination or Cancellation Fees | | | | All | | |
| 10 | Agreement with Indemnification for Contractor | | | | All | | |

*Legend: **R** = Review. **R/A** = Review/Approval. **R*** = Review required, but see exceptions at HSAM 3004.7003(b). **R/A***= Review and Approval required, but see exceptions at 3004.7002(d). **D** = Discretionary as determined by the Contracting Officer. CPO = Chief Procurement Officer. OCPO= Office of theChief Procurement Officer. COCO=Chief of the Contracting Office.*

# CONGRESSIONAL NOTIFICATION REQUIREMENTS (HSAM 3005.303-70)

| ACTION | COVERED | NOT COVERED |
|---|---|---|
| New Contracts | New DHS contracts in excess of $1 million. This includes new indefinite-quantity or requirements type contracts at the maximum ceiling price, letter contracts, and awards to small businesses. | |
| New Contract Actions through a Servicing Agency (or Servicing Component) | New contract actions being awarded by a Servicing Agency through an assisted acquisition or awarded by another DHS Component. Covered contract actions include: new contract awards and orders using FY2008 and later appropriated funds, orders under DHS multiple award contracts using FY 2010 or later appropriated funds, orders using FY 2012 multi-year DHS funds in excess of $10 million, and orders in any amount that cause cumulative obligations in a single FY 2012 multi-year account to exceed 50 percent of the total amount appropriated.<br><br>DHS Components may choose to complete and submit DHS Form 2140-01 or alternatively, Components may have the Servicing Agency complete the form and make the required submission to the DHS Office of Legislative Affairs electronic mailbox Contracts@hq.dhs.gov. | Execution of an Interagency Agreement with the Servicing Agency. However, resulting contracts or orders issued by the Servicing Agency require Congressional notification IAW coverage indicated. |
| Contract Modifications | Non-competitive actions over $1 million resulting in contract modifications. | Contract modifications that are determined to be within the scope and under the terms of the existing contract to include those to be issued as Change orders (i.e. exercise of option year) or other administrative occurrences under the terms of an existing contract. |
| IDIQ Contracts - Orders and Modifications | If the estimated value of an IDIQ contract has been reached, provide notice of subsequent modifications and orders to be placed that are expected to have a face value of more than the contract's threshold. Do not report the same work twice.<br><br>Orders in excess of $1 million under DHS multiple award contracts using FY 2010 or later appropriated funds.<br><br>Orders using FY 2012 or FY 2013 multi-year DHS funds in excess of $10 million or in any amount, if the order causes cumulative obligations in a single account to exceed 50 percent of the total amount appropriated. | Task or delivery orders placed under non-DHS IDIQ-type contracts up to the contract threshold.<br><br>Order placed under DHS contracts using FY2009 & prior funds.<br><br>Orders placed under DHS single award IDIQ contracts. |
| BPAs and Orders under BPAs | Orders using FY 2012 or FY 2013 mutli-year funding greater than $10 million or in any amount, if the order causes cumulative obligations in a single account to exceed 50 percent of the total amount appropriated. | DHS BPAs using annual funds established under GSA Schedule contracts iaw FAR 8.405-3, and the orders placed under them. |
| Actions Subject to Availability of Funds (SAF) | Contract actions awarded/issued subject to availability of funds. Notification is tied to award of the contract, or placement of the order, not to subsequent modification(s) that obligate funds. (Except: Orders under DHS multiple award contracts issued awaiting FY 2010 Appropriations Act funding require notification upon initial funding with FY 2010 funds.) | |
| Small Business Set-Asides | For a small business set-aside under FAR 15.503(a)(2), submit the Congressional notification after the DHS announcement to offerors of its intention to make an award. Submit the Congressional notification the first business day following: (1) the closing date for any challenge or (2) after the resolution of any challenge received, whichever is later. Do not execute the award until five (5) full business days after submission. | |
| Architect-Engineer Service Contracts | For an Architect-Engineer Service contract being conducted iaw FAR Subpart 36.6, notwithstanding any release of DHS's intention to negotiate a contract with an offeror on the short slate (see FAR 36.607), submit the Congressional notification only after the successful conclusion of negotiations. | |

# CONTRACT AWARD NOTICE REQUIREMENTS

***Each requirement applies independently of the others, i.e, each is distinct and may apply to a given procurement.***
***Does not apply to actions under the Recovery Act, P. L. 111-5.***

| Notice | FedBizOpps | DHS Congressional Notice – Appropriations Committees | Public Announcement | Requests From Members Of Congress |
|---|---|---|---|---|
| **Threshold** | >$25,000 | >$1 million; multi-year funds >$10 million or cumulative obligations >50 % in a single mulit-year account | >$4 Million | Upon request |
| **Required By** | FAR 5.301 | HSAM 3005.303 | FAR 5.303<br>HSAM 3005.303 | FAR 5.403,<br>HSAM 3005.403 |
| **Format** | Synopsis | DHS Form 2140-01 | Satisfied by FedBizOpps Synopsis, may issue press releases case-by-case | DHS Form 2140-01 |
| **From/To** | Contracting officer to FedBizOpps | • Contracting officer or official designated by the Component to OLA<br>• OLA to Congress | • Contracting officer to FedBizOpps<br>• Press releases to OPA | • Contracting officer to HCA<br>• HCA to OLA& OCPO; FOIA Office & Legal as applicable<br>• OLA to Congress, w/copy to OCPO |
| **Time of Submission** | No required timeframe | • 5 full business days before award: contracting officer to OLA<br>• 3 full business days before award: OLA to Congress<br>• Exception: Contracts using FY2009 and subsequent funds that involve "substantial risk to human life, health, or safety." Require notice concurrent with award or immediately thereafter. | Not before 5:00 p.m. Washington, DC time, Date of Award | As requested |
| **Applies To** | • New contract awards<br>• Mods for additional supplies or services exceeding $25,000 (beyond the original scope of the contract) | • New contracts (including orders awarded by a Servicing Agency or DHS Component)<br>• Mods for additional supplies or services exceeding $1M (beyond the original scope of the contract)<br>• Orders under DHS multiple award contracts using FY2010 and later appropriated funds.<br>• Orders over the estimated value of an Indefinite-quantity contract<br>• Orders under a BPA established under the Commercial Item Test Program<br>• Any task or delivery order using FY 2012 or FY 2013 multi-year funds exceeding established thresholds.<br>• *Includes awards to small businesses*. | • New contract awards<br>• Mods for additional supplies or services exceeding $4M (beyond the original scope of the contract)<br>• Orders over the estimated value of an Indefinite-quantity contract<br>• Orders under a BPA established under the Commercial Item Test Program | Detailed information regarding any particular contract |
| **Exclusions** | • Disclosure would compromise national security<br>• Awards resulting from acceptance of an unsolicited research proposal<br>• Awards under the Small Business Innovation Development Act<br>• Orders placed under Subpart 16.5, unless FY 2012 or FY 2013 multi-year funds are utilized.<br>• Awards for perishable subsistence supplies<br>• Awards for utility services, other than telecommunication services, and only one source is available<br>• The contract action—<br>o Is for an amount not greater than the simplified acquisition threshold;<br>o Was made through a means where access to the notice of proposed contract action was provided through the GPE; and<br>o Permitted the public to respond to the solicitation electronically<br>• Awards for the services of an expert to support the Federal Government in any current or anticipated litigation or dispute pursuant to the exception to full and open competition authorized at 6.302-3. | • Administrative mods or mods to exercise option periods.<br>• Task or delivery orders placed under IDIQs up to the contract threshold using FY2009 and prior funds<br>• Orders under non-DHS IDIQ contracts, if not affected by FY 2012 or FY 2013 multi-year funding restrictions.<br>• Orders placed under DHS single award IDIQ contracts, if not affected by FY 2012or FY 2013 multi-year funding restrictions.<br>• DHS BPAs, and orders under them, established under GSA Schedule contracts IAW FAR 8.405. (Note: Orders are subject to FY 2012 or FY 2013 multi-year funding restrictions.)<br>• Execution of IA for work being performed in-house by a Servicing Agency. | Same as FedBizOpps and Congressional Notice, plus:<br>• Contracts placed with the SBA under Section 8(a) of the Small Business Act<br>• Contracts with foreign firms when the place of delivery or performance is outside the United States and its outlying areas<br>• Contracts for which synopsis was exempted under 5.202(a)(1). | None |

# RECOVERY ACT -- PREAWARD AND AWARD NOTICE REQUIREMENT

***Each requirement applies independently of the others, i.e., each is distinct and may apply to a given procurement.***

| Notice | FedBizOpps | | DHS Notice to OMB | DHS Congressional Notice – Appropriations Committees | Public Announcement | Requests From Members Of Congress |
|---|---|---|---|---|---|---|
| | Preaward | Award | | | | |
| **Threshold** | >$25,000 | >$25,000 | Any $ value | > $1M required<br></=$1M discretionary | >$3.5 Million | Upon request |
| **Required By** | FAR 5.704 | FAR 5.705 | HSAM 3005.770<br>HSAM 3005.771 | HSAM 3005.770 | FAR 5.303<br>HSAM 3005.303 | FAR 5.403,<br>HSAM 3005.403 |
| **Format** | • Synopsis – follow instructions at www.fbo.gov<br>• Clear & unambiguous narrative description of products/services<br>• If the solicitation includes either FAR clause 52.225-11 or 52.225-23, the CO must insert the following notice: "One or more of the items under this acquisition is subject to the World Trade Organization Government Procurement Agreement and Free Trade Agreements." | • Synopsis – follow instructions at www.fbo.gov<br>• If value exceeds $500,000, include a clear & unambiguous narrative description of the products or services<br>• At any dollar value, if the action was not both fixed-price and competitive, include in the description the rationale for using other than a fixed-price or competitive approach | • Contract actions: DHS Form 2140-1. Block 8, Treasury Account Symbol: Enter "70" and the 4 character account code with no spaces, e.g., 700118, 700201, etc.<br>• Interagency agreements: Award information, same data as DHS Form 2140-1 | • DHS Form 2140-01. Block 8, Treasury Account Symbol: Enter "70" and the 4 character account code with no spaces, e.g., 700118, 700201, etc | • Satisfied by FedBizOpps Synopsis<br>• May issue press releases case-by-case | DHS Form 2140-01 |
| **From/To** | • CO to FedBizOpps<br>• FedBizOpps to Recovery.gov | • CO to FedBizOpps<br>• FedBizOpps to Recovery.gov | • HCA or designee to RecoveryLeadership @hq.dhs.gov<br>• DHS Recovery Act Leadership Team to OMB | • CO or official designated by the Component to OLA thru contracts@dhs.gov<br>• OLA to Congress | • CO to FedBizOpps<br>• Press releases to OPA | • CO to HCA<br>• HCA to OLA& OCPO; FOIA Office & legal as applicable<br>• OLA to Congress, w/copy to OCPO |
| **Time of Submission** | • FAR 5.203 applies except to notices for orders issued for informational purposes only | • No required timeframe.<br>• Promptly after award | • Competitive actions: Upon selection of apparent successful offeror<br>• Other actions: Upon finalization of terms and conditions. | • CO:Upon submission to RecoveryLeadership @hq.dhs.gov<br>• > $1M, OLA to Congress: Upon OMB approval, 3 full business days before award<br>• </= $1M, OLA to Congress: Upon OMB approval | Not before 5:00 p.m. Washington, DC time, Date of Award | As requested |
| **Applies To** | • New contract awards<br>• Mods for additional supplies or services exceeding $25,000<br>• Orders under GWACs, MACs, Schedule contracts, other IDIQ contracts, or BPAs.<br>• Follow FedBizOpps instructions to note notice is for information purposes only | • New contract awards<br>• Mods for additional supplies or services exceeding $25,000<br>• Orders under GWACs, MACs, Schedule contracts, other IDIQ contracts, or BPAs | • All contract actions and interagency agreements funded in whole or in part using Recovery Act funds.<br>• Includes awards through a servicing agency<br>• *Includes awards to small businesses.* | • All contract actions funded in whole or in part using Recovery Act funds.<br>• Includes awards through a servicing agency<br>• *Includes awards to small businesses.* | • New contract awards<br>• Mods for additional supplies or services exceeding $3.5M (beyond the original scope of the contract)<br>• Orders over the estimated value of an Indefinite-delivery contract<br>• Orders under a BPA established under the Commercial Item Test Program | Detailed information regarding any particular contract |
| **Exclusions** | • Disclosure would compromise national security<br>• No other exceptions under FAR 5.202 apply | • Disclosure would compromise national security<br>• Awards resulting from acceptance of an unsolicited research proposal<br>• No other exceptions under FAR 5.301(b) apply. | • Purchase card transactions at or below the micropurchase threshold | • Purchase card transactions at or below the micropurchase threshold<br>• Interagency agreements | Same as FedBizOpps and Congressional Notice, plus:<br>• Contracts placed with SBA under Section 8(a) of the Small Business Act<br>• Contracts with foreign firms when the place of delivery or performance is outside the US and its outlying areas<br>• Contracts for which synopsis was exempted under 5.202(a)(1). | None |

# STRUCTURED APPROACH FOR PROFIT OR FEE OBJECTIVE

## INTRODUCTORY REMARKS.

DHS Form 700-17, Weighted Guidelines Profit/Fee Objective, has been automated and contracting officers can access this automated version of the form to calculate profit/fee objectives. The DHS Form 700-17 is accessible from DHSConnect at: http://dhsconnect.dhs.gov/forms/Documents/DHS_Form_700-17.pdf.

When using the DHS Form 700-17, Weighted Guidelines Profit/Fee Objective, the contracting officer must 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 must 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, the tax posture of the business entity is certainly recognized. 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 subchapter, 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 must make the following adjustments:

a. The weight ranges for "Cost risk" (Item 14 on the DHS Form 700-17) must be replaced with -1 to 0.

b. The Total Profit/Fee Objective (Item 20 on the DHS Form 700-17) must be reduced by up to 1% for manufacturing type efforts and up to 3% for R&D or Services type efforts.

***Commercial Organizations*.**

For the purposes of this subchapter, DHS utilizes the description from FAR 31.103 to describe commercial organizations.

**I. CONTRACTOR EFFORT.**
This factor takes into account what resources are necessary and what the contractor must do to meet the contract performance requirements. Evaluation of this factor and the assignment of weights on the DHS Form 700-17 requires analyzing the cost content of the proposed contract 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 must 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 must 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 must be considered.

3. For purposes of computing the prenegotiation profit/fee objective, exclude any amount from the pre-negotiation cost objective measurement base for the purchase cost of contractor-acquired property if i, ii, and iii below apply:

i. The property is categorized as equipment, as defined in FAR 45.101,

ii. The purchase cost the equipment is to be charged directly to the contract, and

iii. The equipment will be retained by the contractor as government property for use by the contractor in performing government contract(s).

**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 must 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 DHS Form 700-17.

**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 DHS Form 700-17 for this factor must 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 must 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, unpriced 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. FACILITIES INVESTMENT.

DHS Form 700-18, Contract Facilities Capital and Cost of Money or a form substantially similar if authorized according to Component procedures, is used to determine the capital employed and cost of money amounts to be entered on the DHS Form 700-17, Weighted Guidelines.

### 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, undepreciated 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 on the DHS Form 700-17 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 DHS Form700-17, 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 DHS 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 an 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.

# HSAM Section 3015.606-70 – Agency procedures.

| DHS PROCESS STEPS FOR RECEIVING, REVIEWING, EVALUATING, AND TIMELY DISPOSAL OF UNSOLICITED PROPOSALS (Note: This flowchart must be used in conjunction with FAR 15.6 and HSAR 3015.6) | Phase 1 | Phase 2 | Phase 3 | Phase 4 | Phase 5 |
|---|---|---|---|---|---|
| | Receipt | Initial Review | Evaluation | Decision | Action |
| AGENCY PROCEDURES | >Each HCA shall designate a contracting office Point of Contact (POC) who must receive and track all Unsolicited Proposals. Typically, the POC is a Contracting Officer.<br><br>>Unsolicited Proposals must be protected as they often contain sensitive information and/or trade secrets. | >The POC must complete initial review; however, POC may obtain assistance from identified cross-functional team members.<br><br>>If POC determines that submission is not an Unsolicited Proposal, Phase 2 is final phase of process. | >POC and appropriate cross-functional team members must complete Comprehensive Evaluation. | >Based on evaluation results, which typically include input from the Program Office, POC and team members make a recommendation to the responsible Contracting Officer.<br><br>>When the recommendation is to proceed with contract negotiations, Phase 5 is needed. | >Contracting Officer, with other members of the DHS negotiation team, conducts contract negotiations as needed.<br><br>>Contracting Officer ensures compliance with all applicable procurement laws and regulations. |
| OUTCOMES/GOALS | **Establish Milestones & Identify Team** | **Complete Initial Review within 7 calendar days** | **Complete Comprehensive Evaluation within 60 calendar days** | **Process (Accept) or Reject Unsolicitated Proposal** | **Negotiate & Award Contract** |
| TASK (TYPICAL) | >POC establishes milestones and identifies appropriate team members.<br><br>>If Unsolicited Proposal is received by other DHS official, it must be immediately forwarded to designated POC. | >Within 3 calendar days after initial review completion, POC must advise Offeror of-- rejection with reasons, or, acceptance with general timeframe for completing Phase 3 Evaluation. | >If additional information is needed from the Offeror, only the POC may contact the Offeror and make the request. | >Within 60 calendar days, POC must advise Offeror of-- rejection with reasons, or, tentative acceptance with timeline for contract negotiations. If rejected, Phase 4 is final phase of process. | >Responsible Program Office must ensure funds are committed and provide approved requisition to Contracting Officer. |
| FAR & HSAR Citations | FAR 15.604 & 15.606, HSAR 3015.606 & 3015.606-1 | FAR 15.605 & 15.606, HSAR 3015.606-1 | FAR 15.4, 15.606-2 & 15.607, HSAR 3015.606-2 | FAR 15.606-2 & 15.607, HSAR 3015.606-2 | FAR 15.402, 15.606-2 & 15.607, & HSAR 3015.606-2 |

# Determination for *(Insert Component Name)* to Award A Task or Delivery Order Contract for *(brief description)* to a Single Source

This determination is made pursuant to FAR 16.504(c)(1)(ii)(D)*(1)* and specifically relies upon *[Provide those FAR citation or citations that apply to this request (e.g., 16.504(c)(1)(ii)(D)(1)(i),(ii), (iii) and/or (iv)).]*

The total value of all actions covered by this determination is estimated to be $_____.

*Describe the action being approved. Provide enough details, facts or reasoning essential to support the determination. The determination document must address all of the below listed points related to the applicable exception(s).*

16.504(c)(1)(ii)(D)(1)(i), *So integrally related only a single source can reasonably perform the work. If the determination is based on this exception, you must:*

- *Explain why only a single source can reasonably perform the work;*
- *Explain the consequences if more than one source is considered for each expected order under the contract and why that is unacceptable;*
- *If firm-fixed prices will not be established under the basic contract, explain why not and why the prices must be established in each individual order (T&M or Labor Hour orders are not FFP). Identify any portions of the contract that will be fixed priced; and*
- *Explain how each order under the contract will be priced; i.e., what type of orders will be issued (FFP, L/H, T&M, etc.) and how the prices of the orders will be determined to be fair and reasonable.*

16.504(c)(1)(ii)(D)(1)(ii), *Firm fixed prices established in the basic contract, not in each order. If the determination is based on this exception, you must:*

- *Explain why the prices are considered to be firm fixed price (T&M or Labor Hour orders are not FFP);*
- *State that fixed prices will be established in the basic contract and explain how (fixed rates per hour, day, job, etc.);*
- *State that the contract will provide for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. (See FAR 16.202-1)*
- *Explain if there will or will not be any line items that will be priced under individual orders and explain why you believe the determination can be approved despite not qualifying under the plain reading of this statutory exception; and*
- *Explain why it is more advantageous to price items in the basic contract rather than competing each order.*

16.504(c)(1)(ii)(D)(1)(iii), *Only one source is qualified and capable of performing at a reasonable price. If the determination is based on this exception, you must:*

- *Explain why only one source is capable of performing at a reasonable price;*
- *Explain the consequences if more than one source is considered for each expected order under the contract;*
- *If firm-fixed prices will not be established under the basic contract, explain why not and why the prices must be established in each individual order (T&M or Labor Hour orders are not FFP). Also, identify any portions of the contract that will be fixed priced; and*
- *Explain how each order under the contract will be priced; i.e., what types of orders will be issued (FFP, L/H, T&M, etc.) and how the prices of the orders will be determined to be fair and reasonable.*

16.504(c)(1)(ii)(D)(1)(iv), *Necessary in the public interest due to exceptional circumstances. If the determination is based on this exception, you must:*

- *Explain what the exceptional circumstances are and why it is in the public's interest to make a single award;*
- *Explain why there is no acceptable alternative to deal with the exceptional circumstance;*
- *If firm-fixed prices will not be established under the basic contract, explain why not and why the prices must be established in each individual order (T&M or Labor Hour orders are not FFP). Also, identify any portions of the contract that will be fixed priced; and*
- *Explain how each order under the contract will be priced; i.e., what types of orders will be issued (FFP, L/H, T&M, etc.) and how the prices of the orders will be determined to be fair and reasonable.*

***Additionally,*** *regardless of which exception is cited, explain why making a single award is in the best interest of the Government and how making multiple awards would impact the organization. If it is argued that the organization would incur significant costs and/or create unnecessary delays by making multiple awards, fully explain why this is so and whether earlier or better advance procurement planning could be used in the future to mitigate such delays and costs.*

I hereby determine that this procurement meets the requirements at FAR 16.504(c)(1)(ii)(D) in that it meets the condition(s) of *[Insert one or more of the four FAR citations at* 16.504(c)(1)(ii)(D)(1)(i) – (iv*) that apply to this request. If more than one citation is applicable, include each.]*, and, if necessary, will be made the subject of the Congressional notice required by 16.504(c)(1)(ii)(D)(2).

Recommended for Chief Procurement Officer Approval

_____ _____

(Name) Date
Head of Contracting Activity

By my making this determination in accordance with FAR 16.504(c)(1)(ii)(D), *(Insert Component Name)* is authorized under 41 U.S.C. 253h(d)(3) to acquire *(Insert number or description of the procurement)* via a single award task or delivery order contract.

_____ _____

(Name) Date
Chief Procurement Officer

# Determination for *(Insert Component Name)* to Make a Single Award Blanket Purchase Agreement (BPA) for *(brief description)*

This determination is made pursuant to FAR 8.405-3(a)(3) and specifically relies upon *[Provide those FAR citation or citations that apply to this request (e.g., 8.405-3(a)(3)(ii)(A), (B), (C) and/or (D)).]*

The total value of all actions covered by this determination is estimated to be $_____.

*Describe the action being approved. Provide enough details, facts or reasoning essential to support the determination. The determination document must address all of the below listed points related to the applicable exception(s).*

*8.405-3(a)(3)(ii)(A), So integrally related only a single source can reasonably perform the work. If the determination is based on this exception, you must:*

- *Explain why only a single source can reasonably perform the work;*
- *Explain the consequences if more than one source is considered for each expected order under the BPA and why that is unacceptable;*
- *If firm-fixed prices will not be established under the basic BPA, explain why not and why the prices must be established in each individual order (T&M or Labor Hour orders are not FFP). Identify any portions of the BPA that will be fixed priced; and*
- *Explain how each order under the BPA will be priced; i.e., what type of orders will be issued (FFP, L/H, T&M, etc.) and how the prices of the orders will be determined to be fair and reasonable.*

*8.405-3(a)(3)(ii)(B), Firm fixed prices established in the basic BPA, not in each order. If the determination is based on this exception, you must:*

- *Explain why the prices are considered to be firm fixed price (T&M or Labor Hour orders are not FFP);*
- *State that fixed prices will be established in the basic BPA and explain how;*
- *State that the BPA will provide for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract.*
- *Explain if there will or will not be any line items that will be priced under individual orders and explain why you believe the determination can be approved despite not qualifying under the plain reading of this statutory exception; and*
- *Explain why it is more advantageous to price items in the basic BPA rather than competing each order.*

*8.405-3(a)(3)(ii)(C), Only one source is qualified and capable of performing at a reasonable price. If the determination is based on this exception, you must:*

- *Explain why only one source is capable of performing at a reasonable price;*
- *Explain the consequences if more than one source is considered for each expected order under the BPA;*
- *If firm-fixed prices will not be established under the basic BPA, explain why not and why the prices must be established in each individual order (T&M or Labor Hour orders are not FFP). Also, identify any portions of the BPA that will be fixed priced; and*
- *Explain how each order under the BPA will be priced; i.e., what types of orders will be issued (FFP, L/H, T&M, etc.) and how the prices of the orders will be determined to be fair and reasonable.*

*8.405-3(a)(3)(ii)(D), Necessary in the public interest due to exceptional circumstances. If the determination is based on this exception, you must:*

- *Explain what the exceptional circumstances are and why it is in the public's interest to make a single award;*
- *Explain why there is no acceptable alternative to deal with the exceptional circumstance;*
- *If firm-fixed prices will not be established under the basic BPA, explain why not and why the prices must be established in each individual order (T&M or Labor Hour orders are not FFP). Also, identify any portions of the BPA that will be fixed priced; and*
- *Explain how each order under the BPA will be priced; i.e., what types of orders will be issued (FFP, L/H, T&M, etc.) and how the prices of the orders will be determined to be fair and reasonable.*

***Additionally,*** *regardless of which exception is cited, explain why making a single award is in the best interest of the Government and how making multiple awards would impact the organization. If it is argued that the organization would incur significant costs and/or create unnecessary delays by making multiple awards, fully explain why this is so and whether earlier or better advance procurement planning could be used in the future to mitigate such delays and costs.*

I hereby determine that this procurement meets the requirements at FAR *8.405-3(a)(3)(ii)*, in that it meets the condition(s) of *[Insert one or more of the four FAR citations at 8.405-3(a)(3)(ii)(A),B), (C) and/or (D)that apply to this request. If more than one citation is applicable, include each.]*.

Recommended for Chief Procurement Officer Approval

_____ _____

(Name) Date

Head of Contracting Activity

By my making this determination in accordance with FAR 8.405-3(a)(ii) *(Insert Component Name)* is authorized to acquire *(Insert number or description of the procurement)* via a single award BPA.

_____ _____

(Name) Date
Chief Procurement Officer

## DETERMINATION AND FINDINGS

Authority to use a *(specify Time and Materials, or Labor Hour)* contract

## FINDINGS

1. The *(specify Component and contracting office within the Component)* of the Department of Homeland Security 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 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 Official

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## DETERMINATION AND FINDINGS

Authority to
*{indicate what is being waived, exempted, granted, etc.}*

## FINDINGS

1. *{Identify the contracting office, Component, and agency (i.e., DHS), 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 shall 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}

# 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 Component's name}* is submitted as required by 29 CFR, 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):

# DHS INSTRUCTIONS FOR COMPLETING THE SEMIANNUAL 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 CFR Part 5), awarded by the Component 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 Component.

5. Enter the total number of investigations completed by your Component.

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 Component as a result of investigations made by DOL.

**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 located at http://www.dol-esa.gov/preaward/ .

# *DEPARTMENT OF HOMELAND SECURITY*
## AFFIRMATIVE PROCUREMENT PLAN (APP)

## I. General.

A. Introduction.

*Green Procurement* is defined as the purchase of environmentally preferable products and services in accordance with federally mandated green purchasing preference programs. It is the Department of Homeland Security (DHS) policy to strive towards achieving 100 percent compliance with mandatory Federal green procurement requirements in all acquisition transactions.

The DHS Affirmative Procurement Program (APP) is an umbrella program that includes the following preference programs: Recovered Materials, Energy and Water Efficient Products, Alternative Fuels and Fuel Efficiency, Sustainable Buildings, Biobased Products, Non-Ozone Depleting Substances and Environmentally Preferred products. The intent of the program is to stimulate a market for new products within the procurement preference programs, conserve energy, preserve natural resources and reduce greenhouse gases, waste and the purchase and use of toxic materials.

This APP implements the policy and guidance in Executive Order (EO) 13423 *Strengthening Federal Environmental, Energy, and Transportation Management (signed January 26, 2007).* The Federal Government has made significant progress in improving environmental and energy performance through a series of EOs, Memoranda of Understanding, and other guidance. Executive Order 13423 builds on existing Federal programs and success by integrating and updating prior practices and requirements into a cohesive, strategic approach to further ensure enhanced performance and compliance with statutory and other legal requirements. *Instructions For Implementing EO 13423, "Strengthening Federal Environmental, Energy, and Transportation Management"*, issued March 29, 2007, provides additional implementation guidance for this EO.

Green purchasing is an important environmental stewardship, required by EO 13423 and in many cases provides products, which outperform their conventional counterparts. Green purchasing can provide many benefits to help the DHS mission become more effective. Informed purchasing decisions can significantly influence the environmental performance of the Department. Thus, the type of materials purchased can impact disposal costs, air emissions, water and energy use. Wise planning can help manage these impacts.

Since green purchasing requirements apply to all purchases of products and services, it is very important that DHS plans to maximize the benefits of the APP through its compliance to meet EO 13423 requirements.

B. Purpose.

EO13423, *Strengthening Federal Environmental, Energy and Transportation Management* and its Implementing Instructions direct Federal agencies to implement sustainable practices for energy efficiency, renewable energy, water consumption, acquisition of green products, pollution prevention, waste prevention and recycling, diversion of solid waste, sustainable buildings, fleet management, and electronics stewardship. This DHS APP policy is issued to fulfill the requirements of EO 13423, EO 13423 Implementing Instructions, DHS Directive 025-01 Sustainable Practices for Environmental, Energy and Transportation Management and other regulatory requirements concerning the acquisition, use, and disposition of green products and services.

The purpose of the DHS APP is to give preference to acquisition of the following types of products over like products lacking the preferable attribute. The items in the list are not in any order of preference, although recycled content products on EPA's list take preference over biobased products on United States Department of Agriculture's (USDA) list as established by Farm Security and Rural Investment Act (FSRIA) and implemented at FAR 23.405(c):

(1) Alternative fuel vehicles and alternative fuels required by the Energy Policy Act of 2005 at http://www.eere.energy.gov/femp/about/fleet_requirements.html.

(2) Biobased products designated by the U.S. Department of Agriculture in the BioPreferred program. Biobased products are those designated by the USDA pursuant to FSRIA, 7 USC 8102. USDA maintains a home page with the list of designated items at: http://www.biopreferred.gov/DesignationItems.aspx.

(3) Energy from renewable sources required by the Energy Policy Act of 2005 at http://www.eere.energy.gov/.

(4) Energy Star® products identified by DOE and EPA at http://energystar.gov, as well as FEMP-designated energy-efficient products at http://www1.eere.energy.gov/femp/program/equip_procurement.html.

(5) Environmentally preferable products and services, including Electronic Product Environmental Assessment Tool (EPEAT) registered electronic products. A website has been established to identify environmentally preferable electronic equipment at: http://www.epeat.net. At this time, EPEAT-registered products are limited to computer desktops, laptops, and monitors however standards for printers, scanners and plotters may be released in FY 2009. EPA's website explaining this initiative at: http://www.epa.gov/opptintr/epp/.

(6) Non-ozone depleting substances, as identified in EPA's Significant New Alternatives Program at http://www.epa.gov/ozone/snap/index.html .

(7) Products with low or no toxic or hazardous constituents, consistent with section VIII. A of the implementing instructions for EO 13423. Each agency is tasked by the Implementing Instructions to develop goals and a list of toxic chemicals, hazardous

substances and other pollutants by January 24, 2008. Information on this is available at http://www.epa.gov/ecotox. Specific DHS information is available in the Sustainable Practices Guidance Manual. [DHS Reading Room]
(8) Recycled content products designated in EPA's Comprehensive Procurement Guidelines (CPG) at http://www.epa.gov/cpg/.

(9) Water-efficient products, including those meeting EPA's Water-Sense standards http://www.epa.gov/watersense/. EPA has already introduced some water efficient technology advancements but has others in process. More information is available at their website.

C. Authority. The following documents establish the requirements for the DHS APP:

(1) Federal Laws:

Resource Conservation and Recovery Act (RCRA), Section 6002 http://www.epa.gov/rcraonline.

Section 9002 of the Farm Security and Rural Investment Act of 2002 (The Farm Bill) http://www.ofee.gov/whats/archive/bbfarm.asp.

Energy Policy Act of 2005 http://www.epa.gov/oust/fedlaws/publ_109-058.pdf.

Public Law 110-140, "Energy Independence and Security Act of 2007" (EISA)

(2) Executive Orders:

Executive Order 13423, *Strengthening Federal Environmental, Energy, and Transportation Management* http://ofee.gov/eo/EO_13423.pdf.

*Instructions for Implementing Executive Order 13423* http://www.ofee.gov/eo/eo13423_instructions.pdf.

EO 13221, *Energy-Efficient Standby Power Devices*, 31 July 2001

(3) DHS Directives and Manuals:

Management Directive 5110 *Environmental Compliance* (6/7/2004);

Directive 025-01 Sustainable Practices for Environmental, Energy and Transportation Management (9/29/2008); and

Homeland Security Acquisition Manual (HSAM)(version December 2006).

(4) Other:

EPA Comprehensive Procurement Guidelines (CPG) http://www.ea.gov/cpg.

Office of Federal Procurement Policy (OFPP), Policy Letter 92-4, http://www.acqnet.gov/Library/OFPP/PolicyLetters/Letters/PL92-4.html.

D. Applicability. The requirement to purchase green products and services and biobased products applies to all acquisition and contracting mechanisms used by the Department of Homeland Security and Components including contracts for services, purchases made with Government purchase cards, and purchases below the micro-purchase threshold.

E. Policy.

DHS developed this comprehensive APP which shall be implemented by all Departmental program offices, components, operation offices, sites, facilities, and applicable contractors. All DHS elements must take steps to carry out this APP for all purchases, including services provided by vendors, in which an EPA-designated item is required and the item will be purchased domestically (i.e., within the United States or its possessions).

It is the policy of the Federal Government to develop and implement green purchasing policies and affirmative procurement programs in order to conserve resources, be good stewards of the environment, and reduce our negative impact on the environment. DHS policy is 100 percent compliant with all mandatory APP elements in all acquisition transactions. DHS shall purchase green products and services to the maximum extent practicable, to purchase biobased products to the maximum extent practicable, and to include green purchasing requirements in all contracts for services to the maximum extent practicable. Green products and services include recycled content products; water-efficient, energy-efficient, Energy Star® and those products with the lowest watt stand-by power; environmentally preferable products; alternative fuels; hybrid and alternative fuel vehicles; non-ozone depleting substances; renewable energy; and Environmental Protection Agency (EPA) designated items containing recovered materials. Biobased products include USDA designated biobased products. Component acquisition policies and programs shall promote, and where appropriate, mandate the purchase and use of green products and services and biobased products.

When formulating requirements, DHS requiring and contracting offices are to employ acquisition strategies that maximize the utilization of environmentally preferable products and services (EPA guidance for utilizing environmentally preferable products and services is found at http://www.ofee.gov/); maximize the utilization of energy-efficient products; eliminate or reduce the generation of hazardous waste and the need for special handling, storage, treatment, and disposal; promote use of nonhazardous and recovered materials; realize life-cycle cost savings; promote cost-effective waste reduction when creating plans, drawings, etc., authorizing material substitutions, extensions of shelf-life, and process improvements; and consider the use of biobased products. Organizational Elements must establish programs that support the DHS APP.

Refer to DHS MD 5130, Department of Homeland Security Waste Prevention, Recycling and Acquisition; and MD 5300, Energy Management Program for guidelines on preference programs.

**II. Green Purchasing Requirements.**

A. Recovered Materials:

(1) EPA has written regulations to implement the Resource Conservation and Recovery Act (RCRA) and EO 13423. The "Comprehensive Procurement Guideline," (CPG), is a list of products that can be made with recovered materials, are technologically and economically feasible to produce, and will conserve raw materials and reduce the solid waste stream. The CPG list is the result of scientific analysis followed by a formal EPA rulemaking process, which is a recurring activity.

(2) The first CPG list was issued in 1995, and the list continues to grow as EPA issues subsequent CPGs. EPA also issues guidance for buying recovered material products in their "Recovered Materials Advisory Notices" (RMANs). The RMANs mandatory recovered material content ranges for CPG products based on current information about commercially available products. RMAN levels are updated by EPA as marketplace conditions change. The EPA recommended minimum content standards are set forth in the Recovered Materials Advisory Notice (RMAN) published in the Federal Register and updates are found on the EPA RMAN list. A list of the EPA designated items and EPA's RMAN guideline for the minimum recovered material content standards is available from the EPA website.

(3) The products that are covered by the CPG include but are not limited to paper and paper products, non-paper office products, vehicular fleet maintenance products, construction products, landscaping products, traffic control products, park and recreation products, and other miscellaneous products. Recovered material product requirements apply to all CPG item acquisitions made with Federal dollars, no matter what purchasing mechanism is used or how they are paid for. Purchase card buys, all types of contracts, and in-house projects that include CPG items must all comply with EPA requirements. Recovered material products are available from many Government and commercial sources.

(4) EPA's procurement guidelines only apply to an agency whose total annual purchases (for each designated item) equals $10,000 or more, or when the procuring agency purchased $10,000 or more of the item (or of a functionally equivalent item) during the preceding year. This $10,000 threshold includes micro-purchases. Thus, because the procurement requirements identified in EPA's guidelines apply to DHS as a whole, all Component program offices, operations offices, sites, and applicable contractors shall be responsible for implementing the procurement requirement outlined in both this document and EPA's guidelines. Agencies and supply centers are required to report purchases made from non-Governmental (commercial) sources. Annual survey forms will be furnished to Component procurement offices by DHS, Office of the Chief

Procurement Officer. Accordingly, when submitting agency annual reports under RCRA, Component's shall report all purchases of items covered in this document and the percentage of recovered material required to be reported by FAR clause 52.223-9 to DHS, Office of the Chief Procurement Officer. Individual Component statistics will be combined into one DHS response to the Office of the Federal Environmental Executive and the Office of Federal Procurement Policy.

(5) Components shall supplement the Departmental APP with appropriate policy and procedures outlining specific guidelines for implementing the Departmental APP in their activities. The scope and magnitude of the policy and procedures shall be commensurate with the procurement activity associated with green products and services and biobased products.

(6) It is DHS policy to procure 100 percent of EPA-designated products with recovered material, unless the item cannot be acquired competitively within a reasonable time frame; meet appropriate performance standards; or procured at a reasonable price. This policy includes the purchase of items at or below the micro purchase level. However, *tracking micro purchases of EPA-designated items is not required* as an exemption (as specified at (FAR 23.405) from establishing an APP will not be requested by DHS.

(7) Components shall supplement the Departmental APP with appropriate policy and procedures outlining specific guidelines for implementing the Departmental APP in their activities. The scope and magnitude of the policy and procedures shall be commensurate with the procurement activity associated with green products and services and biobased products.

(8) Special requirements apply when procuring certain items. These are:

> DHS requires 100 percent of purchases of printing and writing paper to meet or exceed one of the following minimum content standards: For high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white woven envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock, the minimum content standard must be no less than 30 percent post consumer materials;
>
> Virgin material or supplies composed of or manufactured using virgin material cannot be required unless compelled by law or regulation or unless virgin material is vital for safety or meeting performance requirements of the contract.

B. Energy Efficient Products:

(1) Energy and water conserving product purchases are mandatory elements of the DHS APP. EO 13423 states that each agency shall improve energy efficiency through the reduction of energy intensity. The goal is to reduce energy demand by 3 percent annually

through the end of fiscal year 2015, or 30 percent by the end of FY 2015, relative to a FY 2003 baseline year.

(2) Required Actions:

Purchases of off-the-shelf energy-consuming products or contracts for services or construction will include provisions of energy-consuming products. DHS and Components shall specify products that are ENERGY STAR® or Federal Energy Management Program (FEMP) labeled/approved products or justify, in writing to the DHS Office of Occupational Safety and Environmental Programs, that no ENERGY STAR® or FEMP designated product is reasonably available that meets the function requirements or that the non ENERGY STAR® or FEMP designated product(s) are more cost-effective over the life of the product taking energy cost savings into account.

Contract officers shall ensure that the FAR clause at 52.223–15, Energy Efficiency in Energy-Consuming Products is inserted in solicitations and contracts when energy-consuming products will be delivered, acquired by the contractor for use in performing services at a federally controlled facility, furnished by the contractor for use by the Government or specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.

(3) Locating products and services:

Energy Star® products identified by DOE and EPA at http://energystar.gov, as well as FEMP-designated energy-efficient products at http://www1.eere.energy.gov/femp/program/equip_procurement.html.

Energy-saving products can be found in Federal supply sources including the GSA Environmental Products and Services Guide, GSA Advantage! (look for the Energy Star symbol and the EE symbol) and the DoD EMALL. Energy saving products are also available from commercial sources. To choose energy efficient products, look for the Energy Star first. If an Energy Star product is not available cost effectively, choose the most efficient product possible from FEMP's Energy-Efficient Products list. Both programs use the same criteria, with Energy Star rated products attaining the highest level of performance. To identify products that meet the Federal low standby power requirements, consult FEMP's online database of electronic products.

C. Energy-savings performance contracts:

(1) Energy-savings performance contracts are mandatory elements of the DHS APP. Energy Savings Performance Contracts (ESPC), Utility Energy Savings Contracts (UESC), and green power purchases are managed by the AFCESA Mechanical/Electrical Engineering Division.

(2) Required Actions. DHS and Components may enter into ESPC under 42U.S.C. 8287, as amended, subject to the requirements of 10 CFR Part 436. The procedures for notification to the DHS, Office of Occupational Safety and Environmental Programs are established at HSAM 3023.205(c).

D. Energy efficiency in energy-consuming products:

(1) EO 13423 states that each agency shall improve energy efficiency through the reduction of energy intensity. The goal is to reduce energy demand by 3 percent annually through the end of fiscal year 2015, or 30 percent by the end of FY 2015, relative to a FY 2003 baseline year.

(2) DHS and Components will reduce energy use and purchase energy-efficient products. The FEMP and the Energy Star program guide these efforts. EnergyStar® products meet FEMP standards for low standby power. DHS and Components are required to buy products that comply with Federal energy efficiency requirements, and to design and operate buildings to minimize energy and water consumption in accordance with EO 13423.

(3) When acquiring energy-consuming products, DHS and Components shall acquire products that meet the requirements of EO 13221 and EO 13423 and its implementing instructions for low standby power devices.

(4) Required Actions:

> Purchases of off-the-shelf energy-consuming products or contracts for services or construction will include provisions of energy-consuming products. DHS and Components shall specify products that are Energy Star® or FEMP labeled/approved products or justify, in writing to the Office of Occupational Safety and Environmental Programs, that no Energy Star® or FEMP designated product is reasonably available that meets the function requirements or that the non Energy Star® or FEMP designated product(s) are more cost-effective over the life of the product taking energy cost savings into account.
>
> Contract officers shall ensure that the FAR clause at 52.223–15, Energy Efficiency in Energy-Consuming Products is inserted in solicitations and contracts when energy-consuming products will be delivered, acquired by the contractor for use in performing services at a federally controlled facility, furnished by the contractor for use by the Government or specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.

(5) Energy Star® products identified by DOE and EPA at http://energystar.gov, as well as FEMP-designated energy-efficient products at http://www1.eere.energy.gov/femp/program/equip_procurement.html.

E. Electronic Product Environmental Assessment Tool (EPEAT):

(1) As required by EO 13423, DHS and Components must ensure that at least 95 percent electronic product purchases are EPEAT-registered electronic products, unless there is no EPEAT standard for such products and strive to purchase EPEAT products rated silver unless there is no standard for such products.

(2) DHS and Components are exempt from EPEAT purchase requirements if the dollar value of exceptions granted will not exceed 5 percent of the total dollar value of electronic products acquired by the purchaser, for which EPEAT-registered products are available, no EPEAT-registered product meets agency requirements or the EPEAT-registered product will not be cost effective over the life of the product.

(3) EPEAT is a system in which manufacturers declare their products' conformance to a comprehensive set of environmental criteria in 8 environmental performance categories. The operation of EPEAT and the environmental criteria are contained in a public standard IEEE 1680. For more information about IEEE 1680 and the environmental criteria go to http://www.ieee.org/portal/site or http://www.epeat.net/. EPEAT is a required specification for Federal purchasers and is increasingly used by state and local government purchasers and private sector IT managers to 'green' their electronics purchasing.

(4) Required Actions:

> Procurement Offices shall incorporate FAR clauses for environmental and energy considerations, including the EPEAT Waste Reduction Program, in all solicitations and contracts for contractor operation of Government-owned or leased facilities and all solicitations and contracts for support services at Contractor operated Government-owned facilities.
>
> Unless an exception has been approved in accordance with FAR 23.705(c), insert the FAR clause at 52.223–16, IEEE Assessment of Personal Computer Products, in all solicitations and contracts for personal computer products, services that require furnishing of personal computer products for use by the Government or Contractor operation of Government-owned facilities.
>
> Procurement offices will strive to purchase or lease products that are rated at the EPEAT Silver level or higher.
>
> Contracts for leased IT equipment shall incorporate adequate language that at the end of the lease period, the equipment is reused, donated, sold, or recycled using environmentally sound management practices.

(5) Purchasers are encouraged to use the following contract language to ensure the products they buy meet the EPEAT standard:

All desktops, laptops, and computer monitors provided under this contract are required to have achieved Bronze registration or higher under the Electronic Products Environmental Assessment Tool (EPEAT) and should strive for Silver registration. EPEAT is a procurement tool designed to help large volume purchasers evaluate, compare, and select desktop computers, laptops, and monitors based upon their environmental attributes as specified in the consensus-based IEEE Standard for the Environmental Assessment of Personal Computer Products (1680). The registration criteria and a list of all registered equipment are provided at http://www.epeat.net.

(6) A website has been established to identify environmentally preferable electronic equipment at: http://www.epeat.net. Presently product criteria for EPEAT is limited to computer desktops, laptops, and monitors, but will be expanded as criteria standards are expected for other electronic devices. Environmentally preferable products and services, however, are much broader than just electronic products. EPA's website explaining this initiative at: http://www.epa.gov/opptintr/epp/.

F. Water Efficient Products:

(1) In accordance with EO 13423, beginning in FY 2008, all Agencies shall reduce water consumption by 2 percent annually through the end of FY 2015 or 16 percent by the end of FY 2015. Water conservation requirements apply to all building construction and renovation projects.

(2) In order to reach this goal, DHS and Components will purchase water efficient products. The EPA WaterSense label program guides this effort. 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.

(3) Where applicable, DHS and its Components shall purchase WaterSense labeled products and choose irrigation contractors who are certified through a WaterSense labeled program. 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.

(4) Water-efficient products, including those meeting EPA's Water-Sense standards http://www.epa.gov/watersense/. EPA has already introduced some water efficient technology advancements but has others in process, and routinely provides updated information at the EPA WaterSense website.

G. Alternative Fuels and Fuel Efficiency:

(1) The Energy Policy Act (EPACT), Public Law 102-486, addresses all aspects of energy supply and demand, including energy efficiency, alternative fuels and renewable energy. Title III of EPACT states that of the total number of vehicles acquired by a

Federal fleet after 1999, 75% shall be Alternate Fuel Vehicles (AFVs). It also requires Federal agencies to arrange for refueling of AFVs at commercial fueling facilities that offer alternative fuels for sale. Accordingly, DHS and Components must acquire AFVs (with the exception of military tactical, law enforcement, and emergency vehicles), alternative fuels for those vehicles, and fuel-efficient petroleum-powered passenger cars and light trucks. Other requirements in EO 13423 include:

Reducing the fleet consumption of petroleum products by 2 percent annually through the end of FY 2015.

Increase non-petroleum based fuel consumption by 10 percent annually.

Use Plug-In Hybrid (PIH) vehicles when PIH vehicles are commercially available at a reasonably comparable, on the basis of life-cycle cost, to non-PIH vehicles.

(2) The following web site will assist in finding additional information about AFVs, alternative fuels, and fuel efficient vehicles:

The GSA Vehicle Leasing Program offers AFVs as part of their service [GSA Guidance].

DOE's Clean Cities Program web site has an Alternative Fueling Stations Locator [Alt Fuel Locator].

Defense Energy Support Center (DESC) supplies Federal agencies with alternative fuels, including biodiesel (B20) and ethanol (E85). DESC's Logistics Tutorial explains the acquisition process.

The Fuel Economy Guide and other tools for finding fuel-efficient, environmentally preferable vehicles are available on the EPA/Department of Energy (DOE) Fuel Economy web site. Users can find and compare cars by gas mileage, greenhouse gas emissions, air pollution ratings, and safety information. The site also provides information regarding gas mileage tips, gas prices, advanced technology, and the importance of fuel economy.

H. Biobased or BioPreferred Products:

(1) The Biobased Products Preference Program is sponsored by the USDA. It is modeled after the EPA Recovered Material Program. FAR 52.223-1, Biobased Product Certification, is a solicitation provision containing a certification for offerors to certify that they will furnish products meeting the USDA biobased content specifications for the products being delivered. FAR 52.223-2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts, is a clause to be used in service and construction contracts which may involve the use of biobased products, e.g., use of a biobased roof coating in a construction or service contract. The biobased program does

not require a second certification following delivery as does the EPA recovered materials program (see FAR 52-223-9).

(2) 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. Please go to http://www.biopreferred.gov/DesignationItemList.aspx for a list of designated biobased preferred products.

(3) Biobased items include office products; printing products; transportation fleet maintenance products; construction products; and janitorial and landscaping products.

(4) There will be some overlap between the CPG list for recycled-content purchasing and the USDA list for biobased item purchasing. Procurements that are subject to the CPG do not have to satisfy the biobased product requirements, if the two sets of requirements are inconsistent. However, this does not mean that CPG requirements must automatically be followed in place of biobased purchasing. Purchasers should look at the benefits and costs of both types of products, and select the one that provides the best value overall.

(5) DHS and Components must give preference to the purchase the BioPreferred items on USDA's Biobased products list (http://www.biobased.oce.usda.gov/fb4p/Designation Items List.aspx).

(6) Biobased products can be found by visiting the following web sites:

The Department of Energy Biomass Program develops technology for conversion of biomass (plant-derived material) into fuels, chemicals, materials and power in order to reduce dependence on foreign oil. Biomass uses include ethanol, biodiesel, biomass power and industrial process energy. (**http://www.1.eere.energy.gov/biomass/**)

The United Soybean Board web site offers a Products Guide that lists consumer and industrial products. (http://www.unitedsoybean.org/)

National Corn Growers Association web site has a database of information on availability of corn-based products for industrial and consumer use. (http://www.ncga.com)

The GSA Environmental Products and Services Guide include a biobased product category. (GSA Guidelines)

I. Environmentally Preferable Products (EPP):

(1) Purchase environmentally preferable products and services. Environmentally preferable means products or services that have a lesser or reduced effect on human

health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service. DHS will endeavor to purchase any products and services that are more environmentally friendly than what we routinely purchase, but are not already covered by one of the mandatory programs described above.

(2) The following web sites will help consumers find environmentally preferable products:

> Database of Environmental Information for Products and Services: EPA offers an extensive, searchable database of product-specific information (e.g., environmental standards and guidelines or contract language) developed by Government programs, both domestic and international, as well as third parties.
>
> GSA Advantage! (Look for the tree symbol)
>
> GSA Environmental Products Overview
>
> DLA Environmental Catalogs
>
> OIKOS Green Building Source
>
> Guide to Resource Efficient Building Elements

**III. Affirmative Procurement Preference Program.**

A. When formulating requirements, DHS requiring and contracting offices are to employ acquisition strategies that maximize the utilization of environmentally preferable products and services (EPA guidance for utilizing environmentally preferable products and services is found at http://www.ofee.gov/); maximize the utilization of energy-efficient products; eliminate or reduce the generation of hazardous waste and the need for special handling, storage, treatment, and disposal; promote use of nonhazardous and recovered materials; realize life-cycle cost savings; promote cost-effective waste reduction when creating plans, drawings, etc., authorizing material substitutions, extensions of shelf-life, and process improvements; and consider the use of biobased products. Components must establish programs that support the DHS APP.

B. EPA Designated Items. EPA designates certain items which must meet the standard for recovered material content. An official list of these is found at 40 CFR 247.10-247.17. A list of these items is also located on the EPA website.

C. Future EPA Designated Items. This APP will be modified, as necessary; to incorporate future EPA designated items and minimum content standards.

D. APP Materials Determination Form. In making the determinations required by FAR Part 23 and delegated in HSAM 3023, DHS program offices shall use the format or substantially the same format as shown in Attachment 1. This form must be signed by the cognizant requirement's or program official, forwarded to the contracting office with the procurement request and maintained in the contract file. In developing plans, drawings, work statements, specifications, or other product descriptions, program offices shall consider the following factors: elimination of virgin material requirements, use of recovered materials, reuse of products, life-cycle cost, recyclability, use of environmentally preferable products, waste prevention (including toxicity reduction or elimination), and ultimate disposal, as appropriate. These factors should be used in acquisition planning for all procurements and in the evaluation and award of contracts (i.e., the bidder most able to cost-effectively satisfy the recovered material content specifications as well as the performance/design specifications outlined in the solicitation document).

E. Request for Waiver. To request a waiver from the purchase of EPA designated item containing other than recovered materials, an electronic product other than an EPEAT-registered product, and biobased preferred products when such products are available, requirements or program offices and contracting officers shall use the format or substantially the same format as shown in Attachment 2. The contracting officer is designated as the approval official for these exemptions. This approval document must be coordinated through the appropriate DHS Component's Environmental Program Office for technical review. The approved document shall be maintained in the contract file.

F. Federal Sources of Recycled and Environmental Products. Thousands of recycled and environmental products are available to procuring agencies through established Federal supply sources, and new items are continuously being added. Federal sources of EPA-designated items and other recycled and environmental products include the General Services Administration
(GSA) Federal Supply Service (FSS), Government Printing Office (GPO) and the Defense
General Supply Center (DGSC). GSA FSS publishes various documents to assist in identifying and requisitioning recycled and environmental products. These documents are available on the GSA website and are available through Centralized Mailing List Service (CMLS), P.O. Box 6477, Fort Worth, TX 76115, and phone number: (817) 334-5215, fax number (817) 334-5227.

G. Other Recycled and Environmentally Preferable Products. EPA's guidelines may not reflect those procured products or services most often used by DHS. Procurement originators are encouraged to request, procure, and use other products containing recovered materials in addition to those specified in this APP. At the discretion of the

Component, items other than EPA designated items for which recovered material content must be specified may be adopted.

H. Life-Cycle Cost Analysis. OFPP Policy Letter 92-4 required Federal agencies to use life-cycle cost analysis, wherever feasible and appropriate, to assist in selecting products and services. At this time, life-cycle cost information for EPA designated items is not available. Until such information is developed for Federal agency's use, Components shall rely on minimum content standards of preference standards in EPA's guidelines (RMAN).

**IV. Recovered Materials Promotion Program.**

A. DHS preference for recovered materials shall be incorporated into all applicable solicitations. This shall be accomplished by including explicit recovered material preference standards for EPA-designated items in appropriate solicitations for bids, statements of work, and during contract negotiations.

B. Each DHS procuring office shall promote the DHS APP within its operation. The promotional program shall include at least the following:

(1) Procuring offices shall include in their FedBizOpps announcements a statement of the recycling and recovery requirements of the solicitation, if applicable;

(2) Contracting officers should seek from the marketplace and annotate their sources/bidders lists with information on vendors offering recovered products and services;

(3) Contracting officers should encourage each contractor under a value engineering program to look for savings opportunities which could be proposed; and

(4) Contracting officers shall promote the fact that they are seeking to buy recovered materials at pre-bid and pre-proposal conferences, where applicable.

**V. Procedures for Vendor Estimation and Certification.**

A. Estimation. DHS's minimum content standards for EPA designated items shall be specified in the statement of work. Vendors responding to solicitations for EPA designated items must meet the minimum content standards; therefore a separate estimate from the vendor regarding the percentage of recovered materials in the product is not required unless the product exceed the minimum content standards specified.

B. Certification. Vendors/offerors are responsible for: (1) providing written certification to the contracting officer that their products meet minimum content standards, (2) maintaining copies of certification documents, and (3) producing copies of the written certification upon request.
(See (FAR 23.406 for solicitation provisions and contract clauses.)

C. Verification. Heads of the Contracting Activity shall periodically review vendor certification documents as part of their review and monitoring processes. Such review shall enable DHS's Environmental Executive to verify DHS's compliance with Executive Order 13423.

D. Exclusions. Federal supply sources such as GSA, GPO, and DGSC have established their own estimation, certification, and verification procedures for EPA-designated items. Therefore, there is no requirement to conduct independent estimation, certification, and verification procedures.

**VI. Annual Review and Reporting.**

A. Federal agencies are required, on an annual basis, to review the effectiveness of its affirmative procurement program and provide reports to the Federal Environmental Executive and to OFPP.

B. OFPP has devised a standard format for use in reporting affirmative procurement program effectiveness. The report shall be transmitted to the Office of the Chief Procurement Officer for consolidation into a Departmental response, which has historically been due in December of each year. However, since the reporting format and due date of the report has changed over the years,
The Office of the Chief Procurement Officer will provide each Component an updated reporting format, if necessary, and the response date in writing in sufficient time for the Components to respond in a timely manner.

**VII. Waste Prevention**.

Executive Order 13423 requires Federal agencies to implement waste prevention techniques, such as electronic transfer and double-sided copying, so that annual expenditures for recycled printing and writing paper do not exceed current annual budgets for paper products as measured by average annual expenditures. To this end, it is DHS policy that a contractor submitting paper documents relating to an acquisition, should, if possible, submit those documents printed/copies double-sided on recycled paper (see (FAR 4.303 and 52.204-4).

**DEFINITIONS**

The following definitions are intended for use in this APP only.

**Affirmative Procurement Program (APP) -** a program assuring Guideline items composed of recovered materials will be purchased to the maximum extent practicable, consistent with Federal law and procurement regulations. [RCRA, Section 6002]

**Biobased Product -** a commercial or industrial product (other than food or feed) that utilizes biological products or renewable domestic agricultural (plant, animal, and marine) or forestry materials. [USDA Guidelines]

**Case-by-Case Procurement -** open competition for contract awards among products made of virgin and recovered materials with preference being given to the latter (vice identifying minimum content standards required). [RCRA, Section 6002]

**Certification -** provided by offerors/bidders/vendors, it is written documentation certifying the percentage of recovered materials contained in products or to be used in the performance of the contract is at least the amount required by applicable specifications or other contractual requirements. Certification on multi-component or multi-material products should verify the percentage of post consumer waste and recycled material contained in the major constituents of the product. [EPA Guidelines]

**Cost-Effective Procurement Preference Program -** a procurement program favoring more environmentally-sound or energy-efficient products and services than other competing products and services, where price and other factors are equal. [OFPP Policy Letter 92-4]

**Designated Item -** an available EPA guideline item or category of items, made with recovered material, advancing the purpose of RCRA when purchased. [RCRA, Section 6002]

**Energy-efficient product –** a product in the upper 25 percent of efficiency for all similar products or, if there are applicable Federal appliance or equipment efficiency standards, a product that is at least 10 percent more efficient than the minimum Federal standard

**Environmentally Preferable -** "Environmentally preferable" means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service. [EPA Guidelines]

**Environmentally-Sound -** a product or service less damaging to the environment when used, maintained, and disposed of in comparison to a competing product or service. [OFPP Policy Letter 92-4]

**Estimation -** quantitative determination made by vendors of the total percentage of recovered material contained in offered products. Estimations should be based on historical or actual percentages of recovered materials in products sold in substantial quantities to the general public or on other factual basis. EPA recommends procuring agencies maintain records of these documents for three years by product type, quantity purchased, and price paid. [EPA Guidelines]

**Life Cycle Cost -** the amortized annual cost of a product, including capital costs, installation costs, operating costs, maintenance costs, and disposal costs discounted over the lifetime of the product. [EPA Guidelines]

**Life Cycle Assessment** - the comprehensive examination of a product's environmental and economic aspects and potential impacts throughout its lifetime, including raw material extraction, transportation, manufacturing, use, and disposal. [EPA Guidelines]
**Minimum Content Standard -** the minimum recovered material content specifications set to assure the recovered material content required is the maximum available without jeopardizing the intended item use or violating the limitations of the minimum content standards set forth by EPA's guidelines. [RCRA, Section 6002]

**Performance Specification -** a specification stating the desired product operation or function but not specifying its construction materials. [EPA Guidelines]

**Pollution Prevention** - "source reduction" as defined in the Pollution Prevention Act of 1990 (42 U.S.C. 13102), and other practices that reduce or eliminate the creation of pollutants through: (a) increased efficiency in the use of raw materials, energy, water, or other resources; or (b) protection of natural resources by conservation.

**Post Consumer Materia**l - a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. "Postconsumer material" is a part of the broader category of "recovered material." [EPA Guidelines]

**Post consumer Waste -** a material or product, discarded for disposal after passing through the hands of a final user, having served its intended purpose. Post consumer waste is part of the broader category "recycled material." [OFPP Policy Letter 92-4 and 49 CFR 247.101(e)]

**Practicable -** capable of performing in accordance with applicable specifications, available at a reasonable price and within a reasonable period of time, and while a satisfactory level of competition with other products is being maintained. [EPA Guidelines]

**Preference -** when two products or services are equal in performance characteristics and price, the Government, in making purchasing decisions, will favor the more environmentally-sound or energy-efficient product. [OFPP Policy Letter 92-4]

**Preference Standard -** the highest practicable minimum content standards for products. When minimum content is impractical to calculate, preference is for the presence of a recovered material or an environmentally-preferable trait (i.e., retread tires).

**Procurement Guidelines -** regulations issued by EPA pursuant to section 6002 of RCRA: (1) identifying items produced (or can be produced) with recovered materials and where procurement of such items will advance the objectives of RCRA; and (2)

providing recommended practices for the procurement of such items. [RCRA, Section 6002]

**Procuring Agency -** any Federal or State agency, or agency of a state's political subdivision using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract. [EPA Guidelines]

**Recovered Materials** - waste materials and by-products that have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process (42 U.S.C. 6903 (19)). [EPA Guidelines]

**Recyclability** - the ability of a product or material to be recovered from, or otherwise diverted from, the solid waste stream for the purpose of recycling. [EPA Guidelines]

**Recycled Material -** a material utilized in place of raw or virgin material in product manufacturing consisting of materials derived from post consumer waste, industrial scrap, material derived from agricultural wastes, and other items, all of which can be used in new product manufacture. [EPA Guidelines and OFPP Policy Letter 92-4]

**Recycling** - the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of new products other than fuel for producing heat or power by combustion. [EPA Guidelines]

**Solid Waste -** garbage, refuse, sludge, and other discarded solid materials, including those from industrial, commercial, and agricultural operations, and from community activities. This *excludes* solids or dissolved materials in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents, dissolved materials in irrigation return flow, etc. [EPA Guidelines]

**Specification -** a clear and accurate description of the technical requirements for materials, products, or services including the minimum requirement for materials' quality and construction and any equipment necessary for an acceptable product. In general, specifications are in the form of written descriptions, drawings, prints, commercial designations, industry standards, and other descriptive references. [EPA Guidelines]

**Unreasonable Price -** when recycled product cost is greater compared to virgin material cost.

(Unreasonable price is not a factor when minimum content standards are specified in the statement of work/procurement request, because price estimates will only be obtained from vendors who can supply products meeting recovered material content requirements.)

**Verification** - procedures used by procuring agencies to confirm both vendor estimates and certifications of the percentages of recovered material contained in the products supplies to them or to be used in the performance of a contract. [EPA Guidelines]

**Waste Prevention** - any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials. [EPA Guidelines]

**Waste Reduction** - preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products. [EPA Guidelines]

**Attachment 1**

## AFFIRMATIVE PROCUREMENT PROGRAM MATERIALS DETERMINATION FORM

Instructions: This form is to be completed by the procurement originator where the items or deliverables subject to DHS's Affirmative Procurement Program (APP) are being procured from vendors. This form is not required for items requisitioned from established Federal supply sources.

1. The procurement originator (requirements or program official) lists the designated item(s) which apply to the procurement request, signs and dates the bottom of the form, and provides to the contracting office with the procurement request.

2. The completed form becomes part of the official contracting office contract file.

Procurement Request No:

The Statement of Work/Specifications covering this procurement request is subject to the DHS APP, HSAM Chapter 3023, Appendix A. The items being procured are:

_____

_____

_____

_____

I hereby certify that the Statement of Work/Specifications for the requisition of materials/services listed above complies with applicable DHS preference standards.

_____ _____

Procurement Originator's Signature Date

**Attachment 2**

**REQUEST FOR WAIVER**
**AFFIRMATIVE PROCUREMENT PROGRAM ITEM(S)**

Instructions: This form is needed only if the item(s) being procured are subject to DHS's Affirmative Procurement Program (APP).

A. This form is to be completed by the procurement originator (program official) and Contracting officer, as appropriate, when items subject to DHS's APP are not procured.

B. The procurement originator and Contracting officer checks the appropriate justification(s), provides a written explanation, and signs and dates the form.

C. The original form is maintained in the official contract file.

Procurement Request No: _____

1. To be completed by Procurement (Requirements or Program Office) Originator:

Products meeting DHS's preference standards for the following designated items:
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
were not obtained because:

_____ Items do not meet all reasonable performance specifications.

_____ Items are not available within a reasonable period of time.

_____ Other: (Written justification for not procuring designated items containing recovered material.)

_____ _____
Procurement Originator's Signature Date

2. To be completed by the contracting officer:

Products meeting DHS's preference standards for the following designated items:
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

were not obtained because:

_____ Use of minimum content standards would result in inadequate competition.

_____ Products meeting the preference standards would require paying a price premium.

_____ Other: (Written justification for not procuring designated items.)

Remanufactured or recycled toner cartridges for use in laser printers, photocopies, facsimile machines, or micrographic printers were not obtained because:

_____ _____
Contracting Officer's Signature Date

# DETERMINATION AND FINDINGS

## Authority to Make Progress Payments

## FINDINGS

1. The *(identify the Component and the contracting office)* of the Department of Homeland Security 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 Head of the Contracting Activity (HCA))*

**ACTION:** Payment under *(Enter the DHS 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, etc.)*

The attached invoice/voucher was submitted by the contractor for payment under the subject contract. Please review this document and provide, as appropriate, your recommendation or acceptance 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, etc.)*

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 on 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 on 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

---

VOUCHER/COMMERCIAL INVOICE SUPPORT LETTER (T&M/LH CONTRACTS OR ORDERS) per HSAM 3032.7002(d)(3).

Below is a sample letter that should be sent from a contracting officer to a contractor whenever the contracting officer delegates authority to a COR to approve interim payment vouchers/commercial invoices under a time-and-material/labor hour contract or order. The letter may also be sent when the contracting officer retains authority to approve interim vouchers/commercial invoices. This letter directs the contractor to provide certain information with each voucher to support payment of the amount requested. Additional support information may be added to the list contained in the letter.

Contractor Name
Street Address
City

Dear (name of contractor POC),

Your contract (insert contract number) requires the Government to approve individual vouchers/commercial invoices prior to interim payments being made under the contract. An essential portion of this responsibility involves ensuring that the payment amounts are correct and that the amounts are adequately supported by information provided by the contractor.

The payment clause in your contract requires you to substantiate vouchers with information determined necessary by the contracting officer to support payment amounts requested for labor hours expended or material costs incurred. Accordingly, for each voucher/commercial invoice submitted for approval for an interim payment, you are directed to provide the following accompanying information:

- A calculation showing the number of hours for each labor hour rate times the labor hour rate and a total amount for each such labor rate together with a grand total for all labor rates.
- A calculation supporting costs for materials.
- A statement that all employees billed under the voucher meet the qualifications for the labor categories to which they are being billed and the location of records verifying that these facts.
- A comparison matching the hourly rates for each category on the voucher with the rates specified in the contract for the period being invoiced.
- A statement that the material costs included in the voucher are adequately supported by invoices and/or payment and the location of records verifying that statement.

You may be required to provide additional information after your voucher or invoice is received. You should review the Homeland Security Acquisition Manual 3032.70 and its Appendix S to understand the types of analysis that may be applied to your vouchers. Failure to provide necessary supporting information may result in your voucher/commercial invoice being determined not to be a proper invoice and returned to you without payment. Approval of the final payment will likely involve more detailed Government review of your records.

You are encouraged to develop streamlined means of providing this information through proposing advance agreements for review and approval of your vouchers/invoices. If you have been approved for direct billing by the Defense Contract Management Agency, you may qualify for submission of a reduced set of data for most vouchers.

For questions, please contact *(insert name and contact information).*

Sincerely,

Contracting Officer]

**********

<u>VOUCHER/COMMERCIAL INVOICE REVIEW AND APPROVAL CHECKLIST</u>
TIME AND MATERIAL/LABOR HOUR CONTRACT OR ORDER

The following is a checklist that should be used to verify that payments are appropriate under a voucher/commercial invoice submitted for interim payment under a T&M/LH contract or order. If all elements are marked “Yes,” payment should be approved. If any are marked “No,” consultation with the contracting officer should occur to determine appropriate action.

The payment clause in a T&M/LH type contract requires a contractor to substantiate vouchers with information determined necessary by the contracting officer to support payment amounts requested based on labor hours expended or material costs incurred. Prior to approving a voucher or recommending it for approval, the amount requested for payment should be evaluated to determine if it is properly supported and if it is the proper amount required to be paid under the contract.

*As long as the contractor is using its approved accounting system* to generate the voucher, not every labor hour or material cost billed by a voucher needs to be evaluated and confirmed for every voucher. However, individual elements supporting the amount requested for payment under various vouchers should be checked occasionally. If an error or problem is detected that indicates the requested amount is not proper, the requested amount should be adjusted accordingly and prior vouchers should be examined to determine if that same issue is present. If this reexamination of previously approved vouchers shows they have the same issue, the payment amounts for those previously paid vouchers should be recalculated based on the new information. If the contractor was overpaid for those vouchers, the next payment should be offset and reduced by that overpayment amount.

Each of the elements in the checklist below is required to be approved for each voucher. Depending on the type of service provided, and the makeup of the contractor's workforce, some or all of the following elements should be reviewed or verified in order to approve a voucher for payment. The contracting officer may also negotiate an agreement with a contractor who has a billing system that meets special qualifications, such as direct billing authority granted by Defense Contract Management Agency. Such an advance agreement would permit the COR to check "Yes" in some of the blocks below solely on the basis of the agreement. However, random or other sampling checks of information may still be performed or required occasionally, based on the authority granted in the contract.

The checklist below should be used in accordance with HSAM 3032-7002(d) to verify the adequacy of vouchers (or commercial invoices submitted for payment under time – and-material/labor-hour contracts containing FAR 52.212-4 Alternate I) for time-and-materials (T&M) or labor-hour (LH) contracts.

# VOUCHER/COMMERCIAL INVOICE REVIEW AND APPROVAL CHECKLIST

## TIME AND MATERIAL/LABOR HOUR CONTRACT OR ORDER

| YES | NO | SUPPORT ELEMENTS FOR $ AMOUNT REQUESTED |
|---|---|---|
| | | The contractor provided the voucher support information required by the contracting officer. *If not, return the voucher without payment as not a proper invoice.* |
| | | Each employee billed under the voucher meets the qualifications for the labor categories being billed? *Stable workforce, homogeneous workforce-review supporting info less often. Roving/rotating workforce-review supporting info more often (perhaps each time).* |
| | | Overtime rates not applied unless approved in advance by contracting officer or specifically included as overtime rates in the contract. |
| | | Hourly rates for each labor category on the voucher match the rates specified in the contract for the period being invoiced? |
| | | The number of hours for each labor hour rate times the labor hour rate equal the grand total amount for labor hours billed? |
| | | Material Costs – Non-commercial item contract (FAR clause 52.232-7).<br>The material costs are adequately supported by invoices and/or payment records?<br>☐ Contractor paid for material or services (or within 30 days?)<br>☐ Correct indirect cost rate applied?<br>☐ No fee/profit included?<br>☐ Labor Hour contract? $0 allowable for material, ODC, etc. |
| | | Material Costs – Commercial item contract (FAR clause 52.212-4, Alt I)<br>The material costs are adequately supported by invoices and/or payment records?<br>☐ Contractor paid for material or services (or within 30 days)?<br>☐ Indirect cost - Prorated from fixed amount identified in contract? If none in contract, then $0 allowable.<br>☐ No fee/profit included?<br>☐ Other Direct Costs - Match authorized list in contract? If none listed, then $0 allowable.<br>☐ Labor-Hour contract? $0 allowable for material, ODC, etc. |
| | | The payment will not exceed the ceiling price cited in the contract or order. |
| | | The correct quantity of items or services performed (e.g., actual # of hours performed under a labor-hour type contract) |
| | | A correct extended amount (quantity * unit price = extended amount) |
| | | Terms of any discount for prompt payment offered |
| | | **ADMINISTRATIVE ELEMENTS** |
| | | The correct name and address of the contractor |
| | | The invoice date and invoice number |
| | | A period of performance (e.g., the billing period) clearly identified, accurate and which is covered by the contract/order cited on the invoice |
| | | The correct contract and/or order number |
| | | Contract Line Item Numbers (CLINS) that match those contained in the contract/order |
| | | The correct description of supplies or services that match the description of the supplies or services in the contract/order |
| | | Name and address of official to whom payment is to be sent |
| | | Other details or data required by the contract/order |
| | | Attachments or supplemental pages required by the contract/order |
| | | No other payment for the billing period have been previously received or processed |
| | | If this is a final payment for a supply or service after acceptance by DHS, the COR or other designated Government official has prepared an Inspection and Acceptance Report, such as a DHS Form 700-21, Material Inspection and Receiving Report.<br>☐ The Inspection and Acceptance Report indicates that all invoiced items/services |

| | | |
|---|---|---|
| | | have been accepted by the Government<br>☐ The Inspection and Acceptance Report indicates that all or some invoiced items/services have been rejected by the Government |

**CHECKLIST FOR PRIVATE SECTOR TEMPORARY PERSONNEL**

PART I

*(Must be completed by the Requesting Office)*

1. The services of private sector temporaries are needed for the following reason *(Note: The Office of Personnel Management regulation authorizes the use of private sector temporaries only in the short-term situations described below. Please check the situation which exists in your office or work unit)*:

a. {____} An employee *(DO NOT insert employee's name)* currently filling the position of *(insert the title, series, and grade of the employee)* _____ is absent from this position for a temporary period (short-term) because of a personal need including emergency, accident, illness, parental or family responsibilities, or mandatory jury service, but not including vacations or other circumstances that are not shown to be compelling in the judgment of the requesting office.

b. {____} I have determined that work must be carried out for a temporary period cannot be delayed because of a critical need. The critical need is:

2. We will need these services starting on _____ and ending on _____. *(Note: If the required services are for other than full-time continuing, also show the total number of days _____ and/or total number of hours _____ the services will be needed.)* Also, this need cannot be met with current employees within the time available, by the date, and for the duration of time the help is needed. *(Note: Length of time for using a private sector temporary must not exceed 120 work days in a 24-month period. If an appropriate need still exists at the end of the 120 work days, the temporary may work up to a maximum of 240 workdays provided it has been determined that using the services of the same individual for the same situation will prevent significant delay.)*

3. A full description of the needed work is as follows or is attached *(Note: Do not use the Government employee's position description since it is too general for the purpose of describing the work to be performed by the temporary)*:

4. The person must have the following knowledge, skills and abilities in order to work:

5. The person may be required to use the following equipment *(List the equipment that will be used, showing the make and model of personal computer, word processor, mail sorter, etc.)*

6. If a specific personal computer program is required, show the name.

7. Describe the work environment by stating the type of setting in which the temporary

will be working (e.g., general office, front office, typing, information desk, mailroom, warehouse, etc.).

8. List any physical endurance, such as a significant amount of walking (e.g., mail clerk), bending and lifting (e.g., warehousing), standing (e.g., clerk-photocopying), etc. that the work will require.

9. List any other special conditions of the work (e.g., security clearance requirements).

10. List administrative information, such as address and location of the workplace including building and room number; the daily working hours and lunchtime; the name, address, room number, and telephone number of the person to whom the temporary should report on the first day of work. For example:

U.S. Department of Homeland Security
(Insert Component's name)
Washington, DC

Temporary Worker Should Report to: _____
in Room:_____

11. I certify that the statements under #1 through #10 are correct to the best of my knowledge, and the temporary or use of these temporary services:

(a) _____ Will not displace a Federal employee;
(b) _____ Is not for the work of managerial or supervisory positions;
(c) _____ Will not be for the work of or to fill an SES employee or position;
(d) _____ Does not circumvent the regular recruitment and hiring procedures under the civil service laws for permanent appointment in the competitive civil service;
(e) _____ Will not circumvent controls on employment levels; and
(f) _____ Will not be used in lieu of appointing a surplus or displaced Federal employee as required by 5 CFR Part 330, Subpart F (Agency Career Transition Assistance Plan for Displaced Employees) and Subpart G (Interagency Career Transition Assistance Plan for Displaced Employees).

_____
*(Signature)*

_____
*(Title of Office Official)*

_____
*(Date)*

## CHECKLIST FOR PRIVATE SECTOR TEMPORARY PERSONNEL

PART II

*(Must be completed by the Chief, Human Capital Personnel Officer or Component servicing Personnel official)*

1. I have reviewed Part I to ensure compliance with regulatory requirements and to ensure that the information is sufficient to contract with the private sector. I certify the following:
(a) That the need ___ can ___ cannot be met through the direct appointment of temporary employees within the time available, by the date, and for the duration of time the work is needed;
(b) That there ___ are (see attachment) ___ are no qualified candidates on the applicant supply file or on the reemployment priority list; and
(c) That there ___ are (see attachment) ___ are no qualified disabled veterans with a compensable service-connected disability of 30 percent or more under 5 U.S.C. 3112, who are immediately available for temporary appointment of the duration required.

_____
*(Signature)*

_____
*(Title of Chief, Human Capital Office or Component's servicing Personnel Official)*

_____
*(Date)*

**MEMORANDUM OF UNDERSTANDING**
**Between**
**Defense Contract Audit Agency**
**and**
**Department of Homeland Security**

## 1. PURPOSE

**This memorandum sets forth an understanding of contract audit coverage and related audit services which the Defense Contract Audit Agency (DCAA) will provide to the Department of Homeland Security (DHS) and its organizational elements (OE), hereafter referred to as "the customer". Questions concerning provisions or implementation of this agreement will be coordinated between the Office of the Assistant Director, Operations, for DCAA and the DHS Office of the Chief Procurement Officer (OCPO). Names, phone numbers, and addresses of applicable contact points can be found in Annex I of this agreement.**

## 2. DEFINITIONS

a. The term "abnormal travel" as used in this Memorandum of Understanding (MOU) is defined as travel which is outside the geographical area of responsibility normally serviced by a particular Field Audit Office (FAO).

b. The term "cognizant audit agency" as used in this MOU is defined as the agency with the sole responsibility, authority, or control to perform all Federal contract audits at a specific company or non-profit entity. DCAA cognizance is determined by one of the following:

(1) OMB has assigned responsibility to the Department of Defense (DoD); therefore, DCAA is the cognizant audit agency.

(2) DoD has the predominant financial interest based on contract activity; therefore, DCAA is the cognizant audit agency.

(3) The agency with the predominant financial interest and DCAA have agreed that DCAA will be the cognizant audit agency.

Once DCAA is determined to be the cognizant audit agency, the responsible audit office within DCAA is determined based on the level of audit activity and geography. If the audit activity is significant, DCAA will establish a Resident Audit Office. Otherwise, the responsible audit office is determined based on the geographical location of the contractor.

c. The term "postaward audit" as used in this MOU is defined as an audit that is performed to determine that a contractor has submitted accurate, complete, and current cost or pricing data when negotiating a contract or other pricing action with the Government. These audits are sometimes called "defective pricing" audits.

d. The term "Contracting Official," as used in this MOU, includes contracting officers at all DHS organizational elements, whether the warrant is issued within DHS or is a carryover from the contracting official's legacy agency.

## 3. INTERAGENCY FUNDING AND BILLING RESPONSIBILITIES

a. Audit services will be provided by DCAA on a reimbursable basis. Reimbursement will be based on billable audit hours at the prevailing interagency billing rate. Abnormal travel and per diem expenses required to accomplish audits are not included in the standard hourly rate and are subject to separate billing. DCAA will obtain customer approval prior to the incurrence of abnormal travel expenses.

b. Funding will be accomplished each fiscal year in separate interagency funding documents to be executed between the Office of Assistant Director, Resources, for DCAA and the DHS organizational elements.

**c.** When requested by the DHS OCPO and/or a DHS organizational element, DCAA will provide its best estimate of rates and hours for use in out-year projections. These estimates will be updated on a recurring basis whenever a significant change becomes known (such as a billing rate change announced by the Department of Defense).

## 4. DCAA RESPONSIBILITIES

a. The criteria in the DCAA Contract Audit Manual (DCAAM 7640.1) will be used to determine the following:

(1) The locations where contract audit coverage will be maintained by DCAA.

(2) Audit cognizance.

(3) Compliance with Generally Accepted Government Auditing Standards (GAGAS). DCAA will conform to GAGAS in determining the scope of audit, including the manner and the level of effort necessary to provide complete audit coverage at a contractor location. Under GAGAS the approach to contract auditing is to audit contractor systems and pursue corrective action as necessary to provide a basis for maximum reliance and to minimize the extent of contract testing necessary. Therefore, it must be understood that contract audits include DCAA evaluations of internal controls and examinations of contractor accounting and financial management systems.

b. At contractor locations where DCAA has audit cognizance, DCAA will respond to specific requests from the customer or their designee for contract audit coverage as follows:

(1) Forward Pricing Audits. DCAA will respond to all customer requests for audit of specific price proposals. This includes audits of specific proposal elements or agreed upon procedures (e.g., rate audits only). It is understood that adequate proposal audit coverage

may require the DCAA auditor at the prime contractor location to request assistance from a DCAA office at a subcontractor location. In such cases, the detail supporting the DCAA bill will show each participating DCAA office separately. Requests for audits will normally be limited to those that exceed the current dollar threshold of the applicable procurement regulations. However, in special situations, the customer may request audits of lesser amounts. Available labor and overhead information will also be provided where appropriate.

(2) Audit of Incurred Cost Claims.

(a) DCAA audits incurred cost claims by evaluating contractor systems, and uses statistical sampling techniques in order to address all auditable dollars at a contractor location for an entire Fiscal Year, or years. This approach is the most efficient method of evaluating incurred cost claims at a contractor location. DCAA does not audit incurred cost claims on a contract by contract basis, and will not audit an incurred cost claim for only part of a year. Therefore, requests for audits of selected contracts or portions of a year at a contractor location will not be accommodated. However, DCAA does take specific contract provisions into account in audit planning and performance. Therefore, the customer should make DCAA aware of specific issues to be covered in the audit.

(b) DCAA will audit incurred cost claims at all contractor locations where DCAA is cognizant and auditable dollars have been identified. DCAA bills these types of audits based on the relationship of an agency's cost audited to the total cost audited. DCAA will provide the customer or their designee with an incurred cost audit report at the conclusion of the audit. Estimates for billable hours for incurred cost audits (identified as DCAA self-initiated effort) will be separately identified in a letter to the agency notifying them of the DCAA estimate. It must be understood that once the self-initiated budget is established, it cannot be reduced by the customer to cover unplanned demand effort. If the customer desires an audit of an incurred cost claim at a contractor where DCAA is not cognizant, the customer will issue a request for audit in accordance with paragraph 5a of this agreement. DCAA will process such requests in accordance with paragraph 4c of this agreement. When DCAA agrees to process such requests, the cost of these audits will be charged against the budget for demand audits identified in the DCAA estimate.

(3) Other Incurred Cost Audits.

(a) Other incurred cost audits are defined as audits of incurred cost not related to the contractor's annual incurred cost claim. Such audits would include, but are not limited to, the following types of audits: Final Price Submissions, Provisional Billing Rate Audits, Terminations, Equitable Adjustment Claims, Hardship Claims, Escalation Claims, Progress Payments, Financial Capability Audits, and Other Special Audits necessary to protect the Government's interests. If DCAA believes that one of the above type audits is necessary based on conditions or information coming to its attention, the customer will be notified.

(b) DCAA will respond to all customer requests for other incurred cost audits at locations where DCAA is cognizant.

(4) Cost Reimbursement Voucher Processing. DCAA will process vouchers in accordance with Annex II of this agreement.

(5) Contract Closeout. Subject to the status of applicable incurred cost audits, DCAA will issue a contract audit closing statement upon request. DCAA bills for the direct effort required to reconcile the contractor's final claim to amounts previously audited and prepares a closing statement. If there are years for which the contract has not been audited due to the customer declination to issue audit requests, DCAA may choose to conduct the additional work necessary to perform the closeout effort, or may decline the request.

(6) Postaward Audits. DCAA will perform postaward audits for all contracts identified by the customer in accordance with paragraph 5d of this agreement. In addition, DCAA will provide the DHS OCPO with a recommended list of contracts for postaward audits by July 31 of each year.

(7) Financial Advisory Services. DCAA will provide general advice on accounting, auditing, and financial matters in areas of DCAA responsibility, and facilitate and coordinate audit services with cognizant Field Officers (FAOs).

(8) Other. Includes investigative support, negotiation assistance, and contracts appeals. A complete listing of reimbursable DCAA activities is available upon request.

c. At a contractor location where DCAA is requested to perform an audit, but has never had an audit presence, or has not audited at that contractor location for the past several years, DCAA will try to accommodate the customer's audit request. Such decisions are made on a case-by-case basis when there is sufficient information to show that it would be in the best interest of the Government for DCAA to do the audit.

d. DCAA will provide estimates of billable time and starting and completion dates for the audit upon request. These estimates are only to be used for planning purposes; actual hours and timeframes incurred may differ. DCAA cannot agree to perform an individual audit within a preapproved budget but will make every effort to stay within the budget. DCAA will obtain customer approval prior to incurring expenses in excess of the preapproved budget, and will provide explanations of significant differences between estimated time and actual time billed on an assignment. After receipt of a request from the customer, the assignment will be set up and completed in accordance with established procedures.

e. DCAA field offices will solicit input from the customer or their designee during the budget formulation process for succeeding year audits, to assure that customer concerns are addressed in planning. The budget process normally takes place in August of each year.

f. Headquarters, DCAA, will promptly transmit to the DHS Inspector General reports of suspected contractor fraud or other wrongdoing whether disclosed by outside sources or detected through performance of the contract audit function. If the DHS OIG initiates an

investigation, and audit support is requested by that agency through the Department of Justice, the benefiting Government agencies will be billed their pro rata share of the audit support.

g. DCAA field offices will promptly send a copy of the audit report to whomever is designated in the request. In addition, copies of the following types of audit reports will be provided to the DHS Office of the Chief Procurement Officer, Director, Oversight and Strategic Support electronically via PROCUREMENTSUPPORT@hq.dhs.gov:

(1) Contractor Internal Control System Reviews (accounting system reviews, estimating system reviews, compensation reviews, etc.);

(2) Audits of Compliance with Cost Accounting Standards;

(3) Audits of Cost Impact of Cost Accounting Standards (changes in cost accounting practice and/or noncompliances); and

(4) Defective Pricing Audits (Reviews for Compliance with the Truth in Negotiation Act)

(5) All DCAA reports and memorandums that contain questioned costs or cost disallowances.

(6) All DCAA Form 1's and Form 2000's.

h. Upon request by DHS OCPO, DHS Inspector General, or a DHS organizational component, DCAA will make available audit working papers relating to a customer's contract. The requestor will review such work papers at the applicable DCAA office and can make copies of any work papers deemed appropriate. DCAA will retain the original work papers in DCAA files.

i. Third-party requests (e.g., media, FOIA, non-participating agencies, Congress, etc.) received by DCAA for access to resultant audit reports and underlying work papers will be coordinated with the DHS OCPO and the DHS affected organizational component(s).

## 5. CUSTOMER RESPONSIBILITIES

a. DHS organizational elements will address requests for audits directly to the cognizant DCAA field office. Initial contacts may be made by telephone with a written confirmation to follow. At a minimum, the following items will either be included with the request or addressed in the request:

(1) A copy of the contractor's submission to be audited should be submitted along with the audit request. This submission should be prepared in accordance with Federal Acquisition Regulations (FAR) and/or other applicable agency requirements. DCAA will work with the customer, if requested, to assist in defining an adequate submission.

(2) Billing reference numbers, if required by the customer, will be in the audit request. If no reference numbers are in the request, DCAA will assume they are not required.

(3) Audit report distribution requirements will be in each audit request; otherwise, distribution will be handled in accordance with paragraph 4g.

b. Contracts to be covered by audits shall include an access to records clause and a clause incorporating the cost principles set out in the FAR or other applicable agency guidelines.

c. The customer agrees to pay for incurred cost audit coverage at all locations where DCAA is the cognizant auditor and customer contract costs are part of the total auditable cost.

d. By August 15, prior to the beginning of the fiscal year, the customer will provide the Office of Assistant Director, Operations, DCAA, with a listing of all contract pricing actions for which the customer wants DCAA to perform a postaward audit in the next Fiscal Year. The listing will provide the contract number (and modification number if appropriate), contract value, type of contract, and name and location of the contractor. This listing will constitute specific authority by the customer for DCAA to perform, and bill for, postaward audits.

e. The DHS OCPO is responsible for follow-up on the contracting officer's implementation of DCAA audit recommendations, as required by OMB Circular A-50. As part of the audit-follow up process, for each audit report that is received, the Contracting Officer shall provide the cognizant DCAA office a copy of the price negotiation memorandum promptly after contract award. This memorandum should clearly address resolution of the audit findings. If the contractor for which the audit was provided is not the awardee, the contracting officer shall notify DCAA in writing of this fact. The price negotiation memorandum and/or the notification serves as the basis for DCAA disposition of the audit findings. Within 30 days after the end of each quarter (quarters ending March 31, June 30, September 30, and December 31), DCAA shall provide the DHS OCPO a listing of all open reports of audits conducted at the request of DHS (open reports are those audit reports for which DCAA has not dispositioned the findings).

f. The customer is responsible for review of program results to determine if the goals and objectives of organizations, programs, activities, or functions established by laws or regulations are attained, as required by applicable General Accounting Office (GAO) audit standards.

g. When the customer becomes aware of any internal or external reviews, including reviews by the customer, GAO, investigative agencies, etc., which may impact on the audit services furnished by DCAA, the customer will notify and will coordinate in advance with the local DCAA office affected by the review. If several DCAA offices will be affected by the review, the customer can coordinate in advance with the Office of the Assistant Director, Operations, DCAA. In this regard, to the extent the customer has control, appropriate sections of draft reports which result from such reviews will be provided to permit comment on those matters involving DCAA.

h. The customer will use only DCAA audit services to perform all contract audit functions at locations where DCAA is the cognizant auditor to preclude dual or split audit

cognizance, unless DCAA acknowledges that it cannot provide the assistance required because: it concerns matters beyond the proper role of DCAA, it would result in undue delays or inefficiencies in the accomplishment of customer objectives, or it is not in the best interest of the Government.

## 6. DURATION

This MOU may be terminated by any party at any time by issuance of a written notice 60 days in advance of the intended termination date.

## 7. ANNEXES

a. The following Annexes are enclosed and considered an integral part of this agreement:

ANNEX I CUSTOMER CONTACT POINTS FOR MEMORANDUM OF UNDERSTANDING

ANNEX II COST REIMBURSEMENT VOUCHER PROCESSING PROCEDURES

b. Further Annexes to this MOU may be negotiated by the responsible agencies' executives and will be treated as an integral part of this agreement.

**DEPARTMENT OF HOMELAND SECURITY**

_____[SIGNED]_____ ___4/22/2011___
Richard K. Gunderson Date
Deputy Chief Procurement Officer

**DEFENSE CONTRACT AUDIT AGENCY (SERVICE PROVIDER)**

_____[SIGNED]_____ _____4/7/11_____
Patricia A. Letzler Date
Deputy Assistant Director, Operations

# ANNEX I

## CUSTOMER CONTACT POINTS FOR MEMORANDUM OF UNDERSTANDING
**Between**
**Defense Contract Audit Agency**
**and**
**Department of Homeland Security**

## 1. PURPOSE

This annex identifies the names, titles, addresses, and phone numbers of the appropriate contact points for DCAA and the DHS OCPO as discussed in the Memorandum of Understanding (MOU). It is recognized that individuals and organizations change periodically. It is intended that this annex be updated as necessary without changing the content of the MOU. Updates to this annex will be coordinated between the Office of the Assistant Director, Operations, for DCAA, and the DHS OCPO.

## 2. CUSTOMER CONTACT POINTS

The following individual should be contacted for questions concerning provisions or implementation of the MOU:

Richard K. Gunderson
Deputy Chief Procurement Officer
U.S. Department of Homeland Security
Washington, DC 20528
(202) 447-5300

David J. Capitano
Director, Oversight & Strategic Support
Office of the Chief Procurement Officer
U.S. Department of Homeland Security
Washington, DC 20528
(202) 447-5417
PROCUREMENTSUPPORT@hq.dhs.gov

## 3. DCAA CONTACT POINTS

Patricia A. Letzler
Deputy Assistant Director, Operations
Headquarters, DCAA
8725 John J. Kingman Road, Suite 2135
Fort Belvoir, VA 22060-6219
(703) 767-2238

J. Philip Anderson
Assistant Director, Resources
Headquarters, DCAA
8725 John J. Kingman Road, Suite 2135
Fort Belvoir, VA 22060-6219
(703) 767-2248

Lisa Chrissinger
Program Manager, Workload Analysis Div.
Headquarters, DCAA
8725 John J. Kingman Road, Suite 2135
Fort Belvoir, VA 22060-6219
(703) 767-2257

## 4. PROCEDURES REGARDING REQUESTS FOR AUDIT SERVICES

a. Annual Financial Agreement. Each DHS organizational element that anticipates utilizing contract audit services from DCAA shall complete an Annual Financial Agreement with DCAA. DCAA will provide the annual financial agreements for each of the organizational elements. The agreement shall define the amount of annual effort for a fiscal year period between each organizational element and DCAA. The original annual financial agreements should be returned to DCAA prior to September 30.

b. Funding Documents. Each organizational element shall submit an approved funding document prior to the start of the fiscal year audit effort to DCAA. The organizational element shall use funding documents, Inter-agency Agreements and Inter-Agency Agreement Orders to request audit services.

c. Audit Requests. The DHS organizational element shall send the official audit request to the cognizant DCAA branch offices. Audit request acknowledgement letters shall be sent to the organizational element identifying requested audit services.

d. Audit Reports. Completed DCAA audit reports will be sent to the requesting organizational element. In addition, copies of the types of audit reports listed in paragraph 4g of the MOU will be provided to the OCPO Director of Acquisition Oversight:

## 5. PROBLEM RESOLUTION PROCEDURES REGARDING AUDIT SERVICES.

In the event the customer is not satisfied with the content of a DCAA audit report, generally, the quickest method of resolving this is for the customer to discuss their concerns with the Field Audit Office (FAO) Manager of the DCAA office providing the service. If the parties do not receive satisfactory resolution to their concerns at this level, the parties should contact the Regional Audit Manager responsible for the applicable field office. If a satisfactory resolution is still not received, or if the parties want to discuss a problem with someone at DCAA Headquarters, they should contract the Workload Analysis Division (OWD), Operations, DCAA Headquarters, to voice their concerns. This division will identify the appropriate individuals required to achieve resolution and advise senior level agency management of significant agency problems.

**DEPARTMENT OF HOMELAND SECURITY**

_____[SIGNED]_____ _____4/22/2011_____
Richard K. Gunderson Date
Deputy Chief Procurement Officer

**DEFENSE CONTRACT AUDIT AGENCY (SERVICE PROVIDER)**

_____[SIGNED]_____ _____4/7/2011_____
Patricia A. Letzler Date
Deputy Assistant Director, Operations

# ANNEX II

## COST REIMBURSEMENT VOUCHER PROCESSING PROCEDURES
## Between
## Defense Contract Audit Agency
## and
## Department of Homeland Security

## 1. PURPOSE

This annex sets forth the procedures by which the Defense Contract Audit Agency (DCAA) will provide cost reimbursement voucher processing to the Department of Homeland Security.

## 2. REQUIREMENTS

DCAA must perform and bill for incurred cost audits at the contractor location in accordance with paragraph 4b(2) of the MOU in order to be involved in processing vouchers.

## 3. PROCEDURES

All DHS cost reimbursement and T&M/LH contracts will require the contractor to submit a copy of the voucher to DCAA at the same time as the original is sent to the COR/contracting officer, who will certify and process them for payment. DCAA will review contractor's interim vouchers in accordance with agency procedures. DCAA will review all vouchers in excess of $1 million and review all first vouchers submitted under the contract or delivery order. For contractors not on direct billing, DCAA will also sample the remaining vouchers using the FAO-established sampling techniques consistent with the methodology used for DoD voucher review sampling (CAM 6-1008). Since DHS has no contracts subject to direct billing, if the contractor has direct billing for DoD and/or any other Government contracts, auditors shall ensure the interim vouchers related to DHS contracts are included in the universe for selection when performing its annual review of paid vouchers. In addition, for any particular voucher, a contracting officer can request a review of that specific voucher if the contracting officer has concerns.

Auditors will notify the contracting officer immediately of any issues identified during the voucher review. If the auditor identifies a concern (e.g., inaccuracies, questionable or unsupportable costs) with the DHS voucher selected for review, the auditor should notify the contracting officer in writing and include any suspended or disapproved costs with a recommendation that the amount questioned be deducted from the next available voucher. No notification to the contracting officer is necessary if the auditor's review disclosed no exceptions.

**DEPARTMENT OF HOMELAND SECURITY**

_____[SIGNED]_____ ___4/22/2011_____
Richard K. Gunderson Date
Deputy Chief Procurement Officer

**DEFENSE CONTRACT AUDIT AGENCY (SERVICE PROVIDER)**

_____[SIGNED]_____ ____4/7/11_____
Patricia A. Letzler Date
Deputy Assistant Director, Operations

# MEMORANDUM OF AGREEMENT (MOA) BETWEEN THE DEFENSE CONTRACT MANAGEMENT AGENCY (DCMA) AND THE DEPARTMENT OF HOMELAND SECURITY (DHS) FOR REIMBURSEMENT FOR CONTRACT ADMINISTRATION SERVICES (CAS) PROVIDED IN SUPPORT OF DHS CONTRACTS

***Agreement Number: DCMA-DHS-03-0001***
***As revised by Amendment 02[1] and Amendment 03***
***[Consolidated Version][2]***

## 1. PURPOSE

This Memorandum of Agreement (MOA) sets forth policies and procedures by which the Defense Contract Management Agency (DCMA) shall be reimbursed for Contract Management Services (CMS) in support of the Department of Homeland Security (DHS) contracts.

## 2. AUTHORITY

This agreement is executed according to the Economy Act, 31 U.S.C. 1535 and 1536, as implemented by the Federal Acquisition Regulation (FAR) Subpart 17.5, FAR Part 42, and the Department of Defense Instruction (DoDI) 4000.19, Interservice and Intragovernmental Support.

## 3. SCOPE *[As revised by Amendment 02]*

This overarching MOA establishes a communication and support network between the listed parties for DCMA to provide CAS for the DHS. By mutual agreement, DCMA will provide delegated contract administration services according to FAR Part 42, Subpart 42.302, Contract Administration Functions, FAR Part 34, Subpart 34.2, Earned Value Management System, and Appendix 3 to this MOA, Earned Value Management Contract Administration Services, on existing and future contracts, Other Transactions, or grants falling under the purview of the DHS. The support provided by DCMA will be further delineated under separate Letters of Delegation (LODs) or Inter Agency Agreements (IAAs) between the DHS Components and DCMA. The points of contact for DHS Components and for DCMA are identified in Appendix 1.

## 4. PROCEDURAL ARRANGEMENTS *[As revised by Amendment 02]*

(a) A LOD signed by the DHS Component contracting officer shall be used to specifically request contract administration services, as defined under FAR Subpart 42.2,

[1] Amendment 01 was rescinded by Amendment 02
[2] This is a roll up of the basic MOA and amendments. Pdf images of the signed basic MOA and each amendment can be accessed at http://dhsconnect.dhs.gov/org/comp/mgmt/cpo/paw/Pages/AcquisitionPolicyLegislation(APL).aspx

or as described on Appendix 3 to this MOA, from a particular DCMA CMO for administration.

(b) The separate LODs between individual DHS Components and DCMA establishing CAS shall include orders in the form typically used by the particular DHS Component for interdepartmental funding transfers, i.e., Military Interdepartmental Purchase Request, IAAs, etc. These orders shall comply with FAR 17.504, Ordering Procedures, and will be signed by a DHS Component contracting officer.

(c) DHS Components shall execute, in writing, the determination required by FAR Subpart 17.5, as supplemented by the DHS Component. This determination shall remain part of the requesting Component's contract file.

(d) Each order shall provide a specific term of performance, the maximum number of hours to be expended during that term, and a maximum funding limitation applicable to that term. Each order shall reference the DCMA/DHS Component LOD number and also identify the DHS Component accounting data for resulting billings. As required by FAR 17.504, a funds citation shall be placed on each order. The funds cited shall equal the maximum funding limitation cited on the order. Each order shall contain the requesting Component's finance office and the POC for that office, including the mailing address where reimbursement billings should be sent for payment.

(e) Orders issued under this agreement shall be forwarded directly to the appropriate DCMA CMO in accordance with the Federal Directory of Contract Administration Services (CAS) Components with a copy to the DCMA Headquarters POC as listed in Appendix 1. The web address for the Federal Directory of CAS Components is **http://home.dcma.mil/CASBOOK/casbook.htm**. If multiple CMOs are covered under one LOD, orders pertaining to that LOD shall be submitted to DCMA Headquarters for disposition. The DCMA CMO will notify the originating Component that the order has been accepted.

(f) DHS Components shall advise DCMA, in a timely manner, of anticipated changes in support requirements. DCMA shall advise DHS Components, in a timely manner, of changes in DCMA capability or resources which may have a significant impact on the support to be provided to DHS Components. If a proposed LOD requires a substantial increase in Full Time Equivalents or Permanent Change of Station costs, the DHS Component shall coordinate with DCMA Headquarters prior to issuing the LOD.

(g) DCMA will promptly advise the DHS program office of any audit, survey or investigation by the Government Accountability Office or a departmental or agency inspector general, that will include in its scope a DHS contract or program for which DCMA is performing CAS.

(h) When contract audit services are required in conjunction with contract administration services ordered under this MOA, the audit services will be obtained in accordance with the Memorandum of Understanding among the Defense Contract Audit

Agency, the Department of Homeland Security, and the DHS Office of Inspector General.

## 5. **BASIS FOR REIMBURSEMENT**

DCMA will perform CMS for DHS Components on a reimbursement basis at the prevailing DCMA CMS hourly rate in effect at the time the work is performed. The basic rate will be applied to the actual direct hours worked. For FY07, the rate is $98.40 per hour. This MOA is subject to annual modification, as necessary, to provide for reimbursement of costs.

Direct hours worked shall include any combination of regular hours, credit hours, compensatory time worked, and overtime. Overtime hours will be charged at the same rate as regular direct hours.

The DCMA reimbursable rate includes overhead costs which provide recoupment for supervisory, clerical, normal training, leave, and routine travel. Routine travel is defined as travel which is inside the geographical area of responsibility normally serviced by a particular DCMA CMO. All other travel costs will be billed to the DHS Component. Time spent in training courses attended at the request of the DHS Component is billable, provided that the trainee is in a paid duty status. Time spent traveling to a contractor facility solely in support of a DHS Component delegation or to a training course specifically requested by a DHS Component is considered direct support and is billable, provided that the DCMA employee is in a paid duty status.

## 6. **BILLING DESCRIPTION**

The Defense Finance and Accounting Services (DFAS) is the accounting entity for the Department of Defense (DoD). The DFAS Columbus Center, which provides accounting services to DCMA, shall request and receive payment for services performed by DCMA from the DHS Component finance office listed on each order. Invoices shall contain at least the following information:

a. DHS Component for which services were furnished;
b. DHS Component order identification number;
c. period of performance covered by the bill;
d. hours expended by function (e.g., contract management, property administration, quality assurance, financial services, etc.);
e. prime contract number and contractor's name; and
f. total hours expended, reimbursable rate, and dollars billed.

Reimbursement requests will be submitted to each DHS Component finance office on a monthly basis. The reimbursement requests will include a summary of hours and dollars charged and any additional charges for actual costs related to non-routine travel. DFAS Columbus will identify all CMS costs to each DHS Component finance office by using the Standard Form (SF) 1080 (Voucher for Transfers Between Appropriations) and/or

Intragovernmental Payment and Collection (IPAC) with as many as two line items identified in the supporting documentation:

(1) cost of DCMA CMS (hours x current rate); and

(2) cost of DCMA Non-Routine Travel (actual costs).

Billing procedures are detailed in Appendix 2.

## 7. MODIFICATIONS, INTERPRETATIONS AND TERMINATION

Changes and/or modifications to this agreement may be made at any time upon mutual written consent of the undersigned. Modifications shall cite the agreement number indicated at the beginning of this document and shall set forth the exact nature of the change and/or modification.

No verbal statement by any person, and no written statement by anyone other than the undersigned, or an authorized representative as designated in writing, shall be interpreted as modifying or otherwise affecting the terms of this agreement.

This agreement may be updated in writing by mutual agreement of both parties.

Either party may terminate this agreement with 180 days advance written notice. If terminated by DHS with less than 180 days notice, DCMA may bill DHS Components for reimbursement of unavoidable termination expenses incurred during the 180-day period following notification.

## 8. POINTS OF CONTACT

Points of contact for both parties are listed under Appendix 1.

## 9. EFFECTIVE DATE

This MOA is effective upon signature.

**APPROVAL/DATE:**

**For pdf images of the original signed MOA and each signed amendment, go to OCPO / Acquisition Policy and Legislation at:**
http://dhsconnect.dhs.gov/org/comp/mgmt/cpo/paw/Pages/AcquisitionPolicyLegislation(APL).aspx

Appendices
1. DHS Component and DCMA Points of Contact
2. Billing Procedures
3. Earned Value Management

## APPENDIX 1 *[As revised by Amendment 03]*

## DHS COMPONENTS & DCMA POINTS OF CONTACT

(Pages V-5 through V-7 have been removed, but are available at the below link)

See the link: HSAM Appendix V: DCMA and DHS MOA - Points of Contact and Billing Procedures

## APPENDIX 2 *[As revised by Amendment 03]*

## BILLING PROCEDURES

(Pages V-8 through V-11 have been removed, but are available at the below link)

See the link: HSAM Appendix V: DCMA and DHS MOA - Points of Contact and Billing Procedures

# APPENDIX 3 *[Added by Amendment 02]*

# EARNED VALUE MANAGEMENT (EVM) CONTRACT MANAGEMENT SERVICES

## I. Background

The Office of Management and Budget (OMB) OMB Circular A-11 requires the use of an Earned Value Management Systems (EVMS) that meet the American National Standards Institute (ANSI)/Electronics Industries Alliance (EIA) Standard – 748 - A for both Government and contractors (referred to as the EVMS ANSI Standard). Further, the Department of Homeland Security (DHS) requires, through the *Homeland Security Acquisition Manual* (HSAM) and the *DHS Earned Value Management Guidance*, that major investment programs, major systems, and their associated contracts use Earned Value Management (EVM) as a tool for effective monitoring and program management. DHS recognizes that the Department of Defense (DOD) has designated the Defense Contract Management Agency (DCMA) as the Executive Agency for EVM, and that DCMA has the knowledge and expertise to support DHS with EVM services.

## II. Purpose

The purpose of this Appendix is to provide a Statement of Work (SOW) for obtaining DCMA EVM services related to: 1) initial EVMS compliance reviews and acceptance determinations, 2) surveillance reviews of ongoing compliance with the EVMS ANSI Standard, 3) review for cause evaluations, and 4) subject matter expertise. These services will help to ensure that contractors' EVMS provide accurate information to enable Program Managers, Contracting Officers, Component leadership, and DHS Headquarters to manage their investment programs effectively.

## III. General Procedures for Reviews

General procedures for EVM verification reviews to ensure initial and ongoing compliance with the EVMS ANSI Standard include:

1. Assess for initial acceptance the contractor's EVMS compliance with the EVMS ANSI Standard, in accordance with the *DHS Earned Value Management Guidance* and the *DOD Earned Value Management Implementation Guide* (DOD EVMIG); and make the acceptance determination of whether the contractor has an EVMS ANSI compliant system or not.
2. Conduct ongoing surveillance to evaluate changes to a contractor's accepted EVMS to ensure adherence with the EVMS ANSI Standard. Test system application through interviews with Control Account Manager (CAM), Program Manager, and project controls personnel and perform data traces on DHS contracts and subcontracts.
3. Identify corrective actions when the contractor's system either does not meet contractual requirements, the application of the system is inconsistent with the EVMS ANSI Standard; or the system is not providing realistic performance data. Issue a Corrective Action Request (CAR) in these instances, to include a severity level rating of 1 through 4, summarized below:
    a. CAR Level 1:

i. Written request that occurs when a contractual non-compliance requires no special management attention to correct. The CAR may be directed to working level personnel, and documented and resolved at that level.

ii. Corrective actions need to be reported by the contractor to the Program Manager, and tracked with estimated closure dates.

b. CAR Level 2:

i. Written request that occurs for corrective action for contractual non-compliances that are systemic in nature and could adversely affect cost, schedule, or performance if not corrected. Level 2 CAR should be directed to the contractor's management level responsible for the process, with a copy to the Program Manager and the Component Contracting Officer.

ii. A formal CAR corrective action plan must be submitted from the contractor for concurrence from the Program Manager, with acceptance granted by DCMA to resolve identified deficiencies. DCMA and the Program Manager would work together in overseeing the contractor's adherence to the plan.

c. CAR Level 3:

i. Written request that calls attention to serious contractual non-compliance, and recommends remedies such as reductions of progress payments, cost allowances, cure notices, show cause letters, or business management systems disapprovals.

ii. A formal CAR corrective action plan must be submitted from the contractor for concurrence from the Program Manager, with acceptance granted by DCMA to resolve identified deficiencies. DCMA and the Program Manager would work together in overseeing the contractor's adherence to the plan.

iii. The CAR should be addressed to the contractor's top level management.

iv. Because of the seriousness of the Level 3 CAR, copies will be provided to the DHS Executive Agent for EVM and CPO, along with the Program Manager and the Component Contracting Officer. All parties listed above will be notified before the Level 3 CAR is written.

v. Closure of the Level 3 CAR, and letters notifying the contractor of the closure action should be sent to all those addressed/copied in the original CAR.

d. CAR Level 4:

i. Written request documenting contractual non-compliance and recommends remedies such as suspension of progress payments or product acceptance activities, termination for default, and suspension or debarment, in accordance with applicable Federal Acquisition Regulation (FAR) policies and procedures.

ii. A formal CAR corrective action plan must be submitted from the contractor for concurrence from the Program Manager, with acceptance granted by DCMA to resolve identified deficiencies. DCMA and the

Program Manager would work together in overseeing the contractor's adherence to the plan.

iii. Level 4 should be addressed to the contractor's top level management. In addition the Component Contracting Officer and Contracting Officer's supervisor should sign the CAR.

iv. Because of the seriousness of the Level 4 CAR, copies will be provided to the DHS Executive Agent for EVM and CPO, along with the Program Manager and the Component Contracting Officer. All parties listed above will be notified before the Level 4 CAR is written.

v. Closure of the Level 4 CAR, and letters notifying the contractor of the closure action should be sent to all those addressed/copied in the original CAR.

4. Track and report on the resolution of CARs as part of ongoing surveillance through the corrective action plan developed between the contractor and the Program Manager.
5. Conduct a Review for Cause when appropriate. This would occur when systemic problems with the system are observed that then warrant a full review. A Review for Cause may also be initiated by requests from leadership.
6. Inform the DHS Executive Agent for EVM of the status of work ordered under this MOA.

## IV. SCOPE AND APPLICABILITY

This Appendix applies to DHS contracts with an EVMS requirement, including subcontracted efforts, for which the DHS Component Contracting Officer has issued a letter of delegation or inter-agency agreement, in accordance with paragraphs *3. Scope*, and *4. Procedural Arrangements*, of the basic MOA, as amended.

## V. ROLES AND RESPONSIBILITIES

**DHS Office of the Chief Procurement Officer (DHS CPO).** DHS CPO will:

1. Serve as the point of contact for any MOA-level issues.
2. Review and act upon, in conjunction with the Program Manager, Component Contracting Officer, and DHS Executive Agent for EVM, CARs level 3 and 4 as described in item 4 of Section III: General Procedures for Reviews.

**DHS Executive Agent for EVM**. DHS Executive Agent for EVM will:

1. Provide DHS EVMS regulations, policy, and guidance, as appropriate.
2. Provide consultation and assistance on EVMS issues as necessary.
3. Resolve technical issues that may arise between DCMA and DHS Investment Program Managers.
4. Review and act upon, in conjunction with the Program Manager, Component Contracting Officer, and as appropriate the DHS CPO, compliance acceptance reports, ongoing surveillance reports and recommendations, and CARs level 3 and 4 as described in item 4 of section III: General Procedures for Reviews.

**DHS Component Contracting Officer**. DHS Component Contracting Officer will:

1. Issue Letters of Delegation (LOD) and Inter-Agency Agreements (IAA) to order EVMS services in accordance with the procedures in paragraph 4., Procedural Arrangements, of the basic MOA,
2. Administer the LODs and IAAs.
3. Review and act upon, in conjunction with the Program Manager, and as appropriate the DHS Executive Agent for EVM and CPO, compliance acceptance reports, ongoing surveillance reports and recommendations, and CARs level 1 – 4 as described in item 4 of section III: General Procedures for Reviews.
4. Provide documentation to the DHS Executive Agent for EVM regarding letters of agreement or other documentation that recognize that contractors have already accepted EVMS by another Cognizant Federal Agency (CFA).
5. Consult with the DHS Executive Agent for EVM prior to issuing any correspondence regarding EVMS system acceptance for those instances where contractors claim their systems have been accepted by another CFA.

**DHS Component Investment Program Manager.** DHS Component Investment Program Manager will:

1. Ensure that the contracting package submitted to the Contracting Officer includes the EVMS reporting requirements that are required by DHS policy.
2. Provide funding for desired EVM services requested from DCMA.
3. Develop a project plan in conjunction with DCMA to implement the EVMS review(s).
4. Provide background documents needed by DCMA to carry out their surveillance tasking.
5. Provide access to information and locations needed by DCMA to conduct initial compliance and ongoing surveillance reviews.
6. Provide personnel to participate in reviews as part of a Joint Surveillance Team with DCMA.
7. Review and act upon, in conjunction with the Component Contracting Officer, and as appropriate the DHS Executive Agent for EVM and CPO, compliance acceptance reports, ongoing surveillance reports and recommendations, and CARs level 1-4 as described in item 4 of section III: General Procedures for Reviews.

**Defense Contract Management Agency (DCMA).** The Defense Contract Management Agency will:

***General Services***

1. Provide a single focal point in matters relating to EVM services described in this SOW.

***Initial EVMS Compliance Reviews and Acceptance Determination***

1. Conduct the Preliminary Assessment Visit (PAV) to establish expectations and timelines for the initial compliance review.
2. Assess for initial acceptance the contractor's EVMS compliance with the EVMS ANSI Standard, in accordance with the *DHS Earned Value Management Guidance* and the *DOD Earned Value Management Implementation Guide* (DOD EVMIG).

3. Provide the appropriate parties as described in this SOW with documentation supporting its recommendation of acceptance of the contractor's EVMS as being compliant with EVMS ANSI Standard. Documentation supporting the recommendation of acceptance may be a letter, report, or other document, such as a Letter of Agreement signed by both the government and the contractor.
4. Provide adjudication of findings to resolve issues identified and decisions made from the initial compliance review and acceptance determination.

***Surveillance Reviews of Ongoing Compliance with the EVMS ANSI Standard***

1. Perform ongoing surveillance of contractors EVMS to ensure adherence to the EVMS ANSI Standard.
2. Document how contractor's EVMS processes differ from the EVMS ANSI Standard, and identify the possible impact (positive and negative) to the cost, schedule, and technical performance of the contract through CARs.
3. Evaluate and monitor the contractor's CAR plans to resolve problems.
4. Employ surveillance techniques that minimize disruption to the contractor's workforce and duplication of efforts performed by other government agencies.
5. Provide adjudication of findings to resolve issues identified and decisions made as a result of ongoing surveillance activities.

***Review for Cause***

1. Conduct a review for cause to determine if a contractor with an accepted EVMS should have the acceptance revoked. This involves a full review of contractor compliance with all 32 guidelines of the EVMS ANSI Standard.
2. Provide DHS with documentation supporting its recommendation for the acceptance determination (i.e., continue acceptance or revoke acceptance).
3. Provide adjudication of findings to resolve issues identified and decisions made concerning the acceptance determination.

***Subject Matter Expertise***

1. Provide subject matter expertise to advise on issues related to contract administration and EVMS.

## VIII. EXPECTED WORK PRODUCTS

1. DCMA will prepare monthly project status reports for the Component Contracting Officer, who will then distribute them to the Program Manager and other appropriate parties. Status reports will summarize the results of activities, including reviews underway and their status, findings, actions taken, and expected dates of resolution. Status reports will also provide summary statistics of the status of contractors' management control systems based on data collected from reviews.

2. DCMA will prepare a written report within 30 working days of completion of a PAV that describes the results of the review, identified discrepancies, and recommendations for system improvement. The report will include the DCMA's assessment of the contractor's readiness for the initial compliance review. The report will be provided to the DHS Executive Agent for EVM and the Component Contracting Officer for distribution to the Program Manager and other appropriate parties for evaluation and discussion with the contractor.
3. DCMA will prepare a written report within 30 working days after completion of an initial compliance review and provide it to the Component Contracting Officer, with copies to the Program Manager and DHS Executive Agent for EVMS.
4. DCMA will prepare a written report on a periodic basis summarizing the status of ongoing surveillance reviews and provide it to the Component Contracting Officer, with copies to the Program Manager and DHS Executive Agent for EVM. The written report shall summarize progress against the contractor's CAR plan to resolve material discrepancies identified during the prior verification reviews.

If CARs are written, DCMA will provide copies to the Component Contracting Officer and Program Manager for CARs Level 1 and 2, and to those parties and the DHS Executive Agent for EVM and CPO for CARs Level 3 and 4, along with accompanying correspondence.

# *COR Nomination Letter*

**Agency/Component letterhead**

**Subject:** ***Nomination of Contracting Officer's Representative***

**To:** **(*Insert name of contracting officer*)**

**From:** **(*Insert name of program office representative*)**

I hereby nominate (*insert name, series and grade*) for appointment as (*indicate primary or alternate*) Contracting Officer's Representative (COR) for (*describe requirement and include contract/requirement name/number (if available)*). This request is based on the individual's qualifications as described below and the technical and administrative requirements of the anticipated contract, which will require a COR certified at Level (*from contracting officer, indicate appropriate level of certification—either Level II or III only at DHS*).

a. ***Federal Acquisition Certification for CORs*** (*Include highest certification level attained, but note that only Levels II or III are recognized for DHS), date certified, and attach a copy of the certificate. (In addition to the certification requirements specified in* http://dhsconnect.dhs.gov/org/comp/mgmt/cpo/paw/Pages/COTRCertification.aspx *confirm the prospective COR is on track to attain 40 hours in their current two-year certification anniversary cycle and list currency hours attained. If not current, they will have to achieve 40 hours of currency and be recertified before they may be nominated and appointed. State that COR was confirmed registered in FAITAS*).

b. ***Training qualifications:*** (*List course titles and dates completed, only for initial COR training and COR continuous learning within the last two years. Ensure that one hour of procurement ethics training has been completed within the past year.)*

c. ***Technical qualifications/experience:*** (*List offices, dates and types of work performed or contracts administered, and description of relevant experience.*)

d. ***COR contact information to include*:** *Component CAE, email and phone number, supervisor email and phone number, COR email, phone number, physical location and mailing address.*

e. ***Other information as appropriate:*** (*Confirm the COR has been informed of the requirements necessary to maintain his/her certification. List all other contracts and dates awarded to which the COR is currently or was previously assigned. Indicate which assignments are no longer current.)*

# *COR Appointment Letter*

**Agency/Component letterhead**

**Subject: Appointment as a Contracting Officer's Representative (COR)**

**From:** ***(Insert name of Contracting Officer)***

**To:** ***(Insert name of prospective COR)***

You are hereby appointed as the Contracting Officer's Representative (COR) under (*Insert contract number or procurement request number if contract number is not available*) with the *(Insert the name(s) of the contractor(s))* for *(Describe the supplies, services, or construction being purchased)*. As the COR, your primary duty is to monitor *(Insert the contractor's name)* performance to ensure that all of the technical requirements under the contract are met by the delivery date or within the period of performance, and at the price or within the estimated cost stipulated in the contract. The duties or authorities in this letter are not delegable; therefore, you must advise the Contracting Officer, *(Insert name of Contracting Officer)* or the Contract Administrator/Specialist *(Insert name of Contract Administrator/Specialist)* immediately when you are unable to perform these duties.

***Scope of Authority (insert section if authorized by Component procedures).***

As COR, you are authorized….

***COR Responsibilities and Duties (See Appendix W, Attachment 2 for requirements).***

Your duties as applicable to the contract are as follows:

> ***Performing surveillance/inspection and acceptance.***
>
> ***Monitoring activities, cost, providing input to contractor performance evaluations and notifications to the Contracting Officer.***
>
> ***Making recommendations for invoices and payments.***
>
> ***Managing Government Furnished Assets (when required).***
>
> ***Managing Contractor Employee Access (when required).***

***Non-Delegable Functions and Exclusions (See Appendix W, Attachment 2 for requirements).***

As COR you shall not:

***FAR and DHS Authorities/Directives, Government Ethics and Training.***

The FAR and the Department of Homeland Security requires strict compliance with established standards of conduct and conflict of interest rules. *In addition to the FAR, HSAR and DHS Directives for ethics, training and financial disclosure, Component procedures should address and include additional related Contracting Officer's instructions to the COR. See also Exhibit 3, Federal Acquisition Regulation (FAR), DHS Directives and Government Ethics, and Training.*

***Federal Acquisition Certification Requirements***.

Based on the technical and administrative characteristics of this contract, I have determined that the COR must possess a Federal Acquisition Certification (FAC) for CORs Level *(insert appropriate level).* Your appointment as COR is based on the training, experience, certification, and other qualifications cited in your nomination letter. It is your responsibility to maintain your certification and/or qualifications for COR on this contract, including completing continuous learning points. If you fail to maintain your FAC COR certification at this level, DHS is prohibited by law from paying you for performing COR functions.

***Contract file content and maintenance.***

Instruction for contract file content is in accordance with Component and Contracting Officer's instructions.

If you have any questions or problems, please contact the Contract Specialist, [insert name of Contract Specialist], at [insert full telephone number including area code].

---

***Appointment Effective and Termination Dates.***

Your appointment as the COR under the above numbered contract is terminated upon receipt of a written notice of termination from the appointing Contracting Officer, the Contracting Officer's successor, or a higher level of authority.

| _____ | _____ | _____ |
|---|---|---|
| Name of Contracting Officer | Signature of Contracting Officer | Date |

***Acknowledgement Receipt and Acceptance of Appointment.***

Please acknowledge receipt and acceptance of this appointment by signing and returning the attached acknowledgement section to the Contracting Officer or contract administrator/specialist.

I understand and accept my assignment as the COR under *(Insert contract /requirement name/number (if available)* as outlined in your letter to me dated (*insert date of Contracting Officer's letter*).

| _____ | _____ | _____ |
|---|---|---|
| **Name and title of Contracting Officer's Representative (COR)** | Signature of Contracting Officer's Representative (COR) | Effective Date |

***Attachments:***
OGE 450, Confidential Financial Disclosure Report (if applicable)

***Copy to:***
Payment Office
Contractor
Other Offices (as appropriate)

**Exhibit 1: COR/Alternate COR Core Responsibilities and Functions.**
(See HSAM 3042.270-2(b)(i), COR Appointment letter.)

| Required functions | Examples for describing COR delegated duties |
|---|---|
| Performing surveillance/inspections and acceptance. | Perform on-site surveillance in accordance with the surveillance plan. Document surveillance activities and provide a copy of documentation to the contracting officer. Review technical proficiency and compliance against the technical provisions of the contract, and verify the performance of work by the contractor. |
| | Perform surveillance of the performance under the business agreement and conduct inspections necessary to assure performance and compliance with the terms and conditions of the agreement. |
| | Assure prompt review of draft reports and approval of final reports to contractor to assist with meeting the specified completion date of the contract, and assuring prompt inspection and acceptance, or rejection of deliverable. |
| | Notify the Contractor of deficiencies observed during surveillance. Record and report to the contracting officer all incidents of faulty or nonconforming work, delays, or problems which may disrupt or hinder future performance. |
| Monitoring activities, cost (see HSAM 3016.601, 3032.7000, and 3042.1500), providing input to contractor performance evaluations and notifications to the contracting officer (see examples): | Components HCAs are responsible for contractor performance evaluations procedures and policies (see HSAM 3042.1500) for ensuring that contractor performance evaluations (interim and final) are included in the PPIRS through the Contractor Performance Assessment Reporting System. The CO's identification and requested assistance from the COR for input into the contractor evaluations can be efficiently assigned via the appointment COR letter. |
| | See HSAM 3016.601 and 3032.7000 for specific requirement in monitoring cost reimbursement contracts & time-and-material and labor hour contracts. |
| Notification examples: | Any requests for changes from a contractor. |
| | Potential labor disputes or workforce problems. |
| | Lack of performance which may jeopardize the cost or required schedule. |
| | Monitoring financial management controls with respect to the allocation of appropriated dollars under the designated contract. |
| | Possible changes in Contractor management and/or key personnel. |
| | Disagreements with the Contractor regarding performance of statement of work/objectives (SOW/SOO) requirements or other potential disputes with the Contractor about technical or other business matters. |
| | Any possible Contractor deficiencies or questionable practices so that corrections can be made before the problems become significant. |
| | Procurement fraud, waste, abuse, bribery, conflict of interest, or other improper conduct to the CO and agency office, such as the OIG. |
| | All problems, potential disagreements or controversy, both oral and in writing, regarding the status of the contract and performance of its requirements. |
| Making recommendations for invoices and payments. | Report any discrepancies in payment vouchers to the contracting officer. Provide documentation to support the representation. |

| | |
|---|---|
| (See HSAM 3016.601 and 3032.7000.) | Evaluate progress payment requests based on costs incurred and actual work accomplished. |
| | Certify invoices to the contracting officer for payment, using the ____ electronic invoicing system (if Component systems provide this functionality). |
| | Reviewing contractor invoices for accuracy of work completed in accordance with contract requirements and certifying acceptance or rejection. |
| | Review the Contractor's invoices/vouchers for reasonableness and applicability to the contract and recommend to the contracting officer approval, conditional approval, or disapproval for payment. The review must be completed within five days after receipt of the invoice or voucher. If you cannot meet the required review time, advise the contracting officer or contract specialist so that action can be taken to ensure Government compliance with the Prompt Payment Act, thereby avoiding the payment of interest penalties to the Contractor. |
| | Review the contactors invoices/vouchers to ensure that they accurately reflect the work completed in accordance with the requirements of the contract, and certify acceptance of the delivered items. Submit certified invoices/vouchers to the Dallas Finance Center and copies to the contracting officer in a timely manner. |
| | See HSAM 3016.601 and 3032.7000 requirements for processing payment for cost reimbursement & time-and-material and labor hour contracts. |
| Managing Government-furnished property (used when Government property is specified in the contract). | You are not authorized to provide any Government-owned (or leased) equipment or supplies or use of Government space to the Contractor, other than those specifically identified in the business agreement and authorized by the contracting officer. |
| | If applicable, ensure Government-furnished property is made available in a timely manner. |
| | Request the contracting officer authorize Government-furnished property and, when requested by the contracting officer, provide disposition advice on Government-furnished property or contractor-acquired property. |
| Managing contractor employee access and security through established application process for cards, badges or credentials (when security requirements are specified in the contract). | Serves as a Federal sponsor for contractor, by assisting with the agency Security process, to include handling, as appropriate, the Contractor Suitability worksheet for contractor requiring a DHS PIV card, notification of results of the contractor access submissions, ensuring the return of the DHSPIV card, and communication of contractor and employee's changes in status. |
| Perform oversight of inherently Governmental and critical functions. See HSAM 3007.5 and DHS Guide on Inherently Governmental and Critical Functions regarding specific requirements | Perform on-going reviews of the functions performed by contractors, especially ways in which work is performed, and the manner in which Government personnel are managing services acquisitions. Reviews should focus on functions that are closely associated with inherently governmental functions and critical functions. In addition, monitor contracts to ensure that the relationships between Government personnel and contractors have not evolved into unauthorized personal services or inherently governmental functions. Also, provide information to the CO so the CO can document the contract file to reflect the results of the on-going review. |

## Exhibit 2: Non-Delegable Functions and Exclusions.

(See HSAM 3042.270-2(ii), COR Appointment letter)

| **Suggested characteristics of contracting officer non-delegable functions. Component procedures may include variations substantially the same as the following:** |
|---|
| Contracting officers may not delegate to the COR the following authorities or activities: |
| To make or give the appearance of being able to make commitments, modifications, or other actions which would commit the Government to a change in price, performance, quality, quantity or the delivery schedule. |
| To provide guidance to the contractor, either orally or in writing, which might be interpreted as a change in the scope or terms of the contract. |
| To change or modify any of the terms and conditions, or statement of work of a contract, business agreements, or transaction. |
| To approve items of cost not specifically authorized or increase dollar limits for the contract or business agreement. |
| To take any action with respect to termination, except to notify the contracting officer that action maybe necessary and to assist with the process as requested. |
| To engage in conduct prejudicial to the Government. |
| To sign contracts or contract modifications. |
| To solicit proposals. |
| To direct a contractor (oral or written) to begin work prior to contract award date or notice to proceed, or to stop work. |
| To participate in negotiations with a contractor outside the presence of a contracting officer. |
| To render a decision on any dispute or question of fact under the Disputes clause of the contract. |
| To interfere with the contractor's management by supervising contractor employees or otherwise directing their work efforts. |
| To specify limitations and include the admonition that the COR may be personally liable for unauthorized commitments. |
| To make any agreement with the Contractor relating to the expenditure of Government funds. |

**Exhibit 3:**
**Federal Acquisition Regulation (FAR), DHS Directives and Government Ethics, and Training**
(See HSAM 3042.270-2(b)(iii), COR Appointment letter)

| **Required** | **Suggested examples** |
|---|---|
| FAR, Ethics and DHS Directives | Adherence to applicable requirements for ethics (annual training), procurement integrity, no conflict of interest, and proper standards of conduct, including the identification of regulations (e.g., FAR Part 3, Improper Business Practices and Personal Conflicts of Interests), statutes, or agency directives governing these topics (e.g., 5 CFR Part 2635 Standards of Conduct and Management Directive 0480.1, Ethics/ Standards of Conduct (or any successor directive)). |
| | Submit disclosure reports, such as the OGE 450, Confidential Financial Disclosure Report, via the appropriate confidential report system. |
| | Use of authority for appointment letter is "Pursuant to the Federal Acquisition Regulation (FAR), the Homeland Security Acquisition Regulation (HSAR), you are appointed the COR or Alternate COR." |
| Training | Adherence to DHS Annual Skills Currency to maintain COR certification and any special instructions for obtaining training, to include ethics or other relevant training. |
| Precautionary Measures | Provide in accordance with Component procedures a disclaimer: "*The responsibilities and exclusions set forth in this document are not intended to be all encompassing. As a COR, you are required to consult with the contracting officer when there are questions on your authority. You are not authorized to re-delegate your authority. Violation or misuse of your authority could result in abuse of DHS policy and resources at a minimum or monetary loss to the COR or firm involved, disciplinary actions, and other measures, depending on the extent of the offense.*" |

# *COR Supervisor Notification Letter*

**Agency/Component letterhead**

**Subj: Supervisors Notification of Appointment of (Insert name of prospective COR) as Contracting Officer's Representative (COR)**

**From**: *(Insert name of Contracting Officer)*

**To:** *(Insert name of COR's supervisor)*

This is to advise you that *(Insert name of COR*) is being appointed as COR under Contract No. *(Insert number)* with the *(Insert the name(s) of the contractor(s))* for *(Briefly describe the supplies, services, or construction being purchased).* As the COR, Mr. / Ms. *(Insert name of COR)'s* primary duties include monitoring the contractor's performance to ensure that all of the technical requirements under the contract are met by the delivery date or within the period of performance, and at the price or within the estimated cost stipulated in the contract. Another very important duty is to provide, on a timely basis, input into the contractor performance evaluation for this contract, as specified in Homeland Security Acquisition Manual (HSAM) Subchapter 3042.15. The full delegation to Mr. / Ms. *(Insert name of COR )* is in the COR appointment letter, attached.

DHS leadership considers the role of COR to be vital to the effectiveness of acquisition programs and ultimately, to the ability of DHS to successfully accomplish its mission. Recognizing this, HSAM 3042.270-1 requires that each COR's annual performance appraisal include an evaluation of how well the COR's functions are performed. Please ensure that the COR's annual performance appraisal specifically addresses the five core COR Responsibilities descried in HSAM 3042.270-2(b)(i).

As the COR's supervisor, you are requested to ensure that the COR has adequate resources, including time, to perform the COR's duties. You are also requested to monitor the COR's performance with regard to their responsibilities under Contract (insert contract number) and to ensure that the COR's annual performance appraisal accurately reflects the extent to which the COR met those responsibilities.

Please feel free to contract me if you have any questions regarding this letter.

_____
Contracting Officer

Attachment:
COR Appointment letter to (*Insert name of COR*)

Copy to:
(*Insert name of COR*)

**HSAM Appendix Y**

**DETERMINATION AND FINDINGS**
**Authority to Award an Award Fee Contract**
**FINDINGS**

1. The *(identify the Component and the contracting office)* of the Department of Homeland Security proposes to contract for *(describe the supplies and/or services being procured and identify the program/project, if applicable).*

2. *Estimated value of the contract action:* $_____
3. The work to be performed is such that it is neither feasible nor effective to devise predetermined objective incentive targets applicable to cost, schedule, and technical performance because _____*(insert rationale)*_____;
4. The likelihood of meeting acquisition objectives will be enhanced by using a contract that effectively motivates the contractor toward exceptional performance and provides the Government with the flexibility to evaluate both actual performance and the conditions under which it was achieved because _____*(insert rationale)*_____;
5. Any additional administrative effort and cost required to monitor and evaluate performance are justified by the expected benefits as documented by a risk and cost benefit analysis for the reasons addressed in the following/attached cost/benefit analysis. _____*(insert or attach the cost/benefit analysis)*_____.

   *[The cost benefit analysis must address at least each of the following:*
   - The estimated **additional cost under the contract** for the contractor to participate in the award fee (AF) process, including additional reporting and attendance of meetings.
   - The estimated **additional salary, travel and other costs to the government** of performing the award fee functions;
   - The estimated **additional contract award fee amounts** necessary under the award fee plan to be paid for excellent contractor performance.
   - The **additional value or benefit** desired from the contractor as a result of motivation from the award fee process (such as reduced contract price or added value of contract deliverables [you do not have to dollarize added value of improved deliverables]).
   - An **assessment** showing the desired benefits outweigh the anticipated costs. ]

6. The Award Fee Plan is attached.
7. All of the limitations of FAR 16.301-3 will be complied with (applies only if this is a cost type contract):
   (a) A cost-reimbursement contract may be used only when—
   (1) The contractor's accounting system is adequate for determining costs applicable to the contract; and
   (2) Appropriate Government surveillance during performance will provide reasonable assurance that efficient methods and effective cost controls are used.
   (b) The use of cost-reimbursement contracts is prohibited for the acquisition of commercial items.

**DETERMINATION**

On the basis of the above findings, I hereby determine that the use of an award fee arrangement for this contract action is in the best interests of the government.

*(Signature of the Head of the Contracting Activity (HCA))*

# MEMORANDUM OF AGREEMENT (MOA) BETWEEN THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY (DHS) AND THE NAVAL INVENTORY CONTROL POINT (NAVICP) PRICE FIGHTERS$ FOR REIMBURSEMENT FOR SOURCE SELECTION, ENGINEERING ANALYSIS, AND COST AND PRICING EVALUATION SERVICES PROVIDED IN SUPPORT OF DHS CONTRACTS

## 1. PURPOSE

This Memorandum of Agreement (MOA) sets forth policies and procedures by which the Price Fighters$ shall be reimbursed for source selection, engineering analysis, and cost and pricing evaluation services in support of the Department of Homeland Security (DHS). This MOA contains terms that will applied in future agreements or orders between the parties, including a general description and schedule of available services and methods for pricing, issuing, and delivering services during its period.

## 2. AUTHORITY

DHS executes this agreement pursuant to its Management Directive 0450.1, Memoranda of Understanding (MOU) and Memoranda of Agreement (MOA). Price Fighters$ executes this agreement pursuant to Department of Defense Instruction (0001) 4000.19, Interservice and Intragovernmental Support. Agreements or orders incorporating the policies and procedures of this MOA will be issued pursuant to the Economy Act, 31 U.S.C. 1535 and 1536, as implemented by the Federal Acquisition Regulation (FAR) Subpart 17.5, FAR Part 42, and Executive Branch policy.

## 3. SCOPE

(a) This overarching MOA establishes a communication and support network between the listed parties for Price Fighters$ to provide source selection support, value analysis, technical assistance, engineering analysis, and cost and pricing support services. By mutual agreement, Price Fighters$ will provide source selection, engineering analysis, and cost and pricing evaluation services as described in Appendix 2 to this MOA, on existing and future DHS requirements.

(b) DHS obligates no funds under this MOA, except as incorporated into IMs as described in subsection 4(a) below.

(c) The Points of Contact (POCs) for DHS and for Price Fighters$ are identified in Appendix 1.

**4. PROCEDURAL ARRANGEMENTS**

(a) The support provided by Price Fighters$$ will be specifically identified in separate Inter Agency Agreements (IAAs) or Military Interdepartmental Purchase Requests (MIPRs ) between DHS Components and Price Fighters$ that will incorporate in full text or by reference the terms of this MOA. These IAAs/MIPRs will contain statements of work for specific services to be provided, and any necessary additional terms (consistent with this MOA), which together will form the basis of an agreement between Price Fighters$ and that DHS Component under the Economy Act. Those IAAs/MIPRs, and records created to support them, will contain the documentary evidence and additional terms sufficient for the DHS Component to obligate funds under 31 U.S.C. §§ 1501 and 1535-1536 and fully satisfy the requirements of Federal Acquisition Regulation (FAR) Subpart 17.5, FAR Part 42, and Executive Branch policy.

(b) Additional general procedures and terms may be included in MOAs between Price Fighters$ and individual DHS Components for recurring use in agreements and orders placed by those Components under the Economy Act, FAR Subpart 17.5, DoD I 4000.19, and the DoD Financial Management Regulation.

(c) Unless directed otherwise in accordance with applicable law. Price Fighters$ will promptly advise the DHS of any audit, surveyor investigation by the Government Accountability Office or a departmental or agency inspector general, that will include in its scope a DHS contract or program for which Price Fighters$ is performing services under an IAAIMIPR that relies upon this MOA.

(d) Price Fighters$ shall not allow the use of private sector contractors to conduct evaluations or analyses of any aspect of a proposal submitted to DHS for an acquisition, except in accordance with 41 U.S.C. § 419 (as implemented in FAR 37.203(d) and 37.204), or a successor statute and regulation. Under no circumstance will Price Fighters$ allow any contract support staff it employs to take an action set forth in FAR 7.503(a)(12) (or successor regulation) with respect to a DHS prime contract.

(e) The policy and procedures of this MOA may be used in establishing IAAs/MIPRs between Price Fighters$ and DHS Components for the services described herein, and for the pricing, issuing, and delivering of those services, where the IAAIMIPR relies for its source of authority on a law other than the Economy Act, where to do so would comply with such law.

(f) In support of each IAA or MIPR, the OHS Component will forward to Price Fighters$ a copy of a Determination & Findings (D&F) under FAR 17.503. An authorized Price Fighters$ or NAVICP official shall execute for each MIPR an Acceptance of MIPR 00-448-2. (Where an IAA is used, an authorized Price Fighters$ or NAVICP official shall execute an acceptance equivalent to an Acceptance of MIPR DD-448-2.) When issuing each order the DHS Component shall provide a certification on or attached to the Economy Act order that the funds cited on the order are properly chargeable for the purposes cited in the order.

## 5. BASIS FOR REIMBURSEMENT

(a) Price Fighters$ will provide source selection support, engineering analysis, and cost and pricing services for the DHS on an actual cost reimbursement basis, which is estimated at the prevailing Price Fighter$ hourly rates for the functional specialties engaged in the project. The applicable rate will be applied to the actual direct hours worked. For FY09, the rate for estimating purposes is $79.25 per hour. This MOA is subject to annual modification, as necessary, to provide for adjustment of the rate for estimating.

(b) Direct hours worked shall include any combination of regular hours, credit hours, compensatory time worked, and overtime. Overtime hours will only be charged with the agreement of the DHS component.

(c) The Price Fighter$ reimbursable rates include overhead costs which provide recoupment for supervisory, clerical, normal training, leave.

(d) Travel will be reimbursed at cost, based on current rates established by applicable Government travel regulations.

## 6. BILLING DESCRIPTION

(a) The Defense Finance and Accounting Services (DFAS) is the accounting entity for the Department of Defense (DoD). The DFAS Columbus Center, which provides accounting services to Price Fighters$, shall request and receive payment for services performed by Price Fighters$ from the DHS finance office listed on each order. Invoices shall contain at least the information required in Appendix 2.

(b) Unless otherwise agreed to with the DHS component, reimbursement requests will be submitted electronically to each DHS Component finance office on at least a biweekly basis via the Enterprise Resource Planning (ERP) and Intragovernmental Payment and Collection (IPAC) systems after actual expenditures are approved. The reimbursement requests will include a summary of hours and dollars charged and any additional charges for actual costs related to on-site support travel. DFAS Columbus will identify all costs to each DHS Component finance office by using the Standard Form (SF) 1080 (Voucher for Transfers Between Appropriations) *andlor* Intragovernmental Payment and Collection (IPAC) with as many as three line items identified in the supporting documentation:

(1) Cost of Price Fighter$ (hours x current rate);
(2) Cost of Price Fighter$ on-site support travel (actual costs); and
(3) Cost of Price Fighters$ Contractor Support Services (actual costs), if applicable.

## 7. USE OF CONTRACTOR SUPPORT

In each case where Price Fighter$ plan to utilize contractor support to perform work for DHS, Price Fighter$ shall notify the contracting officer in writing. The notification shall include (a) a description of the contractor support being provided, and (b) a statement that -

(i) contractor support is required due to a lack of sufficient readily available PriceFighters personnel and

(ii) PriceFighters are not aware of other Department of Navy readily available personnel for such support.

The DHS contracting officer will review the Price Fighter$ notification of intention to use contractor support and notify the Price Fighter$, in writing, that the contracting officer (a) approves the use of the contractor support in accordance with FAR 37.203(d), FAR 37.204, and FAR 37.205, or (b) disapproves the use of the contractor support.

When the contracting officer disapproves the use of contractor support, the PriceFighter$ shall notify the contracting officer, in writing, that (a) PriceFighter$ will perform the work without using contractor support, or (b) PriceFighter$ declines to perform the work.

## 8. SECURITY CLASSIFICATION REQUIREMENTS AND TRADE SECRETS PROTECTION

Information resulting from this agreement may contain competitive, sensitive, proprietary, or other non-public information not intended for disclosure outside of official Government channels. In those cases where Price Fighter$ will use contractor support, DHS non-disclosure agreements (see Appendix 3) will be signed by all contract support personnel and returned to the DHS POC as directed.

In response to any DHS request for Price Fighter$ assistance, the Price Fighter$ shall provide the DHS requestor with a list of the support contractors that may be participating in the Price Fighter$ work. Price Fighter$ is responsible for assuring that an Appendix 3 non-disclosure agreement is signed by each support contractor employee participating.

When Price Fighter$ assistance is requested prior to issuance of the RFP, the DHS requestor is responsible for ensuring that the solicitation includes the name and address of any Price Fighter$ support contractors that may be supporting the evaluation. When the DHS requestor decides to utilize the services of Price Fighter$, after issuance of the RFP but before contract award , the DHS requestor will assure that appropriate notification is provided to all potential offerors through an amendment to the RFP or other suitable method of communication. When assistance is requested after contract award, the DHS requestor will work with the awardee and Price Fighter$ regarding use of support contractors.

## 9. MODIFICATIONS, INTERPRETATIONS AND TERMINATION

(a) Changes and/or modifications to this agreement may be made at any time upon mutual written consent of the undersigned. Modifications shall cite the agreement number indicated at the beginning of this document and shall set forth the exact nature of the change andlor modification.

(b) No oral statement by any person, and no written statement by anyone other than the undersigned, or an authorized representative as designated in writing, shall be interpreted as modifying or otherwise affecting the terms of this agreement.

(c) Either party may terminate this agreement with 180 days advance written notice. If terminated by DHS with less than 180 days notice, Price Fighters$ may bill DHS the actual costs for reimbursement under specific 1M or MIPR, of unavoidable termination expenses incurred during the 180-day period following notification.

## 10. POINTS OF CONTACT

General Points of Contact (POCs) for both parties are listed under Appendix 1.

## 11. EFFECTIVE DATE

This MOA is effective upon Signature by both parties.

**APPROVAL/DATE:**

| | | |
|---|---|---|
| /Signed/ | March 30, 2010 | /Signed/ |
| Department of Homeland Security<br>Richard K. Gunderson<br>Acting Chief Procurement Officer Director, | | NAVICP Price Fighter$<br>Willard B. Jones<br>Price Fighter$ Department |

**APPENDICES**

1 DHS and Price Fighters$ Points of Contact
2 Price Fighters$ services available under this MOA
3 DHS Non-Disclosure Agreement

# APPENDIX 1

## DHS AND COMPONENT & NAVICP PRICE FIGHTER$ POINTS OF CONTACT

### DHS Headquarters, Office of Chief Procurement Officer

Mr. William Randolph
Department of Homeland Security
Office of the Chief Procurement Officer
245 Murray Lane, SW, Building 41
Washington D.C. 20528
(202) 447-5252 PROCUREMENTSUPPORT@hq.dhs.gov

### DHS Headquarters, Office of Procurement Operations

Ms. Cynthia Brice Department of Homeland Security
Office of Procurement Operations
245 Murray Lane, SW, Building 41
Washington, D.C. 20528
(202) 447-0065 Cynthia.Brice@dhs.gov

Alternate Point of Contact

Mr. Ralph Eagleton Department of Homeland Security
Office of Procurement Operations
245 Murray Lane, SW, Building 41
Washington, D.C. 20528
(202) 447-5805 Ralph .Eagleton@dhs.gov

### Coast Guard

Ms, Jeraline Artis
U.S. Coast Guard Headquarters
Acquisition Policy and Oversight (G-APO) Policy and E-Business
2100 2nd Street,
SW Washington, DC 20593
Phone: (202) 475-3718 FAX: (202)372-3949
Jeraline.Artis@uscg.dhs.gov

**Secret Service**

Communications Center (PRO)
ATTN: Ms. Kelly Curtin
245 Murray Lane, SW
Building T-5
Washington, DC 20223
(202) 406-6809 Kelly.Curtin@usss.dhs.gov

**U. S. Customs and Border Protection**

Mr. Don Carter
U.S. Customs and Border Protection
Procurement Directorate,
Procurement Programs Division
1300 Pennsylvania Ave NW, Suite 1530
Washington, DC 20229
Phone: (202) 344-3296 Fax: (202) 344-1812
Email: Donald.J.Carter@dhs.gov

**Federal Law Enforcement Training Center**

Ms. Robin Fowler
Deputy Chief, Procurement Division
FLETC PRO, Building 93
1131 Chapel Crossing Road
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# APPENDIX 2

## SERVICES PROVIDED BY PRICE FIGHTERS$

**Services include the following:**

**I. Business Case Analyses**

-Decision support tool comparing alternatives

-Tailored to DoD, DoN, Military Services or Agency guidance

-Determine the potential savings/loss of PBL support

-Other Business Case Analysis support as agreed by DHS components and Price Fighters$.

**II. Cost Proposal Evaluation**

-Review the Request for Proposal (RFP)

-Review of contractor's proposal

-Determine the manufacturing processes and time to perform these processes

-Determine the prices for the necessary material

-Evaluate the production run quantities and specifications

-Determine the test and inspection requirements

-Evaluate the adequacy of technical data and determine the cost of tooling for new suppliers

-Calculate the unit price by using the DCM approved or recommended labor and overhead rates

-Provide an unbiased technical report of all findings to the requester

-Provide assistance in determining if the proposal provides fair and reasonable pricing

-Provide assistance in formulating a negotiation position

-Negotiation support

-Pre and Post Business Clearance support

-Other Cost Proposal Evaluation support as agreed by DHS components and Price Fighters$.

**III. Engineering Change Proposal Evaluation**

-Coordinate production and retrofit Engineering Change Proposals (ECP)

-Conduct in-plant fact-find at the contractor's facilities

-Provide analysis for technical and cost proposals

-Assist in contractor negotiations

-Assist in grouping ECPs into logical and economic incorporation

-Review ECPs for impact to Integrated Logistics Support

-Review ECP for Field Service Installation activity

-Other Engineering Change Proposal Evaluation support as agreed by DHS components and Price Fighters$.

**IV. Integrated Logistics Support (ILS)**

-Evaluate Contractor's cost proposal

-Evaluate integrated electronic technical manuals (IETMs) support development proposals

-Evaluate support equipment development proposals

-Assist in formulating the Government's negotiation position

-Participate in fact-find meetings at the contractor's facilities

-Test proposal for fair and reasonableness

-Conduct meetings/technical reviews/program meeting with NAVAIR and Contractors

-Evaluate field service technical support proposals

-Evaluate tooling/fixtures proposals -Evaluate packaging and handling

-Evaluate Organizational, Intermediate, and Depot level facilities proposals

-Other Integrated Logistics Support effort as agreed by DHS components and Price Fighters$.

**V. Litigation Support**

-Contract Claim Analysis

-Discovery Document Reviews

-Critical Path Method Recreations

-Drawing Reviews

-Scheduling / Delay Analysis

-Expert Witness Reports

-Entitlement Analysis

-Quantum Analysis

-Other litigation Support as agreed by DHS components and Price Fighters$.

**VI. Price Challenge Hotline**

-Provide pricing validation

-Address suspected overpricing

-Address identical/duplicate items in the system

-Address alternate sources -Forward case for Value Analysis

-Assist in determining the requester award amount, if warranted

-Other Price Challenge Hotline effort as agreed by DHS components and Price Fighters$.

**VII. Repair Contract Proposal Evaluation**

-Review the Request for Proposal (RFP)

-Review of Contractor's proposal

-Determine the manufacturing processes and time to perform these processes

-Determine the prices for the necessary material

-Evaluate the production run quantities and specifications

-Determine the test and inspection requirements

-Calculate the unit price by using the DCM approved or recommended labor and overhead rates

-Develop a repair contract position/recommendation

-Provide an unbiased technical report of all findings to the requester

-Provide negotiation assistance

-Other Repair Contract Proposal Evaluation as agreed by DHS components and Price Fighters$.

**VIII. Repair Should Cost Analysis**

-Review the part or technical data package

-Determine the manufacturing processes and time to perform these processes

-Determine price of the necessary material

-Evaluate the production run quantities and specifications

-Determine the test and inspection requirements

-Evaluate the adequacy of technical data and determine the cost of tooling for new suppliers

-Calculate the unit price by using the DCM approved or recommended labor and overhead rates

-Other Repair Should Cost Analysis as agreed by DHS components and Price Fighters$.

**IX. Should Cost Analysis**

-Review the part or technical data package

-Determine the manufacturing processes and time to perform

-Determine price of the necessary material

-Evaluate the production run quantities and specifications

-Determine the test and inspection requirements

-Evaluate the adequacy of technical data and determine the cost of tooling for new suppliers

-Calculate the unit price by using the DCAA approved or recommended labor and overhead rates
-Other Should Cost Analysis as agreed by DHS components and Price Fighters$.

## X. Technical Data Package Review

The technical data package review consists of two distinct operations:

--*In Process Review:*

-Inventory and file all documents received

-Examine each piece for legibility of all notes and other instructions

-Check the resolution of each drawing and illustration for clarity and quality

--*Physical Configuration Audit:*

-Verify that each item in each drawing is accurately represented

-Verify test programming and standard alteration instructions for clarity

-Make fact-find visit to manufacturer's facilities

## APPENDIX 3

## DHS NON-DISCLOSURE AGREEMENT

Department of Homeland Security Non-Disclosure Agreement

# DEPARTMENT OF HOMELAND SECURITY

# DEBRIEFING GUIDE

**OFFICE OF THE CHIEF PROCUREMENT OFFICER**
**December 2011**
**Version 2.0**

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## I. Introduction

This debriefing guide is part of DHS's vender communication strategy. It is important to communicate appropriate information at all stages in the acquisition process and especially valuable to communicate with unsuccessful offerors at the end of the award process. This debriefing guide summarizes the regulations and DHS policy regarding debriefings and explanations of the basis for award to encourage communication with unsuccessful offerors in order to:

- Reduce misunderstandings and protests.
- Improve future proposals.
- Obtain information that improves DHS's acquisition process.
- Strengthen and enhance the government's relationship with industry.

Debriefing is the process that affords offerors to a competitive solicitation with an explanation of the evaluation process, an assessment of their proposal in relation to the evaluation criteria, a general understanding of the basis of the award decision, and the rationale for exclusion from the competition. Debriefings consist of two types, preaward (offerors excluded from the competitive range) and postaward. The Federal Acquisition Regulation (FAR) requires, upon written request from the Offeror, debriefings of unsuccessful offerors in accordance with FAR 15.505, 15.506 and 16.505. Postaward debriefings requested under FAR 15.506 and 16.505 provide unsuccessful offerors with an analysis of the offeror's proposal and the basis for the selection decision. FAR 15.505 allows offerors excluded from the competitive range to request either a preaward debriefing with immediate but limited assessment of the proposal's deficiencies or a postaward debriefing that expands the information to include the basis of the selection decision. Only one debriefing is required – so, if the contracting officer provides a preaward debriefing, there is no need to later provide a postaward debriefing.

The FAR also includes explanations of the basis of the award to communicate with unsuccessful offerors outside of the debriefing process described in FAR Part 15. For example, FAR 8.405-2 requires, upon a written request from the Offeror, an explanation of the award decision for some General Service Administration (GSA) Federal Supply Schedule (FSS) orders where selection was based on factors other than price alone.

A debriefing or explanation of the basis of the award is an important task at the end of the award process for all types of procurements and therefore, the contracting officer should consider communicating the appropriate information to unsuccessful offerors even if a debriefing or explanation of the award is not required. An optional debriefing or explanation of the basis of the award is important because each proposal or quotation requires considerable resources to prepare. The government's explanation of why the offeror was unsuccessful may be the only value the offeror receives for its participation. It is also in the government's interest to inform the offeror of the proposal's shortcomings, so the same mistakes are not repeated in future procurements. These actions reduce the cost of the competitive process and encourage offerors to view the government as a trustworthy customer.

## II. Scope

This guide is intended to be used by all DHS contracting officers as a resource for all competitive procurements. Table 1 below lists the contracting processes that include debriefings or explanations of the award:

**Table 1 Types of Communication with Offerors**

| FAR Citation | Contracting Process | Debriefing or Explanation | Notice Requirement | Time Limit to Request Information | Required or Optional |
|---|---|---|---|---|---|
| 8.405-2 | FSS Orders requiring statements of work | Explanation | No requirement to notify bidder of opportunity for an explanation | No time limit to request an explanation | Required if requested on an award that was based on factors other than price alone. Optional in other cases. |
| 8.4 | Other FSS Orders and BPAs against the GSA schedule | Explanation | No requirement to notify bidder of opportunity for an explanation | No time limit to request an explanation | Optional |
| 13.106-3(d) | Simplified Acquisitions | Explanation | No requirement to notify bidder of opportunity for an explanation | No time limit to request an explanation | Required- if requested on an award that was based on factors other than price alone. Optional in other cases. |
| 15.5 | Source Selection | Debriefing | Required notice to offerors within 3 days of award. | Must be received in writing by contracting officer within 3 days of notification of contract award. | Required- if a timely request is received. Optional if the request is untimely. |
| 16.505 | Orders under multiple award IDIQ contract under $5m | Explanation | No requirement to notify bidder of opportunity for an explanation | No time limit to request an explanation. | Optional |
| 16.505 | Order under multiple award IDIQ contract equal to or greater than $5m | Debriefing | Required notice to offerors within 3 days of award. | Must be received in writing by contracting officer within 3 days of notification of contract award. | Required- if a timely request is received. Optional in other cases. |
| 35.008 | Award of R&D contracts | Debriefing | Should notify offerors within 3 days of award | Should be received in writing by contracting officer within 3 days of notification of contract award. | Optional |
| 36 | Construction Contracts that use FAR Part 15 or FAR Part 16 processes for award | Debriefing | Required notice to offerors within 3 days of notification | Must be received in writing by contracting officer within 3 days of notification of contract award. | Required- if a timely request is received where the request is required within a certain number of days. Optional in other cases. |

## III. Sources

FAR 8.405-2 Ordering procedures for services requiring a statement of work
FAR 13.106-3 Award and documentation
FAR 15.505 Preaward debriefing of offerors
FAR 15.506 Postaward debriefing of offerors
FAR 16.505 Ordering
FAR 35.008 Evaluation for award
Department of Agriculture, USDA, Guidelines: Debriefing Offerors, February 4, 2003
Department of the Army Guidelines for Conducting Debriefings, July 19, 2006
Department of Homeland Security, A practical Guide to Source Selection
Federal Acquisition Institute (FAI) Sample: Debriefing, October 30, 2003
National Aeronautical Space Administration (NASA) Procurement Debriefing Guide, March 9, 2010
Post-Award Debriefing Guide by Robert Knauer

## IV. Purpose

A debriefing or explanation of the basis of the award:

- Instills confidence that the offeror was treated fairly.
- Assures the offeror that its proposal was evaluated in accordance with the solicitation and applicable laws and regulations.
- Reduces misunderstandings and protests.
- Gives the offeror an opportunity to provide assessment regarding the selection process.
- Enables a contractor to improve his proposal responses for future acquisitions. (This, in turn, would create a more competitive market ensuring the government would have stronger competitors from which to choose).

A debriefing or explanation of the basis of the award is **not**:

- A page-by-page analysis of the offeror's proposal.
- A comprehensive point-by-point comparison of the unsuccessful offeror’s and the successful offeror’s proposals.
- A debate or defense of the government's award decision.

## V. Debriefings and Explanations of the Basis of the Award Comparison

Debriefings and explanations of the basis of the award are appropriate mechanisms to communicate with unsuccessful offerors. The timing and information provided to offerors differs based on the type of procurement. In general, debriefings are associated with FAR Part 15 source selections; while explanations of the basis of the award occur at the end of a simplified acquisition or GSA schedule order placement. A debriefing includes detailed information on the debriefed offeror’s proposal and the selection process. In contrast, an explanation of the basis of the award is short, includes the basis for the selection, and provides the offeror with general areas to improve future proposals. There is no discussion of strengths, weaknesses, deficiencies,

ratings or ranking in an explanation of the basis of the award. Similar to debriefings, explanations of the award cannot disclose information that is prohibited in debriefings under FAR 15.505(f) or FAR 15.506(e). The other consistent requirement in debriefings and explanations of the basis of the award is the solicitation of an assessment of the acquisition process from the offeror. The offeror's suggestions should be evaluated and if appropriate, used to improve the DHS acquisition process. Attachment A to the Guide provides a short list of helpful tips for a debriefing and an explanation of the basis of the award.

## VI. Preaward and Postaward Debriefings

Debriefings consist of two types, preaward (offers excluded from the competitive range) and postaward. Separate regulations have been established for governance of each type. There are no separate rules for debriefing best value awards. Evaluation criteria have been spelled out in the solicitation, and offerors have been notified of the place cost/price plays in the overall decision for award. A well-documented decision memorandum will indicate the cost/technical tradeoffs that made in the award decision. Proper preparation for an effective debriefing can often deter a protest by demonstrating that the government conducted a thorough, fair evaluation and made a sound decision according to the established solicitation evaluation methodology.

Preaward Debriefings

Offers excluded from the competition before award may request a debriefing before award in accordance with FAR 15.505. The offeror may request a preaward debriefing by submitting a written request for debriefing to the contracting officer within 3 days after receipt of the notice of exclusion from the competition. (Count the days as calendar days, and include weekends and legal holidays. Do not count the day the offeror received the notice. Start with the next day. For example, the offeror receives the notice of award at 3 p.m. on Tuesday. That means the contracting officer must receive a request for a debriefing by close of business on Friday). It is a "required debriefing" only if the requester submits in writing the request to the contracting officer within three days after receipt of the notice of exclusion from the competitive range or within three days after receipt of the notice of award. Law and regulations require the contracting officer to "make every effort" to provide timely requested preaward debriefings "as soon as practical." Contracting officers are provided latitude in delaying the debriefing if providing the debriefing is not in the government's best interest.

The offer may elect to have the debriefing deferred until after award. If the debriefing is delayed until after award, it shall include all information normally provided in a postaward debriefing. Debriefings delayed until after award extend the time available to file a subsequent protest.

Postaward Debriefings

Any offeror in the competitive range, including the awardee, has a right to a timely postaward debriefing, provided the offeror submits a timely written response. The offeror must request a postaward debriefing within 3 days of notification that award has been made. The request must be made in writing. In accordance with a properly executed request, the government shall provide a debriefing and furnish the basis for the selection decision and contract award. To the

maximum extent practicable, the debriefing should occur within 5 days after receipt of the written request. Offerors that requested a postaward debriefing in lieu of a preaward debriefing, or whose debriefing was delayed for compelling reasons beyond contract award, also should be briefed within this time period.

## VII. DHS Policy

**Debriefings:** When using the FAR Part 15 source selection or the FAR 16 "fair opportunity" process for IDIQ orders over $5 million, the contracting officer must debrief an unsuccessful offeror if the offeror makes a written request for a debriefing. Where a debriefing is not required, the contracting officer should consider providing an optional debriefing if the benefits of an optional debrief outweigh the litigative risks. Specifically, the contracting officer should **consider** an optional debriefing when the unsuccessful offeror fails to request a debriefing in a timely manner due to a lack of understanding of FAR or DHS procedures. In addition, the contracting officer should consider debriefing the successful offeror when any of the unsuccessful offerors are debriefed. Whenever the contracting officer is considering an optional debriefing, the contracting officer should seek legal counsel to understand all of the potential risks before making the decision. If an optional debriefing is provided to one offeror, an optional debriefing must be offered to all other offerors in the procurement.

**Explanation of the basis of the award:** The FAR requires that upon request, the contracting officer must provide an explanation of the basis of the award to each participant in a simplified acquisition and certain types of GSA FSS orders. Where not required, the FAR permits the contracting officer to provide an explanation of the basis of the award, but does not mandate the communication. The contracting officer, in consultation with legal counsel, should balance the value of the communication with the litigation risk when deciding whether to provide an optional explanation of the award. If an optional explanation will be offered, all participants in the process must be afforded the same opportunity to receive the information.

### *1. Notice and Time Issues*

**Debriefing:** Usually, debriefings are requested after a notice from the contracting officer reminding the offeror of the right to a debriefing. Attachment B includes sample wording of a contracting officer's notice to the offerors regarding the right to a debriefing. When an offeror is excluded from the competitive range, the contracting officer must include the notice of the right to a debriefing within the exclusion notification. However, a notice of contract award to an unsuccessful offeror is not required to contain a notice of the right to a debriefing. Nevertheless, the contracting officer should remind the offeror of the debriefing opportunity at the time the offeror is notified of the selection.

Scheduling a debriefing may have significant ramifications, if a protest is later filed. Under FAR 33.103(f)(3), an unsuccessful offeror is entitled to an automatic suspension of contract performance **if the protest is filed within five (5) days of the debriefing date offered to the protester (or 10 days after contract award, whichever is later**). Thus, it is important to schedule the debriefing at the earliest possible date. The contracting officer should inform the offeror of the scheduled date by written electronic means to preserve an accurate record in case a timing issue arises. If the contracting officer has selected an oral debriefing but the offeror is unable to attend on the proposed date, the contracting officer should consider a written debriefing

in order to preserve the government's rights. If the contracting officer prefers an oral debriefing, he or she should require the offeror to acknowledge in writing that it was offered an earlier date, but the offeror requested the later date instead. This procedure will protect the government's interests if the offeror subsequently files a protest.

While it is a best practice to provide an optional debriefing, the contracting officer must weigh the value of the communication against the litigative risk, in consultation with legal counsel, before providing a debriefing to an offeror who submitted an untimely request. Such requests do not invoke the statutory provision for automatic suspension of contract performance unless the protest is filed within 10 days of contract award. However, receipt of the debriefing does not preclude an offeror from later filing a protest on an issue raised in the debriefing.

**Explanation of the basis of award:** It is a best practice for the contracting officer to notify offerors of the right to request an explanation of the basis of award for a simplified acquisition or GSA schedule order, but there is no notice requirement. Attachment B includes sample wording for the contracting officer's notice to the offerors of the right to an explanation of the award included as part of a notification of the award. Like debriefings, explanations of award should be provided as soon as practicable after award to avoid extending the time the procurement is at risk of a protest.

### *2. Method and Location*

The contracting officer selects the means and location for the debriefing or explanation of the award that ensures a professional presentation of the information. For actions below the simplified acquisition threshold, an email explanation of the basis of award or telephone communication may be most appropriate. If using an oral method to provide the explanation of the award, the contracting officer should document the information provided even though a debriefing memorandum is not required. In accordance with FAR 15.506(b), debriefings of successful and unsuccessful offerors may be done orally, in writing, or by any other method acceptable to the contracting officer. There is no specific requirement to hold face-to-face debriefings. A written debriefing may be provided by mail, electronically, or may be read to participants in a conference. The following is a list of the most common debriefing and award explanation methods:

| Method of Debriefing | Debriefing or Explanation of the award |
|---|---|
| Written – mailed/emailed with proof of receipt or read face to face | Debriefing |
| Oral face-to-face | Debriefing |
| Written – series of exchanged letters/email attachments with proof of receipt | Debriefing and Explanation of the basis of the award |
| Video teleconference | Debriefing and Explanation of the basis of the award |
| Telephone conference | Explanation of the basis of the award |
| Email exchange | Explanation of the basis of the award |

### *3. Oral Debriefing Unique Requirements*

#### A. Location

If an oral debriefing is contemplated, the contracting officer should secure an appropriately equipped conference room well before the award. If classified material will be discussed, appropriate arrangements must also be made well in advance of the debriefing. The contracting officer may choose a location other than the procurement office for the oral debriefing; even the offeror's facilities may be used. The contracting officer should consider the offeror's cost and the number of participants when selecting an oral debriefing, but the contracting officer is not required to accommodate the offeror's preferences.

#### B. Government Personnel

The contracting officer chairs the oral debriefing; however, this does not mean that the contracting officer must present all of the information. Usually the government's technical representative and contract specialist present the portions of the debriefing that address their specialized areas of the offeror's proposal.

Oral debriefings require the most coordination of all of the debriefing methods. The contracting officer should select the other government team members who will attend well in advance of the debriefing. Legal counsel may be invited to attend all oral debriefings, and counsel should attend oral debriefings whenever the offeror's counsel attends the debriefing. The selection of additional evaluation team members to participate in the debriefing is based on the complexity of the evaluation and the evaluation team dynamics. The key is to ensure that knowledgeable government personnel are present and that they demonstrate cohesiveness in their evaluation of the offeror's proposal in accordance with the solicitation. However, the contracting officer must weigh the value and availability of each participant. Discord and disconnects during the debriefing may cause the offeror to have little confidence in the award. Keeping in mind team dynamics, the contracting officer should consider the following evaluation team members to participate in an oral debriefing:

- Technical Experts
- Cost Price Analyst
- Contract Specialist
- Program Manager
- Representative from the user community or requirements office.

The identical team is not required to debrief each unsuccessful offeror, but it is preferred.

#### C. Offeror Personnel

If the contracting officer chooses an oral debriefing, the contracting officer should ask the offeror to identify all individuals by name, company, and role who will attend the debriefing. The prime offeror may invite company employees (including the technical proposal leader, the program manager for the effort, the contract administrator responsible for the proposal) as well as

subcontractors, consultants and attorneys. Normally, there is no limitation on the personnel the offeror may bring to a debriefing. However, if space is constrained, the contracting officer can limit the number of attendees rather than pursue a written or telephone debriefing or delay the debriefing process.

## D. Preparation

A successful oral debriefing requires preparation. Lack of preparation is the surest way to lose the offeror's confidence and provoke a potential protest. The extent of preparation necessary varies considerably with the complexity and dollar value of the procurement. Preparation begins by compiling source selection documents and arranging for the facilities. The contracting officer should also decide if a stenographer or note taker is required for the debriefing. If so, appropriate arrangements should be made well in advance of the debriefing. The contracting officer should prepare a detailed agenda and outline of information to be presented, gather all of the debriefing materials, draft an opening and closing statement, and stage one or more dry runs to ensure each government participant is comfortable with the information being presented. As part of the dry run, the contracting officer should assign the roles and responsibilities for each government participant. The team should practice answering sample questions to ensure that all information presented is appropriate for the debriefing. Government personnel should be instructed to make their presentations in a positive manner; argumentative or defensive conduct should be avoided. Inconsistency between the debriefing and the source selection documents can reduce the offeror's confidence that DHS acted appropriately in making the award. Thus, the debriefing team must speak with one voice that supports the award decision.

### VIII. Oral and Written Debriefing Format

#### *1. Required information*

Contracting officers must provide at least the following information for a preaward and postaward oral or written debriefing:

Preaward Debriefing Minimum Contents:

- Agency's evaluation of significant elements of offeror's proposal.
- Summary of the rationale for exclusion from the competition, and
- Reasonable responses to relevant questions regarding the source selection process.

Postaward Debriefing Minimum Contents:

- Offeror's evaluated significant weaknesses or deficiencies.
- Overall evaluated price/cost and technical ratings of the debriefed offeror and awardee.
- The number of offers received.
- When ranking was developed, the overall ranking of the debriefed offeror.
- A summary of the rationale for award (identifies the significant advantages of the awardee's proposal in general terms without revealing confidential information, and may address cost/technical tradeoffs).

- For acquisition of commercial items, the make and model of item to be delivered, and
- Reasonable responses to relevant questions about whether source selection procedures were followed.

However, within DHS, the contracting officer is encouraged to provide all of the following information in order to maximize the value of the debriefing for the offeror and the government.

### *2. Introduction and Objective*

The debriefing should begin with a brief introduction. The contracting officer should advise the offeror of the objective of the debriefing. Attachment C provides a sample opening statement for an oral debriefing that can be adapted as an introduction in a written debriefing.

### *3. Ground Rules*

The contracting officer should inform the offeror of the ground rules for the debriefing, any time constraints, and if it is an oral debriefing, the debriefing agenda. Some suggested ground rules include:

- State the intent to share information with the debriefed offeror; however, the debriefing is not a forum for a debate.
- State that the government will not divulge information from the winning proposal.
- Establish that the government will not respond to hypothetical questions, and
- Establish the appropriate time and manner for raising questions.

### *4. Source Selection Process*

The contracting officer should remind the offeror that the evaluation was based solely on the proposal with the applicable past performance information gathered in accordance with the solicitation. The contracting officer should briefly explain the evaluation process and, if it is a postaward debriefing, the selection process. In a written debriefing, the contracting officer should not identify the evaluators. However, it is permissible to introduce evaluators present during an oral debriefing. In either case, the contracting officer should convey to the offeror that qualified personnel evaluated the proposals in accordance with the solicitation and the evaluation plan.

### *5. Evaluation Factors*

The contracting officer should restate the information from Section M of the solicitation and provide the evaluation factors, sub factors, and weights or relative importance of the evaluation factors. The contracting officer is also encouraged to share the ratings and definitions used in the evaluation if the definitions differ from a standard American dictionary.

### *6. Overall Rating and Ranking of the Proposal (POSTAWARD ONLY)*

Provide the overall rating for the debriefed offeror's proposal and the winning proposal only. In addition, if the proposals were ranked during source selection, provide the debriefed offeror's rank.

### *7. Specific Evaluation Results*

In addition to the overall rating of the proposal, provide the debriefed offeror's ratings for each factor or rated sub factor. Also provide a short discussion of the strengths, weaknesses, and deficiency found. This is the most important part of the debriefing – be clear, accurate and consistent. Link the strengths and weaknesses to specific evaluation factors from the solicitation. Subcontractors are not entitled to the offeror's past performance information, so they may need to be excused for the past performance portion of an oral debriefing. Remind the offeror of the contract type, discuss the cost or price analysis performed, and provide the amount and reason for any adjustment from the proposed amount.

### *8. Rationale for Award Decision (POSTAWARD ONLY)*

The contracting officer should summarize the rationale for the award decision contained in the Source Selection Decision Memorandum without revealing confidential proprietary information contained in the awardee's proposal.

### *9. Award Information (POSTAWARD ONLY)*

The contracting officer should provide a summary of publicly available information on the award, which is generally the information provided in the award announcement or displayed in the public view of FedBizOpps. If the awardee's proposal includes a commercial item that is an end item under the contract, the make and model of the item number must be disclosed.

### *10. Prohibited Information in Debriefings*

In accordance with FAR 15.505(f), **DO NOT PROVIDE ANY OF THE FOLLOWING during preaward debriefings:**

- The number of offerors.
- The identity of offerors and the identity of offerors in the competitive range.
- The content of other offerors' proposals.
- The ranking of other offerors' proposals.
- The evaluation of other offerors' proposals.
- The other offerors' trade secrets.
- Privileged or confidential manufacturing processes and techniques.
- Commercial and financial information that is privileged or confidential, including cost breakdowns, profits, indirect cost/rates, and similar information; and names of individuals providing referenced information about an offeror's past performance.
- The names of individuals providing reference information about the offeror's past performance.
- Point-by-point comparisons with other offers; and
- Information not releasable under the Freedom of Information Act (FOIA).

In accordance with FAR 15.506(e), **DO NOT PROVIDE ANY OF THE FOLLOWING during postaward debriefings:**

The debriefing shall not include point-by-point comparisons of the debriefed offeror's proposal with those of other offerors and shall not include the strengths, weaknesses, and deficiencies in competing proposals. Moreover, the debriefing shall not reveal any information prohibited from disclosure by FAR 24.202 or exempt from release under the Freedom of Information Act (5 U.S.C. 552) including:

- Trade secrets, innovative concepts, design, etc.
- Privileged or confidential manufacturing processes and techniques.
- Commercial or financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information; and
- The names of individuals providing reference information about an offeror's past performance.

### *11. Questions*

The debriefed offeror is permitted to ask relevant questions pertaining to whether the government followed the source selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities. The contracting officer must provide reasonable responses to those questions. However, caution must be exercised not to inadvertently disclose proprietary information of other offerors or engage in debating hypothetical questions that may undermine the credibility of the selection. Debriefed offerors often display persistent curiosity about the content of their competitor's proposals. Resist these efforts. The FAR strictly limits the information that may be disclosed regarding other offeror's proposals. Normally, responses should stay within the confines of the guidance stated above. If the contracting officer is unprepared to answer an appropriate question at the debriefing or it is a written debriefing, the contracting officer should obtain the answer and promptly furnish it to the offeror. The debriefing is not considered complete until the last allowable question is answered. The debriefing is the forum for answering reasonable questions; offerors should not be allowed to submit questions after the debriefing is completed. Otherwise, the time for the filing of a protest is extended.

### *12. Assessment*

Prior to concluding the debriefing, the contracting officer should solicit the debriefed offeror's comments regarding the solicitation and the procurement process. This is an opportunity for DHS to obtain valuable input regarding the offeror's perspective and use the information to make process improvements.

### *13. Conclusion*

The contracting officer should thank the offeror for participation in the procurement and ensure that the offeror understands that the debriefing is officially concluded unless outstanding questions remain. If follow-up is necessary to answer questions, the contracting officer should ensure that the offeror understands that the debriefing is concluded when the answers are provided.

## IX. Oral or Written Explanation of the Basis of Award Format

Attachment F contains a sample oral and written explanation of award format.

### *1. Introduction*

The contracting officer should open thanking the firm for participating in the competition and describe the information that will be provided in the explanation of the basis of award. The contracting officer should make clear that it is not a debriefing and will not provide detailed information on the evaluation of the quote.

### *2. Required information*

Contracting officers must provide at least the following information for an explanation of the award:

- The number of offerors solicited.
- Number of offers received.
- The name and address of each offeror receiving an award.
- The items and quantities, and any stated unit prices of each award. (Only the total contract price need be furnished if the number of items, quantities, and any stated unit prices of each award shall be made publically available, upon request).
- In general terms, the reason(s) the offeror's proposal was not accepted (e.g., a summary of the unsuccessful offeror's evaluated strengths and weaknesses), unless the price information readily reveals the reason.
- How the awardee was selected (i.e., lowest price, best delivery schedule, best technical approach).

Although not required, if quotes are rated during the evaluation, include the unsuccessful offeror's rating.

### *3. Source Documentation*

The explanation of the basis for award should be derived from the following documents:

- The solicitation.
- The offeror's quotation or proposal.
- The selection documents.
- The award announcement or public information on the award.

### *4. Evaluation and Selection Process*

The contracting officer should remind the offeror of the award process and identify in general how the awardee was selected (i.e., lowest price, best delivery schedule, best technical approach). (Note: If the award is based on price alone, an explanation of the basis of the award is not necessary). The contracting officer should also identify why the offeror was not selected (i.e., the price was higher than the awardee's price; the delivery schedule did not meet the government's needs). Ask if the firm has any questions about the selection process and answer reasonable questions. If the questions seek information on details of the evaluation, or areas that cannot be

discussed with the offeror, reiterate the opening remarks on the limits of an explanation of the basis of award.

### *5. Proposal Assessment*

The contracting officer may provide suggestions on how the offeror could improve future quotations or proposals. (Example: Your quote would have been more competitive if you had followed all of the instructions in the request for quote). Your quote did not address (state the area) specifically required in the RFQ).

### *6. Process Assessment*

The contracting officer should ask the offeror for an assessment on the process and solicit suggestions on how DHS could improve the process.

### *7. Conclusion*

The contracting officer should close the explanation of the award by thanking the offeror for participating in the process and encourage the offeror's participation in future competitions.

### *8. Prohibited Information in Explanations of Award*

**DO NOT PROVIDE ANY OF THE FOLLOWING during an explanation of an award:**

- Discussion of strengths, weaknesses, deficiencies, ratings or rankings of other offers.
- Any other offer submitted for the procurement.
- Any information prohibited from disclosure.

## X. Documentation of the Debriefing or Explanation of the Basis of the Award

By statute and regulation, the contracting officer must include an official summary of each debriefing and explanation of the basis of award in the contract file to preserve a complete record of the procurement process. If a written debriefing or explanation of the basis of award is selected, a copy of the document should be included in the contract file. For an oral debriefing, a good debriefing memorandum is essential especially if the procurement is re-opened or re-solicited as a result of a protest. A sample debriefing memorandum is included in Attachment D. The debriefing memorandum must be tailored if it is used for an explanation of the basis of the award. Both a debriefing memorandum and an explanation of the basis of the award memorandum should include at a minimum:

- A list of all attendees.
- A summary of the information disclosed during the debriefing or explanation of the basis of the award. If charts were used at the debriefing, they may be attached to the memorandum as an efficient way of summarizing the disclosed information.
- The substance of all questions and answers discussed at the debriefing. Include answers provided after the debriefing.
- Any relevant information provided subsequent to the debriefing.

# Attachment A - Tips for a Debriefing or Explanation of the Basis of Award

## The top 10 tips to make a debriefing successful:

1. Keep some evidence of when an offeror receives notice of being excluded from the competitive range or notice of award. A “delivery” and “read” notice from an email works well.

2. Use the source selection documents and evaluation reports to form the basis for creating the oral or written debriefing.

3. For oral debriefings, request that the potential government debriefing team refrain from scheduling leave immediately after the anticipated award.

4. If a timely written request is received for a required debriefing, prepare to provide the debriefing immediately, but no later than 5 days from receipt of request. Carefully review the calendar for reducing the suspension of performance opportunity to coincide with the 10 days from award period. Confirm in writing the date when the government offered to make the debriefing.

5. For oral debriefings, obtain a list of who will be attending on behalf of the offeror and elicit written specific questions they wish to be addressed at the debriefing.

6. If discussions were held, except for those weaknesses identified as a result of changes in the Final Proposal Revision, each weakness discussed during the debriefing should have already been discussed with the offeror.

7. Tie responses to questions to areas evaluated during source selection.

8. Someone not involved in the debriefing should be assigned to take notes during the oral debriefing. These notes, as well as any written debriefing materials, are useful attachments to the debriefing memo which constitutes the official record of the debriefing.

9. For oral debriefings, instruct the debriefing team to be polite, professional, confident, and to avoid arguments, but not to be apologetic.

10. Actively listen to the offeror’s suggestions for improving DHS’s procurement process, take notes, and help incorporate any good ideas the offeror suggests into future procurements.

## The top 10 tips to make an explanation of the basis of award successful:

1. Keep some evidence of when an offeror was reminded of the opportunity to obtain an explanation of the award and when the offeror requested the explanation of the award. A "delivery" and "read" notice from an email works well.

2. Use the solicitation and evaluation information for the basis of the explanation.

3. For oral explanations, keep a record of who received the explanation.

4. Keep the explanation short and to the point.

5. Avoid using acronyms, jargon or federal procurement specific terms. Clarify or define any terms that could have a different meaning outside of the federal procurement process.

6. Do not discuss specific strengths or weaknesses in the proposal.

7. If possible, have legal counsel review the explanation before it is provided.

8. For oral explanations, be polite, professional, confident, and avoid arguments. Do not apologize for the award decision.

9. Actively listen to the offeror's suggestions for improving DHS's procurement process, take notes, and help incorporate any good ideas the offeror suggests for future procurements.

10. Thank the offeror for participating and encourage participation in future competitions.

# Other Useful Tips for a Debriefing

- Preparation is critical to conducting a thorough and informed debriefing. An ill prepared team will cast doubt on the agency's process and decision which could lead to a protest. Stand by your award decision.

- Handle requests for copies of the contract on a case-by-case basis. Prior to the debriefing, the contract should be reviewed by the contracting officer in concert with the Attorney/Counsel (for the agency), Program Manager and Freedom of Information Act (FOIA) division to determine what is releasable without a FOIA request. If, during this review, the contracting officer discovers an error, the first task is then to determine whether the error materially affects the award decision. This must be accomplished prior to the scheduled debriefing since a material error that is prejudicial to an offeror should result in the agency canceling the debriefing and taking corrective action.

- It is permissible to provide the debriefing material prior to the debriefing; however, in order to avoid an unsuccessful offeror becoming overly defensive, the preferred approach is to provide such material during the debriefing.

- Conduct a "dry run" prior to the actual debriefing. Have participants practice their part of the debriefing. Develop a set of questions that offerors may ask at the debriefing. It is often useful to review questions asked during the discussion phase (if held) of the competition. Also, ask offerors to submit written questions in advance. Consult counsel for guidance as part of your preparations.

- The contracting officer may defer to others for specific portions of the debriefing but will control all exchanges. There are many different approaches that the contracting officer can take in leading the debriefing. One of the common approaches is:

  1) For the contracting officer to present the entire debriefing.
  2) For the contracting officer to start the debriefing and then turn over portions of the presentation to experts in those areas, e.g., Technical Team Leader presents the technical evaluation portion of the presentation.

- Have appropriate government technical personnel in attendance (e.g., Team Leads).

- Have relevant documents for the debriefed offeror readily available to the team (RFP, offeror's proposal, evaluation reports, past performance data, etc.)

- Offerors should be advised at the start that the government believes the presentation will address any questions they may have. The offerors should also be advised that any remaining questions they have at the end of the pertinent sections of the presentation may be asked at that time. Be open to discussion but **don't be drawn into a debate**. Questions may be answered during the debriefing; however, a government caucus may be needed to address some questions at the end of the debriefing. The government may request that the questions be written for the caucus as needed.

- If you cannot adequately answer a question at the debriefing, provide written answers as soon as possible. However, promising additional information at a later date should be avoided because the *period for protest* starts from the time new relevant information is provided.

- Allow sufficient time and take breaks, scheduled or unscheduled, whenever needed. During breaks and following the debriefing, avoid "water cooler" and "off line" chats—remember one individual chairs the debriefing.

- Have a redacted version of the Source Selection Authority (SSA's) decision memorandum and as appropriate, any briefing charts/documentation presented to the SSA, ready for release during or after the debriefing, if appropriate. Because what is relevant is the SSA award decision and whether that decision is well supported and results from a source selection conducted in a thorough, fair and sound manner consistent with the requirements and source selection methodology established in the RFP, avoid disclosing documentation that was not presented to/considered by the SSA. These dissenting viewpoints must, of course, be addressed/resolved as part of the consensus report of the evaluation team, but the mere existence of a dissenting viewpoint may encourage a protest.

- Allow the offeror an opportunity to provide feedback regarding the quality of the solicitation document, e.g., proposal instructions, the appropriateness of discussions, and the source selection process, itself.

- Do not discuss validity of requirements, validity and integrity of the evaluation process, and prohibited information. (See FAR 15.506(e)).

- Do not provide names of individuals providing reference information about an offeror's past performance. In addition, in order to prevent offeror's from contacting individuals after the debriefing and to avoid creating tension in ongoing working relationships on existing government contracts, avoid disclosing the names of individual evaluators or members of the Source Selection team.

- The debriefing slides, the offeror's request for debriefing (if any), previously submitted questions, any handouts, a list of written questions/answers, and any other relevant documents, must be included in the contract file.

# Attachment B - Sample Notice of a Right to a Debriefing

A notice of the right to a debriefing is usually provided to the unsuccessful offerors when each is excluded from the competitive range or after award to another offeror. The following is a sample of this type of notice:

In accordance with FAR (15.505 for preaward notice or 15.506 for postaward notice), you are hereby reminded that you have the right to a debriefing of your unsuccessful proposal submitted in response to the solicitation for (insert name and number of solicitation). If you elect to receive a debriefing, you must email or fax a written request to (insert contracting officer's name) at (insert fax number and email address) on or before (insert date that is 3 days after offeror will receive the notice).

Your debriefing will discuss only your proposal and will provide you with the strengths, weaknesses and deficiencies of the proposal, a discussion of the total evaluated (cost or price) of your proposal as well as your rating and ranking within the competitive process. You will also be provided with a summary of the evaluation process and the rating scheme used to evaluate your proposal. You will not be provided any information on other unsuccessful proposals and will only receive appropriate publicly available information regarding the successful proposal. You may ask relevant questions regarding the source selection procedures, but not hypothetical questions, or those that would provoke debate, or require prohibited information to be disclosed in order to answer a question. A reasonable effort will be made to schedule your debriefing within five (5) days after your request is received. In order to assist with a prompt debriefing, please include the name, company, and title for each person who will attend the debriefing. Once your request is received, you will be contacted to complete the scheduling process. You are advised that if there are space limitations, not all requested attendees may be accommodated. In advance of the debriefing, please discuss with the contracting officer whether the subcontractors are permitted to attend the portion of the debriefing that discusses your past performance information.

If you have any questions regarding the above, please contact (insert name) at (insert phone number).

**Notice of an explanation for the basis of award usually conducted after award of simplified acquisitions, GSA orders or other task or delivery orders under $5 million**

In accordance with DHS policy, you may request an explanation of the basis for the award for (insert name and number of solicitation). The explanation will discuss the procurement process and how your bid was evaluated. It will provide an assessment of your offer or quotation, but will not provide the specific strengths, weaknesses or deficiencies noted. The explanation will not include any other offer submitted for this procurement or provide any information prohibited from disclosure. The explanation is offered in order to assist you in competing for other government procurements and assure you of DHS's commitment to transparency in its contracting process.

If you elect to receive a brief explanation of the award, please contact (insert contracting officer's name) at (phone number and email address) on or before (insert date that is 3 days after offeror will receive the notice). The information will be provided via (telephone call/email/face to face discussion). A reasonable effort will be made to schedule the event quickly. In order to assist with a prompt scheduling, please include the name, company, and title for each person who will participate. Once your request is received, you will be contacted to complete the scheduling process to ensure maximum participation.

If you have any questions regarding the above, please contact (insert name) at (insert phone number).

# Attachment C - Sample Opening Statement for Debriefings

Welcome to your debriefing of (add the name and solicitation number of the procurement being debriefed). I want to thank you for participating in our competitive process. Our primary objective of this debriefing is to provide you with a basis for improving future proposals by informing you of the government's evaluation of the significant aspects of your proposal and discussing deficiencies and weaknesses which were observed. We will also provide you with the information required by law.

In this debriefing, we will not provide you with point-by-point comparisons of your offer to other offerors; nor will we reveal to you the relative merits or evaluation findings (i.e., strengths, weaknesses, and deficiencies) of competing proposals. In addition, we will not disclose the names of individuals providing reference information about your company's past performance. **(Note: Use the following information only when debriefing offerors who are within the competitive range). I wish to emphasize that your proposal was determined technically acceptable. However, after careful consideration by the evaluation teams and the Source Selection Authority, your proposal did not represent the most advantageous offer for the government.**

As I have noted, we cannot disclose the relative merits of competitors; however, we will provide you with the following information:

- Our evaluation of the significant weaknesses and deficiencies of your proposal. We also will provide you with the strengths and technical merits of your proposal;
- (Postaward Debriefings only) The overall evaluated cost and technical rating of the successful offeror.
- (Postaward Debriefings only) The overall ranking of the offer if ranking was part of the source selection;
- (Postaward Debriefings only) A summary of the rationale for the award;
- (Postaward Debriefings only) The make and model of the end item to be delivered under contract as offered by the successful offeror if applicable (if an end product was provided to the government); and
- Responses to relevant questions to clarify how we followed the source selection procedures set forth in the solicitation, evaluation plan and applicable regulations.

I can assure you that the evaluation criteria set forth in the solicitation were followed and that no additional criteria were used. Furthermore, all source selection procedures as required by the Federal Acquisition Regulation (FAR), Homeland Security Acquisition Regulation (HSAR), and Homeland Security Acquisition Manual (HSAM) were strictly implemented.

# Attachment D - Sample Debriefing Memorandum

MEMORANDUM
FROM: _____, Contracting Officer
TO: File

Subj: (Title and Number of procurement) Debriefing Memo

1. On (insert date), a (preaward/postaward) debriefing was conducted for (insert name of company), a (successful or unsuccessful offeror). The debriefing was conducted (insert number of days) after the award of the contract. A copy of the sign-in sheet listing everyone who attended the debriefing is attached to this memo.
2. The debriefing was performed (describe the method – face to face/ telephone/email/writing or oral) and held at (if face to face, state the location).
3. Attached is the presentation used in the debriefing or a copy of the written debriefing. The debriefing included a discussion of the proposal's strengths, weaknesses, and deficiencies as well as its overall rating and rank for the debriefed offeror if appropriate. The proposal's (total cost or total price) of _____ was discussed and the offeror was advised of any cost/price adjustments made as part of the debriefed offeror's proposal evaluation.
4. The rationale for award was provided (orally or in writing) and is attached to this memo.
5. The (insert company name) asked the following questions. The summary of the government's answers is listed after each question.

Question:
Answer:

Question:
Answer:

6. The (insert company name) was provided (list any hand outs or documents provided to the offeror) as part of the debriefing process.
7. The (insert company name) was advised that the debriefing was completed (at the end of the session or state the date and method of ending the debriefing if questions were answered after the briefing).

## Attachment E - Sample Questions that may be used for "Dry Run" Debriefing

**1. FAR 15.506(d) (l): the government's evaluation of the significant weaknesses or deficiencies in the proposal.**

a) *Please identify the strengths, weaknesses, or deficiencies in our proposal for each evaluation factor and sub factor*.

**NOTE:** Typically this is done as part of the debriefing presentation; however, you may not disclose detailed information regarding the strengths, weaknesses and/or deficiencies in other proposals. Such a disclosure could amount to a point-by-point comparison of proposals, prohibited per FAR 15.506(e), and/or could involve disclosure of protected/privileged information. However, if a strength is evident from the awarded contract (for example, a more attractive delivery schedule) you may be able to highlight that fact—consult counsel for guidance.

b) *What were the most significant weaknesses*?

c) *Were there any solicitation requirements that we failed to address*? If so, what were they?

d) *Were any significant deficiencies identified by the government during discussions not adequately addressed in our response in the Evaluation Notice (EN)? If so, how did the evaluation of the deficiencies change during the evaluation of our final proposal revision?*

e) *Were there any specific considerations that precluded us from being selected as the awardee? If so, what were those considerations?*

f) *What was missing from our proposal?*

**NOTE:** Be careful how you answer--what we "desired" may not have been "required" and thus the failure to propose should not have prejudiced the offeror's proposal. Often times the government highlights "desired" features in the RFP; if that is the case, direct the offeror to the relevant section of the RFP.

g) *Please explain how past performance was evaluated. What was our rating? How was that rating applied to the source selection process?*

h) *Was experience evaluated? If so, what was our rating and how was that information used in the source selection process*?

i) *Please explain the procedure for the evaluation of risk? What risks were identified in our proposal? How did they impact the rating of our proposal*?

**2. FAR 15.506(d)(2) & (3):** the overall evaluated cost or price (including unit prices) and technical and past performance rating of the successful offeror(s) and of our proposal and the overall ranking for all offerors if such a rating was developed as part of the source selection.

a) *Please provide the evaluated cost/price and technical, management, and past performance ratings for our proposal and all other offerors.*

**NOTE**: While a debriefed offeror is only entitled to the evaluated cost/price and technical and past performance ratings for themselves and the successful offeror and an overall rating for all offerors (if one was developed), you are strongly encouraged to provide evaluated cost/price and factor (and sub factor) ratings for all offerors (Use letter designations (vice names) for *other* offerors). Providing information at this level of detail facilitates the primary purpose of the debriefing, which is to ensure the offeror that the government conducted a thorough, fair evaluation and made a sound decision according to the established source selection methodology.

b) *Please provide the overall ranking for all offerors.*

**NOTE**: Depends on evaluation process and type of contract. We typically don't rank all offerors; rather, we typically only select the offeror(s) that represent the best value and assign no ranking to other offeror(s). However, if a ranking was developed as part of the source selection, then it is permissible to disclose such ranking at the debriefing.

c) *In what areas was our proposal considered "overpriced"?*

d) *Were we compliant with all technical requirements?*

**NOTE:** You may not discuss whether the other offerors were compliant with all technical (or any other) requirements. Regarding the successful offeror, it is permissible to generally assure the debriefed offeror that the awarded contract fully complies with all the solicitation requirements but avoid detailed discussion of weaknesses/deficiencies.

e) *In the proposal risk portion of the technical/management area, what criteria did the government use to determine the final evaluation ratings?*

*How was this proposal risk rating reflected in the other areas of the evaluation?*

f) *Was there anything not required by the solicitation that we could have offered that might have made us more competitive for the award?*

**NOTE:** The answer should be: "*An answer to this question would be* ***conjecture*** *on my part. It would therefore not be appropriate for me to predict a change of the outcome based on changes in your proposal*."

g) *Were our responses adequate? If not, how could we have improved our responses? How were our responses on past performance evaluated?*

**3. FAR l5.506 (d) (4**): a summary of the rationale for award.

a) Please explain in detail the methodology used to determine which proposal offered the greatest overall value to the government, especially with respect to any comparisons/trade-offs made between technical factors and costs proposed.

b) Please provide a copy of the Source Selection or Summary Decision Memorandum.

**4. FAR l5.506 (d) (6):** reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed.

a) *Please describe the evaluation process used for this procurement.*

b) *How important was cost in the source selection decision relative to past performance and technical considerations?*

**NOTE:** Be careful not to conflict with Section M of the RFP. Technical evaluation processes.

c) *If the costs were "normalized," please explain how the normalization was conducted.*

d) *Was a cost realism analysis used? If so, please describe what process was used.*

e) *Did your agency prepare an independent cost estimate?*

f) *What was the basis for not selecting us?*

**NOTE:** Be careful not to conflict with Section M of the RFP.

g) *Did you make a cost/technical trade-off?*

**NOTE:** If the basis for award was best value, the answer to this question should always be YES.

h) *In order of importance, what were the most critical evaluation criteria that distinguished our proposal?*

i) *What were the most critical evaluation criteria that proved to be tiebreakers in the evaluation of proposals?*

j) *Please identify any information not contained in our proposal that was used by the evaluators in assessing our offer.*

**5. QUESTIONS TO WATCH OUT FOR**

a) *Who was on the Source Selection Advisory Committee?*

**NOTE**: In order to prevent offeror's from contacting individuals after the debriefing and to avoid creating tension in ongoing working relationships on existing government contracts, do not

disclose the names of individual evaluators or members of the Source Selection team (e.g., the TET, Source Selection Evaluation Board (SSEB), and SSAC). However, those people in attendance at the debriefing should be introduced.

b) *Did the Source Selection Authority (SSA) and the SSAC (if applicable) fully accept the recommendations of their respective staffs (SSAC, SSEB or Technical Evaluation Team (TET))? If not, why not? Did either reach any independent determinations? If so, what independent determinations were made?*

**NOTE:** Providing this level of insight into the Source Selection process is discouraged as the existence of a dissenting viewpoint may encourage a protest. For purposes of the debriefing, the relevant items are the SSA decision and whether that decision is well supported and results from a source selection conducted in a thorough, fair and sound manner consistent with the requirements and source selection methodology established in the RFP. One way to answer is to simply state, "*The Source Selection decision memorandum speaks for itself*."

*c) Were there any common areas of weaknesses or deficiencies in the proposals in the competitive range?*

**NOTE**: Don't forget you may not do point-by-point comparisons of proposals. In addition, providing detailed information regarding the strengths, weaknesses or deficiencies of other proposals may disclose protected/privileged information. See FAR 15.506(e).

d) *What management structure did the agency consider as optimal for performing the contract? How did our proposal rate against this standard?*

**NOTE**: Be careful how you answer—the government should not have any preconceived ideas regarding how to meet the RFP requirements. And, if this preconceived "optimal management strategy" was not set forth in the RFP then the offerors proposal should not have been evaluated against that standard.

e) *Please identify any and all evaluation factors, sub factors, and elements not identified in the solicitation that were used to evaluate the proposals.*

**NOTE:** This is a trick question! There should never be any evaluation factors, sub factors and/or elements that were not identified in the solicitation that were used to evaluate proposals. If there are, you have a problem – consult counsel.

# Attachment F - Oral and Written Explanation of Award Format

## 1. General information

The contracting officer should open thanking the firm for participating in the competition and describe the information that will be provided in the explanation of the basis of award. The contracting officer should make clear that it is not a debriefing and will not provide detailed information on the evaluation of the quote.

## 2. Content

- Award information:
  - Name and address of the awardee
  - Total value of the contract or order including options
  - Total amount obligated at the time of award
  - Awardee status as a small, small disadvantaged, small woman owned, small veteran owned, small disabled veteran owned or HUBZone contractor
  - The number of quotes received
- Recap of the award process
  - Type of solicitation issued
  - Date solicitation issued
  - Date solicitation closed or last date quotes were received
  - Method used to select the awardee (Note: if award is based on price alone, an explanation of the basis of the award is not appropriate)
    - State the criteria other than price used in the selection process
    - Remind the offeror of the information in the proposal used to evaluate the criteria
- Explanation of the award
  - Give a 1 to 2 sentence conclusion as to why the awardee was selected based on the criteria.
- Information on the firm's performance in the evaluation
  - If there were glaring problems with the quote or if there are specific things the firm could do to improve the likelihood of winning future competitions, provide a brief summary of these areas:
    - Example: Your quote would have been more competitive if you had followed all of the instructions in the request for quote. Your quote did not address (state the area) specifically required in the RFQ.
- Reasonable responses to relevant questions
  - Ask if the firm has any questions about the selection process and answer reasonable questions. If the questions seek information on details of the evaluation, or areas that cannot be discussed with the offeror, reiterate the opening remarks on the limits of an explanation of the basis of award.
- Ask the firm what could be improved in the process and what they found helpful.
- Closing
  - Thank the offeror for participating, state that it is the end of the explanation and you look forward to their participation in future competitions.

# TEMPLATE FOR A DEMAND FOR PAYMENT LETTER TO A DHS CONTRACTOR.


| TITLE | DESCRIPTION | PAGE |
|---|---|---|
| INTRODUCTION | | AB-1 |
| INSTRUCTIONS | | AB-1 |
| TEMPLATE #1 | Use template #1 if you determine 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). | AB-2 |
| TEMPLATE #2 | **Defective Pricing Debt** with debt required by a Defective Pricing clause. Use template #2 if you determine that the contract debt is a arises from a submission of defective cost or pricing data. | AB-4 |
| TEMPLATE #3 | **Cost Accounting Standards (CAS) Debt**. Use template #3 if you determine that the contract debt is as a result of operation of a CAS clause. | AB-7 |
| TEMPLATE #4 | Contract debt arises from a clause that requires payment of **interest beginning at the date of overpayment** (vs. beginning at date of demand for payment) OTHER THAN Defective Pricing or CAS. | AB-9 |
| TEMPLATE #5 | **Other Debt, with no interest payments** required by the contract. Use template #5 only if you determine that the contract DOES NOT include a clause that requires the contractor to pay interest on debts under the contract, such as the interest clause at FAR 52.232-17 or 52.212-4(i). | AB-12 |


## INTRODUCTION:

This HSAM 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 DHS contract or order. Demands for payment of a contract debt are governed by FAR 32.6.

## INSTRUCTIONS:

When you prepare a demand for payment letter, you should select the template that best fits the type of debt for which you are seeking payment. The difference between the various templates is due to differences in contract clauses regarding payment of interest by the contractor for different types of debts that can 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. Some 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. 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 and DHS financial management procedures.

The five sample templates provided for your use in this HSAM Appendix give a starting place for preparation of your demand for payment letter. Each must be customized to fit your situation. You should select the template that best fits your situation and prepare your letter to match the facts of your situation and the requirements of the FAR and other governing regulations or laws.

## Demand For Payment Letter - Template #1 - Contract debt with interest required ONLY by Interest clause, FAR 52.232-17 or 52.212-4(i)(6).

INSTRUCTIONS FOR USE OF TEMPLATE #1.

1. Use template #1 if you determine 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 #1 to insert appropriate amounts to describe the debt.
3. Modify Template #1 to delete paragraphs that do not apply to your situation per instructions within the template.

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 $XX,XXX.XX) on Contract No. XXXXXX-XX-X-XXXX 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 $_____ payable to the payment office that is identified in your 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:

| | |
|---|---|
| AAAAAAAAA | $ |
| BBBBBBBBB | $ |
| CCCCCCCCC | $ |

*(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 fund 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 #2

## DEFECTIVE PRICING

INSTRUCTIONS FOR USE OF TEMPLATE #2.

4. Use template #2 if you determine that the contract debt arises from a submission of defective cost or pricing data.
5. Modify template #2 to insert appropriate amounts to describe the debt.
6. Modify Template #2 to delete paragraphs that do not apply to your situation per instructions within the template.

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 $XX,XXX.XX) on Contract No. XXXXXX-XX-X-XXXX 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 $_____ payable to the payment office that is identified in your 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 52.215-10, 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 you owe 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:

| | |
|---|---|
| AAAAAAAAA | $ |
| BBBBBBBBB | $ |
| CCCCCCCCC | $ |

*(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]*.

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 fund 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 #3
## COST ACCOUNTING STANDARDS (CAS)

INSTRUCTIONS FOR USE OF TEMPLATE #3.

1. Use template #3 if you determine that the contract debt is as a result of operation of a CAS clause.
2. Modify template #3to insert appropriate amounts to describe the debt.
3. Modify Template #3 to delete paragraphs that do not apply to your situation per instructions within the template.

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 $XX,XXX.XX) on Contract No. XXXXXX-XX-X-XXXX 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 $_____ payable to the payment office that is identified in your 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 you owe 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

| | |
|---|---|
| AAAAAAAAA | $ |
| BBBBBBBBB | $ |
| CCCCCCCCC | $ |

Contract #2

| | |
|---|---|
| AAAAAAAAA | $ |
| BBBBBBBBB | $ |
| CCCCCCCCC | $ |

Contract#3, Etc.

*(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].*

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 fund 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 #4

## CONTRACT CLAUSE REQUIRING INTEREST FROM DATE OF OVERPAYMENT (OTHER THAN DEFECTIVE PRICING OR CAS)

INSTRUCTIONS FOR USE OF TEMPLATE #4.

1. Use template #4 if you determine that the contract debt arises from a clause that requires payment of interest beginning at the date of overpayment (vs. beginning at date of demand for payment) OTHER THAN Defective Pricing or CAS or the Interest Clause at FAR 52.212-17 or 52.212-4(i)(6).
2. Modify template #4 to insert appropriate amounts to describe the debt.
3. Modify Template #4 to delete paragraphs that do not apply to your situation per instructions within the template.

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 $XX,XXX.XX) on Contract No. XXXXXX-XX-X-XXXX 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 $_____ payable to the payment office that is identified in your 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* 52.216-5 -- *Price Redetermination – Prospective, or 52.216-16 -- Incentive Price Revision -- Firm Target).* 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 you owe 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 | $ |

*(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:

| | |
|---|---|
| AAAAAAAAA | $ |
| BBBBBBBBB | $ |
| CCCCCCCCC | $ |

*(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]*.

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 fund 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 #5

***CONTRACT <u>DOES NOT INCLUDE A CLAUSE</u> REQUIRING INTEREST PAYMENT.***

INSTRUCTIONS FOR USE OF TEMPLATE #5–

1. Use template #5 <u>only if</u> you determine that the contract DOES NOT include a clause that requires the contractor to pay interest on debts under the contract, such as the interest clause at FAR 52.232-17 or 52.212-4(i).
2. Modify template #5 to insert appropriate amounts to describe the debt.
3. Modify Template #5 to delete paragraphs that do not apply to your situation per instructions within the template.

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 $XX,XXX.XX) on Contract No. XXXXXX-XX-X-XXXX 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 $_____ payable to the payment office that is identified in your 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:

| | |
|---|---|
| AAAAAAAAA | $ |
| BBBBBBBBB | $ |
| CCCCCCCCC | $ |

*(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].*

*(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. See also Section 3.13, Non-Tax Debt Collection, of the DHS Financial Management Policy Manual, which governs interest and penalty requirements on debt collection within DHS when a contract does not include a specific interest payment requirement. )*

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. Handling charges will accrue at a rate of ten dollars ($10.00) per month if payment is not received within sixty (60) days of the date of this notice. In addition to interest and handling charges, if DHS does not receive payment within ninety (90) days of the date of this notice, a six percent (6%) per annum penalty will be assessed. 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 fund 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

**Template: Notice of Pending Termination**
(This template shall be used to support a termination notice as required in HSAM 3049.101(a))

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**MEMORANDUM TO THE FILE**

Subject: PENDING TERMINATION PURSUANT TO HSAM 3049.101(a)

As required by Homeland Security Acquisition Manual (HSAM) 3049.101(a), the contracting officer shall provide a copy of all termination notices for anticipated terminations of contracts or orders with a total value exceeding $1 million to the Office of the Chief Procurement Officer (OCPO) at least five business days prior to issuing the notice to the contractor. The following is a synopsis of the pertinent information related to this termination for *(insert either default, cause or convenience)*:

| | |
|---|---|
| Component: | *Self explanatory* |
| Contracting Officer: | *Name, phone number, email* |
| Contract/Order Number: | *Self explanatory* |
| Contractor: | *Full name of contractor as listed on award document and contractor size (small, large)* |
| Description of Requirement: | *Short description of requirement* |
| Total Value of Contract: | *Total value including options* |
| Type of Contract: | *Multiple award; firm-fixed-price (FFP); cost-plus-fixed-fee (CPFF); etc.* |
| Period of Performance: | *Total performance period (base and options)* |
| Type of Termination: | *Default, cause or convenience, full or partial* |
| Estimated Termination Cost: | *If available* |
| Proposed Termination Date: | *After submission to OCPO* |
| Reason for Termination: | *Short synopsis of rationale for termination* |

**A. Background:**

In this section, provide a brief chronology of the events leading to the anticipated termination action, including the specific failure of the contractor and the excuses for the failure. For example, if a small business contract is being terminated, discuss the coordination with the Office of Small and Disadvantaged Business Utilization (OSDBU). Similarly, if a contract is being terminated for convenience as a result of a protest, discussion of the protest grounds, protest resolution, and any changes in selection and award.

**B. Potential Impact**:

Any potential impact to the Department, Component, or program execution (e.g., financial, programmatic, schedule, etc.) should be identified here. Highlight any issues that may rise to the Chief Procurement Officer's (CPO's) attention as a result of the termination. Discuss the availability of the supplies or services from other sources, the urgency of the need for the supplies or services, and the period of time required to obtain them from other sources as compared to the delivery time that could be obtained from the contractor considered for termination (see FAR 49.402-3(f)).

**C. Contracting Officer's Intended Action:**

I certify that I have reviewed the subject contract and find, to the best of my knowledge and judgment, that the contract was properly awarded and is a valid contract, that the contractor failed to deliver items in accordance with the contract terms, and that it is in the best interests of the Government that the contract be terminated for (*default, cause or convenience, full or partial).*

_____ _____

**Contracting Officer's Signature** **Date**

**D. Recommended OCPO Action:**

The contracting officer shall identify actions needed from OCPO to support the termination.

Attachment: Contractor's Notice of Termination from the Contracting Officer