Department of Homeland Security Acquisition Manual

December 2006

FOREWORD

The Department of Homeland Security Acquisition Manual (HSAM) implements and supplements the Federal Acquisition Regulation (FAR) and the Homeland Security Acquisition Regulation (HSAR). It is non-regulatory in nature and provides uniform procedures for the internal operation of acquiring supplies and services within the Department of Homeland Security. The HSAM format conforms to the arrangement and numbering system of the FAR and HSAR and is divided by chapters and subchapters. The HSAM is not a stand alone document and must be read in conformance with the FAR and HSAR.

The HSAM second edition, effective December 29, 2006, includes relevant Internet links wherever external references are made. The DHS Office of Acquisition Policy and Oversight intends to focus its information dissemination efforts to the Internet, and does not publish any hard copies of the manual. Please provide any suggestions or comments to the DHS Office of Acquisition Policy and Oversight.

//signed//
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HSAM NOTICE NUMBER	**DATE OF CHANGE**	**REPLACEMENT PAGES**
HSAM Notice 07-01	March 20. 2007	Pages 1-15, 4-9, 6-1, 6-2, Chap 3006-Appendix 1, 7-2 to 7-10, Chap 3007-Appendix 1, 7-13, 7-14 and 7-28, 19-5 and 19-6, and 37-1 to 37-7, DHS Form 700-16 and 700-20.
HSAM Notice 07-02	July 3, 2007	Pages 1-7, 1-15, 4-1 through 4-19, 7-12, Chap 3007-Appendix A, 7-12, 7-14, 7-31 and 7-32, and 9-1 through 9-9.
HSAM Notice 07-02	August 17, 2007	Pages 15-2 through 15-5.
HSAM Notice 08-01	October 16, 2007	Page 1-4, 7-2 through 7-10, and Chapter 3007, Appendix A.
HSAM Notice 08-02	November 21, 2007	Pages 1-15, 5-1 to 5-4, 6-1 to 6-3, Chap 3006-Appendix 1, 6-4 to 6-27, 8-1 to 8-2, 11-1, 13-1 to 13-3, and DHS Form 700-16.
HSAM Notice 08-03	January 8, 2008 (Eff. February 18, 2008)	Pages 16-1 to 16-4 and 32-7 to 32-12.
HSAM Notice 08-04	February 26, 2008	Page 15-1 and 15-5; and Appendix B.
HSAM Notice 08-05	March 4, 2008	Pages 4-5 to 4-18; 5-3 to 5-5; 7-2 to 7-10; 17-3 to 17-4, 50-1 and 2140-1 (01/08)
HSAM Notice 08-06	April 1, 2008	Page 15-3 to 15-6 and 42-1 to 42-15.
HSAM Notice 08-07	April 16, 2008	Pages 16-1 to 16-3
HSAM Notice 08-08	August 18, 2008	Pages 1-15, 4-1 to 4-10, 4-14, 4-18, 4-19, 5-3 to 5-6, 7-2 to 7-6, 7-14, 17-1 to 17-3, 39-1 to 39-2, 48-1 to 48-2, DHS Form 2140-1 (03/08).

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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 Oversight Office. 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 0700, Delegation to the CPO for Acquisition and Financial Assistance Management and MD Number 0003, Acquisition Line of Business Integration and Management.

3001.104 Applicability.

All acquisitions within the Department shall follow this manual unless otherwise excluded by the FAR, HSAR, or this manual. The Transportation Security Administration (TSA) is exempt from use of this manual, except as indicated in chapters 3004, 3005, 3007 and 3033.

3001.105 Issuance.

3001.105-170 Publication of HSAM.

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

3001.105-270 Arrangement of HSAM.

(b) *Numbering.* (1) This manual conforms to the arrangement and numbering system prescribed by (FAR) 48 CFR 1.105. HSAM addresses the specific paragraphs for which supplementation or implementation applies. For example, this paragraph supplements (FAR) CFR 1.105-2(b)(1);

therefore, the only paragraphs cited in HSAM 3001.105-270 would be 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/dhspublic/. 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, available at DHSOnline. Components shall ensure proper coordination through their organization 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 Policy and Oversight.

(b) Updates to the HSAM will be summarized in a HSAM Notice published on the Internet at

http://www.dhs.gov/dhspublic under “Business”. 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 simultaneously updated to incorporate the changes.

(c) The HSAM is maintained by CPO 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 HSAM Chapters, 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 last two digits of the fiscal year.

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 precedent 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) 48 CFR 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/dhspublic/; 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 48 CFR 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) 48 CFR 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 of Strategic Initiatives 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 of Strategic Initiatives, after review and approval of the HCA requesting the change. FAR recommended changes determined appropriate by the CPO will be forwarded by the CPO to the Civilian Agency Acquisition Council.

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 to this chapter.

(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., Bankcard recipient, Contracting Officer Technical Representative (COTR), 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. COTR 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) 48 CFR 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) 48 CFR 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 700-14, 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 Bank of America credit 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.

The DHS MD Number 0740.2, 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 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 MD Number 0783, under VI. B. Procedures 2. Certification Application, ….”.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 3001 - APPENDIX A

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	Director, Procurement Division
TSA	Assistant Administrator for Acquisition
US CBP	Executive Director, Procurement Directorate; and Executive Director, SBI Acquisition Office
USCG	Director of Contracting and Procurement (CG-91)
US ICE	Director, Office of Acquisition Management
USSS	Chief, Procurement Division

CHAPTER 3002 DEFINITION OF WORDS AND TERMS

Subchapter 3002.1 Definitions
3002.101 Definitions.

3002.1 Definitions.

3002.101 Defintions.

"Acquisition" means for DHS, the conceptualization, initiation, design, development, test, contracting, production, deployment, support, modification, and disposal of systems, supplies, or services (including construction) to satisfy Component needs. Acquisition includes all functions managed by the DHS Chief Procurement Officer (CPO) and Component Heads of the Contracting Activities.

"Acquisition Executive (AE)" means the DHS official responsible for acquisitions; the decision maker at Key Decision Points (KDPs) or milestones in an acquisition program's development as designated in DHS MD Number 1400, Investment Review Process.

"DHS Chief Acquisition Officers (CAO) Council" is an advisory body comprised of the Chief Procurement Officer (CPO), Deputy CPO, Director, Acquisition Policy and Oversight, and the Heads of the Contracting Activity (or designee) from each Component. The DHS CAO Council Charter establishes the role of the Council and the HCA members, who are listed at HSAM 3001, Appendix A.

"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.

CHAPTER 3003 IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subchapter	**3003.1**	**Safeguards**
	3003.104	Procurement Integrity.
	3003.104-1	Definitions.
	3003.104-3	Statutory and related prohibitions, restrictions, and requirements.
	3003.104-4	Disclosure, protection, and marking of contractor bid or proposal information and source selection information.
	3003.104-5	Disqualification.
	3003.104-7	Violations or possible violations.
	3003.104-570	Information security.
Subchapter	**3003.6**	**Contracts with Government Employees or Organizations Owned or Controlled by Them**
	3003.602	Exceptions.
Subchapter	**3003.7**	**Voiding and Rescinding Contracts**
	3003.704	Policy.
	3003.705	Procedures.
Subchapter	**3003.8**	**Limitation on the Payment of Funds to Influence Federal Transactions**
	3003.804	Policy.
	3003.806	Processing suspected violations.
Subchapter	**3003.9**	**Whistleblower Protections for Contractor Employees**
	3003.905	Procedures for investigating complaints.
	3003.906	Remedies.

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) 48 CFR 2.101 (under the definition for "Source selection information") and (FAR) 48 CFR 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) 48 CFR 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) 48 CFR 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.

(b) 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) 48 CFR 3.905.

3003.906 Remedies.

The HCA is delegated the authorities at (FAR) 48 CFR 3.906**.**

CHAPTER 3004 ADMINISTRATIVE MATTERS

Subchapter	**3004.1**	**Contract Execution**
	3004.101	Contracting officer's signature.
	3004.101-70	Contract execution in contract writing systems.
Subchapter	**3004.2**	**Contract Distribution**
	3004.202	Agency distribution requirements.
	3004.203	Taxpayer identification number information. (TIN).
Subchapter	**3004.4**	**Safeguarding Classified Information Within Industry**
	3004.403	Responsibilities of contracting officers.
	3004.470	Security requirements for contractor access to unclassified facilities, IT resources, and sensitive information.
	3004.470-1	Responsibilities.
	3004.470-2	Conditional access to sensitive but unclassified information.
Subchapter	**3004.5**	**Electronic Commerce in Contracting**
	3004.502	Policy.
	3004.502-70	Acquisition-Related Systems.
Subchapter	**3004.6**	**Contract Reporting**
	3004.601	Record requirements.
	3004.602	Federal Procurement Data System.
	3004.602-70	Report on UNICOR acquisitions.
	3004.602-71	Unique Procurement Instrument Identifiers (PIID) System.
	3004.670	Acquisition related reporting requirements.
Subchapter	**3004.8**	**Government Contract Files**
	3004.801	General.
	3004.804	Closeout of contract files.
	3004.804-1	Closeout by the office administering the contract.
	3004.804-170	Monitoring contract closeouts.
	3004.804-5	Procedures for closing out contract files.
	3004.805	Storage, handling, and disposal of contract files.
	3004.805-70	Storage, handling and disposal of purchase card records.
Subchapter	**3004.9**	**Taxpayer Identification Number Information**
	3004.903	Reporting contract information to the IRS.
	3004.903-70	Additional reporting contract information to the Department of Treasury, Internal Revenue Service (IRS).
	3004.904	Reporting payment information to the IRS.
Subchapter	**3004.11**	**Central Contractor Registration**
	3004.1102	Policy.
	3004.1103	Procedures.

Subchapter 3004.13 Personal Identity Verification of Contractor Personnel
3004.1300 Policy.

Subchapter 3004.70 Review and Approval of Proposed Contract Actions
3004.7000 Scope.
3004.7001 Definitions.
3004.7002 Component internal review and approval procedures.
3004.7003 Legal review.
3004.7004 Office of the Chief Procurement Officer (OCPO) review and approval.
3004.7005 Periodic compliance reviews.

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) 48 CFR 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) 48 CFR 45.101;

(2) The requiring office; and

(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) Number 11030.1, Physical Protection of Facilities and Real Property. 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).

(a) and (b) The contracting officer may use any means to provide the contractor's Taxpayers Identification Number (TIN) to the payment office as long as the TIN is protected from public disclosure. Disclosure within the Component is limited to Government personnel who have a need to know the TIN.

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) 48 CFR 2.101 is proposed. 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) Department of Defense (DOD) 5220.22-M, Industrial Security Manual for Safeguarding Classified Information; and

(3) (FAR) 48 CFR 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 Number 11045, Protection of Classified National Security Information: Accountability, Control, and Storage, and any Component implementing procedures. OPO Contracting officers should contact DHS, Office of Security for assistance in the preparation of the contract security specifications. Contracting officers in Component organizations should contact their Component Security offices for assistance with contract security specifications 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.

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) 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) MD Number 11050.2, Personnel Security and Suitability Program; and

(3) MD Number 11042.1, Safeguarding Sensitive But Unclassified (For Official Use Only) Information.

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) 48 CFR 3052.204-71, 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, DHS Form 11000.6, before starting work under the contract.

(b) Contracting officers 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), to ensure that information systems, technologies, procedures, and processes used by the Department of Homeland Security to conduct electronic commerce --

(1) Are implemented uniformly throughout the agency, to the maximum extent practicable;

(2) Facilitate access to Government acquisition opportunities by small business concerns, HUBZone, Service Disabled Veteran Owned small business concerns, small disadvantaged business concerns, and women-owned small business concerns;

(3) Include a means of providing widespread public notice of acquisition opportunities through the single, Government-wide point of entry and a means of responding to notices or solicitations

electronically; and

(4) Comply with nationally and internationally recognized standards that broaden interoperability and ease the electronic interchange of information, such as standards established by the National Institute of Standards and Technology.

(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 the DHS Acquisition Systems Governance Board 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

3004.601 Record requirements.

(a) All DHS Components are required to report contract/procurement actions, with the exception of purchase card transactions (however, see the requirements of HSAM 3004.602(c)(1), directly to Federal Procurement Data System-Next Generation (FPDS-NG). The FPDS-NG, which is operated, updated and maintained by the General Services Administration (GSA), meets the requirements of (FAR) 48 CFR 4.601 and also has the capability to generate query reports. The FPDS-NG collects and reports data on all reportable procurement actions. The FPDS-NG is the primary source of procurement data from DHS contracting offices. All data submitted to FPDS-NG by DHS Components shall be subject to verification and validation by the CPO. When requested by the CPO, the HCAs for each Component are responsible for submitting an annual confirmation that the FPDS-NG 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) All contract actions shall be entered in the FPDS-NG within 3 business days of the date of obligation for the action, unless otherwise required or directed by the FAR.

(1) Each DHS contracting officer is responsible for timely and accurate reporting of data to FPDS-NG.

(2) A completed printed version of the information entered into FPDS-NG for each action shall be included in the contract file. FPDS-NG 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.

(f) Agency transmission procedures are identified in subparagraphs (a) and (b).

3004.602 Federal Procurement Data System.

(b) The FPDS guidance, such as the "User Manual", Computer Based Training", or "Help File" at https://www.fpds.gov should be consulted for entering data into the system.

(c)(1) DHS contracting offices shall report required data directly to the FPDS-NG. When the Government Purchase card is used as a form of payment and is supported by an instrument with a PIID/SPIID (see HSAM 3004.602-71), the transaction shall be reported in FPDS-NG. In situations where the Government Purchase card is not used under $3,000 and a PIID/SPIID is generated, the transaction shall be reported in FPDS-NG.

(d) Except as provided in paragraph (e), contracting officers in and outside the United States shall obtain a Data Universal Numbering System (DUNS)(also know as Contractor Identification Number (CIN), as described in the following subparagraphs. Requests to any office other than the Dun and Bradstreet office indicated below will not be honored.

(1) To obtain up to 10 DUNS numbers by telephone, call (610) 882-7741. Dun & Bradstreet will reject all telephone requests for more than ten DUNS numbers.

(2) To obtain more than 10 DUNS numbers, the request must be facsimiled by dialing (610) 882-7140 or mailed to the following address:

FPDC Department
Dun & Bradstreet Information Services
899 Eaton Avenue
Bethlehem, PA 18025-0013

(3) The requestor must provide the following information with each telephone, written, or facsimile request to Dun and Bradstreet:

(i) Reporting agency name: U.S. Department of Homeland Security;

(ii) Requestor's agency code: (This is the FIPS 95 Code for every DHS Component with contracting authority. See table below for the appropriate 4-digit code for use to enter data or extract reports):

FIPS 95 Code	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	Immigration and Customs Enforcement
7013	Transportation Security Administration
7014	Customs and Border Protection
7015	Federal Law Enforcement Training Center (FLETC)
7022	Federal Emergency Management Agency

(iii) Contracting office code: (Use the 5-digit code used to report the Contracting office for FPDS-NG, found in the "Funding and Contracting Office Codes" list in FPDS-NG;

(iv) Name and telephone number of the person requesting the DUNS number;

(v) Contractor's establishment name, street address, city, state, zip code, and telephone number (if available); and

(vi) If this is a foreign contractor (i.e., established outside of the U.S. and its outlying areas), provide the contractor's establishment name, street address, province (if any), city, country, postal code, and telephone number (if available).

(e) (FAR) 48 CFR 4.1102 allows for certain exceptions to the requirement that prospective contractors be registered in the Central Contractor Registration (CCR) (which also requires a 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 in (FAR) 48 CFR 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-NG.

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

3004.602-70 Report on UNICOR acquisitions.

Section 2901 of the Crime Control Act of 1990 (Public Law 101-647) requires each Federal department and agency to report to the General Services Administration (GSA), through the FPDS-NG, all acquisitions of products and services from the Federal Prison Industries (UNICOR). Components shall report all UNICOR acquisitions in accordance with the procedures under HSAM 3004.602(c).

3004.602-71 Unique Procurement Instrument Identifiers (PIID) System.

3004.602-7100 Scope.

(a) This subchapter, which applies to all of DHS including the Transportation Security Administration (TSA), prescribes policies and procedures for assigning numbers to all solicitations, contracts, and related instruments, and is in accordance with (FAR) 48 CFR 4.601.

(b) Alphanumeric characters, other than those prescribed in this subchapter, shall not be used as a part of the PIID or Supplemental PIID (SPIID). 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.

3004.602-7101 Procurement Instrument Identifiers (PIIDs).

(a) Elements of the PIID. 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 (i.e., 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) 48 CFR 13.3, 16.7, and Federal Supply Schedules. Do NOT use for Cooperative Agreements.
B	Sealed Bidding: Use for solicitations as defined under (FAR) 48 CFR 14.2. (***Character"B" use is at the Component's discretion.***)
C	Contracts: Use for all contracts (i.e., 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) 48 CFR 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 3004.602-7102(a)(1).)
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 3004.602-7102(a)(2).)
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) 48 CFR 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) 48 CFR Part 13 are followed.
R	Request for Proposal: Use when the procedures under (FAR) 48 CFR 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) 48 CFR 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.

(b) Illustration of the PIID. An example of a PIID is illustrated in the below chart. The PIID HSCG23-03-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 2003.

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.	03
9	Type of procurement instrument	B
10-15	Unique identifiers of the procurement instrument	0001, 00001, 000001, A001, AB001, ABC001

3004.602-7102 Supplementary Procurement Instrument Identifiers (SPIIDs).

(a) A Supplementary number shall be used in conjunction with the PIID, to identify the following:

(1) 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 3004.602-7101(5), as the SPIID. For example, this includes orders issued where the basic award was a GSA schedule and a BPA was created from the schedule.

(2) Ordered 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 3004.602-7101(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-NG. Components shall establish an internal numbering process for the call orders with retrieval purchase descriptions, date of purchase, amounts and vendor source.

3004.602-7103 Other Identifiers relating to PIIDs and SPIIDs.

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

(2) 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, the modifications issued by the administration office

shall be prefaced with an "A".

3004.670 Acquisition related reporting requirements.

Appendix A of this chapter is a list of various acquisition related reporting requirements. Unless otherwise advised by the CPO or the Head of the Contracting Office (HCA), the Chief of Contracting Office (COCO) shall ensure that each report 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.

3004.804 Closeout of contract files.

3004.804-1 Closeout by the office administering the contract.

(a) (FAR) 48 CFR 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) 48 CFR 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) 48 CFR 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 action (e.g., request for final audit, closing documents, etc.) commences within 90 calendar days after receipt and acceptance of all contract deliverables (i.e., the contract completion date).

(c) *Tracking system.* The COCO 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) 48 CFR 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) 48 CFR 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) 48 CFR 4.805. The General Services Administration (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 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) 48 CFR 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 purchase card records.

Purchase Cards records at or below the simplified acquisition threshold for other than construction orders shall be retained for three years after final payment. Purchase Card records for construction 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.

3004.903-70 Additional reporting contract information to the Department of Treasury, Internal Revenue Service (IRS).

(b)(1) Contracting officers have satisfied the requirements of 26 U.S.C. 6050M for reporting awards cited under (FAR) 48 CFR 4.903(b)(1) when the award information is reported to the

DHS FPDS-NG. The Director of the Federal Procurement Data Center extracts the requisite information from the FPDS and files the required information with the IRS. To report awards valued at less than $25,000, the contracting officer shall provide the finance office with a copy of the award document with the contractor's tax identification number annotated on the document.

3004.904 Reporting payment information to the IRS.

In addition to the requirements cited under (FAR) 48 CFR 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 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) 48 CFR 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 are to ensure each contract document transmitted to the payment office includes the Data Universal Numbering System (DUNS) number or, if applicable, the DUNS + 4 number assigned by Dun and Bradstreet Information Services, within the award document in accordance with (FAR) 48 CFR 52.204-7(b)(2).

3004.13—Personal Identity Verification of Contractor Personnel

3004.1300 Policy

(b) The DHS Office of Security HSPD-12 Program Management Office (PMO) is responsible for agency wide implementation. Headquarters' and Component's implementation of HSPD-12 is intended to be a phased rollout implementation of FIPS PUB 201 and OMB Guidance No. M-05-24, dated August 5, 2005. The PMO is working in coordination with the Office of the Chief Information Office and is leading the intra-agency Integrated Process Team (IPT). DHS Contracting Officers shall not procure HSPD-12 related products and services, available by the GSA Federal Supply Schedule 70 (OMB Memorandum No. M-06-18) or through open market acquisitions, without the coordination of the DHS HSPD-12 PMO see DHS Acquisition Alert 06-07, OMB Memorandum No. M-06-18; Acquisition of Products and Services for Implementation of HSPD-12.

(c) Components shall contact the DHS Office of Security HSPD-12 PMO regarding implementation, agency instructions and compliance with HSPD-12. The DHS HSPD-12 Procedures and Reference tools are located at the HSPD-12 Home Page.

Subchapter 3004.70 Review and Approval of Proposed Contract Actions.

3004.7000 Scope.

(a) This subchapter establishes the review and approval requirements for the f HSAM Notice 08-05
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 pursuant to Federal Acquisition Regulation (FAR) Parts 12, 13.5, 14 or 15;

(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, and modifications to such orders issued and awarded against a multiple award indefinite delivery contract or FAR Part 13 or Subpart 8.4 for BPAs;

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

(5) Proposed intra/inter-agency agreements; and

(6) Pre-negotiation objectives and the documentation of negotiation (see (FAR) 48 CFR 15.406-3) for actions using FAR Part 15.

(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) 48 CFR 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: Chapter 3004, Appendix B, 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 officer 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. 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 acco 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 Chief of the Contracting Office (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 MD Number 0710.1, entitled, Reimbursable Agreements, (which will be superseded and updated with a new version entitled, Inter/Intra-agency Agreements) and (FAR) 48 CFR 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) 48 CFR 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 3004 - APPENDIX A - 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	OCPO
Contractor Report of Government Property*	FAR Part 45.505; HSAR/HSAM 3045	Annually; October 31	OCPO
Semi-annual Labor Enforcement Report	FAR Part 22; HSAM 3022.406-13; 29 CFR 5.7(b)	Component submission Semi-annually; April 25 and October 25	Department of Labor
Resource Conservation and Recovery Act Report	HSAM 3023.4000	To Be Determined	To Be Determined
Subcontracting Report for Individual Contracts	FAR 19.7; FAR Deviation-DHS 06-03	See the DHS "Small Business Subcontracting Plan (July 2005) (DEVIATION)"	www.esrs.gov
Summary Subcontract Report	FAR 19.7; FAR Deviation-DHS 06-03	See the DHS "Small Business Subcontracting Plan (July 2005) (DEVIATION)"	www.esrs.gov
Undefinitized Contract Action (UCA) Report*	HSAM 3043.7002	Upon request from the OCPO	OCPO
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 3019.202-70	Initial – Annually; Update – Semiannually or as needed	OSDBU
Competition Advocate Report	HSAR 3006.502(a); HSAM 3006.502(b)(2)	November 1 for the preceding year	OCPO

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.

CHAPTER 3004 - APPENDIX B - REVIEW AND APPROVAL MATRIX

REVIEW TYPE AND THRESHOLDS			REVIEW AND APPROVAL LEVELS *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 - Solicitation and Award -	<$500,000	R/A		D	D	
		>$500,000	R	R/A	R	D	
2	Negotiated Procurements - Solicitation, Pre-Negotiation, Negotiation & Award	<$500,000	R/A			D	
		>$500,000	R	R/A		D	
	Solicitation & Award	>$500,000			R		
	Pre-Negotiation or Negotiation Memoranda	Any amount			D		
3	Solicitations, Orders, BPAs - Issued and awarded using SOW, SOOs, PWS, or requiring licenses	<$500,000	R/A		D	D	
		>$500,000	R	R/A	R*	D	
4	Solicitations & Orders – Issued and awarded IAW FAR Part 16 for multiple award Indefinite Delivery contracts, Or FAR Part 13 or Subpart 8.4 for BPAs.	<$500,000	R/A		D	D	
		>$500,000	R	R/A	R*	D	
5	Inter/Intra-Agency Agreements	<$500,000	R/A		D	D	
		>$500,000	R	R/A	R	D	
		All IAs going to or coming from Non-FAR covered agencies	R	R	R	D	CPO - R/A
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 the Chief Procurement Officer. COCO=Chief of the Contracting Office.*

CHAPTER 3005 PUBLICIZING CONTRACT ACTIONS

Subchapter	**3005.000**	**Scope**
	3005.003	Governmentwide point of entry (GPE).
Subchapter	**3005.1**	**Dissemination of Information**
	3005.102	Availability of solicitations.
Subchapter	**3005.2**	**Synopses of Proposed Contract Actions**
	3005.202	Exceptions.
	3005.207	Preparation and transmittal of synopses.
Subchapter	**3005.3**	**Synopses of Contract Awards**
	3005.301	General.
	3005.301-70	Synopsis of contracts containing Public Law 95-507 subcontracting plans and goals.
	3005.303	Announcement of contract awards.
Subchapter	**3005.4**	**Release of Information**
	3005.401	General.
	3005.403	Requests from Members of Congress.
	3005.404	Release of long-range acquisition estimates.
	3005.404-1	Release procedures.
Subchapter	**3005.5**	**Paid Advertisements**
	3005.502	Authority.

Subchapter 3005.000 Scope

Subchapter 3005.003 Governmentwide point of entry (GPE).

(a) 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) 48 CFR 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) 48 CFR 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) 48 CFR Part 5.102(a)(6)) shall be made available via the internet at http://www.fedbizopps.gov, unless an exception at (FAR) 48 CFR Part 5.102(a)(5) applies.

(4) 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 by FedTeDS. 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:

6. 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.FedBizOpps.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.

3005.301-70 Synopsis of contracts containing Public Law 95-507 subcontracting plans and goals.

The synopsis of contract award, where applicable, shall include a statement identifying the contract as one containing Public Law 95-507 (FAR) 48 CFR 19.702) subcontracting plans and goals.

3005.303 Announcement of contract awards.

(a) Public announcement. Contracts valued in excess of $1M shall not be awarded or distributed, nor any information released to any source outside of DHS (except as described in (FAR) 48 CFR 15.503), until the requirements of the subparagraphs below have been accomplished. The timing of public notice and any press release must be consistent with the requirements of Congressional Notification. As necessary, the DHS Office of Legislative Affairs will coordinate with the DHS Office of Public Affairs and the Component Office of Legislative Affairs/Office of Public Affairs to develop a communications plan for Component or DHS press release.

(1) The contract notification procedures contained in the successor DHS Directive to DHS Management Directive (MD) Number 2140, Congressional Notification of Contract Awards, this subchapter, and supplemented as necessary by Component procedures, shall be used to transmit the required contract award information in excess of $1M. The information contained on the DHS Form 2140-01 for contracts in excess of $1M will be used by the DHS Office of Legislative Affairs to contact interested Members of Congress (See FAR 5.403) and notify Senate and House of Representative Appropriations Committees at least three (3) full business days prior to contract award in accordance with Section 508 of Division E of Public Law 110-116 (and subsequent similar Appropriations Act provisions) [See HSAM 3005.303(c)]. DHS Office of Legislative Affairs may also elect to have the Component's Office of Legislative Affairs provide required information to Congress.

(2) Announcement and Notification Procedures. 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@dhs.gov at least five (5) full business days prior to the planned award of the contract. Unless notified otherwise, Contracting Officers may assume Congressional Notification occurred within two (2) full business days following transmission of DHS Form 2140-01 to Contracts@dhs.gov and may proceed with public announcement and contract award five (5) full business days following transmission of the DHS form 2140-01 to Contracts@dhs.gov. 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.

(3) Coverage. The following contract actions are/are not covered by Congressional Notification requirements of this subchapter:

(i) New DHS contracts in excess of $1M funded with FY 2008 and subsequent years' appropriations are covered. This includes new indefinite-quantity or requirements type

contracts at the maximum ceiling price.

(ii) New contracts being awarded on behalf of DHS by a Servicing Agency through an assisted acquisition or awarded on behalf of one DHS Component by another DHS Component are covered. Program managers and Contracting Officers shall ensure that Congressional Notification occurs prior to award of all new contracts in excess of $1M awarded on behalf of DHS. 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 designated in paragraph (2) above. Whichever approach is selected, contract award may not be made prior to the elapse of 5 full business days following transmission of the form to the electronic mailbox.

(iii) Contract modifications to existing contracts where the modification changes the scope of the contract are covered.

(iv) Contract modifications that are determined to be within the scope and under the terms of the existing contract to include those to be issued pursuant to the Changes clause, funding modification or other administrative occurrences under the terms of an existing contract are not covered.

(v) Unless otherwise provided for in statute, task or delivery orders placed under indefinite-delivery indefinite-quantity (IDIQ) type contracts [i.e., GWACs, GSA & VA schedule contracts, EAGLE, or other IDIQ contract vehicles] up to the estimated value of the underlying contract are not covered. However, if the estimated value of an IDIQ contract has been reached, announce/notify 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.

(vi) DHS Blanket Purchase Agreements (BPA), and the orders placed under them, established under GSA Schedule contracts in accordance with FAR 8.405-3 are not covered.

(vii) Orders under DHS BPAs awarded under the Commercial Test Program in accordance with FAR Subpart 13.5 are covered. Congressional Notification must be provided for each order. No notification is required for the BPA itself.

(viii) Contracts being awarded subject to the availability of funds are covered. Congressional Notification is tied to the award of the contract, not to subsequent modification(s) obligating funding.

(ix) HCAs are authorized to provide discretionary Congressional Notification of special interest contract actions at or below $1M or task or delivery orders under IDIQ-type contracts. Coordinate with the DHS Office of Legislative Affairs prior to submission of DHS Form 2140-01 to its electronic mailbox.

(x) Congressional Notification should not be provided prior to DHS announcement to offerors of its intention to make an award under a small business set-aside under FAR 15.503(a)(2), nor of DHS' intention to negotiate a contract with an offeror on the short slate of an Architect-Engineer Service contract being conducted in accordance with FAR Subpart 36.6 (See FAR 36.607).

(4) For those procurements subject to the requirements of Subchapter 3015.3, Source Selection, after the Source Selection Authority has selected the contractor(s) for award, the Contracting Officer shall be notified immediately so that the DHS Form 2140-01 can be prepared, signed, and transmitted.

(5) All personnel are reminded that contract information contained on DHS Form 2140-01 may be competition sensitive. DHS Contracting Officers continue to be responsible for limiting the release of information related to pending contract award in accordance with Section 27 of the Office of Federal Procurement Policy Act. Contracting Officers shall notify their HCA of any premature release of information attributable to this subchapter. The HCA shall notify the DHS CPO as soon as possible.

(6) Congressional Notification to the Committees of Appropriations of the Senate and House of Representatives for covered contracts is not waiverable to include the requirement that the notification occur at least three full business days prior to contract award.

(c) Congressional Notification to Committees of Appropriation of the Senate and House of Representatives. In accordance with Section 508, Division E of Public Law 110-161 (and similar subsequent Appropriations Act provisions), DHS Components are required to provide Congressional Notification through normal channels for any contract, including letter contracts, in excess of $1M. Contracting Officers shall follow the procedures at HSAM 5.303(a) to comply with this mandate.

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) 48 CFR 5.401(b).

3005.403 Requests from Members of Congress.

(a) *Individual requests.* The Head of the Contracting (HCA) is delegated this authority. The HCA must consult with the Office of Chief Procurement Officer (OCPO) prior to release.

3005.404 Release of long-range acquisition estimates.

3005.404-1 Release procedures.

(a) and (b) The authorities under (FAR) 48 CFR 5.404-1 are delegated to the contracting officer. The contracting officer shall ensure that the conditions set forth at 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.

Subchapter 3005.5 Paid Advertisements

3005.502 Authority.

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

CHAPTER 3006 COMPETITION REQUIREMENTS

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 Justifications.
3006.303-1 Requirements.
3006.303-2 Content.
3006.304 Approval of the justification.

Subchapter 3006.5 Competition Advocates
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.

(c)(3) For contract awards to facilitate the response to or recovery from a natural disaster, act of terrorism, or other man-made disaster, the contract period of performance should be limited to the minimum period necessary, and shall not exceed 150 days unless exceptional circumstances apply and the justification is approved by the Head of the Contracting Activity or higher approval authority if required by FAR 6.304 or DHS procedures. The limitation on the period of performance applies to contracts: 1) awarded in response to or recovery from an emergency or major disaster declared by the President;

2) those awarded in response to or recovery from an incident of national significance declared by the Secretary of Homeland Security; and 3) those awarded in response to or recovery from a natural disaster, act of terrorism, or other man-made disaster that results in loss of life, human suffering, loss of income, and property loss and damage, but for which no disaster or significant incident declaration has been made. (See HSAM 3006.303-2(a)(9)(iv) and 3006.304(a)(5)).

3006.303 Justifications.

3006.303-1 Requirements.

(a) Appendix A of this Chapter, DHS Justification and Approval (J&A) Guide for Other than Full and Open Competition, Version 1.0, provides additional requirements and guidance, including a sample format for J&As.

3006.303-2 Content.

(a)(9)(iv) For a proposed contract to facilitate the response to or recovery from a natural disaster, act of terrorism, or other man-made disaster, in accordance with HSAM 3006.302-2(c)(3), and 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 and the measures underway or planned to ensure maximum competition as soon as practicable.

3006.304 Approval of the justification.

(b) For DHS a proposed contract to facilitate the response to or recovery from a natural disaster, act of terrorism, or other man-made disaster with a period of performance that exceeds 150 days, and (FAR) 48 CFR Part 6.302-2 is cited as the authority, by the Head of the Contracting Activity unless a higher approval authority is required in accordance with (FAR) 48 CFR Part 6.304 or DHS procedures. This authority is not delegable below the Head of the Contracting Activity (HCA). Individuals acting in the place of approving officials shall meet the qualification requirements of (FAR) 48 CFR 6.304.

(c) Class justifications shall be approved by the same approval authority as for individual justifications (see (FAR) 48 CFR 6.304(a) and HSAM 3006.304(a) above).

Subchapter 3006.5 Competition Advocates

3006.501 Requirement.

The Component is authorized to appoint a competition advocate.

3006.502 Duties and responsibilities.

(b)(2) Competition advocates for the procuring activities shall submit an annual Component report to the Departmental Competition Advocate on or before November 15

for the preceding fiscal year (FY) (i.e., the report for FY07 covering October 1, 2006 through September 30, 2007, is due November 15, 2007). The Departmental Competition Advocate shall submit an annual Departmental report to the CPO on an annual basis.

3006.570 Competition advocates for the procuring activity.

A listing of Component positions designated as competition advocates for the procuring activity (see HSAM 3006.101-70 above) is maintained by the CPO on DHSOnline under the Competition Advocacy Channel. The HCA shall provide any revisions to this listing to the CPO within 10 working days of designation.

Justification and Approval (J&A) Guide (For Other than Full and Open Competition)

Office of the Chief Procurement Officer
November 2007
Version 1.0

PREFACE

This Guide will help you prepare and process Justification and Approvals (J&As) for the use of other than full and open competition, and will help you answer questions such as:

- Do I need a J&A?
- What is the basis for the justification?
- What goes in the J&A?
- Who approves the J&A?

The requirement for preparing J&As is statutory. The 1984 legislation that established the requirement is known as the Competition in Contracting Act (CICA). The law was codified in 10 U.S.C. 2304 and 41 U.S.C. 253 and is implemented by the Federal Acquisition Regulation (FAR) Part 6, as supplemented by the Department of Homeland Security Acquisition Regulation (HSAR) and the Homeland Security Acquisition Manual (HSAM). 10 U.S.C. 2304 and its sections apply to the United States Coast Guard (USCG) only and 41 U.S.C. 253 and its sections apply to the remaining DHS Components, except the Transportation Security Administration (TSA).

This Guide is not intended to serve as a substitute for the FAR, HSAR and the HSAM. It does not relieve the preparer of the J&A from reviewing these regulations and manual. In addition, this Guide will not focus on the J&As required for the standardization of equipment and/or vehicles. If additional guidance is needed on standardization, contact the Department Competition Advocate, who is located in the Office of the Chief Procurement Officer or the Procuring Activity Competition Advocates (PACAS).

CHAPTER 1

WHEN IS A JUSTIFICATION & APPROVAL REQUIRED?

The law requires the Government to solicit full and open competition from the private sector leading to the award of a contract, purchase order, etc. unless one of seven statutory exceptions applies. The authority for each exception is described in Chapter 2 of this Guide. If awarding a contract under other than full and open competition procedures pursuant to these authorities, written documentation is required.

Written documentation is also required if awarding a contract using full and open competition after exclusion of one or more sources. If you are excluding one or more sources for reasons such as to maintain or develop alternative sources of supplies or services, a Determination & Findings (D&F) must be prepared by the Contracting Officer and approved by the Chief Procurement Officer. Refer to FAR Subpart 6.2 and HSAR Subpart 3006.2.

"Full & open competition" is specifically defined in the statute, as explained in the definition in Chapter 5 of this Guide. The existence of "competition" does not necessarily mean full and open competition was solicited. If only a limited number of sources are able to compete due to competitive barriers that are inherent in the Government's requirement, a J&A may be required. Even when full and open competition does not exist, the CO is required to "solicit offers from as many potential sources as is practicable under the circumstances" (FAR 6.301(d)). In addition, the Government may not automatically reject proposals from sources not identified in the J&A. The Government is obligated to consider any proposal received from a responsible source.

These requirements apply to all new contracts and modifications except:

1. Acquisitions made under the simplified acquisition procedures of FAR Part 13 (for those actions, a simpler explanation is allowed)**;**

2. Contracts awarded under procedures expressly authorized by statute (other than those addressed under the authority of 10 U.S.C. 2304(c)(5) and 41 U.S.C. 253(c)(5). So if you are excluding a class or classes of sources in order to conduct a small business set-aside, or an 8(a) acquisition, no written justification or determination is required. A brief explanation should be placed in the contract file;

3. Contract modifications that are within the scope and under the terms of an existing contract (e.g., changes clause actions, exercise of contract options when initially priced and evaluated under full and open competition, etc.); and

4. Orders placed under indefinite-quantity contracts when the contract was awarded under the procedures of FAR Subparts 6.1 or 6.2 and all responsible sources were

realistically permitted to compete for the requirements in the contract or when the contract was awarded under FAR Subpart 6.3 and the contract's J&A adequately covered the requirements specified in the order.

Seek legal advice regarding required documentation for Indefinite Delivery/Indefinite Quantity (IDIQ) Contracts, Government Wide Agency Contracts (GWACs), or IDIQ DHS-wide contracts where orders contain requirements for brand name specifications.

CHAPTER 2

AUTHORITIES FOR USING OTHER THAN FULL AND OPEN COMPETITION

The requirements for documentation and approval vary depending upon the authority that applies. The most common authorities used in DHS are: Only one responsible source and no other supplies or services will satisfy agency requirements; and Unusual and compelling urgency. The following paragraphs describe conditions when each authority may be appropriate, key issues to address, and documentation requirements.

10 U.S.C. 2304(c)(1) or
41 U.S.C. 253(c)(1)

ONLY ONE RESPONSIBLE SOURCE AND NO OTHER SUPPLIES OR SERVICES WILL SATISFY AGENCY REQUIREMENTS

Guidance regarding use of this authority is at FAR 6.302-1. It applies when either the required supplies or services are available from only one responsible source that can satisfy agency requirements or, for DoD, NASA, and USCG, from only one or a limited number of responsible sources, and no other type of supplies or services will satisfy agency requirements, full and open competition need not be provided for. A J&A must be approved prior to commencing negotiations when proceeding under this authority.

When Appropriate:
This authority is appropriate when impediments to full and open competition are known to exist. It is normally used for follow-on acquisitions when only a specified source is capable of performing the effort. The use of this exception may be appropriate under the following conditions:

1. A unique and innovative unsolicited research proposal is received that does not resemble the substance of a pending competitive acquisition-(see FAR 6.302-l(a)(2)(i), and FAR Subpart 15.6), or, demonstrates a unique capability of the source to provide the particular research services proposed;

2. A follow-on contract is planned for the continued development or production of a system or highly specialized equipment, when award to any other source would result in substantial duplication of costs (which could not be recovered through competition) or unacceptable delays in fulfilling the agency requirements (see FAR 6.302-l(a)(2)(iii));

3. For DoD, NASA, and USCG - A follow-on contract is planned for the continued provision of highly specialized services, when award to any other source would result in substantial duplication of costs or unacceptable delays (see FAR 6.302-l(a)(2)(iii)).

4. The existence of limited rights in data, patent rights, copyrights, secret processes, the control of basic raw material, or similar circumstances, make the supplies or services available from only one source (see FAR 6.302-l(b)(2)).

5. When acquiring utility services, circumstances dictate that only one supplier can furnish the service (see FAR 6.302-l(b)(3)).

6. When there is a reasonable basis to conclude that the Government's minimum needs can only be satisfied by unique supplies or services available from only one with unique capabilities (see FAR 6.302-l(b)(l)).

7. An acquisition that uses a brand name description or other purchase description to specify a particular brand name, product, or feature of a product, peculiar to one manufacturer. However, use of brand name or equal descriptions or other purchase descriptions that permit offerors to propose products other than the specific brand name product do not require J&As (FAR 6.302-1(c)).

Key Points for the Justification:
The single most important part of any justification citing this authority is the market research, (see FAR Part 10). Only by a thorough review of the marketplace including commercial items and nondevelopmental items can our assumptions regarding the specified source's unique capabilities be validated. The justification, or an attachment to the justification, must identify all sources that expressed an interest in the requirement, and provide details regarding the evaluation of capabilities of potential sources.

If the justification is based upon the absence of required data or the existence of limited rights in data, the justification must thoroughly document the actions taken to obtain missing data or to validate, challenge or otherwise remove this impediment. The mere existence of such rights or circumstances does not in and of itself justify use of this authority. If rights are limited by patents or copyright, authorization and consent procedures may be used to permit offerors to circumvent such restrictions (see FAR Part 27). If limited rights in technical data apply, the Government may negotiate purchase of unlimited rights, royalty provisions, Government purpose license rights, or other arrangement to overcome this impediment (see FAR Subpart 27.4.)

The justification must thoroughly describe the unique capabilities or qualifications of the source that form the basis for the justification. In addition, unless exempted by FAR 5.102(a)(5) and 5.202, potential sole source, including brand name descriptions, actions are required to be published at the Government's business opportunities website called the FedBizOpps (FBO) which is the Governmentwide Point of Entry (GPE)). Within each synopsis, a statement affirming that "all interested sources will be considered" should be included to show the reader that all interested contractors would be afforded an opportunity to demonstrate they can meet the Government's minimum requirements. If more than one company adequately demonstrates the capability to meet requirements (to the satisfaction of the Contracting Officer) then the proposed sole source must be canceled and a competitive acquisition conducted.

The justification must also address, how the Contracting Officer has or will determine the prices are or will be fair and reasonable, to include whether certified cost or pricing data will be obtained and if an audit is necessary. This determination is made to give the coordinator/approver assurance that you are acting in the best interests of the Government by obtaining a fair and reasonable price despite restricting competition.

When an acquisition contains a brand name or other purchase description which is used to specify a particular brand name, product, or feature of a product peculiar to one manufacturer, it does not provide for full and open competition no matter how many sources are solicited. If the acquisition contains brand name specifications, the contracting offices shall include the justification or documentation required by FAR 6.302-1(c)(redacted as necessary) with the solicitation publication in the FedBizOpps. Solicitations using this authority must be published in the FedBizOpps per FAR 5.102 and any bids or proposals received must be considered. The Office of Management and Budget (OMB) has specifically directed agencies to reinforce the need to maintain vendor neutral contract specifications, as conveyed in their April 11, 2005 memorandum to Chief Acquisition Officer, Chief Information Officer, and Senior Procurement Executives on the topic, "Use of Brand Name Specifications. The OMB April 2005 memorandum along with the early OMB memorandum, on July 1, 2004, entitled, Software Acquisition, reminds agencies about their responsibilities when procuring software to support agency operations. These memoranda can be found at www.whitehouse.gov/omb/memoranda.

10 U.S.C. 2304(c)(2) or
41 U.S.C. 253(c)(2)
UNUSUAL AND COMPELLING URGENCY

Guidance regarding use of this authority is at FAR 6.302-2. It applies when the need for supplies or services is of such an unusual and compelling urgency that the Government would be seriously injured unless the number of sources solicited is limited to those specified. **The Contracting Officer is obligated to request offers from as many potential sources as practical under the circumstances.** When citing this authority, the J&A may be prepared and approved after contract award or issuance of an undefinitized contract action when preparation and approval prior to award would unreasonably delay the acquisition. (FAR 6.302-2(c)).

DHS and its Components have a special statutory requirement associated with use of this authority. If the contract award facilitates the response to or recovery from a natural disaster, act of terrorism, or other man-made disaster, the contract period of performance should be limited to the minimum period necessary, and shall not exceed 150 days unless exceptional circumstances apply and justification is approved by the Head of the Contracting Activity or higher approval authority if required by FAR 6.304 or DHS procedures. (See HSAM 3006.302-2(c)(3) for more information.)

When Applicable:
This authority is used to provide rapid deployment of supplies and/or services to support time-critical missions. The authority may also be used to extend existing critical service contracts when the award of a follow-on contract has been delayed by conditions that could not have been foreseen, such as protests prior to award. The authority may apply whenever unusual urgency precludes full and open competition and delay of the award would result in serious injury, financial or other, to the Government. Typically, these requirements are granted exceptions from the requirement to publicize the anticipated contract action per FAR 5.202.

Key Points for the Justification:
The most critical aspect of these justifications is quantifying the nature of the serious injury. If any delay will place financial obligations on the Government, these costs must be estimated and the basis of the estimate explained in the justification. If potential personnel injuries or loss of life are possible, describe the conditions that create this condition and why no actions other than the planned acquisition could avert these conditions. If the defensive posture of the United States would be seriously jeopardized, explain the impaired defensive capability.

The justification must explain the extent to which competition is limited (one source or multiple sources) and show that competition was obtained to the maximum extent possible given the conditions described in the justification. If the conditions surrounding the acquisition are similar to those cited under exception 1 (i.e., only one responsible source), be sure to detail these competition impediments in the justification to provide additional support for the limitation of competition. Again, market research is critical.

Only by a thorough review of the marketplace including commercial items and nondevelopmental items or services, can our assumptions regarding the specified source's unique capabilities be validated. The justification, or an attachment to the justification, must identify all sources that expressed an interest in the requirement, and provide details regarding the evaluation of capabilities of potential sources.

The justification must also address, how the Contracting Officer has or will determine the prices are or will be fair and reasonable, to include whether certified cost or pricing data will be obtained.

10 U.S.C. 2304(c)(3) or
41 U.S.C. 253(c)(3)

INDUSTRIAL MOBILIZATION; OR ENGINEERING, DEVELOPMENTAL, OR RESEARCH CAPABILITY; OR EXPERT SERVICES

Guidance regarding use of this authority is at FAR 6.302-3. It applies when it is necessary to award the contract to a particular source or sources in order to (i) maintain a facility, producer, manufacturer, or other supplier in case of national emergency or to achieve industrial mobilization; (ii) to establish or maintain an essential engineering, research or development capability provided by an educational or non-profit institution or federally funded research and development center; and (iii) to acquire services of an expert or neutral person for any current or anticipated litigation or dispute. When citing this authority, the J&A must be approved prior to commencing negotiations. Note: This is not one of the authorities typically used at the Department.

When Applicable:
FAR 6.302-3(b) lists the following specific situations where the use of this authority may be appropriate:

1. Keep vital facilities or suppliers in business or make them available in the event of a national emergency;

2. Train a selected supplier in the furnishing of critical supplies or services; prevent the loss of a supplier's ability and employees' skills; or maintain active engineering, research, or development work;

3. Maintain properly balanced sources of supply for meeting the requirements of acquisition programs in the interest of industrial mobilization (when the quantity required is substantially larger than the quantity that must be awarded in order to meet the objectives of this authority, that portion not required to meet such objectives will be acquired by providing for full and open competition, as appropriate, under this part);

4. Limit competition for current acquisition of selected supplies or services approved for production planning under the Department of Defense Industrial Preparedness Program to planned producers with whom industrial preparedness agreements for those items exist, or limit award to offerors who agree to enter into industrial preparedness agreements;

5. Create or maintain the required domestic capability for production of critical supplies by limiting competition to items manufactured in the United States or its outlying areas; or the United States, its outlying areas, and Canada;

6. Continue in production, contractors that are manufacturing critical items, when there would otherwise be a break in production; or

7. Divide current production requirements among two or more contractors to provide for an adequate industrial mobilization base.

Key Points for the Justification:
The most important part of justifications citing this authority is demonstrating the need to maintain the capability possessed by the identified source(s). The justification must thoroughly describe the unique capabilities or qualifications of the designated source that form the basis for the justification. In addition, with rare exceptions these potential sole source actions are required to be published at the Government's business opportunities website called the FedBizOpps. If a contractor challenges the potential sole source action, the contractor must be afforded an opportunity to show it can meet the Government's minimum requirements. If such a showing is made to the satisfaction of the Contracting Officer, then the proposed sole source must be canceled and a competitive acquisition conducted.

The justification must also address, how the Contracting Officer has or will determine the prices are or will be fair and reasonable, to include whether certified cost or pricing data will be obtained.

If it is inappropriate to pursue actions to foster future competition, be sure to explain why no actions are planned or underway.

Examples for the use of this authority can be found at FAR 6.302-3(b)(3).

10 U.S.C. 2304(c)(4) or
41 U.S.C. 253(c)(4)
INTERNATIONAL AGREEMENT

Guidance regarding use of this authority is at FAR 6.302-4. It applies when competition is precluded by the terms of an international agreement or a treaty between the United States and a foreign government or international organization, or the written direction of a foreign government reimbursing the Department for the cost of the acquisition supplies and services.

Note: USCG does not have to support contracts using this authority with a (J&A). See FAR 6.302-4(c).

When Appropriate:
Whenever we are purchasing supplies or services under an international agreement for non-U.S. customers, this authority may be appropriate. This authority may be used in circumstances such as:

1. When the acquisition is to be reimbursed by a foreign country and that country has specified in written direction, such as a Letter of Offer and Acceptance, that the supplies or services be acquired from a particular firm; or

2. When the planned contract is for supplies to be used, or services to be performed, in the sovereign territory of another country and the terms of a treaty or agreement specify or limit the sources to be solicited.

Key Points for the Justification:
A copy of the pertinent parts of that documentation that has the effect of restricting competition must be attached to the Justification. Note that FAR 5.202(a)(3) permits an exception to the requirement to publicize the proposed contract action when competition is limited by the terms of an international agreement.

10 U.S.C. 2304(c)(5)
41 U.S.C. 253(c)(5)

AUTHORIZED OR REQUIRED BY STATUTE

Guidance regarding use of this authority is at FAR 6.302-5. It applies when statute expressly authorizes or requires the acquisition to be made through another agency or from a specified source; or the agency's need is for a brand name commercial item for authorized resale. When citing this authority, a justification is required and must be approved prior to commencing negotiations. However a J&A is not required under the following conditions:

1. Federal Prison Industries (UNICOR) awards -18 U.S.C. 4124 (see FAR Subpart 8.6);

2. Qualified Nonprofit Agencies for the Blind or other Severely Disabled awards-41 U.S.C. 46-48c (see FAR Subpart 8.7) awards;

3. Government Printing and Binding awards-44 U.S.C. 501-504, 1121 (see FAR Subpart 8.8);

4. Sole source awards under the 8(a) Program 15 U.S.C. 637 (see FAR Subpart 19.8);

5. The Robert T. Stafford Disaster Relief and Emergency Assistance Act awards-42 U.S.C. 5150 (see FAR Subpart 26.2);

When Applicable:
The authority of 41 U.S.C. 2304(c)(5) may be used to justify other than full and open competition when the statute authorizes, or requires the procurement to be made from a specified source or sources. A J&A is required for an acquisition that does not satisfy one of the conditions listed in (1) through (5) above.

Sole source awards under the HUBZone Act of 1997 (15 U.S.C. 657a) or the Veterans Benefits Act of 2003 (U.S.C. 657f) while authorized by law, must have a J&A per FAR 6.302-5(c)(2)(ii). When a statute expressly authorizes the procurement to be made from a specified source or sources, but does not require, that the procurement be made from a specified source, the contracting officer shall prepare a J&A and the content shall include the specific statutory cite, along with the 10 U.S.C. 2304(c)(5) or 41 U.S.C. 253(c)(5) citation.

10 U.S.C. 2304(c)(6)
41 U.S.C. 253(c)(6)
NATIONAL SECURITY

Guidance regarding use of this authority is at FAR 6.302-6. Use of this authority may be appropriate for certain highly sensitive classified programs. It applies when disclosure of the Government's needs would compromise national security and it is necessary to limit the number of sources who are solicited. When citing this authority, the J&A must be approved prior to commencing negotiations.

When Applicable:
This authority may be used when disclosure of the Government's needs would violate security requirements. It should not be used simply because the acquisition is classified or merely because access to classified material will be necessary to submit a proposal or perform the contract. The distinction is the fact that the disclosure of the basic need or overall requirement itself would compromise national security.

Key Points for the Justification:
Documentation for this type of program is typically limited to the minimum essential information to establish validity of the justification. The J&A may also be a classified document. Special handling procedures exist for processing such documentation to the reviewing and approval authorities. Only parties with a "need to know" **and** the proper level of security clearance should be permitted access to the documentation. Using this authority does not relieve the Contracting Officer of the requirement to solicit offers from as many potential sources as is practicable. Therefore, the requirements office must work closely with the Contracting Officer to maximize competition.

The justification must also:

1. Identify how national security would be compromised if the Department's needs were disclosed in the FedBizOpps synopsis and why the synopsis could not be worded in such a manner that national security would not be compromised;

2. Include a statement on why it is critical for vendors to have access to this classified information to prepare their technical and/or cost proposals and the level of security clearance required;

3. Identify the number and value of the contracts that the justification covers; and

4. Follow any DHS/Component policies, procedures and or guidance regarding contractor access to sensitive/classified information.

10 U.S.C. 2304(c)(7)
41 U.S.C. 253(c)(7)
PUBLIC INTEREST

Guidance regarding use of this authority is at FAR 6.302-7. Use of this authority is extremely rare. It applies when the Secretary of Homeland Security determines that the use of full and open competition is not in the public interest for the particular acquisition concerned. This authority may only be used when the Secretary makes a written determination and findings (reference FAR Subpart 1.7) and Congress is notified in writing of this determination not less than 30 days prior to award of the contract. The approval for this authority is not delegated. The Contracting Officer must prepare a justification to support the secretarial determination and may not release the solicitation until the determination has been approved.

When Applicable:
This authority may only be used when none of the other authorities is appropriate. The determination may not be made on a class basis.

Key Points for the Justification:
Describe the reasons full and open competition is not in the public interest and why no other authority is appropriate for use. Keep in mind that this authority is not typically used, so strong rationale is required.

CHAPTER 3

FORMAT OF THE J&A
JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION (J&A)

DHS is legally required to promote full and open competition; however, there are statutory authorities that allow for the absence of competition (See (FAR) 48 CFR 6.302). The frequent exceptions to competition are (1) Only one source is available; and (2) The requirement has unusual and compelling urgency. This section provides assistance in the preparation of the J&A. It is the customer's responsibility to fill out this justification. There are 12 elements to the J&A (See (FAR) 48 CFR 6.303-2). Each element is addressed below.

JUSTIFICATION FOR OTHER THAN FULL AND OPEN COMPETITION
(*Cite authority*, e.g., 10 U.S.C. 2304(c)(7) or 41 U.S.C. 253(c)(7))

Pursuant to the requirements of the Competition in Contracting Act (CICA) as implemented by FAR Subpart 6.3 and in accordance with the requirements of FAR 6.303-1, the justification for the use of the statutory authority under FAR Subpart 6.3 is justified by the following facts and rationale required under FAR 6.303-2 as follows:

1. Agency and Contracting Activity. Identification of the agency and the contracting activity, and specific identification of the document as a Justification for other than full and open competition. Example: The Department of Homeland Security, Office of Procurement Operations, proposes to enter into a contract on a basis other than full and open competition;

2.. Nature and/or description of the action being approved. Approval for a sole source, follow-on procurement for supplies, services, maintenance, rework, etc. Example: DHS has a requirement on a sole source basis to upgrade and maintain proprietary software at an estimated cost of $5,520,000. List the name and address of the proposed contractor(s);

3. Description of Supplies/Services. Describe the supplies or services to be acquired. Provide the estimated total value (including options, if any). Example: The requirement is to provide upgrades and support for XYZ software at a total cost of $5,520,000. The re-capitalization system software requires upgrades to allow integration of information from BCIS and CBP system with DHS' system. This upgrade will allow DHS to consolidate all the information automatically. The manufacturer is the only one that provides this upgrade and the required support for a smooth transition. (If "Unusual and Compelling Urgency" were cited and the proposed contract action facilitates the response to or recovery from a natural disaster, act of terrorism or other man-made disaster, the period of performance is limited to 150 days unless exceptional circumstances apply. See HSAM 3006.302-2(c)(3));

Period		Unit Price		Total
Base Year	12 mo	$70,000		$840,000
Option Year 1	12 mo	$80,000		$960,000
Option Year 2	12 mo	$90,000		$1,080,000
Option Year 3	12 mo	$100,000		$1,200,000
Option Year 4	12 mo	$120,000		$1,440,000
			Total	$5,520,000

4. Identification of Statutory Authority Permitting Other Than Full and Open Competition. Cite the authority under one of the “seven exceptions” listed under FAR 6.302. Example: The statutory authority permitting other than full and open competition is 10 U.S.C. 2304(c)(1)(for USCG) or 41 U.S.C.253(c)(1) (for other Components; except TSA) implemented by the Federal Acquisition Regulation (FAR) Subpart 6.302-1 entitled “Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements”. If "Unusual and Compelling Urgency" is cited, indicate whether or not the requirement facilitates the response to or recovery from a natural disaster, act of terrorism, or other man-made disaster;

5. Demonstration That the Nature of the Acquisition Require Use of the Authority Cited. This paragraph is one of the most important parts of the J&A and should spell out why you have to restrict competition on this acquisition. If using only one responsible source as your authority, explain in detail the specific requirements (not what the equipment or process is capable of doing), why only one contractor is capable of fulfilling those requirements, and where other proposed contractors fail to meet those requirements. If using “Unusual and Compelling Urgency” as your authority, explain in detail why the urgency was not the result of poor planning. You must paint the full picture of this emergency situation and why it was not the user or contracting office’s inability to plan that turned a normal acquisition into an urgent one. Identify what unique qualifications the proposed contractor has for fulfilling the contract requirements. Example: This requirement is a modification to existing software that was designed by XYZ contractor. The existing software is proprietary and only XYZ may make the modifications. If "Unusual and Compelling Urgency" is cited and the requirement facilitates the response to or recovery from a natural disaster, act of terrorism, or other man-made disaster, explain any exceptional circumstances requiring a period of performance beyond 150 days. See HSAM 3006.302-2(c)(3), including requirement for HCA approval of the J&A;

6. Description of efforts made to ensure that offers are solicited from as many potential sources as is practicable. The description should include whether a FedBizOpps notice was or will be publicized, as required by FAR Subpart 5.102(a)(6) and 5.2, and if not, which exception under FAR 5.202 applies. If an announcement has already been made in FedBizOpps, give the date of issuance;

7. Determination by the Contracting Officer that the Anticipated Cost to the Government will be Fair and Reasonable. This paragraph should always begin with a sentence similar to: "The contracting officer determines that the anticipated price(s) will be fair and reasonable based on…." You may have information, such as, commercial pricelists or prior acquisition history that will help the contracting officer determine the anticipated cost is fair and reasonable (FAR Subpart 15.4);

8. Description of Market Research. Market Research is required by FAR Part 10. Describe the results of your market research. Example: The internet was searched for a list of contractors that could provide the software or compatible software that would work with XYZ software. The market research showed that only XYZ could provide the upgrade and there are no other distributors but the manufacturer. If no market research was conducted, provide a reason for its absence. On a sole source acquisition, the only possible way you can state in paragraph 5 of the J&A that there is only one contractor who can fulfill the agency's needs is to conduct market research, and it should be summarized here. This is also the section of the J&A to describe the circumstances for acquiring a patented or copyrighted product on the representation of the intellectual property holder that has not been licensed for resale;

9. Any Other Facts Supporting the Use of Other Than Full and Open Competition. You must explain why technical data packages, specifications, SOW, or purchase descriptions are not suitable for full and open competition. Discuss why your requirement cannot be modified to enhance competition. If you are contending only one source can provide your need, you must provide information why and describe the extent to which the Government will be harmed if not acquired from that vendor. Example: Your requirement is for modification of a software package designed by XYZ Corporation. If XYZ does not do the modification, the new contractor will have to re-write two-thirds of the existing software to make the modification. In this case, you must provide an estimate of the cost to the Government that would be duplicated and how it was derived. If using exception FAR 6.302-2, data, estimated cost, or other rationale as to the extent and nature of the harm is not all safety concerns only those that maybe life threatening;

10. A Listing of the Sources, if Any, That Expressed, in Writing, an Interest in the Acquisition. Example: A synopsis was issued in the CBD on 12/3/2000 requesting that parties express their interest in writing to the contracting officer. Only XYZ Corporation responded;

11. A Statement of the Actions, if Any, the Agency May Take to Remove or Overcome Any Barriers to Competition Before Any Subsequent Acquisition for Supplies or Services Required. Include a statement of actions taken or will be taken to increase competition for future acquisitions of the same item/service. Will the Government revise overly technical specifications; acquire data rights,

drawings, etc.? An example of the statement of actions is as follows: "The USCG is replacing motors on all boats that are clockwise to counter clockwise rotation. Only one source can provide clockwise rotation motors. Once replaced, market research shows that a minimum of 20 manufacturers will be able to compete for this requirement. Any subsequent requirements will be acquired with counter clockwise rotation." If urgent and compelling circumstances are being relied upon, is the agency working on a fully competitive procurement to satisfy longer term needs that will be conducted at the earliest opportunity? If using "Unusual and Compelling Urgency" as your authority for acquisitions to facilitate the response to or recovery from a natural disaster, act of terrorism or other man-made disaster in excess of 150 days, the on-going and planned efforts to ensure maximum competition as soon as practicable must be addressed. (See HSAM 3006.302-2(c)(3));

12. Contracting Officer's Certification. I certify that the data supporting the recommended use of other than full and open competition is accurate and complete to the best of my knowledge and belief; and

_____ _____
Contracting Officer * Date

13. Technical/Requirements Personnel Certification. I certify this requirement meets the Government's minimum need and that the supporting data, which forms a basis for this justification, is complete and accurate.

_____ _____
Technical Representative Date

APPROVAL:

_____ _____
Contracting Officer: Not exceeding $550K** Date

_____ _____
Competition Advocate**:
$550K to not exceeding $11.5 mil Date

_____ _____
HCA: $11.5 mil to not exceeding $57 mil Date
HCA USCG: $11.5 mil to not exceeding $78.5 mil

_____ _____
CPO (Non-USCG actions): over $57 mil Date
CPO (USCG action): over $78.5 mil

* This format is not required for proposed action under $100K, however the Contracting Officer is responsible for approval of sole source documentations, including brand name specifications (See FAR 5.102, 6.303-1, 8.405-1, 11.105, 13.106-1 and 13.501, and implementing HSAM chapters.)

**For a proposed contract to facilitate the response to or recovery from a natural disaster, act of terrorism, or other man-made disaster with a period of performance that exceeds 150 days, approval by the Head of the Contracting Activity unless a higher authority is required. This authority is not delegable.

CHAPTER 4

APPROVAL OF J&As

For actions not exceeding $550,000*, the Contracting Officer's certification required by FAR 6.303-2(a)(12) will serve as approval unless a higher approving level is established by the Component.

For actions exceeding $550,000* but not exceeding $11,500,000*, the Contracting Activity Competition Advocate is the final approving official. If the Contracting Activity does not have a Competition Advocate appointed by the Component, the Department's Senior Competition Advocate will be the final approving official.

For actions of $11,500,000 but not exceeding $57,000,000 ($78,500,000 for the USCG), the Component Competition Advocate is the final approving official and approval by the Head of the Contracting Activity (HCA) will be required.

For actions exceeding $57,000,000, ($78,500,000 for the USCG), the Department's Chief Procurement Officer is the final approving official.

NOTE:
Each review must be prepared by lower level approval(s), e.g., for actions over $57 million, all approvals (Contracting Officer, Component Competition Advocate and Head of the Contracting Activity) are also required. If any approval required is not received, the acquisition shall not proceed, except for acquisitions between $550,000* and $11.5 million* where the Contracting Activity's Competition Advocate is not available and the Departmental Competition Advocate agrees to sign the approval (see FAR 6.304(a)(2)).

*For a proposed contract to facilitate the response to or recovery from a natural disaster, act of terrorism, or other man-made disaster with a period of performance that exceeds 150 days, approval by the Head of the Contracting Activity unless a higher authority is required. This authority is not delegable.

CHAPTER 5

ACRONYMS & DEFINITIONS

ACRONYMS

CICA:	**Competition in Contracting Act**
D&F:	**Determination & Findings**
HSAR:	**Homeland Security Acquisition Regulation**
HSAM:	**Homeland Security Acquisition Manual**
FAR:	**Federal Acquisition Regulation**
HCA:	**Head of the Contracting Activity**
J&A:	**Justification & Approval**
SOW	**Statement of Work**

DEFINITIONS

Competition: When used in relation to the award of a contract, competition includes both "full and open competition" and other types of competition between a limited number of sources. A justification and approval is normally required when only a limited number of responsible sources are permitted to compete for contract award.

Competition Advocate: An individual designated by the Component to serve as an advocate for competition for the procuring activity in accordance with Section 20 of the Office of Federal Procurement Policy Act. The Competition Advocate promotes "full and open competition" and challenges barriers to such competition, and fulfills the duties and responsibilities set forth in FAR Subpart 6.5. A list of DHS and Component Competition Advocates may be found on DHSOnline within the Acquisition, Acquisition Policy and Legislation page at:
https://dhsonline.dhs.gov/portal/jhtml/dc/sfi.jhtml?doid=98621

Class Justification & Approval: A J&A providing authority for a class (or group) of contracting actions for the same or related supplies or services that require essentially identical justifications. The Contracting Officer must make a written determination that an individual contract action may be awarded within the scope of a class J&A before such actions are awarded (FAR 6.303-1(c)). **Note:** This type of J&A is not commonly used.

Department Competition Advocate: An individual designated by the Chief Procurement Officer to serve as an advocate for competition for the agency in accordance with Section 20 of the Office of Federal Procurement Policy Act. The job of the Competition Advocate is to promote "full and open competition" and challenge barriers to such competition, as well as fulfill the duties and responsibilities as delineated in FAR Subpart 6.5.

Full & Open Competition: When used with respect to contract actions, means that all "responsible" sources are permitted to compete (FAR Subpart 6.1). Small business set-asides, 8(a) competitions, and so forth are considered full and open competition (FAR Subpart 6.2) after exclusion of services.

International Agreement: An agreement between the United States and a foreign government or international organization. An international agreement may be a treaty, Letter of Offer and Acceptance, Memorandum of Agreement, etc.

Justification & Approval (J&A): A written and approved document explaining the reasons for the sole source or limited competition contract action that does not provide an opportunity for all responsible sources to submit proposals.

Market Research: Approach used to collect and analyze information about capabilities within the market, before acquiring goods and services to determine if sources exist to meet the agency's requirements or whether or not commercial items or nondevelopment items either exist or can be modified to meet the agency's needs.

Responsible: When used in reference to making award to a prospective contractor (i.e., the offeror selected for award), a "responsible" contractor must: (a) have adequate financial resources, or the ability to obtain them; (b) be able to comply with the required or proposed delivery/performance schedule; (c) have a satisfactory performance record; (d) have a satisfactory record of integrity and business ethics; (e) have the necessary organization, experience, accounting and operational controls, and technical skills, or the ability to obtain them; (f) have the necessary production, construction, technical equipment and facilities, or the ability to obtain them; and (g) be otherwise qualified and eligible to receive an award under the applicable laws in regulations. In short, a responsible contractor is one who is capable of performing the contract and who has a satisfactory record of past performance and integrity (reference FAR 9.104-1). In the context of "full and open competition", the Government is generally prohibited from predetermining the responsibility of prospective offerors and thereby limiting competition to a pre-selected group.

Sole Source: A contract action that is entered into, or proposed to be entered into for the purchase of supplies or services, after soliciting and negotiating with only one source.

Synopsis: A notice published in the FedBizOpps for the purposes of identifying the Government's requirements as potential business opportunities (preaward) (e.g. Sources Sought, Presolicitation Notice) or for those requirements, which have been awarded (postaward) (e.g. Post Award Synopses). The primary purposes of the notice are to improve small business access to acquisition information and enhance competition by identifying contracting and subcontracting opportunities. Preaward synopses are typically required for open market purchases that will exceed $25K. When the acquisition includes a brand name description, the Contracting Officer shall include the justification or documentation with the solicitation when published in the FedBizOpps (See FAR 5.102(a)(6)). For post-award synopses and notices, reference FAR Subpart 5.3 and HSAM Subpart 3005.3.

CHAPTER 3007 ACQUISITION PLANNING

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	3007.502	Applicability.
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Subchapter 3007.1 Acquisition Plans

This subchapter applies to all of DHS including the Transportation Security Administration.

3007.101 Definitions.

"Acquisition Plan", as used in this chapter, means a document used to fulfill the acquisition planning requirements of (FAR) 48 CFR Parts 7.105 and 7.107. This includes all acquisitions, including contracts, and task orders or delivery orders under Indefinite

Delivery/Indefinite Quantity contracts (for example Federal Supply Schedule contracts, Government Wide Agency Contracts (GWACs), etc).

"Acquisition" also includes intra-agency and interagency acquisitions.

"Advance Acquisition Plan (AAP)"means a plan of all anticipated procurements, including interagency agreements, blanket purchase agreements and task orders over $100,000 for the forthcoming fiscal year. This does not include interagency agreements where a DHS Component is acting as the Servicing Activity. See HSAM 3007.172. The AAP will also be used to compile and publish the annual "Forecast of Contract Opportunities" which is issued by the Office of Small and Disadvantaged Business Utilization (OSDBU).

"Plan" means an acquisition plan.

3007.102 Policy.

(b) No synopsis for a solicitation may be released, solicitations issued, or funds transferred within or outside the Department until the plan has been completed and approved. Program acquisition plans must include all program contractual actions including Inter-agency agreements. The plan must demonstrate how each contractual action contributes to meeting the program's objectives. In addition, the plan must document annual funding for contractual action including Inter-agency agreements. In the case of Inter-agency (to other federal agencies) or Intra-agency (between DHS Components) agreements, the following requirements apply:

(1) If a DHS Component anticipates sending funds to another federal agency, the program manager may require that the Servicing Agency prepare the acquisition plan. In such cases, the program manager will assist the Servicing Agency and provide any necessary information. The program manager will also prepare an Analysis of Alternatives as described in DHS Instruction Number 125-02-001 entitled "Instruction Guide on Interagency Agreements", describing why the Inter-Agency Agreement is the appropriate way to fulfill the mission need.

(2) If two or more DHS Components are jointly planning an acquisition/program and funds will be transferred via an Intra-agency agreement, the receiving Component must prepare and complete the acquisition plan. If a Component transfers funds via an Intra-agency agreement to another Component for purposes of awarding onto an existing contract, the originating Component is responsible for completing the acquisition plan. No acquisition plan is necessary if the Intra-agency agreement is executed under Tri-Bureau Shared Services agreements.

(3) When a new contract in excess of $1M is being awarded on behalf of DHS by a Servicing Agency through an assisted acquisition or by one DHS Component on behalf of another DHS Component, program managers and contracting officers shall ensure that Congressional Award Notifications occur in accordance with the requirements at HSAM

3005.303 Announcement of contract awards. The Servicing Agency may not make award until the notification requirements have been met.

3007.103 Agency-head responsibilities.

(d) DHS's implementation of (FAR) 48 CFR Part 7 acquisition planning requirements is as follows:

(1) The complexity of the acquisition plan will reflect the dollar value and complexity of the acquisition.

(2) Content Requirements.

(i) Acquisitions for other than development which are valued greater than or equal to $10 million require a written acquisition plan that complies with the planning requirements of (FAR) 48 CFR Part 7.1 including (FAR) 48 CFR Part 7.106, Additional Requirements for Major Systems. For acquisitions valued less than $10 million, entry of the information in the Advanced Acquisition Plan Database (http://www.fido.gov/dhs/aap/, see HSAM 3007.172) satisfies the written acquisition plan requirement. Notwithstanding other provisions of this subsection, acquisitions for development valued greater than or equal to $5 million require a written acquisition plan. The definition of "development" is contained at (FAR) 48 CFR Part 35.001.

(ii) When the acquisition involves contract bundling, the plan shall also include the acquisition research and analysis requirements of (FAR) 48 CFR Part 7.107.

(iii) Appendix A, DHS Acquisition Planning Guide, Version 4.0, provides additional requirements and guidance on preparing written Acquisition Plans.

(iv) When using the DHS EAGLE or FirstSource contracts, streamlined APs are authorized and the sample format is found at the Office of Procurement Operations ESO website:https://dhsonline.dhs.gov/portal/jhtml/community.jhtml?index=135&community=MGMT&id=2031380003. Also see HSAM 3007.107(e) for additional information regarding individual procurements for a program.

(3) Acquisition plans are not required for:

(i) Agreements between DHS elements in which all work is performed by DHS personnel;

(ii) Emergency acquisitions (i.e., when the need for the supplies/services is of such an unusual and compelling urgency that the Government would be seriously injured if the supplies/services were not immediately acquired). However, when the authority of FAR 6.302-2 is cited as the authority for a noncompetitive award of a contract above the simplified acquisition threshold in excess of 150 days to facilitate the response to or recovery from a natural disaster, act of terrorism, or other man-made disaster in accordance with HSAM 3006.302-2(c)(3), the Justification and Approval (J&A) shall

describe measures underway or planned to ensure maximum competition as soon as practicable;

(iii) Actions subsequent to the initial submittal of a plan which have already been included as part of an approved plan (e.g., exercise of options);

(iv) Procurements conducted under the Small Business Innovative Research Program (SBIR); and
(v) Procurements for sealed bid construction projects.

(e) Individual procurements where written plans for a program have already been approved and address the specific contracting actions do not require a separate acquisition plan.

(h) Review of Acquisitions Plans.

(1) Reviews.

(i) For acquisitions greater than or equal to $10 million for purposes other than development, the HCAs for the United States Secret Service (USSS) and the Federal Law Enforcement Training Center (FLETC) shall submit all acquisition plans to OCPO for review. All other Component HCAs shall submit acquisition plans with a total value greater than or equal to $50 million to OCPO for review. Plans shall be submitted for OCPO, Acquisition Oversight review as early as possible in the acquisition cycle, but not less than 7 days prior to issuing any solicitation under the Plan.

(ii) All HCAs shall have the responsibility and final approval authority for their respective APs. The HCAs are responsible for reviewing all comments provided to them by OCPO and making any appropriate revisions to the APs as a result of OCPO comments. HCAs shall document the disposition of all OCPO comments in the AP section of the contract file and ensure retention of this file documentation for follow on DHS Acquisition Oversight reviews.

(iii) The Chief Procurement Officer may, at his/her discretion, waive the review requirements of paragraph (h).

(2) Before APs are submitted to OCPO for review, the HCA must review the plan and ensure OCPO is provided sufficient review processing time.

(3) The Chief Procurement Officer retains the right to review any acquisition plan.

(k) The Chief Procurement Officer may waive requirements of detail and formality in planning for acquisitions having compressed delivery or performance schedules because of the urgency of the need. Waiver requests shall be submitted by the HCA through the Director, Strategic Initiatives to the CPO for approval. Waiver requests shall contain

sufficient detail to clearly explain the basis for the request, procedures to be waived, and any recommended alternative action.

3007.103-70 Other officials' responsibilities.

(a) *Acquisition planner/Technical official*. The development of plans, and updates to them, is the responsibility of the acquisition planner (e.g., program manager). The acquisition planner is located within the requiring agency (if outside DHS) or within the requiring Component (if within DHS). The acquisition planner is usually the technical official, and is responsible for providing applicable input for the plan (e.g., quality, quantity, delivery requirements). The acquisition planner, among other functions, shall:

(1) Coordinate with all personnel responsible (e.g., contracting, fiscal, legal, small business, technical, security and logistics) for significant aspects (including but not limited to Earned Value Management (EVM), Personnel Security, Information Technology (IT), Security and Enterprise Architecture) of the plan;
(2) Provide input to the plan as necessary;
(3) Obtain applicable concurrences;
(4) Forward the plan through the approval process; and
(5) Review and update the plan annually.

(c) *Contracting officer*. The contracting officer is responsible for providing applicable input for the plan (e.g., type of contract to be used, procurement milestones, set-aside considerations).

(d) *Competition Advocate.* The cognizant competition advocate within the Component is responsible for reviewing streamlined acquisition plans before they are submitted to the approving official when other than full and open competitive procedures are expected to be used.

(e) *HCA.* At the earliest market research and planning stage, the Head of the Contracting Activity (HCA) shall report the intended acquisition of any automated acquisition related systems to the DHS CPO for coordination, collaboration, and approval by the CPO.

3007.104 General procedures.

Component program officials must forecast ongoing and future requirements to ensure applicable projects are covered in Acquisition Plans. Additionally, chiefs of contracting offices should issue instructions establishing procurement lead-times and cut-off dates.

3007.107 Additional requirements for acquisitions involving bundling of contract requirements.

(a) The contracting officer shall conduct market research to determine whether bundling is necessary and justified. See (FAR) 48 CFR Part 10.001(c) for additional requirements.

(b) The DHS Deputy Secretary, without redelegation, shall determine that bundling is necessary and justified under the circumstances at (FAR) 48 CFR Part 7.107(c). When the contracting officer believes that these circumstances apply to the acquisition, the

HCA shall forward to the CPO the following:
(1) A copy of the approved acquisition plan required by (FAR) 48 CFR Parts 7.105 and 7.107;

(2) A copy of the SBA's 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) 48 CFR 7.107(b) were derived.

The CPO will review the information. If the CPO proposes to recommend disapproval to DHS Deputy Secretary, the reasons for disapproval will be discussed and resolved with the contracting officer and/or at a managerial level within the Component. The CPO findings on any unresolved issues will 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) Advance acquisition plans (AAPs) shall be developed for all acquisitions over $100,000. All Components shall assign an AAP Coordinator and a Small Business (SB) Coordinator.

(1) AAPs shall be developed on a fiscal year basis and shall be modified as necessary throughout the acquisition cycle using the DHS wide electronic AAP data system available under http://www.fido.gov/dhs/aap/. As a minimum, the AAPs shall be reviewed and updated on a semi-annual basis.

(2) The AAP contains the integrated/coordinated efforts of all personnel engaged in managing the acquisition process in the determination of requirements, finance, strategic planning, small business considerations, technical data requirements, contracting and contract administration.

(3) The Component AAP/SB Coordinators shall ensure that their respective Component AAPs are complete and accurate prior to validation in the DHS wide electronic AAP data system. The Component AAP Coordinators shall ensure that their respective Components update and validate the AAPs on or before the DHS due dates. The DHS AAP Coordinator will work closely with the DHS Office of Small & Disadvantaged Business Utilization (OSDBU) and will provide the due dates to the Component AAP/SB Coordinators. The DHS AAP Coordinator and DHS OSDBU will also provide assistance to the Component AAP/SB Coordinators to ensure timely and accurate submissions.

(4) No later than October 15 of each year, the OCPO will establish Component-specific acquisitions to be reviewed and notify each HCA. The HCA is responsible for notifying

the specific contracting office of the required annual review and approvals as established by the OCPO.

Subchapter 3007.2 Planning for the Purchase of Supplies in Economic Quantities

3007.204 Responsibilities of contracting officers.

(a) The contracting officer shall transmit in writing to the cognizant requirements office either the actual offeror responses or a summary of their salient points.

(b) All transmittals shall request a prompt response which is to indicate whether the acquisition should remain as is, be amended, or cancelled. 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.

Subchapter 3007.270 Additional Requirements for Acquisitions Involving Strategically Sourced Commodities.

3007.270-1 Scope of subchapter.

(a) Procedures for all requirements, regardless of dollar value, for all strategically sourced commodities listed in MD Number 0730, Strategic Sourcing Group Operations, are described in this subchapter. This subchapter applies to contracting officers, ordering officials and purchase cardholders.

(b) This subchapter does not apply to the purchase of commodities that are not strategically sourced.

3007.270-2 Definitions.

“Commodity” means a good or a service or a combination thereof.

“Strategically Sourced” means designated as a commodity type in MD Number 0730 and purchased through a corporate contractual vehicle.

3007.270-3 General Requirements.

(a) Prior to contracting for, ordering against an existing contract, or making a purchase with a purchase card, regardless of dollar value, the contracting officer or ordering official shall review MD Number 0730 for the listing of commodities that are to be strategically sourced.

(b) The contracting officer, ordering official, or purchase card holder shall place an order for any commodity listed in MD Number 0730 in accordance with the instructions provided in the directive, unless a waiver is granted by the Strategic Sourcing Group.

3007.270-4 Review procedures.

Contracting Officers, Ordering Officials, and Purchase Cardholders: Contracting officers, ordering officials and purchase cardholders are responsible for ensuring that acquisition of a commodity listed in MD Number 0730, regardless of dollar value, is acquired in an efficient and effective manner. This requires that the contracting officer, ordering official and purchase card holder review the commodities listed in the directive and the definition provided for those commodities. Any purchase of a commodity covered by the commodity's definition shall be acquired in accordance with the procedures provided in MD Number 0730.

3007.270-5 Waiver Procedures.

Contracting officers, ordering officials, and purchase cardholders requesting a waiver to the procedure in MD Number 0730 shall provide a description of the requirement(s) along with a detailed explanation and rational justifying why a wavier is necessary. Waiver requests shall be submitted in writing and addressed to the CPO.

3007.270-6 Procedural documentation requirements.

(a) The contract file shall be documented as to whether or not a purchase of a commodity defined in MD Number 0730 was placed in accordance with the procedures provided in the MD.

(b) If granted, the waiver shall be placed in the contract file.

3007-271 DHS-wide Agency Contracts.

3007.271-1 General requirements.

(a) DHS-wide agency contracts are those that support multiple (2 or more) Components.

(b) The CPO must approve the designation of a contractual action as a DHS-wide Acquisition Contract. Written approval by the CPO must be received prior to issuing a pre-solicitation synopsis in FedBizOpps or other public notice. Requests for DHS-wide designation must be submitted to the CPO by the HCA.

(c) DHS-wide contractual action will require the designated acquisition office to coordinate the DHS-wide requirement(s) with the DHS Director of Strategic Sourcing and other Components which may have requirements for similar items or services. Coordination includes, but is not limited to identifying common requirements from Components, establishing ordering and contract management procedures, and determining administrative costs/assessments for use of the DHS-wide contract.

3007.271-2 Post-award notification.

The HCA must notify the CPO once the DHS-wide Agency Contract is awarded, so that information about the contract can be distributed and posted on the DHS website. This notification must list the awardee, the office making the award, program/project description, contract type, fee arrangements, competition status, lead time requirements, and any other pertinent comments regarding the contract.

Subchapter 3007.4 Equipment Lease or Purchase

3007.401 Acquisition considerations.

The contracting officer shall make any required comparison and document the contract file.

Subchapter 3007.5 Inherently Governmental Functions

3007.502 Applicability.

While inherently governmental activities require the exercise of substantial discretion, not every exercise of discretion is evidence that an inherently governmental activity is involved. Rather, the use of discretion must have the effect of committing the Government to a course of action when two or more alternative courses of action exist and decision making is not already limited or guided by existing policies, procedures, directions, orders or other guidance that: (1) identify specified ranges of acceptable decisions or conduct; and (2) subject the discretionary authority to final approval or regular oversight by agency officials. An activity may be properly awarded to contract or public reimbursable performance where the offeror does not have the authority to decide on the course of action, but is tasked to develop options or implement that course of action, with agency oversight. The following factors should be considered when deciding whether award to a private sector or public reimbursable provider might effect a transfer of inherently governmental authority:

(a) Congressional legislative restrictions or authorizations.

(b) The degree to which official discretion is or would be limited, i.e., whether the agency, private sector or public reimbursable provider’s involvement is or would be so extensive that senior management ability to develop and consider options other than those provided by the provider is inappropriately restricted.

(c) In claims or entitlement adjudication and related services; (i) the finality of any agency, private sector or public reimbursable’s action affecting individual claimants or applicants, and whether or not review of the providers action is de novo (i.e., to be effected without the appellate body's being bound by prior legal rulings or factual determinations) on appeal of the decision to an agency official; (ii) the degree to which agency, private sector or public reimbursable activities may involve wide-ranging interpretations of complex, ambiguous case law and other legal authorities, as opposed to being circumscribed by detailed laws, regulations, and procedures; (iii) the degree to

which matters for decision by agency, private sector or public reimbursable providers involve recurring fact patterns or unique fact patterns; and (iv) the discretion to determine an appropriate award or penalty.

(d) The agency, private sector or public reimbursable provider's authority to take action that will significantly and directly affect the life, liberty, or property of individual members of the public, including the likelihood of the provider's need to resort to force in support of a police or judicial function; whether force, especially deadly force, is more likely to be initiated by the provider or by some other person; and the degree to which force may have to be exercised in public or relatively uncontrolled areas. (Note that contracting for guard, convoy security, and plant protection services, armed or unarmed, is not proscribed by these policies.)

(e) The availability of special agency authorities and the appropriateness of their application to the situation at hand, such as the power to deputize private persons.

(f) Whether the commercial activity in question is already being performed by private persons, and the circumstances under which it is being performed by them.

3007.503 Policy.

(e) Contracts cannot be awarded for services/functions that have been formally approved as inherently governmental by law, the procedures of the Federal Activities Inventory Reform (FAIR) Act, Pub. L. 105-270, (31 U.S.C. § 501 note) and the OMB Circular No. A-76, "Performance of Commercial Activities," (also see (FAR) 48 CFR 7.503). The requiring office shall provide the determination with the purchase requests for services (either in whole or in part) which confirms that none of the services to be performed are inherently governmental. Disagreement pertaining to the determination shall be resolved by the DHS Chief Procurement Officer or designee before release of the solicitation. The FAIR Act, the OMB Circular No. A-76, and related DHS privatization policy implementation is provided through DHS MD Number 0476, Performance of Commercial Activities**.**

DHS Acquisition Planning Guide

October 2007
VERSION 4.0

Office of the Chief Procurement Officer

Purpose

Careful planning is the first step to successful completion of the Department of Homeland Security's (DHS) mission. Acquisitions are an important method to meet mission requirements. The purpose of this document is to provide program managers (PMs) and other acquisition personnel a way to organize and plan each acquisition to meet their portion of the DHS mission. This Guide implements the Federal Acquisition Regulation (FAR) 7.102 and HSAM 3007.1. Acquisition Plans (AP) prepared using this Guide will document the acquisition planning and provide a road map to complete each acquisition.

Policy

All DHS acquisitions shall be planned. Unless an exception applies, all DHS acquisitions or combination of acquisitions supporting a program that meet the threshold requirements in HSAM 3007.103(d)(2)(i) require a formal written approved Acquisition Plan (AP) before initiating any contractual action. Acquisitions include, but are not limited to, contracts, orders against the GSA Federal Supply Schedule or other contract vehicle and basic ordering agreements, memorandum of understanding and memorandum of agreements that transfer funds that will ultimately be applied to a contractual action. The program manager may require that the Servicing Agency prepare APs for Inter/Intra-agency Agreements (IAs) with two exceptions. The two exceptions to having the Servicing Agency prepare the AP are when the Servicing Agency is also a DHS Component or when the IA is part of a larger Program AP.

Introduction

This document covers only how to plan acquisitions to meet program requirements; it does not provide guidance on program planning. This document is written in three parts. Part I is general information about acquisition planning. Part II provides detailed narrative information on the contents required in an AP and how to prepare an AP. The last section of the Guide is the Glossary, which defines the terms and acronyms used in this document.

Part I – Overview of the Acquisition Planning Process

1.1 What is an Acquisition Plan?

An Acquisition Plan (AP) documents a program's plan for meeting a portion of the Department of Homeland Security (DHS) mission through one or more acquisitions. It is a comprehensive plan that provides the background necessary to understand the program and how each acquisition will support the program. An AP also documents the plan for a stand-alone acquisition that is separate from any identified program. For these acquisitions, the AP describes DHS' need for the stand-alone acquisition.

Program or stand-alone APs address the technical, business, management and other significant considerations that will affect the acquisition strategy and execution of each contractual action. The AP is a means to discuss the acquisition process and documents the decisions made prior to processing each contractual action. The AP serves as a mechanism to review, approve and document acquisition decisions and create a road map for the implementation of the acquisition decisions. Once approved, an AP provides direction and approval for execution of each contractual action. The Transportation Security Agency (TSA) refers to stand-alone acquisitions as Operating Capability Investments.

1.2 When is an Acquisition Plan required?

The Federal Acquisition Regulation (FAR) 7.102(a) and HSAM 3007.102 require planning for all acquisitions. Acquisition planning is the first step in any acquisition and should start as early in the program lifecycle as possible. For stand-alone acquisitions, it should start as soon as the need is known. Where the planned acquisition(s) meet or exceed the DHS thresholds in HSAM 3007.103(d)(2)(i), a formal written acquisition plan must be prepared. For acquisitions below the HSAM 3007.103(d)(2)(i) threshold, planning decisions should be documented where possible. Heads of the DHS Contracting Activities (HCAs) may provide thresholds and requirements for informal written acquisition plans and may consider data entered into the Advanced Acquisition Plan to meet the acquisition plan requirements for programs or stand-alone contract actions below the HSAM 3007.103(d)(2)(i) thresholds.

1.3 Who prepares an Acquisition Plan?

In accordance with HSAM 3007.103-70, the acquisition planner is responsible for developing and executing the acquisition program. In general, within DHS, the acquisition planner is the program manager (PM) for program acquisition plans or the originator of the purchase request (PR) for stand-alone acquisition plans. The PM prepares the program acquisition plan with the team who will be responsible for executing the plan. The acquisition team should include at a minimum the PM or sponsor, the contracting officer, the contracting officer's technical representative (COTR) and the budget officer.

For IAs, acquisition planning is required. However, the DHS/Component program manager may delegate preparation of written APs to the Servicing Agency program manager - unless the IA is part of a larger program requiring an AP or the Servicing Agency is also DHS Component. Whenever an IA is contemplated, the DHS program manager will prepare an Analysis of Alternatives as described in DHS Instruction Number 125-02-001 entitled "Instruction Guide on Interagency Agreements", Attachment 1. The Analysis of Alternatives describes why an IA is the appropriate vehicle to fulfill the DHS requirement.

1.4 Can Contractors create, edit or review Acquisition Plans?

Contractor support personnel should not normally be employed in direct support of acquisition planning or in the development of APs. If contractor personnel must be used in preparing, editing or reviewing the AP, appropriate Organizational Conflict of Interest provisions must be included in the contract under which the contractor's services have been obtained and non-disclosure agreements must be executed to cover AP related information. In order to avoid the appearance of a conflict of interest, a Contractor who participates in acquisition planning may not participate in any other aspect of implementing the program at DHS. If there is any question concerning a potential, actual or the appearance of an organizational conflict of interest, the contracting officer must contact the Office of General Counsel or Component legal office before undertaking any acquisition planning involving a contractor's participation.

1.5 What is the scope of the Acquisition Plan?

Program APs cover an entire program and describe how that program will meet its portion of the DHS mission through one or more acquisitions. Program APs should include all acquisitions including administrative contracts, training and technical support contracts, independent validation and verification contracts, IAs and basic or applied research and development efforts for the program.

Stand-alone APs may be prepared for single acquisitions not covered by a program. These APs cover acquisitions that are not part of a formal program but need to be performed to support the DHS mission.

1.6 When do Program Acquisition Plans get revised?

The PM or sponsor and the contracting officer review the AP at least annually and at each Key Decision Point (KDP) milestone. The AP is revised annually to reflect a major program change, or other significant change to the approved AP. An AP change is <u>significant if the item procured changes, how it is being procured (including method and contract type) changes, or funding changes</u>. AP revisions are subject to the same review and signature process as the original document. Revisions may be done with change pages or by complete revision of the AP. The AP will receive a revision number (see paragraph 1.9). The following table may be used to track AP revisions.

Document Version	Date Completed	Reason for Revision
Original	xx/xx/200X	Not applicable
Revision 1	xx/xx/200X	Updated the logistics section of the AP
Revision 2	xx/xx/200X	Made corrections to the acquisition considerations section of the AP

1.7 Can the Acquisition Plan be waived or tailored?

The contents of an AP vary depending on the nature, scope, complexity, circumstances, program level, and phase of the acquisition program lifecycle. APs consider all of the topics listed in Part II of this Guide, but the contents of each topic will vary and may be tailored. APs should reference the applicable program documents and summarize them where appropriate. The AP summarizes program approvals and does not substitute for KDP, Joint Requirements Board, Investment Review Board or other programmatic decisions.

FAR 7.103 provides significant flexibility in establishing criteria for Acquisition Plans. The complexity and cost of the acquisition dictates the criteria, thresholds, and level of detail that should be incorporated into written APs. In rare cases (e.g., For procurements having a compressed delivery or performance schedule based on the urgency of need,) the Chief Procurement Officer (CPO) may waive the requirement for an AP. See HSAM 3007.103(k). Waivers are required to be in writing and describe the facts and the basis for the request. A waiver will not be considered when the urgency stems solely from a lack of planning. Requests for waivers are submitted to the OCPO for approval in the same manner as the AP reviews and are only available prior to the first action in the acquisition process (e.g., announcement of the requirement, Justification for Other than Full and Open Competition, etc.).

Waivers do not constitute authority for any deviation, special condition or clause which might be needed for an acquisition. Neither an approved AP nor a waiver of an AP may substitute for any determination and findings, Justification for Other than Full and Open Competition, or deviation from FAR or HSAR requirements.

1.8 Are there page limitations for the AP?

The AP should be concise. In general, an AP should not exceed 50 pages. To condense the size of the AP, program wide information should be presented first and then information for each acquisition should be presented separately. Use charts and tables where more than one acquisition is covered in the AP to separate information associated with each. Cite programmatic documents such as the Mission Need Statement, OMB 300

Exhibits, Acquisition Program Baseline, test plans, support plans, evaluation plans by reference whenever possible, and summarize the documents.

1.9 Is there a required numbering system for the AP?

Yes, each Component creates policies and procedures for assigning the nine-digit identifier of the AP for each formal written AP. The first four digits on DHS APs will be "HSXX" referring to the Department of Homeland Security (HS) and issuing Acquisition Component (XX). The next two digits shall be the fiscal year in which the AP was or will be approved. The last three digits shall be assigned sequentially as stated in Component procedures.

Revision to the AP shall be identified with the identification number of the original AP followed by the revision number and date the revision was approved.

1.10 Who signs, reviews and approves the AP?

In accordance with FAR 7.103, the Agency Head for the Department of Homeland Security has delegated approval of all acquisition plans to the Heads of the Contracting Activities (HCAs) designated for the DHS Components. All APs that exceed the HSAM 3007.103(d) (2)(i) threshold shall be signed at a minimum by the PM or sponsor, small business specialist, contracting officer and HCA. By signing the AP, the PM certifies that the information in the AP is current, accurate and complete. The Small Business Specialist reviews and signs the AP concurring with the market research and resulting acquisition strategy unless all acquisitions covered in the AP are set-aside for small business. (If the Component has an alternate procedure that ensures Small Business Specialist review of the AP, document a reference to it in the AP.) The contracting officer's signature certifies that the acquisition methodology is sound and that the contracting officer independently concurs that the AP reflects the best business strategy for the acquisition(s). The HCA signature signifies that the HCA concurs with the AP contents and has met all of the HCA responsibilities in FAR 7.103 and HSAM 3007.103. The Competition Advocate must also concur with the AP if any of the planned acquisitions will be met using other than full and open competition under FAR 15.

All APs that meet or exceed the HSAM 3007.103(h)(1)(i) threshold shall be reviewed by OCPO prior to HCA approval, but OCPO does not approve or sign the AP.

1.11 Is there any help in preparing an AP?

While this Guide is designed to be the primary tool to help in preparing DHS APs, additional assistance is provided by the OCPO Desk Officer for each Component. Seek Office of General Counsel or Component legal office assistance with planning complex or large dollar value acquisitions.

1.12 When are design-to-cost and lifecycle cost techniques used?

Design-to-cost is a method of acquiring supplies and services where cost is treated as an independent variable. In this instance, the Offerors are provided with the budgeted amount and required to propose solutions to provide as much of the requirement as possible within the budget. This acquisition technique is considered whenever the budgeted amount (shown in paragraph C.1 of the AP) is less than the independent cost estimate. If design-to-cost is considered but rejected when the budgeted amount is less than the independent government estimate, then the AP must explain why design-to-cost was rejected and how the funding shortfall will be accommodated.

Lifecycle cost is the total program cost to meet the program mission or need. It includes the estimated cost for all contract actions from basic research through disposition of property and closeout. It also includes training in maintenance and operation as well as ancillary supplies and services that are needed to meet the full mission need, but does not include internal government costs. Lifecycle costs must be addressed in paragraph C.1 whenever a system (supply or software) is procured to meet a mission need.

Part II – Preparation and Contents of an Acquisition Plan

Each numbered sub-section in Part II shall be addressed in every AP, but the contents of each subsection may be tailored to the program or noted as "not applicable" with a brief explanation where required.

AP Contents

APs are written for programs, or in the absence of a program, individual acquisitions that exceed the threshold at HSAM 3007.103(d)(2)(i). To make program APs as brief as possible, the contents of the AP should first present those characteristics that apply to the entire program. This should be followed by a separate discussion of individual acquisitions under the program where there are multiple acquisitions or unique characteristics separate from the general information.

Program Wide Information

In this Guide, "program wide" refers to the program information common to all the acquisitions covered in the plan. The development of additional documents, such as logistics support plans, test and evaluation plans, safety plans, environmental protection plans and risk management plans is encouraged for large and complex programs. Cite and summarize information from these separate plans in the AP, but do not duplicate the information.

For Each Acquisition

A program may require one or more acquisitions to meet its mission. In this Guide "*for each acquisition*" means the specific and unique information associated with each acquisition under a single program. Each acquisition may include one or more

contractual actions to obtain the entire supply or service required. Each acquisition and each known contractual action that supports the acquisition should be documented in the AP.

Section A. Identification of Acquisition Plan

Provide the Program or Acquisition Title or Name and the acquisition plan number.

Assign a nine digit identifier followed by the date of the AP for each formal written AP. The first four digits on DHS APs will be "HSXX" referring to the Department of Homeland Security (HS) and issuing Acquisition Component (XX).

The next two digits shall be the fiscal year in which the AP was or will be approved. The last three digits shall be assigned sequentially, as stated in Component procedures. The AP date is the date the AP is approved by the HCA.

*For research and development APs, use the title "*Acquisition Strategy for Major System Research and Development Efforts*". In all other cases, the documentation of the plan for each contractual action will be called an Acquisition Plan.

Mark each page of the AP "SOURCE SELECTION INFORMATION - SEE FAR 3.104." See HSAM 3.104-4 for more information about protecting and marking source selection information.

*For non-FAR-based DHS Components, the title Acquisition Strategy for Major System Research and Development is not required.

Section A. Acquisition Background and Objectives

What is the purpose of this program or stand-alone acquisition? What is the mission and what will each acquisition accomplish? Does this acquisition involve operations, technologies, or activities in more than one DHS Component (e.g. Secure Border Initiative)? If yes, note the Components involved and describe the operations and technologies.

Identify if the document is a new AP or an AP update. If it is an update, provide the reason for the update and summarize the new information. (Revisions to the AP may be tracked using a table such as the one immediately below.)

Document Version	Date Completed	Reason for Revision
Original	xx/xx/2007	Not applicable
Revision 1	xx/xx/2007	Updated the logistics section of the AP
Revision 2	xx/xx/2007	Made corrections to the acquisition considerations section of the AP

A1. Statement of Need

A1a. Program History

Program Wide
Introduce the AP with a brief statement of need summarizing the approved Mission Need Statement (MNS) or other requirements documents.

Identify the MNS or other document that authorized program initiation and approval for the current program lifecycle phase or Key Decision Point (KDP) milestone. If the MNS is not available or applicable, cite any applicable program authorization or explain why it is not applicable. Do not attach a copy of the entire MNS.

Summarize the relevant technical history of the program or stand-alone requirement, preferably in 250 words or less. Include a brief statement indicating how long the program has been in development or production and how long it is expected to continue in the current program lifecycle phase. This history should include the current program lifecycle phase, accomplishments in the previous program phases as well as the program's relationship to other programs.

Describe the type of research information associated with or developed under the program. Describe the type of technology developed under the program or used by the program to meet program goals. Include all technology (IT and non-IT) associated research, development and production processes and applications as well the support systems (e.g., test and simulation equipment).

If applicable, identify the Exhibit 300 for the program and indicate that it has been reviewed. Ensure that the AP and Exhibit 300 reflect accurate, consistent and complete program information. If an Exhibit 300 is not required, provide an explanation as to why it is not applicable.

If the AP includes an IT program covered under OMB Circular A-130, "Management of Federal Information Resources," discuss how the program has met the A-130 requirements.

A1b. Contract History

Program Wide
Include or attach a brief summary chart or table of major contract actions completed for the program to date. Include all types of acquisitions and include grants, memoranda of agreement, memoranda of understanding and Other Transactions. The information must include at least the applicable document or action identifier, the name of the firm or source who performed the service or provided the supply, the type of contractual vehicle

used, a description of the supply or service provided, the quantity of supplies provided the duration and level of service provided and the historical or estimated value of each acquisition identified.

The following chart may be used:

Identifier	**Contractor or Source**	**Contractual Vehicle Type**	**Supply or Service**	**Quantity or Period of Performance**	**Historical or estimated value**

A2. Applicable Conditions

Program Wide
State all significant conditions or constraints affecting the acquisition such as the interrelationship between the acquisitions covered under the AP, the relationship between the acquisitions under the AP and the historical acquisitions cited in paragraph A1b. Also discuss constraints such as single sources of supply for key components or new technology required to meet the program needs. If there are external constraints on the cost (e.g., limited budget or funded from fees), schedule (e.g., congressionally mandated implementation dates) or capability or performance (e.g., new technology or interoperability) discuss them from a programmatic perspective.

Section B. Technical Issues

B1. Capability or Performance

Program Wide
Summarize the key capability or performance characteristics from the MNS or requirements document. Show how those characteristics will be achieved through the acquisitions covered in the AP.

For Each Acquisition
What are the results required from each acquisition covered under the AP? What does each supply need to be able to do? What capability will each service provide to DHS? What unique knowledge, skills, experience does the Contractor need to be able to provide the supply or service.

Does this acquisition involve operations, technologies, or activities in more than one DHS Component (e.g., Secure Border Initiative)? If yes, note the Components involved and describe the operations and technologies.

B2. Delivery or Performance-Period Requirements

Program Wide
Describe the overall timeframe for the program and the anticipated dates for each program lifecycle phase. Describe any mandated deadlines or any integration issues that affect performance schedules. A Gantt chart may be used for the critical program events.

For Each Acquisition
State the period of performance for each acquisition and discuss why that period of performance was chosen. If any time frame is longer than 5 years, summarize the market research that supports the extended period of performance.

B3. Product or Service Description

For Each Acquisition
Discuss what will be procured and how it will be described in the solicitation and award documents. If the supply or service will not be described in performance-based terms, provide the rationale and market research that supports your alternative method.

State whether the supply or service is a commercial item. Summarize the market research that supports the commercial item status. If not a commercial item, describe what will be done to convert to a commercial item in the future.

B4. Test and Evaluation

Program Wide
How will the program be tested and evaluated? How will the usefulness and performance of the program be verified? Summarize the program wide test and evaluation plan and provide details for each type of test and evaluation below.

B4a. Developmental Testing

Program Wide
Summarize how the program will document how it is progressing toward meeting the MNS or other requirements document. Cite any applicable acquisition program baseline and discuss any known or potential variances.

For Each Acquisition
If the acquisition is for developmental testing or includes developmental testing as part of the acquisition, summarize the nature and extent of the testing and how the results of the testing will be evaluated and used.

B4b. Operational Assessment

The Operational Assessment summarizes the PM's plan to independently assess the program or individual acquisition(s). Note that the Operational Assessment cannot be conducted by the Contractor who is providing the supply or service. It must be an

independent assessment conducted by the PM with any support needed from independent subject matter experts.

Program Wide
Summarize how the PM will document an independent assessment of program performance. How will the assessment prove the program's value to DHS? Summarize market analysis or other efforts that have been or will be undertaken to ensure that the program is the best way to meet DHS needs.

For Each Acquisition
Summarize the assessment method, the analysis that will be required and discuss how the results of the assessment will be reported and used on a stand-alone basis or in the context of the program.

B4c. Operational Testing

Note that some support services do not readily lend themselves to operational testing. In those cases, the operational assessment method must be structured to ensure that service delivery is commensurate with acquisition cost.

Program Wide
Summarize how the program will test the supplies and services covered by the AP to ensure that they function when provided to the end-user. Discuss when the testing will occur, by whom and how the results will be analyzed and evaluated.

For Each Acquisition
If the acquisition is to provide Operational Testing, discuss how it will be performed independent from the supply or service provider. Discuss how information will be collected by users of the supply or service and how maintenance problems or failure to perform "*as needed*" will be analyzed, evaluated and reported.

B4d. Acceptance Testing

For Each Acquisition
Summarize how (through testing or otherwise) each line item will be accepted by the government before payment for the supplies or services.

B5. Logistics Considerations

Discuss logistics issues that must be addressed in the contract (such as building access for services contracts, etc.)

Program Wide
For complex programs, cite and summarize the logistics plan that includes training, use, maintenance, repair, upgrade and or replacement of supplies or services within the

program. Discuss the expected life of the supply or service and how the logistics plan will promote competition throughout the lifecycle of the supply or service for the items.

For IT acquisitions, discuss the use of open standards.

For Each Acquisition
Discuss the assumptions made about the supplies or services being acquired. Discuss the logistics supplies and services that will be included in the acquisition including training, maintenance, repair, upgrade, replacement, etc. Discuss how competition will be maintained if logistics items are not purchased or described in the initial acquisition document.

B6. Environmental Considerations

For Each Acquisition
In accordance with the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901, *et seq.*), Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, Executive Order 13123 of June 3, 1999, Greening the Government through Efficient Energy Management, and Executive Order 13221 of July 31, 2001, Energy-Efficient Standby Power Devices, describe how each acquisition includes—

(i) Products containing recovered materials;
(ii) Environmentally preferable products and services;
(iii) Energy-efficient products and services;
(iv) Products and services that utilize renewable energy technologies; and
(v) Products containing energy-efficient standby power devices.

Describe how the contract will consider use of recovered materials, energy- and water-efficient products and services, products containing energy-efficient standby power devices, environmentally preferable purchasing criteria developed by the EPA, and environmental objectives. (See FAR Subparts 23.2 and 23.4 and 23.703(b)) when—

(i) Developing, reviewing, or revising federal and military specifications, product descriptions (including commercial item descriptions), and standards;
(ii) Describing government requirements for supplies and services; and
(iii) Developing source-selection factors.

B7. Metric System Requirements

For Each Acquisition
In accordance with The Metric Conversion Act of 1975, as amended by the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C.205a, *et. seq.*), indicate that the metric system of measurement will be used as the system of measurement in the acquisitions covered under the AP or describe why such use is impracticable or is likely to cause significant inefficiencies or loss of markets to United States firms.

Section C. Business and Management Issues

C1. Cost, Budgeting and Funding

C1a. Cost

Program Wide
Provide the estimated cost of the program broken down by fiscal year. Provide the estimated cost for each program lifecycle phase and the estimate for each acquisition within each lifecycle phase. Discuss the method used to derive the estimated cost including the supporting rationale and assumptions. If the program's lifecycle costs were not estimated, explain why.

For Each Acquisition
Provide the estimated value of the acquisition and a detailed independent government estimate of the acquisition cost. Discuss the value of the acquisition in relationship to the lifecycle cost of the program. Discuss whether cost constraints require the acquisition to use design-to-cost objectives. Discuss whether a should-cost analysis has been done or will be done for the supply or service being procured.

C1b. Budgeting and Funding

For Each Acquisition

	Prior Year Obligated Amount	FY 1	FY 2	FY 3	FY 4	FY 5	Total Funding
Funding Source 1							
Amount Required							
Amount Budgeted							
(Under or Overage)							
Funding Source 2							
Amount Required							
Amount Budgeted							
(Under or Overage)							

Total Funding							
Amount Required							
Amount Budgeted							
(Under or Overage)							

In the table, list the source(s) of funds for each acquisition, the amount required as stated in the independent cost estimate and the amount budgeted. In the Under or Overage row, provide the difference between the amount required and the amount budgeted for the effort. If there is an overage or underage, explain why and how the program will correct the situation.

C2. Trade Offs and Risks

C2a. Trade-offs

<u>Program Wide</u>
Discuss program cost, schedule and performance trade-offs. If the amount required is less than the funding budgeted in C1b., discuss how schedule and performance will be traded-off against cost to obtain program objectives within budget. Note: Do not discuss proposal trade-offs between cost and technical factors here. This paragraph describes the programmatic trade-offs outside of source selection.

C2b. Risks

<u>For Each Acquisition</u>

Risk Event	**Risk Category**	**Risk Probability**	**Impact**	**Risk Management**	**Responsible**
(Identify the risk)	*(Cost, Schedule, Performance, Political or Organizational)*	*(High, Medium or Low)*	*(What would happen and how sever would it be if the risk event occurred)*	*(Describe the mitigation strategy)*	*(Name and title of the person who is responsible for managing the risk)*

Identify the risks to each acquisition and complete the table above for each identified risk. Risks may include cost schedule, performance, political and organizational. If there is a risk management plan, cite the plan number and date and include a brief summary instead of completing the chart.

C3. Acquisition Considerations

C3a. Acquisition Streamlining

For Each Acquisition
Acquisition streamlining includes efforts that result in a more efficient and effective use of resources during the acquisition process. List each item that may be used in each acquisition to streamline the acquisition process. Examples of streamlining include:

(i) Draft solicitations including draft Statements of Objectives (SOOs), Statements of Work (SOWs), or Performance Work Statements (PWSs) released for industry comment.
(ii) Limiting the size of proposals to less than 50 pages for Request for Proposals (RFP) and 20 pages for Request for Quotes (RFQs).
(iii) Limiting the number of evaluators to 5 or less.
(iv) Using PWS.
(v) Acquiring Commercial Off the Shelf (COTS) products.
(vi) Using pre-solicitation and pre-proposal conferences.
(vii) Using oral presentations.
(viii) Using advisory process to advise potential Offerors before the solicitation is released. *(See FAR 15.202.)*

C3b. Competition

For Each Acquisition
State the type of acquisition process that will be used and describe how it will maximize competition through the life of the resulting contractual instrument. If the action is a sole source or limited competition, including GSA schedule competition, describe how and when full and open competition in accordance with FAR Part 15 will be introduced into the program for acquisitions over $10 million.

C3c. Sources

For Each Acquisition
Summarize the market research performed and cite the market research report. Summarize your market research to find the appropriate sources. If “small business set-aside” was not selected as the acquisition strategy, describe why small businesses were not considered appropriate sources for this work. If this is a sole source acquisition, summarize the basis for the sole source and include market research that supports the decision.

C4. Source Selection Considerations

For Each Acquisition

Describe the process used for each acquisition citing the applicable FAR Part (e.g., FAR 15 full and open competition, FAR 19 small business set-aside competition, FAR 8.4 GSA task order competition). Discuss why the acquisition process was chosen and briefly discuss the alternative acquisition processes considered. Describe the term of the contract action and provide at least the following information:

i. Discuss whether each acquisition will be performance-based. For acquisitions for services, provide rationale for not structuring the action as performance-based in accordance with FAR 7.105.

ii. This is ☐ is not ☐ a multi-year contract in accordance with FAR 17.1.

iii. This contract vehicle will contain ☐ will not contain ☐ options in accordance with FAR 17.2.

iv. This contract vehicle will be ☐ will not be ☐ incrementally funded in accordance with FAR 32.7. (See HSAM 3032.702(e) concerning limitations on incremental funding.)

v. This will be ☐ will not be ☐ a multiple award Indefinite Quantity or Indefinite Delivery contract in accordance with FAR 16. If this is a single award IDIQ contract, provide the justification for the single award.

vi. The resulting contracting vehicle will contain the following line items using the associated contract types:

Base or Option Item	Line Item Number	Description	Contract Type

C5. Contract Administration, Management Information Requirements and Technical Data

C5a. The COTR is .

C5b. The COTR will manage the technical aspects of the contract by (Explain how the COTR will maintain oversight of the technical aspects of the contract.)

C5c. The contractual vehicle will include ☐ will not include ☐ Earned Value Management (EVM) as a contract administration tool. In accordance with OMB Circular A-11, FAR and HSAM, Earned Value Management (EVM) systems shall be applied to any contract above specified thresholds where the risk, whether associated with Cost, Schedule or the integration of the effort or product could impact the cost or schedule risk of another effort warrants the cost of implementation, including application on firm fixed price contracts in certain cases. If EVM is not required, discuss what methods will be used to measure cost, schedule and performance during the contract term.

C5c(i). If EVM will be used, discuss how it will be evaluated in the source selection process; how each Offeror's EVM system will be verified and whether verification will be before or after award; and how EV data will be used to administer the contract. List the government's EV team members and discuss how the government will analyze and use the earned value data to assess and monitor contract performance. Specifically discuss how financial and non-financial incentives and disincentives will be linked to the government's analysis of the EV data.

C5c(ii). The solicitation ☐ will include ☐ will not include a pre-award Integrated Baseline Review (IBR). If a pre-award IBR will be included, discuss how the IBR will be used within the source selection, how the information will be evaluated and discuss how the schedule will accommodate the pre-award IRB. State whether funds have been committed to pay each Offeror to prepare for and participate in the pre-award IBR. A copy of the Source Selection Plan must accompany the Acquisition Plan for review and approval of this source selection process.

C5c(iii). If one or more post award IBRs will be included in the contract, provide a summary of the detailed plan for the IBR. The summary must include as a minimum:

- The timing of the initial and subsequent IBRs;
- Location of the IBRs;
- A listing of the government representatives participating in the IBR; and
- The type of specific information that will be reviewed by the government during the IBR. If contractor support will be used to assist the government in evaluating the information, discuss the nature of the government support and the method of obtaining the contractual services (note that support services acquisition should be addressed in its entirety as a separate item within the acquisition plan).

C5d. Each line item will be accepted after successful completion of . Invoices will be reviewed by the COTR to ensure that the contractor has met all of the acceptance criteria prior to approval and payment of each invoice.

C5e. The contract vehicle will include the following data rights clauses:

C5g. Summarize any printing/copying requirements and how they will comply with the standards specified in section 505 of Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition (see 11.303);

C5h. Address whether the Electronic and Information Technology Accessibility Standards (see 36 CFR Part 1194) are applicable (see 11.002(e)). If so, explain how these standards are included in requirement planning, as appropriate (see subpart 39.2).

C6. Transition Planning

For Each Acquisition
Identify whether the contract vehicle will ☐ will not ☐ contain a line item for "transition in" and or a line item for "transition out". Define work to be performed during the transition. Discuss the period of performance for each line item and the tasks that will be included. Explain pricing and timing of the transition.

C7. Government-Furnished Information and Property

For Each Acquisition

C7a. Government-Furnished Property (GFP): If government property is to be provided to contractors, demonstrate clearly, in accordance with FAR 45.102(b), that:

(i) Providing the property is in the government's best interest

(ii) The overall benefit to the acquisition significantly outweighs the increased cost of administration, including ultimate property disposal;

(iii) Providing the property does not substantially increase the government's assumption of risk;

(iv) Government requirements cannot otherwise be met.

Provide all information necessary for the solicitation and award of the contract. If this is a competitive acquisition, see FAR 45.201(a). If the GFP will be used on more than one contract, provide the additional information required by FAR 45.201(d) The following Government-Furnished Property (GFP) clause(s) (see FAR 45.107) will be included in the contract: .

The Offerors will ☐ will not ☐ have a due diligence event to view/evaluate the GFP before award. The estimated dollar value of all GFP to be provided is $_____.

C7b. List the property that will be provided with both the date it will be provided and returned.

Description of Government Property (Include detail required at FAR 45.201(a)	Date/ Event when provided	Date/Event when returned

C7c. Government-Furnished Information: Provide the following information**:** The following Government-Furnished Information (GFI) will be provided to the successful offeror for use under the contract: **.** The Offerors will ☐ will not ☐ have a due diligence event to view/evaluate the GFI before award. The estimated dollar value of all GFI to be provided is $_____.

C7d. List the information that will be provided with both the date it will be provided and date to be returned (if required.) If the information will not be returned, indicate "not returned" in that block.

Description of Government-Furnished Information	Date/ Event when provided	Date/Event when returned

C8. Contractor versus Government Performance. Address whether any of the acquisitions covered under the AP are covered by OMB Circular No. A-76 or state that this paragraph is not applicable.

C9. Inherently Governmental Functions. Discuss whether the contracting officer, consistent with the assessments of the Component and/or Department's Competitive Sourcing Official (see HSAM Chapter 3002.101, Definitions, Competitive Sourcing Official) has determined whether any of the work is inherently governmental and how the Contractor will be prevented from performing inherently governmental functions.

Section D. Other Considerations

D1. Priorities, Allocations and Allotments

For Each Acquisition
Generally this paragraph is not applicable. However, if the program is authorized under the Defense Productions Act of 1950 as amended (See FAR 11.6) and will be using a preferential or priority rating, identify the applicable information.

D2. Make or Buy/Lease or Buy

For Each Acquisition
D2a. State whether a Make or Buy Plan is ☐ is not☐ required in accordance with FAR 15.407-2. If not required, cite the applicable exception.

D2b. State whether a Lease or Buy decision is ☐ is not ☐ applicable to this acquisition. If the decision is applicable, provide the factors and analysis considered as required under FAR 7.4.

D3. Environmental Consideration and Energy Conservation

List the environmental and energy conservation clauses that will be included in the resulting contractual instrument. Discuss any environmentally-related requirements to be included in the solicitation or resulting contractual action.

D4. Security Considerations

D4a. Does the acquisition involve access to classified information? Will sensitive, operational, or critical infrastructure information be disclosed in this acquisition? If so, describe the type of operational or infrastructure information and/or identify the type of sensitive (non-classified) information, e.g. SSI, PCII, For Official Use Only (FOUO), SBU, etc requiring protection.

D4b. Describe whether all ☐ some ☐ none ☐ of the Contractor's employees will be required to pass a background investigation ☐ , possess a secret level clearance ☐ or possess a top-secret level clearance ☐ **.**

D4c. List the clauses that will be included in the resulting contractual instrument addressing personnel, data or physical security.

D4d. Will non-U.S. supplier be permitted to compete for this acquisition? If not, under what authority are they excluded? (See FAR Part 25.) Is all work required to be performed within the United States or its territories? If a non-U.S. supplier performs the contract, how will the program protect sensitive information and facilities from non-U.S. supplier access?

D4e. Will the contract require each person participating in the contract to be a U.S. citizen? If not, are there any portions of the contract that require U.S. citizenship to perform the services or provide the supplies?

D5. Other Issues

For Each Acquisition

D5a. Standardization. For each acquisition of a system, discuss what will be done to ensure that the system will be procured to industry standards or whether the system is compatible with industry standards.

D5b. Strategic Sourcing. If not discussed in paragraph A1, discuss whether a DHS Commodity Council exists for the item or services to be acquired and if the Council was consulted regarding this acquisition. Discuss whether the supply or service is strategically sourced in DHS. If a decision is made not to use an existing DHS strategic sourcing vehicle, discuss why.

D5c. Open Systems. If the acquisition involves software, discuss steps being taken to avoid proprietary standards and to acquire systems with open standards.

D5d. Occupational Safety and Health Considerations. Describe the strategy to ensure that occupational safety or health is being managed under the resulting contractual action. If there are no occupational safety, or health considerations, discuss why this paragraph is not applicable.

D5e. System Safety Program. If the acquisition is for a system, summarize the system's safety plan. If this is not a systems acquisition, this paragraph is not applicable.

D5f. Fair Labor Standards. State whether the Service Contract Act (SCA) is ☐ is not ☐ applicable to this acquisition. If applicable, state that all required clauses and provisions will be included in the solicitation and resulting contractual instrument. (Note: Ensure that the independent government estimate in Section C of this Guide incorporates the applicable SCA increases.)

D5g. Disposal. State whether the acquisition will ☐ will not ☐ result in any hazardous material being created or used. If applicable, describe how any hazardous material will be required to be disposed.

Section E. Participants in AP Development

List the individuals who participated in preparing the AP. Provide the name, title, organization, telephone number and email for each individual. Each AP must include participation from at least the program manager, contracting officer, budget officer, Small business liaison officer, commodity council representative and cecurity representative.

Name	**Title**	**Organization**	**Telephone Number**	**Email**
	Program Manager			
	Contracting Officer			
	Budget Officer			
	Small Business Liaison			
	Competition Advocate			

	Commodity Council			
	Security Representative			

Section F. Milestones for the Acquisition Process

<u>For Each Acquisition</u>
List each significant event from acquisition initiation through the end of the contract action (pre and post award). For each event, identify the completion time frame or date and the individual responsible for completion of the action. When a date is not known, use the time frame, such as AP Approval plus 30 days.

Event	Date Completed or Due	Person Responsible
Program Initiated		**Program Manager**
IPT Formed		**Program Manager**
Market Research Completed		
Program Approvals Obtained		
AP Approved		
PR with Funding Provided to the Contracting Officer		
Solicitation Package Complete		
Solicitation Package Reviewed by OGC		
Solicitation Released		
Proposals/Quotes Received		
Evaluators Trained		
Evaluation Complete		
Source Selected		
Post Selection Documentation Complete		
Notification of Unsuccessful		
Award		
Notification of Award		

Acquisition means the acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the federal government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract. (FAR 2.101) Acquisition includes the conceptualization, initiation, design, development, test, contracting, production, deployment, support, modification, and disposal of systems, supplies, or services (including construction) to satisfy agency needs.

Acquisition cost means the total amount of appropriated funds paid to obtain the results or capability for a program under one or more acquisitions.

Acquisition planning means the process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan for fulfilling the agency need in a timely manner and at a reasonable cost. It includes developing the overall strategy for managing the acquisition. (FAR 2.101)

Acquisition Program (See Program.)

Acquisition Program Baseline (APB) means a program document required for all programs that are reviewed and or approved by DHS headquarters. The APB establishes the program's performance requirements, schedule requirements and estimate of total acquisition cost of the entire program (rather than each acquisition).

Acquisition Strategy means a document that includes: the proposed contract type, terms and conditions, and acquisition planning schedules; the feasibility of the requirement, including performance requirements, statements of work, and data requirements; the suitability of the proposal instructions and evaluation criteria, including the approach for assessing past performance information; and related program documents. (FAR 15.201). For Major Systems, the Acquisition Strategy is the program manager's overall plan for satisfying the mission need in the most effective, economical, and timely manner. The strategy shall be in writing and prepared in accordance with the requirements of FAR 7.1, FAR 34.004, HSAR 3007 and HSAM 3007.

Acquisition streamlining means any effort that results in more efficient and effective use of resources to design and develop, or produce quality systems. This includes ensuring that only necessary and cost-effective requirements are included, at the most appropriate time in the acquisition cycle, in solicitations and resulting contracts for the design, development, and production of new systems, or for modifications to existing systems that involve redesign of systems or subsystems. (FAR 7.101)

Advanced Acquisition Plan (AAP) means a plan of all anticipated procurements, including IAs, blanket purchase agreements and task orders over $100,000 for the forthcoming fiscal year. This does not include IAs where DHS is acting as the servicing activity. (See HSAM 3007.102 and HSAM 3007.172)

Bundling or bundled contract means consolidating two or more requirements for supplies or services, previously provided or performed under separate smaller contracts, orders, into a solicitation for a single contract or order that is likely to be unsuitable for award to a small business concern due to—

The diversity, size, or specialized nature of the elements of the performance specified;

The aggregate dollar value of the anticipated award;

The geographical dispersion of the contract performance sites; or

Any combination of the factors described in paragraphs (1)(i), (ii), and (iii) of this definition. (FAR 2.101)

Chief Procurement Officer (CPO) means DHS' Senior Procurement Executive, responsible for the maintenance and oversight of a department-wide acquisition program.

Commercial Item means
(1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and--
(i) Has been sold, leased, or licensed to the general public; or,
(ii) Has been offered for sale, lease, or license to the general public;
(2) Any item that evolved from an item described in paragraph (1) of this definition through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a government solicitation;
(3) Any item that would satisfy a criterion expressed in paragraphs (1) or (2) of this definition, but for --
(i) Modifications of a type customarily available in the commercial marketplace; or
(ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet federal government requirements.

Minor modifications means modifications that do not significantly alter the nongovernmental function or essential physical characteristics of an item or component, or change the purpose of a process. Factors to be considered in determining whether a modification is minor include the value and size of the modification and the comparative value and size of the final product. Dollar values and percentages may be used as guideposts, but are not conclusive evidence that a modification is minor;

(4) Any combination of items meeting the requirements of paragraphs (1), (2), (3), or (5) of this definition that are of a type customarily combined and sold in combination to the general public;
(5) Installation services, maintenance services, repair services, training services, and other services if--
(i) Such services are procured for support of an item referred to in paragraph (1), (2), (3), or (4) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and
(ii) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the federal government;
(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed or specific outcomes to be achieved and under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed or a specific outcome to be achieved. For purposes of these services—
(i) *"Catalog price"* means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and
(ii) *"Market prices"* means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the Offerors.
(7) Any item, combination of items, or service referred to in paragraphs (1) through (6) of this definition, notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a Contractor; or
(8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments. (FAR 2.101)

Commodity Manager means the individual responsible for the acquisition of a specific commodity that is bought on a department-wide basis generally using a unified department-wide acquisition strategy.

Component means directorates and entities comprising the DHS, including those defined in DHS MD Number 0010.2.

Contractual action means any contract, purchase order, project order, delivery or task order, IA, memorandum of agreement, memorandum of understanding, or any other bilateral agreement to obtain anything of value (supply or service) in exchange for appropriated funds.

Design-to-cost means a concept that establishes cost elements as management goals to achieve the best balance between lifecycle cost, acceptable performance, and schedule. Under this concept, cost is a design constraint during the design and development phases and a management discipline throughout the acquisition and operation of the system or equipment. (FAR 2.101)

Head of the Contracting Activity (HCA) means the individual who is responsible for managing the entire acquisition function within a Component.

Lifecycle cost means the total cost to the government of acquiring, operating, supporting, and (if applicable) disposing of the items being acquired. (FAR 7.101)

Major system means that combination of elements that will function together to produce the capabilities required to fulfill a mission need. The elements may include hardware, equipment, software, or any combination thereof, but exclude construction or other improvements to real property. A system is a major system if the total acquisition cost for the system is estimated to exceed $100 million, the value of Level I or II acquisitions as described in MD 1400, Investment Review Process, or if the Deputy Secretary has designated it a major system. (FAR 2.101 and HSAR 3002.101)

Multi-year contract means a contract for the purchase of supplies or services for more than one, but not more than five, program years. A multi-year contract may provide that performance under the contract during the second and subsequent years of the contract is contingent upon the appropriation of funds, and (if it does so provide) may provide for a cancellation payment to be made to the Contractor if appropriations are not made. A multi-year contract, defined in the statutes cited at FAR *17.101*, buys more than one year's requirement (of a product or service) without establishing and having to exercise an option for each program year after the first. (FAR 17.103)

Multiple year contract means a contract that purchases more than one year's requirement (of a product or service) using options for each program year's requirement after the first year. (FAR 17.103)

Order means an order placed under a Federal Supply Schedule contract; or a task order contract or delivery-order contract awarded by another agency, (e.g., government-wide acquisition contract or multi-agency contract). (FAR 7.101)

Performance-Based Acquisition means structuring all aspects of an acquisition around the purpose of the work to be performed with the contract requirements set forth in clear, specific, and objective terms with measurable outcomes rather than structuring an acquisition around the manner by which the work will be performed with broad and imprecise statements. (FAR 2.101)

Program means a directed, funded mission that provides a new, improved, or continuing system or service in response to an approved need. Acquisition programs are divided

into levels established to facilitate decentralized decision-making, execution, and compliance with statutory requirements.

Program Manager (PM) means the responsible person who, with significant discretionary authority, is uniquely empowered to make final scope of work, capital investment, and performance acceptability decisions, and who is responsible for accomplishing program objectives or production requirements through the acquisition of in-house, contract or reimbursable support resources, as appropriate. The PM is responsible for management and oversight of the Integrated Product Team. In general, the program manager is the manager of an acquisition program, but may be a manager of a procurement that does not rise to the level of an acquisition program (e.g., janitorial services, HR services, bulk commodity purchases).

Project means a planned undertaking with a definite beginning, distinct mission, and clear termination. A project may or may not be part of a larger acquisition program.

Project Manager means an individual assigned responsibility for accomplishment of a specific, defined task in support of an acquisition program.

Value of the acquisition means the maximum monetary amount that the government could obligate against a contractual action including all options, incentives, award fees and cancellation fees.

Acronym List

AP	Acquisition Plan
APO	Acquisition, Policy and Oversight Division
BPA	Blanket Purchase Agreement
CASO	Chief Asset Supply Officer
CCR	Contractor Central Registration
CFO	Chief Financial Officer
CIO	Chief Information Officer
COTR	Contracting Officer's Technical Representative
CPAF	Cost Plus Award Fee
CPFF	Cost Plus Fixed Fee
CPO	Chief Procurement Officer
DHS	Department of Homeland Security
EAB	Enterprise Architecture Board
EIA	Electronic Industrial Standards
EVM	Earned Value Management
FAR	Federal Acquisition Regulation
FFP	Firm Fixed Price
FSS	Federal Supply Schedule
FTE	Full Time Equivalent Person
GAO	Government Accountability Office
GFI	Government-Furnished Information

GFP	Government-Furnished Property
GSA	General Services Administration
GWAC	Government Wide Acquisition Contract
HCA	Head of the Contracting Activity
HSAM	Department of Homeland Security Acquisition Manual
HSAR	Department of Homeland Security Acquisition Regulations
IA	Inter/Intra-Agency Agreement
IBR	Integrated Baseline Review
IDIQ	Indefinite Delivery Indefinite Quantity Contract
IGCE	Independent Government Cost Estimate
IRB	Investment Review Board
J&A	Justification for Other Than Full and Open Competition
KDP	Key Decision Point (Program Milestone)
MAC	Multiple Award Contract
MNS	Mission Need Statement
MRC	Management Review Council
OCPO	Office of the Chief Procurement Officer
OSDBU	Office of Small and Disadvantaged Business Utilization
PALT	Procurement Acquisition Lead Time
PBA	Performance-based Acquisition
PM	Program Manager
PWS	Performance Work Statement
SBA	Small Business Administration
SCA	Service Contract Act
SOO	Statement of Objectives
SOW	Statement of Work
T&M	Time and Materials Contract Type
TO	Task Order

CHAPTER 3008 REQUIRED SOURCES OF SUPPLIES AND SERVICES

Subchapter 3008.000 Scope of part.
3008.002 Priorities for use of Government supply sources.

Subchapter 3008.4 Federal Supply Schedules
3008.405 Ordering procedures for supplies and services.
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 3008.002 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 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.

3008.405-6 Limited sources justification and approval.

(a)(1) 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 designed in subparagraph (h) 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) 48 CFR Parts 8.402(d) and 8.405-6.

(h) 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) 48 CFR Parts 8.405-6(a)(1) and (h) shall be submitted to the DHS or Component Competition officials designated at HSAM,

Chapter 3006, Appendix A, DHS Justification and Approval (J&A) Guide for Other than Full and Open Competition, Version 1.0.

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) 48 CFR 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) 48 CFR 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**
	3009.105	Procedures.
	3009.105-2	Determinations and documentation.
Subchapter	**3009.2**	**Qualification Requirements**
	3009.202	Policy.
	3009.204	Responsibilities for establishment of a qualification requirement.
	3009.206	Acquisitions subject to qualification requirements.
	3009.206-1	General.
Subchapter	**3009.3**	**First Article Testing and Approval**
	3009.302	General.
Subchapter	**3009.4**	**Debarment, Suspension, and Ineligibility**
	3009.402	Policy.
	3009.403	Definitions.
	3009.404	List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
	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.
	3009.406-3	Procedures.
	3009.407	Suspension.
	3009.407-1	General.
	3009.407-3	Procedures.
	3009.408	Certification regarding debarment, suspension, proposed debarment, and other responsibility matters.
Subchapter	**3009.5**	**Organizational and Consultant Conflicts of Interest**
	3005.501	Definitions.
	3009.503	Waiver.
	3009.570	Limitations on Lead System Integrators.

Subchapter 3009.1 Responsible Prospective Contractors

3009.105 Procedures.

3009.105-2 Determinations and documentation.

DHS Form 700-12, Determination of Contractor Responsibility, shall be used to make the determination and document that a contractor is/is not responsible before the award of

any contract (e.g., contracts awarded using sealed bidding or negotiations, contracts for construction or A&E services, etc.) except for contract actions using simplified acquisition procedures. For actions using simplified acquisition procedures, use of this form is required when documenting the determination that a firm is not responsible. A responsibility determination is not required when placing orders under indefinite delivery contracts, including orders placed under the GSA Federal Supply Schedule.

Subchapter 3009.2 Qualification Requirements

3009.202 Policy.

(a)(1) The Head of the Contracting Activity (HCA) is delegated the authority at (FAR) 48 CFR 9.202. The cognizant technical office shall prepare and submit a written justification to the contracting officer, who shall coordinate the justification through the Component competition advocate for HCA approval.

(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) 48 C.F.R. 9.202(a). A written justification shall be prepared by the responsible technical office and submitted to the contracting officer for coordination and signature of the 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) 48 CFR 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) 48 CFR 9.302 whenever first article testing and approval is required. The statement shall be forwarded with the procurement request to the contracting office.

Subchapter 3009.4 Debarment, Suspension, and Ineligibility

3009.402 Policy.

The DHS procedures to implement the debarment and suspension requirements of (FAR) 48 CFR Subpart 9.4 are established in this subchapter.

3009.403 Definitions.

"Debarring official" means—
(b) The HCA.

"Suspending official" means—
(b) The HCA.

“Unfair trade practices” means--
(3) The HCA is authorized to make the determination at (FAR) 48 CFR 9.403(3).

3009.404 List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

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

3009.405 Effect of listing.

The HCA is delegated the authority under (FAR) 48 CFR 9.405(a), (d)(2), and (d)(3).

3009.405-1 Continuation of current contracts.

The HCA is delegated the authority under (FAR) 48 CFR 9.405-1(a) and (b).

3009.405-2 Restrictions on subcontracting.

The HCA is delegated the approval authority under (FAR) 48 CFR 9.405-2(a) .

3009.406 Debarment.

3009.406-1 General.

(c) The HCA is delegated approval authority under (FAR) 48 CFR 9.406-1(c). However, see HSAM 3023.506(e) regarding waivers to debarment or suspension determinations for actions under (FAR) 48 CFR Subpart 23.5, Drug-Free Workplace.

3009.406-3 Procedures.

(a) Investigation and referral. In coordination with Component legal counsel, the Chief of Contracting Office (COCO) shall prepare a written report of a proposed debarment action which contains the following information, if available:

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

(2) Name and address of the contractor;

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

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

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

(i) The contract number;

(ii) Description of supplies or services;

(iii) The amount;

(iv) The percentage of completion;

(v) The amount paid to the contractor;

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

(vii) The amount due to the contractor.

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

(i) The contractor number(s);

(ii) The amount(s);

(iii) The amounts paid to the contractor;

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

(v) The amount(s) due the contractor;

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

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

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

(i) Whether to suspend or debar the contractor;

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

(iii) The period of any recommended debarment; and

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

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

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

(ii) Witness statements or affidavits;

(iii) Copies of investigative reports;

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

(v) Any other appropriate exhibits or documents.

(b) Decision making process. After receipt of the COCO report, the Debarring official may request from interested parties (including the contractor if deemed appropriate) a meeting or additional supporting information to assist in the debarment decision in accordance with Component procedures.

(c) Notice of proposal to debar. After reviewing the COCO’s report, and any additional information received in accordance with paragraph (b) above, the Debarring official shall

prepare and coordinate with the Component legal counsel, a written notice of proposed debarment.

(d) Debarring official's decision. When it is found that the contractor's submission raises a genuine dispute over facts material to the proposed debarment, the Debarring official may request the Department of Transportation's Board of Contract Appeals (DOTBCA) to conduct fact finding and provide a report containing the results of the fact finding.

(e) Notice of debarring official's decision. The Debarring official shall notify the COCO of the decision. The COCO shall ensure a copy of the debarment action is included in the contract file, and the information of the decision is submitted electronically to the following offices and web address:

(1) Input data on the decision at www.epls.gov;

(2) Chief Procurement Officer (CPO); and

(3) Component Legal Counsel.

3009.407 Suspension.

3009.407-1 General.

(d) The HCA is delegated the authority under (FAR) 48 CFR 9.407-1(d). However, see HSAM 3023.506(e) regarding waivers to debarment or suspension determinations for actions under (FAR) 48 CFR Subpart 23.5, Drug-Free Workplace.

3009.407-3 Procedures.

(a) Investigation and referral. In coordination with Component legal counsel, the COCO shall prepare a written report of a proposed suspension action containing the information listed in HSAM 3009.406-3.

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

(c) Notice of suspension. After reviewing the COCO's request, and any additional information received in accordance with paragraph (b), the Suspension official shall prepare and coordinate with the Component legal counsel, a written notice of suspension.

(d) Suspending official's decision. When it is found that the contractor's submission raises a genuine dispute over facts material to the proposed suspension, the Suspension official may request the DOTBCA to conduct fact finding and provide a report containing the results of the fact finding. The Suspension official shall notify the COCO of the decision to impose a suspension. The COCO shall ensure a copy of the suspension action is

included in the contract file, and the information of the decision is submitted electronically to the following offices and web address:

(1) Input data on the decision at www.epls.gov;

(2) CPO; and

(3) Component Legal Counsel.

3009.408 Certification regarding debarment, suspension, proposed debarment, and other responsibility matters.

(a)(2) Prior to proceeding with the contract award, the contracting officer shall notify the Debarment and Suspension official of the facts, and submit a copy of the written responsibility determination.

Subchapter 3009.5 Organizational and Consultant Conflicts of Interest

3009.501 Definitions.

(a) Definitions. As required by Section 6405(d)(1) of Public Law 110-28, adapted from Section 805 of the 2006 National Defense Authorization Act, Public Law 109-163 and used in this subpart—

(1) "Lead system integrator" includes "lead system integrator with system responsibility" and "lead system integrator without system responsibility."

(2) "Lead system integrator with system responsibility" means a prime contractor for the development or production of a major system if the prime contractor is not expected at the time of award, as determined by the contracting officer, to perform a substantial portion of the work on the system and the major subsystems.

(3) "Lead system integrator without system responsibility" means a contractor under a contract for the procurement of services whose primary purpose is to perform acquisition functions closely associated with inherently governmental functions (see FAR 7.503(d)) with regard to the development or production of a major system.

(4) The phrase "substantial portion of the work," as used in the definition of "lead system integrator with system responsibility," may relate to the dollar value of the effort or to the criticality of the effort performed.

3009.503 Waiver.

The HCA is delegated the authority under (FAR) 48 CFR 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 Policy.

(a) Section 6405, of Public Law 110-28, the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, provides that, with respect to contracts entered into after July 1, 2007, and except as provided in subparagraph (b), no entity performing lead system integrator functions in the acquisition of a major system by the Department of Homeland Security (DHS) may have any direct financial interest in the development or construction of any individual system or element of any system of systems. (See HSAM 3009.501 for definitions.) At the time of award, the contracting officer shall determine whether the proposed contractor meets the definition of “lead system integrator.”

(b) Exception.--An entity described in subparagraph (a) may have a direct financial interest in the development or construction of an individual system or element of a system of systems if--

(1) The Secretary of Homeland Security certifies to the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Homeland Security of the House of Representatives, the Committee on Transportation and Infrastructure of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on Commerce, Science and Transportation of the Senate that--

(i) The entity was selected by DHS as a contractor to develop or construct the system or element concerned through the use of competitive procedures, and where DHS took appropriate steps to prevent any organizational conflict of interest in the selection process; or

(ii) The entity was selected by a subcontractor to serve as a lower-tier subcontractor, through a process over which the entity exercised no control.

(c) CONSTRUCTION. --Nothing in this section shall be construed to preclude an entity described in subparagraph (a) from performing work necessary to integrate two or more individual systems or elements of a system of systems with each other.

3009.570-2 Procedures.

(a) When the acquisition strategy calls for use of a lead system integrator for a major system, the contracting officer shall address whether the offeror has a direct financial interest in the development or construction of an individual system or element of a system of systems when making the responsibility determination. The contracting officer shall consider all information regarding any such financial interests when making the responsibility determination.

(b) The offeror may be considered eligible for award of a contractor if it has no direct financial interest in development or construction of an individual system or element of systems.

(c) If the offeror has such a direct financial interest, the contracting officer may request an exception from the Secretary of Homeland Security. The request will be submitted, with supporting documentation, to the Office of the Chief Procurement Officer, Director of Strategic Initiatives, Department of Homeland Security. The Director of Strategic Initiatives will process the request through the Office of the Secretary of Homeland Security, and if approved, to the appropriate committees of Congress. The contracting officer's request must explain that –

(i) The entity was selected by DHS as a contractor to develop or construct the system or element concerned through the use of competitive procedures, and where DHS took appropriate steps to prevent any organizational conflict of interest in the selection process; or

(ii) The entity was selected by a subcontractor to serve as a lower-tier subcontractor, through a process over which the entity exercised no control.

CHAPTER 3010

MARKET RESEARCH

(RESERVED)

There is no text implementing or supplementing FAR Part 10.

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, Chapter 3006, Appendix A, DHS Justification and Approval (J&A) Guide for Other than Full and Open Competition, Version 1.0.

(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) 48 CFR 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.

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.

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) 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.
Subchapter	**3013.2**	**Actions At or Below the Micro-Purchase Threshold**
	3013.201	General.
	3013.201-70	Acquisitions involving strategically sourced commodities.
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	**3013.70**	**Special Streamlined Acquisition Authority**
	3013.7001	Delegations.

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) 48 CFR 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) 48 CFR Part 5.102(a)(6).

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.

3013.201-70 Acquisitions involving Strategically Sourced Commodities.

In accordance with HSAM 3007.270-3, the contracting officer or ordering official shall review the commodities list in MD Number 0730 prior to making a purchase using the purchase card.

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 0730, Strategic Sourcing Group Operations. Also see HSAM 3013.201-70.

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 Contracting Activities (HCAs) 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 Chief Financial Officer (CFO) 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) 48 CFR Parts 13.501(a)(1) and (2) shall be submitted to the DHS or Component Competition officials designated at HSAM, Chapter 3006, Appendix A, DHS Justification and Approval (J&A) Guide for Other than Full and Open Competition, Version 1.0.

Subchapter 3013.70 Special Streamlined Acquisition Authority

3013.7001 Delegations.

Requests for delegation under (HSAR) 48 CFR 3013.7001, shall be submitted to the Chief Procurement Officer (CPO) for processing and forwarded to the Under Secretary of Management for approval.

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 invitation 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 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) Chiefs of the Contracting Office (COCOs) are authorized to waive inclusion of (FAR) 48 CFR 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) 48 CFR 14.202-4(c) shall be prepared and signed by the technical official responsible for the procurement request and concurred in writing by the contracting officer.

3014.202-5 Descriptive literature.

(b) *Justification.* The justification required by (FAR) 48 CFR 14.202-5(b) shall be prepared and signed by the technical official responsible for the procurement request and concurred in writing by the contracting officer.

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 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 redelegation, are authorized to make the written determinations at (c), (e) and (f).

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.
	3015.407	Special cost or pricing areas.
	3015.407-4	Should-cost review.
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, (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) 48 C.F.R. 23.703(b), must be considered when developing source selection factors. (See HSAM 3023.4).

(c)(71) Contracting Officers shall consider the extent to which an offeror demonstrates current, or recently initiated, enrollment and current, or planned, participation in the E-Verify program, or any other successor program managed by DHS, during the evaluation of proposals. Participation in E-Verify may be considered a “strength” under a Management factor or subfactor. Evaluation will not be based on an absolute standard, but rather the Contracting Officer shall attribute more significance to offeror participation for an entire workforce versus participation only for single, or multiple, discrete workforce segments. In no instance will lack of participation in E-Verify be evaluated as a proposal “weakness.” Contracting Officers shall include the following information in solicitations that provide for evaluation of offeror participation in E-Verify:

Firms may register for the E-Verify Program on-line at: https://www.vis-dhs.com/employerregistration/. This site provides instructions for completing the Memorandum of Understanding (MOU) for official registration in the Program.

Offerors may obtain additional information about E-Verify by visiting the U.S. Citizen and Immigration Services (USCIS) website at: http://www.DHS.GOV/E-VERIFY or calling the USCIS at 1 (888) 464-4218.

3015.305 Proposal evaluation.

(a)(4) *Cost information.* Cost information may be provided to members of the technical evaluation team as the SSA 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) 48 CFR 15.4 and this subchapter apply unless specifically excluded.

3015.404 Proposal analysis.

3015.404-2 Information to support proposal analysis.

(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 Chapter 3042, Appendix A, Contract Audit Services Memorandum of Understanding.

(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 serves 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) 48 CFR 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 A, 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 A.

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) 48 CFR 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) 48 CFR 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) 48 CFR 15.406-3.

3015.407 Special cost or pricing areas.

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 3015.6 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 B provides DHS procedures, presented in the form of a multi-level flow chart, for the review, evaluation and disposition of unsolicited proposals. Appendix B must be used in conjunction with FAR Subpart 15.6 and HSAR Subpart 3015.6.

APPENDIX A

STRUCTURED APPROACH FOR PROFIT OR FEE OBJECTIVE

INTRODUCTORY REMARKS.

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, HS utilizes the description from (FAR) 48 CFR 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.

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 APPENDIX B

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. >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. >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. >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. >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 Unsolicited Proposal**	**Negotiate & Award Contract**
TASK (TYPICAL)	>POC establishes milestones and identifies appropriate team members. >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

CHAPTER 3016 TYPES OF CONTRACTS

Subchapter	**3016.4**	**Incentive Contracts**
	3016.401	General.
Subchapter	**3016.5**	**Indefinite-Delivery Contracts**
	3016.501-2	General.
Subchapter	**3016.6**	**Time-And-Materials, Labor-Hour, and Letter Contracts**
	3016.601	Time-and-materials contracts.
	3016.602	Labor-hour contracts.
	3016.603	Letter contracts.
	3016.603-2	Application.
	3016.603-3	Limitations.

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.

(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.

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.

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

3016.601 Time-and-materials and labor-hour contracts.

(c)(1)(i) *Government* S*urveillance*. 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 technical representative (COTR) 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 COTR 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 A to this chapter.

3016.602 Labor hour contracts.

When making the required determination and findings, the contracting officer must use a format substantially the same as the format found in Appendix A to this chapter.

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.

COCOs are authorized to approve the use of a letter contract. Letter contracts must contain the appropriate sections of the uniform contract format as discussed (FAR) 48 CFR 15.204-1 as practicable. Profit or fee under letter contracts must not be paid until after definitization of the letter contract (see ((HSAR) 48 CFR) 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) 48 CFR 16.603-3(b).

CHAPTER 3016 - APPENDIX A

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

CHAPTER 3017 SPECIAL CONTRACTING METHODS

Subchapter	**3017.1**	**Multi-Year Contracting**
	3017.105-1	Uses.
	3017.106	Procedures.
	3017.106-3	Special procedures applicable to DoD, NASA, and the Coast Guard.
	3017.108	Congressional notification.
Subchapter	**3017.2**	**Options**
	3017.204	Contracts.
Subchapter	**3017.5**	Interagency Acquisitions Under The Economy Act
	3017.500	Scope of subchapter.
	3017.501	Reserved.
	3017.502	General.
	3017.503	Determinations and findings requirements.

Subchapter 3017.1 Multi-Year Contracting

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 for supplies if all the requirements in (FAR) 48 CFR 17.105-1(b)(1) through (5) are met.

3017.106 Procedures.

017.106-3 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) 48 CFR 17.106-3(e) is delegated to the HCA.

(f) *Annual and Multi-year proposals*. The Chief of the Contracting Officer (COCO) is delegated the authority under (FAR) 48 CFR 17.106-**3**(f) .

(g) *Level unit prices.* The Chief of the Contracting Officer (COCO) is delegated the authority under (FAR) 48 CFR 17.106-3(g)

3017.108 Congressional notification.

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 and how price risks normally associated with a long performance period were 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 head of the contracting activity (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) 48 CFR 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) 48 CFR 37.106 for funding and term of service contracts).

Subchapter 3017.5 Interagency Acquisitions Under The Economy Act

3017.500 Scope of subchapter.

This subchapter establishes DHS policy and procedures to assure the appropriate and consistent use of interagency acquisitions under the Economy Act (31 U.S.C. 1535) as prescribed by (FAR) 48 CFR 17.5. The DHS Directive Number 125-02 entitled "Interagency Agreements", and DHS Instruction Number 125-02-001 entitled "Instruction Guide on Interagency Agreements", apply to all DHS interagency agreements as specified therein. Additionally, the Office of Federal Procurement Policy guidance entitled "Interagency Acquisitions" represents mandatory guidance for all DHS Components, especially for Assisted Acquisitions. The OFPP guide is available on the website: http://www.whitehouse.gov/omb/procurement/.

3017.501 Reserved.

3017.502 General.

(a) Policy. Before transferring funds, pursuant to Economy Act authority, in an Inter/Intra-agency Agreement (IA), the Component shall assure that the IA complies with the requirements of DHS Directive Number 125-02 entitled "Interagency Agreements", and DHS Instruction Number 125-02-001 entitled "Instruction Guide on Interagency Agreements". Review and approvals shall be in accordance with HSAM subchapter 3004.70. Announcement and notification requirements in accordance with HSAM 3005.303 apply to IAs. The Inter/Intra-agency Agreement shall include the announcement/requirements among the terms and conditions of the agreement.

(b) *Exceptions.* The provisions of this subchapter do not apply to:

(1) Supplies and services acquired from or through Government sources, as described in (FAR) 48 CFR Part 8; and

(2) Contracts with the Small Business Administration based upon Section 8(a) of the Small Business Act.

3017.503 Determinations and findings requirements.

The determination shall be prepared in the format shown in DHS Instruction Number 125-02-001 entitled "Instruction Guide on Interagency Agreements".

CHAPTER 3018

EMERGENCY ACQUISITIONS

(RESERVED)

There is no text implementing or supplementing FAR Part 18.

CHAPTER 3019 SMALL BUSINESS PROGRAMS

Subchapter	**3019.2**	**Policies**
	3019.201	General policy.
	3019.202	Specific policies.
	3019.202-270	Procurement forecast.
	3019.202-271	DHS Small Business Review Form.
Subchapter	**3019.5**	**Set-Asides for Small Business**
	3019.501	General.
	3019.502	Setting aside acquisitions.
	3019.502-3	Partial set-asides.
	3019.505	Rejecting Small Business Administration recommendations.
	3019.506	Withdrawing or modifying small business set-asides.
Subchapter	**3019.6**	**Certificates of Competency and Determinations of Responsibility**
	3019.602	Procedures.
	3019.602-1	Referral.
	3019.602-3	Resolving differences between the agency and the Small Business Administration.
Subchapter	**3019.7**	**The Small Business Subcontracting Program**
	3019.704	Subcontracting plan requirements.
	3019.704-70	Reporting requirements.
	3019.705	Responsibilities of the contracting officer under the subcontracting assistance program.
	3019.705-2	Determining the need for a subcontracting plan.
	3019.705-6	Postaward responsibilities of the contracting officer.
Subchapter	**3019.8**	**Contracting with the Small Business Administration (The 8(a) Program)**
	3019.800	General.
	3019.804	Evaluation, offering, and acceptance.
	3019.804-3	SBA acceptance.
	3019.804-470	Repetitive acquisitions.
	3019.810	SBA appeals.
	3019.811.1	Sole source.
	3019.812	Contract administration.

Subchapter 3019.2 Policies

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) 48 CFR 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 Small Business Administration (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) 48 CFR 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 $100,000 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://www.fido.gov/dhs/aap/ (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 every 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 of $100,000 or more (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 (such as 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) 48 CFR 7.104(d), (FAR) 48 CFR 7.107 and (FAR) 48 CFR 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) 48 CFR 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) 48 CFR 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

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) 48 CFR 19.705-2(c)) shall be provided to the Director, OSDBU.

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 the SBA Partnership Agreement (PA) is effective through September 30, 2009 and applies to all new DHS acquisitions under the 8(a) Program.

The PA amends and in some cases, supersedes certain requirements in (FAR) 48 CFR 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 the "agency contracting officer." The current DHS and SBA PA is located at DHSOnline.

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.

3019.811-1 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

CHAPTER 3021

(RESERVED)

There is no text implementing or supplementing FAR Parts 20 and 21.

CHAPTER 3022 APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subchapter	**3022.000**	**Scope**
	3022.001	Definition.
Subchapter	**3022.1**	**Basic Labor Policies**
	3022.101	Labor relations.
	3022.101-1	General.
	3022.101-170	DHS Labor Coordinator/Advisor.
	3022.101-3	Reporting labor disputes.
	3022.101-4	Removal of items from contractor's facilities affected by work stoppages.
	3022.103	Overtime.
	3022.103-4	Approvals.
Subchapter	**3022.3**	**Contract Work Hour and Safety Standards Act**
	3022.302	Liquidated damages and overtime pay.
Subchapter	**3022.4**	**Labor Standards for Contracts Involving Construction**
	3022.404	Davis-Bacon Act wage determinations.
	3022.404-1	Types of wage determinations.
	3022.404-6	Modifications of wage determinations.
	3022.404-10	Posting wage determinations and notice.
	3022.406	Administration and enforcement.
	3022.406-2	Wages, fringe benefits and overtime.
	3022.406-8	Investigations.
	3022.406-9	Withholding from or suspension of contract payments.
	3022.406-13	Semi-Annual enforcement reports.
Subchapter	**3022.6**	**Walsh-Healy Public Contracts Act**
	3022.604	Exemptions.
	3022.604-2	Regulatory exemptions.
	3022.608	Procedures.
Subchapter	**3022.8**	**Equal Employment Opportunity**
	3022.803	Responsibilities.
	3022.804	Affirmative action programs.
	3022.804-2	Construction.
	3022.805	Procedures.
	3022.807	Exemptions.
Subchapter	**3022.10**	**Service Contract Act of 1965, as amended**
	3022.1003	Applicability

3022.1003-4 Administrative limitations, variations, tolerances, and exemptions.

3022.1003-7 Questions concerning applicability of the Act.
3022.1008 Procedures for obtaining wage determinations.
3022.1008-1 Obtaining wage determinations.
3022.1008-2 Section 4(c) successorship with incumbent contractor collective bargaining agreement.
3022.1013 Review of wage determination.
3022.1021 Request for hearing.
3022.1021-70 Additional hearings data.

Subchapter 3022.13 Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans
3022.1305 Waivers.
3022.1308 Compliant procedures.
3022.1310 Solicitation provision and contract clauses.

Subchapter 3022.14 Employment of Workers with Disabilities
3022.1403 Waivers.
3022.1406 Compliant procedures.
3022.1408 Contract clause.

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 3022.90 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) 48 CFR 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) 48 CFR 22.101-

1(e) is not redelegable.

3022.101-170 DHS Labor Coordinator/Advisor.

(a) The labor coordinator for DHS procurements is the Director, Office of Acquisition Policy and Oversight.

(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 will be responsible for coordinating and obtaining advice from the DHS labor coordinator 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 labor coordinator 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/coordinator:

(1) The contractor's and, if applicable, subcontractor's name, address, contract number, and the contractor's point of contact at the contractor's plant or the place where work is being performed (e.g., construction site);

(2) The date the strike began or will begin;

(3) The urgency or critical nature of the affected contract, and whether another source can perform the contract;

(4) Name, address, and telephone number of the local union and union representative(s);

(5) An assessment of the strike with regard to settlement of the issues;

(6) Number of employees affected by the strike; and

(7) The extent, if any, of participation by a federal or state mediation agency.

(b) The contracting officer shall advise, as applicable, the cognizant Component labor advisor or DHS labor coordinator 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 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 labor coordinator 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

(3) Unless otherwise advised by the labor advisor or labor coordinator, submit a written request for removal of items to the contractor and the union representative. The request shall include the following:

(i) A statement of the urgency or criticality of the items or materials;

(ii) A full description (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 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) 48 CFR 22.103-4. The D&F shall be written, in the format of Appendix A, and placed in the contract file.

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) 48 CFR 22.302(c)(1) and (2). The contracting officer's recommendation in (FAR) 48 CFR 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/ 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) 48 CFR 22.406-2(b)(2) to the Administrator, Wage and Hour Division, DOL. The contracting officer shall advise interested parties of DOL's determination within 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.

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 by email at Helm.Timothy@dol.gov . The format and instructions for the semiannual report are provided at Appendix B. Negative reports are not required to be submitted (e.g., no contracts awarded subject to Davis Bacon and Related Acts (DBRA) during the 6 month report period).

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/ 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 still required, the matter shall be referred to the nearest DOL Office of Federal Contracts Compliance Programs (OFCCP). Questions concerning the implementation of the E.O. in

the ((FAR) 48 CFR) 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. Since the OFCCP conducts the compliance review at the primary point of production of each contractor and first-tier subcontractor, contracting officers shall request the clearance from the OFCCP regional office which has jurisdiction over the contractor and subcontractor.

(7) The 15 and 20-day preaward clearance requirement timeframes under (FAR) 48 C.F.R. 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/

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 A.

(c) The justification shall be in substantially the same format as Appendix A. 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, variance, tolerances, and exemptions under FAR 48 CFR 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 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 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 labor advisor.

(e)(2) Contracting officer should request advice from the Component labor advisor, or if unavailable, the DHS labor advisor.

3022.1013 Review of wage determination.

Contracting officer should request advice from the Component labor advisor, or if unavailable, the DHS labor advisor.

3022.1021 Request for hearing.

3022.1021-70 Additional hearings data.

(a) In addition to the requirements of (FAR) 48 CFR 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.

Subchapter 3022.13 Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans

3022.1305 Waivers.

(a)(1) For a request for exemption under (FAR) 48 C.F.R. 22.1305(a)(1), the signatory authority is the HCA, without authority to redelegate.

(a)(2) For a request for exemption under (FAR) 48 C.F.R. 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 A.

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 OFCCP office. 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 A.

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

3022.9000 Policy (USCG).

(a) The Coast Guard HCA is authorized to waive the inclusion of (HSAR) 48 CFR

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 3022 - APPENDIX A

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) 48 CFR 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}*

CHAPTER 3022 - APPENDIX B

SEMI-ANNUAL LABOR COMPLIANCE REPORT

The following semi-annual report (Davis-Bacon and Related Acts and Contract Work Hours and Safety Standards Act) by *{insert 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.

CHAPTER 3022 - APPENDIX C

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) 48 CFR 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/.

CHAPTER 3023 ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG FREE WORKPLACE.

Subchapter 3023.4 Energy and Water Efficiency and Renewable Energy
3023.204 Energy-savings performance contracts.

Subchapter 3023.4 Use of Recovered Materials
3023.400 General.

Subchapter 3023.2 Energy and Water Efficiency and Renewable Energy

3023.204 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 contracting officer, through its HCA or designee, shall notify the CPO by contacting the Director, Acquisition Policy and Oversight (e-mail notification is acceptable) when DHS or a Component contemplates a procurement under this section. Notification should be provided at project inception but must occur before selection of the ESPC contractor. Upon receiving notification, CPO will coordinate with the DHS Office of Safety and Environment, and as needed, additional information will be requested from the contracting office. The purpose of early notification is to provide DHS Headquarters the opportunity to provide assistance and guidance to the contracting activity.

Subchapter 3023.4 Use of Recovered Materials

3023.400 General.

The DHS's *Affirmative Procurement Program (APP) for Products Containing Recovered Materials* required by the Resource Conservation Act of 1976 (RCRA), as amended, and Executive Order 13101 is found at Appendix A to this Chapter. The purpose of the DHS Affirmative Procurement Program is to foster markets for recovered materials by maximizing the Federal Government's recycled products. A secondary objective is to reduce the amount of solid waste requiring disposal through the purchase and use of products containing recovered materials. Procedures for purchases under the micro-purchase threshold and for consolidating and reporting data estimates are also located in the APP.

CHAPTER 3023 – APPENDIX A

DEPARTMENT OF HOMELAND SECURITY AFFIRMATIVE PROCUREMENT PROGRAM FOR RECOVERED MATERIALS

I. General Policy. DHS has adopted the Environmental Protection Agency (EPA) minimum content standards in implementing this affirmative procurement program (APP). These minimum content standards specify the minimum recovered materials content an item must contain to be considered for an award. The EPA recommended minimum content standards were set forth in the Recovered Materials Advisory Notice (RMAN) published in the Federal Register, Vol. 60, on May 1, 1995 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.

A. It is the policy of DHS to acquire designated items with recovered materials to the greatest extent practicable, to promote cost effective waste reduction and recycling of reusable materials from wastes generated by Federal activities, and to encourage economically efficient market demand for designated items produced using recovered materials by directing the immediate implementation of a cost effective procurement preference program favoring the purchase of such items.

(1) 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. 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.

(2) Contractors: DHS's APP shall only apply to such contractors as long as appropriate provisions are contained in the contracts. It is the responsibility of each Component to ensure that appropriate existing contracts are revised to include APP compliance provisions, and appropriate new contracts contain APP compliance provisions ((FAR) 48 CFR 52.204-4, 52.223-4, 52.223-8, 52.223-9). Nothing in DHS's APP would preclude a

DHS contractor from voluntarily implementing an APP until such time as provisions are incorporated into the contract.

(3) State and Local Agencies: State and local agencies purchasing more than $10,000 worth of particular EPA-designated item in a year, and using some Federal funds for these purchases, are required to establish an APP for those particular items. The APP must include the four elements specified by Section 6002 of RCRA: (1) a preference program; (2) a promotion program; (3) estimation, certification, and verification procedures; and (4) procedures for annual review and monitoring. For any questions concerning the applicability of the APP to Federal, State, or local agencies, and government contractors and private party recipients of Federal loans, grants, or funds, contact the Chief, Administrative Services.

B. 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) 48 CFR 23.405) from establishing an APP will not be requested by DHS.

C. Special requirements apply when procuring certain items. These are:

(1) 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; and

(2) 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.

II. 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. Refer to

DHS MD 5130, Department of Homeland Security Waste Prevention, Recycling and Acquisition; and MD Number 5300, Energy Management Program for guidelines on preference programs.

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. Recovered Materials Determination Form . In making the determinations required in HSAM 3023.4, program offices shall use the format or substantially the same format as shown in attachment 1. This form must be signed by the cognizant program official and maintained in the procurement 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 items containing other than recovered materials, program offices and contracting officers shall use the format or substantially the same format as shown in Attachment 2. This form must be signed by the cognizant program official and maintained in the procurement 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 and issued, Components shall rely on minimum content standards of preference standards in EPA's guidelines (RMAN).

III. Recovered Materials Promotion Program.

A. The 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 CBD 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.

IV. 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) 48 CFR 23.406 for solicitation provisions and contract clauses.)

C. Verification. COCOs 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 13101.

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.

V. 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.

VI. Waste Prevention. Executive Order 13101 encourages 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 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) 48 CFR 4.303). The clauses at (FAR) 48 CFR 52.204-4, Printed or Copied Double-Sided on Recycled Paper, shall be inserted in solicitations and contracts greater than the simplified acquisition threshold

DEFINITIONS

Sec. 201. "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.

Sec. 202. "Executive agency" or "agency" means an executive agency as defined in 5 U.S.C. 105. For the purpose of this order, military departments, as defined in 5 U.S.C. 102, are covered under the auspices of the Department of Defense.

Sec. 203. "Postconsumer material" means 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."

Sec. 204. "Acquisition" means the acquiring by contract with appropriated funds for supplies or services (including construction) by and for the use of the Federal Government through purchase or lease, whether the supplies or services are already in existence or must be created, developed, demonstrated, and evaluated. Acquisition begins at the point when agency needs are established and includes the description of requirements to satisfy agency needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling agency needs by contract.

Sec. 205. "Recovered materials" means waste materials and by-products that have been recovered or diverted from solid waste, but such term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process (42 U.S.C. 6903 (19)).

Sec. 206. "Recyclability" means the ability of a product or material to be recovered from, or otherwise diverted from, the solid waste stream for the purpose of recycling.

Sec. 207. "Recycling" means 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.

Sec. 208. "Waste prevention" means 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.

Sec. 209. "Waste reduction" means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

Sec. 210. "Life cycle cost" means 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.

Sec. 211. "Life cycle assessment" means 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.

Sec. 212. "Pollution prevention" means "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.

Sec. 213. "Biobased product" means 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.

Sec. 214. "Major procuring agencies" shall include any executive agency that procures over $50 million per year of goods and services.

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]

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. [EO 13101]

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]

Federal Supply Source - any supply source managed by a Federal agency such as the General Services Administration, Government Printing Office, or Defense General Supply Center.

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]

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]

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]

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]

Attachment 1

RECOVERED 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) for recovered Materials are being procured from outside vendors. This form is not required for items requisitioned from established Federal supply sources.

1. The procurement originator (program official) lists the EPA designated item(s) which apply to the procurement request, and signs and dates the bottom of the form.

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 for recovered materials. 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 for recycled/recovered materials.

_____ _____
Procurement Originator's Signature Date

Attachment 2

REQUEST FOR WAIVER

Instructions: This form is needed only if the item(s) being procured are subject to DHS's Affirmative Procurement Program (APP) for Recovered Materials.

1. 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.

2. The procurement originator and contracting officer checks the appropriate justification(s), provides a written explanation, and signs and dates the form.

3. The original form is maintained in the official contract file.

Procurement Request No: _____

1. To be completed by the contracting officer:

Products containing recovered materials and 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 containing recovered materials would require paying a price premium.

_____ Other: (Written justification for not procuring designated items containing recovered material.)

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

2. To be completed by Procurement Originator:

Products containing recovered materials and 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

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**
	3025.004	Reporting of acquisition of end products manufactured outside the United States.
Subchapter	**3025.1**	**Buy American Act—Supplies**
	3025.103	Exceptions.
	3025.104	Nonavailability articles.
	3025.105	Determining reasonableness of cost.
Subchapter	**3025.2**	**Buy American Act—Construction Materials**
	3025.202	Exceptions.
Subchapter	**3025.10**	**Additional Foreign Acquisition Regulations**
	3025.1001	Waiver of right to examination of records.

Subchapter 3025.000 Scope of Part

3025.004 Reporting of acquisition of end products manufactured outside the United States.

(a) Section 837 of Pub. L. 109-115 and similar sections of subsequent appropriations acts requires agencies to submit a report to Congress on the amount of acquisitions made by agencies from entities that manufacture end products outside of the United States.

(b) 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.

(c) By October 31 of each year, Components shall submit a Report of End Products Manufactured Outside the United States to the OCPO for the previous fiscal year. The Component Report will include the following information:

(1) Dollar value of acquisitions of end products predominantly manufactured outside of the United States and its outlying areas;

(2) Dollar value of acquisitions of end products predominantly manufactured inside the United States;

(3) Total of paragraphs (1) and (2); and

(4) For acquisitions in paragraph (c)(1), the number and dollar value of acquisitions in each of the exception categories listed in paragraph (b) above.

(d) The OCPO will consolidate the Component reported data and transmit a collective report to Congress.

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 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.

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

RESERVED

There is no text implementing or supplementing FAR Part 26.

CHAPTER 3027 PATENTS, DATA, AND COPYRIGHTS

Subchapter	**3027.2**	**Patents**
	3027.203	Patent indemnification of Government by contractor.
	3027.203-6	Clause for Government waiver of indemnity.
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	Conveyance of invention rights acquired by the Government.

Subchapter 3027.2 Patents

3027.203 Patent indemnification of Government by contractor.

3027.203-6 Clause for Government waiver of indemnity.

The Chief of the Contracting Office (COCO) is delegated this authority and must coordinate with legal counsel.

Subchapter 3027.3 Patent Rights Under Government Contracts

3027.302 Policy.

(a) The Head of the Contracting Activity (HCA) is responsible for promoting commercialization.

3027.303 Contract clauses.

(a)(3), (b)(2), (c)(3), and (d)(1)(ii). The HCA is delegated the authority to make these determinations.

3027.304 Procedures.

3027.304-1 General.

(a)(5), (a)(7), (b), (g)(2), (g)(3), (g)(5) through (7) The COCO is delegated this authority, after coordination with legal counsel.

3027.305 Administration of patent rights clauses

3027.305-4 Conveyance of invention rights acquired by the Government.

(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.
	3028.203	Acceptability of individual sureties.
	3028.203-7	Exclusion of individual sureties.
	3028.204	Alternatives in lieu of corporate or individual sureties.
Subchapter	**3028.3**	**Insurance**
	3028.305	Overseas workers' compensation and war-hazard insurance.

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.

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.

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) 48 CFR 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 submission to the Secretary for 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 changes 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. Submit all requests using the procedures and format at (HSAR) 48 CFR 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 99-3.202-2) 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 Headquarters' DHS 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.

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 Pre-contract costs.

(b) To the extent practical, pre-contract costs should be addressed by establishing advance understandings as contemplated by (FAR) 48 CFR 31.109. When the contracting officer determines in writing that it is necessary to incur pre-contract costs to meet the proposed cost-reimbursable, contract 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 pre-contract 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 pre-contract costs involved and a statement that the funds necessary to cover this amount have been provided to the contracting officer;

(5) Total estimated time of the effort requiring pre-contract costs;

(6) 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 pre-contract 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 pre-contract 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

Subchapter	**3032.000**	**Scope**
	3032.003	Simplified acquisition procedures financing.
Subchapter	**3032.1**	**Non-Commercial Item Purchase Financing**
	3032.102	Description of contract financing methods.
	3032.113-70	Customary contract financing.
	3032.114	Unusual contract financing.
Subchapter	**3032.2**	**Commercial Item Purchase Financing**
	3032.202-4	Security for Government financing.
	3032.206	Solicitation provisions and contract clauses.
Subchapter	**3032.4**	**Advance Payments for Non-Commercial Items**
	3032.402	General.
	3032.404	Exclusions.
	3032.409	Contracting officer action.
	3032.409-1	Recommendation for approval.
	3032.409-2	Recommendation for disapproval.
Subchapter	**3032.5**	**Progress Payments Based On Costs**
	3032.501	General.
	3032.501-2	Unusual progress payments.
	3032.502	Preaward matters.
	3032.502-2	Contract finance office clearance.
	3032.504	Subcontracts under prime contracts providing progress payments.
Subchapter	**3032.6**	**Contract Debts**
	3032.601	Definition.
	3032.614	Interest.
	3032.614-1	Interest Charges.
Subchapter	**3032.7**	**Contract Funding**
	3032.702	Policy.
	3032.702-70	Procurement requests.
	3032.702-71	Use of private sector financing.
	3032.703-3	Contracts crossing fiscal years.
Subchapter	**3032.8**	**Assignment of Claims**
	3032.802	Conditions.
	3032.803	Policies.
Subchapter	**3032.9**	**Prompt Payment**
	3032.903	Responsibilities.

	3032.904	Determining payment due date.
	3032.906	Making payments.
Subchapter	**3032.11**	**Electronic Funds Transfer**
	3032.1107-70	Payment Information.
Subchapter	**3032.70**	**Contract Payments**
	3032.7000	Scope of subchapter.
	3032.7001	Policy.
	3032.7002	Invoice and voucher review and approval.
	3032.7003	Record of payment.

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) 48 CFR 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 of Appendix A 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) 48 CFR 32.206.

(g)(2) The HCA is authorized to develop procedures under (FAR) 48 CFR 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) 48 CFR 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 writing the D&F. The D&F shall be written in the format of (FAR) 48 CFR 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) 48 CFR Subpart 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 Officer (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) 48 CFR 32.501-1);

(b) From the COCO, to deviate from the progress payment terms prescribed in (FAR) 48 CFR 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

3032.601 Definition.

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.

3032.614 Interest.

3032.614-1 Interest charges.

(a)(3) The contracting officer shall consult with the Component's finance office concerning contractor's debts that may be exempt from interest charges.

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.

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.

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 stated 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) 48 CFR 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 depends on 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) 48 CFR 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 (i.e., 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 COTR 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.

(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 B for a sample format).

(d) Time-and-materials and labor-hour contracts.

(1) When processing vouchers for 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. 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 are adequately supported by invoices and/or payment;
(iv) The accuracy of the mathematical calculations contained in the voucher; and
(v) The hours worked against the hours billed for the period.

(2) The responsibility for reviewing and recommending approval of vouchers on T&M and labor-hour contracts may be delegated by the contracting officer to either the COTR or to the Defense Contract Audit Agency (DCAA). 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.

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 3032 - APPENDIX A

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))

APPENDIX B

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

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.
	3033.212	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 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) 48 CFR 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.

3033.212 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 DOTBCA.

3033.213 Contract clause.

When using the clause at (FAR) 48 CFR 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.
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 acquisitions.

3034.0 General

3034.002 Policy.

Refer to DHS MD Number 1400, Investment Review Process, for submittal, review and approval requirements for major systems acquisitions.

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 program. 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 HSAM 3007, Appendix A, Glossary;

(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 IT Level 3 investments, as defined in DHS Management Directive (MD) Number 1400.

(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 managers 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 and HSAM, Subchapter 3007.103 and Appendix A.

(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 managers 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	**3035.000**	**Scope**
	3035.017	Federally Funded Research and Development Centers (FFRDC).
	3035.017-2	Establishing or changing an FFRDC.

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) 48 CFR 35.017-2(j).

CHAPTER 3036 CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subchapter	**3036.2**	**Special Aspects of Contracting for Construction**
	3036.201	Evaluation of contractor performance.
	3036.203	Government estimate of construction costs.
	3036.206	Liquidated damages.
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Subchapter 3036.2 Special Aspects of Contracting for Construction

3036.201 Evaluation of contractor performance.

(a)(1) The CPO has authorized a DHS wide class deviation for contracting offices to use the National Institutes of Health (NIH) Contractor Performance System (CPS) to evaluate performance on construction contracts valued at $550,000 or above. If a contract is terminated for default, the NIH CPS may be used, in lieu of using the SF 1420 required at (FAR) 48 CFR and 52.236-1, if the dollar value of the contract is more than $10,000.

(4) The Head of the Contracting Activity (HCA), without redelegation, must establish procedures which ensure that fully qualified personnel prepare and review performance

reports.

(c)(1) Contracting officers must determine the appropriate distribution of the reports.

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) 48 CFR 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) 48 CFR 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) 48 CFR 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) 48 CFR 5.2 are applicable unless a waiver is granted pursuant to (FAR) 48 CFR 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 presolicitation 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 AAP data system detailed at HSAM Subchapter 3007.172 and available at http://www.fido.gov/dhs/aap. 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 and 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) 48 CFR 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) 48 CFR 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) 48 CFR 5.205(d)) for the project and provide it to the contracting officer for publication.

(4) Screen the SFs 330 and any other qualification data received in response to the public announcement of the project and prepare a pre-selection list of the best qualified firms for further consideration. The 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) 48 CFR 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 SFs 330 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) 48 CFR 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) 48 CFR 36.603(a).

3036.604 Performance evaluation.

(a)(5) The HCA retains the authority to ensure that fully qualified personnel prepare and review performance reports.

(c) Performance reports must be distributed per Component procedures.

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) 48 CFR 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) 48 CFR 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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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.

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 is governed by Management Directive (MD) Number 3010.2, Employment of Experts and Consultants. The pay 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 1 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 1 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 1 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 and MD 3010.2, 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 A, 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 by Management Directive Number 3010.2, Employment of Experts and Consultants or 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) 48 CFR 37.204.

(b)(1) The determination must ensure that the requirements of (FAR) 48 CFR 9.5 and (HSAR) 48 CFR 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) 48 CFR 3037.205, the contracting officer must ensure that the requirements of (FAR) 48 CFR 9.5 and (HSAR) 48 CFR 3052.209-70 are met regarding potential organizational and consultant conflicts of interest.

Subpart 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.

APPENDIX A

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)

CHAPTER 3038 FEDERAL SUPPLY SCHEDULE CONTRACTING

(RESERVED)

There is no text implementing or supplementing FAR Part 38.

CHAPTER 3039 ACQUISITION OF INFORMATION RESOURCES

Subchapter 3039.1 General
3039.101 Policy.

Subchapter 3039.2 Electronic and Information Technology
3039.203 Applicability.

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) 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.

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)

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).

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) 48 CFR 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

Subchapter	**3042.002**	**Interagency agreements.**
Subchapter	**3042.1**	**Contract Audit Services**
	3042.102	Assignment of contract audit services.
	3042.170	Contract audit follow-up.
	Appendix A	Contract Audit Services memorandum of Understanding
Subchapter	**3042.2**	**Contract Administration Services**
	3042.202	Assignment of contract administration.
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 procedure.
	3042-708	Quick-closeout procedure.
	3042.708-70	DHS quick-closeout procedures.
Subchapter	**3042.8**	**Disallowance of Costs**
	3042.803	Disallowing costs after incurrence.
Subchapter	**3042.15**	**Contractor Performance Information**
	3042.1502	Policy.
	3042.1503	Procedures.
Subchapter	**3042.70**	**Contracting Officer's Technical Representative**
	3042.7000	Policy

Subchapter 3042.002 Interagency agreements.

(c) Memoranda of Understanding (MOU) for contract administration and audit services are established between the Department of Homeland Security and the Department of Defense components. (See Chapter 3042 Appendix A, Contract Audit Services Memorandum of Understanding).

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.

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. This list 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 for the quarter.

Subchapter 3042.2 Contract Administration Services

3042.202 Assignment of contract administration.

(a) Contracting officers shall comply with the procedures under the MOU between DHS and the Defense Contract Management Agency for contract administration support services.

(c) Delegating additional functions. (2) The Chief of the Contracting Office (COCO) is authorized to approve the delegation to the contract administration office (CAO)**.**

Subchapter 3042.6 Corporate Administrative Contracting Officer

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 this authority.

Subchapter 3042.7 Indirect Cost Rates

3042.703 General.

3042.703-1 Policy.

DHS normally relies on the indirect cost rates established by DCAA unless the DHS Chief Procurement Officer and DCAA mutually agree that another agency will be the cognizant audit agency.

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 a cost reimbursement contract are allowable. Under most circumstances, DHS recognizes that periodic incurred cost audits by a contractor's cognizant audit agency are the preferred mechanism to assist the contracting officer in ensuring the validity of direct and indirect costs billed under cost reimbursement contracts. If at any time the contracting officer decides not to obtain an independent audit, the contracting officer shall document the file as to why the independent audit was not obtained. The file documentation shall include, as a minimum, a discussion of: (1) the reason an independent audit was not obtained (e.g., small dollar amounts remaining unaudited or unsettled; low dollar value of the contracts; planned audit was cancelled); (2) the extent of the analysis that was performed in lieu of obtaining an independent audit (e.g., desk analysis; a comparison of proposed direct costs and indirect rates to incurred direct costs and actual indirect rates; an examination of the costs included in the submission of indirect costs to detect any unallowable costs, or questionable amounts or accounts); and (3) other factors affecting the contracting officer's decision and the mitigation of risk (e.g., an approved accounting system; the absence of significant audit issues and problems in previous pre-award, post-award, or final audits; contract ceilings below claimed indirect rates).

(3) The Administrative Contracting Office (ACO) is responsible for obtaining or negotiating the rate using the guidance under (FAR) 48 CFR 42.704, and HSAM 3042.708, and 3042.708-70.

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) Ceiling indirect cost rates established in the contract (if applicable), consistent with (FAR) 48 CFR 42.707(c)(1) and (2).

(2) Contractor's claimed actual rates adjusted based on the contractor's indirect cost history.

(3) Recommended rates from the cognizant audit agency, the local pricing office, another installation pricing office, or other recognized knowledgeable source.

(4) Billing rates established in the contract.

(5) Previous year's final rates in the contract, if established.

(6) Contracts established final rates for another fiscal year closest to the period for which closeout rates are being established.

(f) If an agreement is reached with the contractor, obtain a release of all claims and other applicable closing documents (see (HSAR) 48 CFR 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 is responsible for ensuring that contractor performance evaluations are completed to meet the requirements of (FAR) 48 CFR Subpart 42.15 and reported into the Contractor Performance System for all contracts including the evaluation of task and delivery orders which exceed the simplified acquisition threshold. Interim evaluations should be performed on contracts exceeding one year in duration to assist with improving

contractor's marginal performance and identifying any major deficiencies. These procedures include evaluation of Contractor performance in the attempt to achieve and the achievement of goals identified in the small business subcontracting plan when the contract includes the clause at (FAR) 48 CFR 52.219-9, Small Business Subcontracting Plan.

3042.1503 Procedures.

(a) The COCO shall determine which government personnel will complete the contractor past performance evaluation reports.

Subchapter 3042.70 Contracting Officer's Technical Representative

3042.7000 Policy.

DHS Management Directive (MD) Number 0780.1, "Contracting Officer's Technical Representative (COTR) Certification, Appointment and Responsibilities." provides policy and procedures concerning the selection and training, certification, appointment, and termination of a COTR.

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.

e. 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 outyear 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. Includes full and part-time non-audit services such as source selection board assistance, commercial pricing, and market research.

(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 OCPO Director of Acquisition Oversight:

(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)

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_____ _____03/26/2008_____
Thomas W. Essig Date
Chief Procurement Officer

DEFENSE CONTRACT AUDIT AGENCY (SERVICE PROVIDER)

_____SIGNED_____ _____03/27/2008_____
Joseph J. Garcia Date
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:

Thomas W. Essig
Chief Procurement Officer
U.S. Department of Homeland Security

Washington, DC 20528
(202) 447-5300

David J. Capitano
Director, Acquisition Oversight
Office of the Chief Procurement Officer
U.S. Department of Homeland Security
Washington, DC 20528
(202) 447-5417
david.capitano@dhs.gov

3. DCAA CONTACT POINTS

Joseph J. Garcia
Assistant Director, Operations
Headquarters, DCAA
8725 John J. Kingman Road, Suite 2135
Fort Belvoir, VA 22060-6219
(703) 767-2236

J. Philip Anderson
Assistant Director, Resources
Headquarters, DCAA
8725 John J. Kingman Road, Suite 2135 Fort Belvoir, VA 22060-6219
(703) 767-2248

Patty Williams
Program Manager, Workload Analysis Div.

(703) 767-2256

Headquarters, DCAA
8725 John J. Kingman Road, Suite 2135
Fort Belvoir, VA 22060-6219

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 03/26/2008
Thomas W. Essig Date
Chief Procurement Officer

DEFENSE CONTRACT AUDIT AGENCY (SERVICE PROVIDER)

SIGNED 03/27/2008
Joseph J. Garcia Date
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

Until a uniform system of processing can be implemented by DHS, DHS Organizational Elements (OE) may follow cost reimbursement voucher processing procedures that were in operation at their respective legacy agencies before the effective date of the transfer of function from legacy agencies to DHS.

U.S. Department of Homeland Security		U.S. Department of Defense Defense Contract Audit Agency
_____SIGNED_____		_____SIGNED_____
Thomas W. Essig	NAME	Joseph J. Garcia
Chief Procurement Officer	TITLE	Assistant Director, Operations
_____03/26/2008_____DATE		_____03/27/2008_____DATE

CHAPTER 3043 CONTRACT MODIFICATIONS

Subchapter	**3043.2**	**Change Orders**
	3043.205	Contract clause.
Subchapter	**3043.70**	**Undefinitized Contract Actions**
	3043.7000	Definitions.
	3043.7001	Administration of UCAs.
	3043.7002	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) 48 CFR 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 the following:

(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.

3043.7001 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.

3043.7002 UCA monitoring system and report.

(a) The Head of the Contracting Activity (HCA) shall ensure that a system is developed and maintained to monitor UCAs. The Chief of the Contracting Office (COCO) shall ensure that progress is made to definitize the UCAs within the six-month period (except see (FAR) 48 CFR 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.

(b) Components may be required to prepare UCA reports upon request from CPO. Therefore, the UCA monitoring system established by the HCA should be able to provide, at a minimum, the total number, age and value of all UCAs.

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.

CHAPTER 3045 GOVERNMENT PROPERTY

SUBCHAPTER	**3045.1**	**General**
	3045.104	Review and correction of contractors' property control systems.
	3045.105	Records of Government property.
Subchapter	**3045.3**	**Providing Government Property to Contractors**
	3045.302	Providing facilities.
	3045.302-1	Policy.
	3045.302-6	Required Government property clauses for facilities contracts.
	3045.302-670	Unauthorized use of Government facilities.
	3045.307	Providing special test equipment.
	3045.307-2	Acquiring special test equipment.
	3045.309	Providing Government production and research property under special restrictions.
Subchapter	**3045.4**	**Contractor Use and Rental of Government Property**
	3045.403	Rental Use and Charges clause.
	3045.405	Contracts with foreign governments or international organizations.
	3045.407	Non-Government use of plant equipment.
Subchapter	**3045.5**	**Management of Government Property in the Possession of Contractors**
	3045.505	Records and reports of Government property.
	3045.505-2	Records of pricing information.
	3045.505-6	Special reports of plant equipment.
	3045.505-1470	Operating administration contract property report.
Subchapter	**3045.6**	**Reporting, Redistribution, and Disposal of Contractor Inventory**
	3045.602	Reutilization of Government Property.
	3045.602-3	Screening.

Subchapter 3045.1 General

3045.104 Review and correction of contractors' property control systems.

(b) The contract file shall contain written evidence that the contractor's property system was reviewed and approved and shall identify the approving official/agency. When DHS is the agency responsible for contract administration at the contractor's plant or installation, Appendix A, Compliance Checklist for Contractors' Property Control

System, may be used to ensure compliance with the Government property clauses of the contract. Appendix A shall be completed and signed by the appointed property administrator and placed in the contract file.

3045.105 Records of Government property.

(b) If the contracting officer maintains the file on Government property in the possession of the contractors. At a minimum, the file shall contain the following:

(1) A copy of the applicable portions of the contract that list the Government-furnished property (GFP);

(2) Contracting officer's letters assigning the Government property administrator to the contract;

(3) Written evidence that the contractor's property control system was reviewed and approved as required by (FAR) 48 CFR 45.104;

(4) If applicable, documentation of the request and approval or denial of the contractor's requests to acquire or fabricate special test equipment in accordance with (FAR) 48 CFR 45.307 or other property;

(5) The contractor's written notice of receipt of the GFP and any reported discrepancies thereto, as required by (FAR) 48 CFR 45.502-1 and 45.502-2, respectively;

(6) Any other documents pertaining to or affecting the status of the Government property in the possession of contractors or subcontractors under the contract;

(7) A copy of the contractor's annual and inventory reports of Government property as required by (HSAR) 48 CFR 3045.505-14 and (HSAR) 48 CFR 3045.508; and

(8) Documentation of the screening and disposal of all Government property as required by (FAR) 48 CFR Subpart 45.6.

Subchapter 3045.3 Providing Government Property to Contractors

3045.302 Providing facilities.

3045.302-1 Policy.

(a)(4) The Chief of the Contracting Office (COCO) is delegated authority to issue and approve the D&F after coordination with the government facilities property office.

3045.302-6 Required Government property clauses for facilities contracts.

3045.302-670 Unauthorized use of Government facilities.

(c) The contracting officer is delegated authority to waive the contractor's liability for the unauthorized use of items of the facilities and to determine that without such a waiver, gross inequity would result. (see (FAR) 48 CFR 52.245-9(j)).

3045.307 Providing special test equipment.

3045.307-2 Acquiring special test equipment.

(b)(2) The Component's property officer should be contacted for assistance.

3045.309 Providing Government production and research property under special restrictions.

(a) The Head of the Contracting Activity (HCA) at (FAR) 48 CFR 45.309(a) is not redelegable.

(3) The contracting officer is authorized to include in the contract an alternate provision.

Subchapter 3045.4 Contractor Use and Rental of Government Property

3045.403 Rental Use and Charges clause.

(a) The contracting officer is authorized to make the determination.

3045.405 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) 48 CFR 52.245-9, Use and Charges. See also OMB Circular A-25, User Charges for guidance on the establishment of fees to recover costs.

3045.407 Non-Government use of plant equipment.

The HCA is authorized to approve non-Government use of active plant equipment exceeding 25 percent.

Subchapter 3045.5 Management of Government Property in the Possession of Contractors

3045.505 Records and reports of Government property.

3045.505-1470 Components contract property report.

(a) By October 31 of each year, each Component shall submit a consolidated contract

property report to the Office of Property Management. The report shall contain the information extracted from DHS Form 0700-05, Contractor Report of Government Property. See (HSAR) 48 CFR 3045.505-14.

Subchapter 3045.6 Reporting, Redistribution, and Disposal of Contractor Inventory

3045.602 Reutilization of Government Property.

3045.602-3 Screening.

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.

CHAPTER 3045 - APPENDIX A

INSTRUCTIONS FOR COMPLETING

COMPLIANCE CHECKLIST

FOR

CONTRACTORS' PROPERTY CONTROL SYSTEM

1. The list of requirements on the checklist is a synopsis of the requirements cited under (FAR) 48 CFR Part 45, Government Property. The Government Property Administrator (PA) shall refer to the FAR for additional information concerning a specific requirement.

2. When the answer to a question on the checklist is "NO", the PA shall attach an explanation of the deficiency and the action the contractor shall take to correct the deficiency.

3. If the PA conditionally approves or disapproves the contractor's property control system, the PA shall follow the procedures of (FAR) 48 CFR 45.104.

COMPLIANCE CHECKLIST FOR CONTRACTORS' PROPERTY CONTROL SYSTEM

REQUIREMENT	YES	NO	N/A	REFERENCE
A. MANAGEMENT.				
1. Has or will the contractor assign a property administrator to the contract to ensure that the requirements of (FAR) 48 CFR Subpart 45.5, (HSAR) 48 CFR 3045, and the contract requirements will be met?				
B. CONTROL.				
1. For both the Government provided and contractor acquired property, is there a system for: (a) Recording the receipt of property? (b) Recording the rejection of property?				

(c) Recording the acceptance of property? (d) Recording the property in the formal property account? (e) Marking property? (f) Recording and reporting overages? (g) Recording and reporting damages?				
2. Is there a system for providing a financial account to the Government property administrator of the Government-owned property?				
3. Is there a system or technique for locating any item of Government property within a reasonable time period after a request from the Government?				
4. Are the contractor's property records set up to provide the information required under (FAR) 48 CFR 45.505-1(a) through (g)?				
5. Is there a system for the immediate identification and reporting of excess (no longer needed Government property)?				
6. Does the contractor require that a physical inventory of Government property be made? If yes, circle how often is will be done: Monthly; Quarterly; Semiannually; Annually				
7. Is there a system for the proper care and maintenance of Government property?				
8. Is there a system for providing an inventory schedule of the Government property?				
9. Will the property be stored in a secure area to prevent theft?				
10. Will the maintenance program ensure that the property operates or functions for the purpose intended?				
11. Will Government property be provided to or acquired by subcontractors?				
12. If the answer to 11. is "YES", has the contractor included (FAR) 48 CFR Part 45, (HSAR) 48 CFR 3045, and the applicable property clauses in the subcontract(s)?				
13. If the answer to 11. is "YES", has the contractor reviewed and approved the subcontractor's property control system to ensure that the property control system requirements of (FAR) 48 CFR Subpart 45.5, (HSAR) 48 CFR 3045, and the contract are met? Date of approval: _____				

14. Other requirements (i.e., list of unique requirements set forth in the contract)?				
C. APPROVAL, CONDITIONAL APPROVAL, OR DISAPPROVAL The contractor's property control system was reviewed by: _____ *(Insert property administrator's name/agency/office)* on _____. The system is: *(Insert date)* 1. _____ Approved. 2. _____ Conditionally approved. (see attached discrepancies) 3. _____ Disapproved. (see attached discrepancies)				
D. SIGNATURE OF PROPERTY ADMINISTRATOR _____ *(Signature of property administrator)*				

CHAPTER 3046 QUALITY ASSURANCE

Subchapter	**3046.3**	**Contract Clauses**
	3046.316	Responsibility 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) 48 CFR 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) 48 CFR Part 7, (HSAR) 48 CFR 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) 48 CFR 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) 48 CFR 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) 48 CFR 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.

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 requires approval one level above the contracting officer.

Subchapter 3047.5 Ocean Transportation by U.S.-Flag Vessels

3047.506 Procedures.

(c) The Maritime Administration (MARAD) address is: Director, Office of Cargo Preference, (MAR-590), 400 Seventh Street, S.W., Washington, D. C., 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 vessels 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; and
(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**
	3048.7000	Value Engineering Report Submissions.

3048.001 Definitions.

For purposes of this manual, the definition at (FAR) 48 CFR 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) 48 CFR 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 Officer (COCO) is authorized to make the cost determination at

(FAR) 48 CFR 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) 48 CFR Part 48 under (FAR) 48 CFR 48.201(a)(6). The CPO is authorized to exempt contract actions on a class basis. Submit requests per (HSAR) 48 CFR 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 CFR 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 CFR 48.202.

Subchapter 3048.70 Annual Value Engineering Report

3048.7000 Value Engineering Report Submissions.

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 to OMB. HCAs are required to submit a report of value engineering results by December 7th of each year, to the Acquisition Program Management Division (APMD), Office of the Chief Procurement Officer (OCPO), with a copy to the respective Desk Officer. 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. OCPO will forward the consolidated DHS report to OMB by December 31st. Negative reports are required.

CHAPTER 3049 TERMINATION OF CONTRACTS

Subchapter 3049.1 General Principles
3049.106 Fraud or other criminal conduct.
3049.111 Review of proposed settlements.

Subchapter 3049.1 General Principles

3049.106 Fraud or other criminal conduct.

The Termination Contracting Officer (TCO) shall submit the report required by (FAR) 48 CFR 49.106, along with supporting documentation, to legal counsel and the Office of the Inspector General (OIG) for review and concurrence prior to submission to the HCA.

3049.111 Review of proposed settlements.

All proposed settlement agreements shall be reviewed by counsel for legal sufficiency.

CHAPTER 3050 EXTRAORDINARY CONTRACTUAL ACTIONS

Subchapter 3050.2 Delegation of and Limitations on Exercise of Authority
3050.201 Delegation of authority.

Subchapter 3050.4 Residual Powers
3050.401 Standards for use.

Subchapter 3050.2 Delegation of and Limitations on Exercise of Authority

3050.201 Delegation of authority.

The authority of the Secretary is retained at the Agency head level.

Subchapter 3050.4 Residual Powers

3050.401 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) 48 CFR Subpart 50.4. Contracting officers shall not include in solicitations or contracts the clause at (FAR) 48 CFR 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 for appropriate coordination with the DHS Office of General Counsel before transmittal to the Secretary. A copy of any Component requests for indemnification shall be transmitted to the Office of the Chief Procurement Officer (OCPO).

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.
	3053.203-71	Source selection information.
	3053.205-70	Contract award notification.
	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.
	3053.222-70	Summary of underpayments.
	3053.232-70	Contract financing.
	3053.236-70	Construction and architect-engineer contracts.

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; and
DHS Form 700-22, Small Business Review.

(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(a)(1).

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.

3053.222-70 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.

Form Name	Form Number	Forms files
Preconstruction Conference Agenda and Checklist	DHS 700-11	DHS-700-11.pdf
Determination of Prospective Contractor Responsibility	DHS 700-12	DHS-700-12.pdf
Cover Page Source Selection Information	DHS 700-13	DHS-700-13.pdf
Cover Page Proprietary Information	DHS 700-14	DHS-700-14.pdf
Simplified Acquisition Summary and Continuation Sheet	DHS 700-16	DHS-700-16.pdf
Weighted Guidelines Profit/Fee Objective	DHS 700-17	DHS-700-17.pdf
Contract Facilities Capital and Cost of Money	DHS 700-18	DHS-700-18.pdf
Summary of Underpayments	DHS 700-19	DHS-700-19.pdf
Procurement Request and Continuation Sheet	DHS 700-20	DHS-700-20.pdf
Material Inspection and Receiving Report and Continuation Sheet	DHS 700-21	DHS-700-21.pdf
Small Business Review Form	DHS 700-22	DHS-700-22.pdf
Contract Award Notification	DHS 2140-1	DHS 2140.1.doc