Department of Homeland Security Acquisition Regulation

JUNE 2006

HSAR - RECORD OF NOTICES		
HSAR NOTICE NUMBER	**DATE OF CHANGE**	**PAGE NUMBERS CHANGED**
Technical Amendment 71 FR 48800	August 22, 2006	1-3 to 1-7, 2-1 to 2-3, 3-2, 6-1, 11-2, 16-2, 17-1, 22-1, 23-1, 24-1, 27-1, 28-2, 31-1, 35-1, 42-1, 52-2, 52-4, 52-6, and 53-1
Final Rule 72 FR 24536	May 3, 2007	1-2, 1-3, 2-1, 2-3, and 33-1.
Final Rule 73 FR 24881	May 6, 2008	36-1
Final Rule 73 FR 30317	May 27, 2008	1-2, 1-3, 2-1, 13-1
Interim Rule 74 FR 41346; HSAR Deviations 08-03; 09-01 and 09-02	August 17, 2009	25-1 to 25-4; and 52-1 to 52-37; 9-1 to 9-2, 36-1; 42-1, 45-1; 52-7, 52-36; 53-1 to 53-2;
Final Rule 74 FR 58851 and 66584 (FPS)	December 16, 2009	9-1 to 9-10; 25-1 to 25-4; 52-1 to 52-5
Interim Rule 75 FR 41097-41101	July 15, 2010	2-2; 7-1; 9-1; 9-10 to 9-12; 16-1; 34-1; 35-1; and, 52-10 to 52-13
Rescission of HSAR Class Deviation 09-02	October 21, 2011	9-1 through 9-4; 52-1; and 52-7 through 52-10
Final Rule (HSAR Revision Initiative) 77 FR 50631 - 50637	September 21, 2012	1-2 through 1-6; 2-1 through 2-3; 3-1 through 3-3; 4-1 through 4-2; 5-1; 6-1 through 6-3; 12-1; 18-1; 22-2; 23-1 through 23-2; 33-1; 35-1 through 35-2; 36-1; 42-1; 45-1; 52-1 through 52-3; 52-5 through 52-8; 52-21 through 52.24; 52-48 through 52-49; and, 53-1 through 53-2.

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Subpart 3001.1 Purpose, Authority, Issuance

3001.101 Purpose.

The Department of Homeland Security Acquisition Regulation (HSAR) establishes uniform acquisition policies and procedures, which implement and supplement the Federal Acquisition Regulation (FAR).

3001.102 Statement of Guiding Principles for the Federal Acquisition System.

(d) The FAR and this supplement are to be interpreted permissively, if consistent with statutory and regulatory requirements, policy, and sound professional judgment.

3001.103 Authority.

The HSAR is issued by DHS's Chief Procurement Officer, who is the Senior Procurement Executive (SPE), see 41 U.S.C. 1702 and DHS Delegation Number 0702, under authority of 5 U.S.C. 301-302, the Office of Federal Procurement Policy Act, Pub. L. No. 93-400, 88 Stat. 796 (1974), including sections 22 and 25, 41 U.S.C. 1707, 1302 and 1303, and (FAR) 48 CFR part 1, subpart 1.3.

3001.104 Applicability.

(a) The following order of precedence applies to resolve any acquisition regulation or procedural inconsistency found within HSAR or the Homeland Security Acquisition Manual (HSAM):

(1) Statute;
(2) FAR or other applicable regulation or Executive Order;
(3) HSAR;
(4) Department of Homeland Security (DHS) Directives; and
(5) HSAM (which establishes uniform DHS-wide acquisition procedures).

(b) The Transportation Security Administration (TSA) exception to this regulation is authorized by the Aviation and Transportation Security Act of 2001 (ATSA) (section 101(a) of Public Law 107-71, as implemented at section 114(o) of title 49) for contracts awarded by TSA pursuant to this ATSA authority. The Consolidated Appropriations Act of 2008, Public Law 110-161, Division E, Title V, section 568 eliminates ATSA section 114(o) effective June 23, 2008. Accordingly, TSA acquisitions initiated after June 22, 2008 are subject to 48 CFR Chapters 1 and 30.

(c) Contracts involving Non-Appropriated Fund Instrumentalities (NAFIs) must contain suitable dispute provisions and may provide for appellate dispute jurisdiction in the Civilian Board of Contract Appeals (CBCA). However, the contract must not attempt to confer court jurisdiction that does not otherwise exist.

(d) The FAR and HSAR may be followed, where feasible, for:

(1) No-cost contracts;
(2) Concession contracts; and

(3) Contracts on behalf of NAFIs entered into by appropriated fund contracting officers.

3001.105 Issuance.

3001.105-1 Publication and code arrangement.

(a) The HSAR is published in:
(1) The **Federal Register** and
(2) Cumulated form in the Code of Federal Regulations (CFR).

3001.105-2 Arrangement of regulations.

(a) General. The HSAR, which encompasses both Department-wide and Component-unique guidance, conforms to the arrangement and numbering system prescribed by (FAR) 48 CFR 1.105-2. Guidance that is unique to a Component contains the organization's acronym or abbreviation directly following the title. The following acronyms and abbreviations apply:

DHS Management (MGMT), including the Office of Procurement Operations (OPO) and the Office of Selective Acquisitions (OSA);
Federal Emergency Management Agency (FEMA);
Federal Law Enforcement Training Center (FLETC);
Transportation Security Administration (TSA);
U.S. Coast Guard (USCG);
U.S. Customs and Border Protection (CBP);
U.S. Immigration and Customs Enforcement (ICE); and
U.S. Secret Service (USSS).

3001.105-3 Copies.

Official versions of the HSAR are available in the Code of Federal Regulations, as supplemented and revised from time to time by the Federal Register, both of which are available from the Government Printing Office in paper and electronic form. The HSAR is also available in electronic form at http://www.dhs.gov. A convenient but unofficial up-to-date version of the HSAR is also available from the Government Printing Office at http://www.gpoaccess.gov/ecfr/index.html. The Homeland Security Acquisition Manual (HSAM), which complements the HSAR, can also be found at http://www.dhs.gov.

3001.106 OMB Approval under the Paperwork Reduction Act.

(a) The Office of Management and Budget (OMB) has assigned the following control numbers that must appear on the upper right-hand corner of the face page of each solicitation, contract, modification, and order:

OMB Control No. 1600-0002 (Contract related forms)
OMB Control No. 1600-0005 (Offeror submissions)

OMB Control No. 1600-0003 (Contractor submissions)
OMB Control No. 1600-0004 (Protests)

(b) OMB regulations and OMB's approval and assignment of control numbers are conditioned upon not requiring more than three copies (including the original) of any document of information. OMB has granted a waiver to permit the Department to require up to eight copies of proposal packages, including proprietary data, for solicitations, provided that contractors who submit only an original and two copies will not be placed at a disadvantage.

Subpart 3001.3 Agency Acquisition Regulations

3001.301 Policy.

(a)(1) The HSAR is issued for Departmental guidance according to the policy cited in (FAR) 48 CFR 1.301. The HSAR establishes uniform Department of Homeland Security policies and procedures for all acquisition activities within the Department of Homeland Security. Component supplemental acquisition regulations to be inserted in the HSAR as a HSAR supplement regulation must be reviewed and approved by the Chief Procurement Officer (CPO) before the CPO authorizes and submits the proposed content for publication in the Federal Register under (FAR) 48 CFR part 1, subparts 1.3 and 1.5.

(2)(i) The CPO is authorized to issue internal agency guidance at any organizational level. Department-wide procedures are contained in the HSAM. The HCA may implement internal procedures or supplement the FAR, HSAR, or HSAM as provided in HSAM 3001.3. The HCA may issue procedures or delegate this authority to any organizational level deemed appropriate. Component procedures may be more restrictive or require higher approval levels than those permitted by the HSAM, unless otherwise specified.

(ii) Individuals granted authority in the HSAR may delegate that authority, unless the FAR or HSAR specifically state that the authority is not delegable.

(b) The Under Secretary of Management established procedures through Management Directive (MD) 0490.1, entitled Federal Register Notice and Rules, to ensure that agency acquisition regulations are published for comment in the Federal Register in conformance with FAR procedures at (FAR) 48 CFR Subpart 1.5.

3001.301-70 Amendment of HSAR.

(a) Requests for changes to the regulation may be recommended by DHS personnel, other Government agencies, or the public. Change requests are to be submitted in the following format to the Department of Homeland Security, ATTN: Office of the Under Secretary of Management, Chief Procurement Officer, Washington, DC 20528.

(1) Problem: Succinctly state the problem(s) created by current HSAR requirements or

processes and describe the factual or legal reasons for requesting a regulatory change.

(2) Recommendation: Identify the recommended change by using the current language and lining through the words to be deleted and inserting proposed language in brackets. If the change is extensive, deleted language may be displayed by forming a box with diagonal lines connecting the corners.

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

(4) Point of Contact: Provide a point of contact for answering questions regarding the recommendation, along with a telephone number, e-mail or other method of reaching the contact.

(b) The HSAR is maintained by the CPO through the HSAR/HSAM change process (i.e., input from various Components including representatives specifically designated to formulate Departmental acquisition policies and procedures).

(1) Homeland Security Acquisition Circular (HSAC). HSAC (see (HSAR) 48 Chapter 3001.301-72) will be used to amend (HSAR) 48 Chapter 30.

(2) HSAR Notices will be issued (with a specified expiration date) when interim guidance is necessary under any of the following circumstances:

(i) To promulgate, as rapidly as possible, selected material in a general or narrative manner, in advance of a HSAC issuance;

(ii) To disseminate other acquisition related information; or

(iii) To issue guidance that is expected to be effective for a period of 1 year or less.

3001.301-71 Effective date.

Unless otherwise stated**:**

(a) HSAR changes apply to solicitations issued on or after the effective date of the change;

(b) Contracting officers may, at their discretion, amend solicitations issued before the effective date to include HSAR changes, provided award of the resulting contract(s) will occur on or after the effective date; and

(c) When required by law, contracting officers must modify existing contracts to include HSAR changes. Otherwise, and where feasible, contracting officers should consider

using the Changes clause or other suitable authority, to modify existing contracts to include HSAR changes.

3001.301-72 HSAC or HSAR Notice numbering.

HSACs and HSAR Notices will be numbered consecutively on a fiscal year basis beginning with number "01" prefixed by the last two digits of the fiscal year (e.g., HSAR Notices 03-01 and 03-02 indicate the first two HSAR Notices issued in fiscal year 2003).

3001.303 Publication and codification.

(a) The HSAR is issued as chapter 30 of Title 48 of the CFR.

(1) The FAR numbering illustrations at (FAR) 48 CFR 1.105-2 apply to the HSAR.

(2) Coverage within HSAR 48 CFR chapter 30 is identified by the prefix "30" followed by the complete FAR cite which may extend downward to the subparagraph level (e.g., (HSAR) 48 CFR 3001.101).

(3) Coverage in HSAR chapter 30 that supplements the FAR will use part, subpart, section, and subsection numbers ending in "70" through "89". A series of numbers beginning with "70" is used for provisions and clauses (e.g., (HSAR) 48 CFR 3001.301-70).

(4) Coverage in HSAR 48 CFR chapter 30, other than that identified with a "70" or higher number, which implements the FAR uses the identical number sequence and caption of the FAR segment being implemented which may extend downward to the subparagraph level. Subparagraph numbers/letters may not be shown as sequential, but may be shown by the specific paragraph/subparagraph implemented from the FAR (e.g., (HSAR) 48 CFR 3003.301 contains subparagraphs (a) and (b) because only these subparagraphs, correlating to FAR, are being supplemented by (HSAR) 48 CFR chapter 30).

(5) Component-unique guidance. Supplementary material for which there is no counterpart in the FAR or HSAR shall be identified using chapter, part, subpart, section, or subsection numbers of "90" and up (e.g., the U.S. Coast Guard's acronym is "USCG"; an USCG-unique clause pertaining to "Inspection and/or Acceptance" would be designated "USCG 3052.246-90").

(6) References and citations. Cross references to the FAR in the HSAR will be cited by "FAR" followed by the FAR numbered cite, and cross reference to the HSAM in the HSAR will be cited by "HSAM" followed by the HSAM numbered cite.

(7) Department/agency and Component supplements must parallel the FAR and HSAR numbering, except department/agency supplemental numbering uses subsection numbering of 90 and up, instead of 70 and up.

TABLE 1-1, HSAR NUMBERING		
FAR	Is Implemented As	Is Supplemented As
19	3019	3019.70
19.5	3019.5	3019.570
19.501	3019.501	3019.501-70
19.501-1	3019.501-1	3019.501-170

3001.304 Agency control and compliance procedures.

(a) The HSAR is under the direct oversight and control of the Department of Homeland Security, Office of the Chief Procurement Officer (OCPO), which is responsible for evaluation, review, and issuance of all Department-wide acquisition regulations and guidance. Each HCA may supplement the HSAR with Component guidance. Supplementation should be kept to a minimum. Components proposing to issue regulatory supplements or use solicitation or contract clauses on a repetitive basis must obtain legal review by the Component's legal counsel and forward supplements to the CPO for concurrence prior to publication in the Federal Register.

(c) The CPO is responsible for evaluating all regulatory coverage in agency acquisition regulations to determine if the substance could apply to other agencies and to make recommendation for inclusion in the FAR.

Subpart 3001.4 Deviations from the FAR and HSAR.

3001.403 Individual deviations.

Unless precluded by law, executive order, or other regulation, the HCA is authorized to approve individual deviations (except with respect to (FAR) 48 CFR 30.201-3, 30.201-4; the requirements of the Cost Accounting Standards board rules and regulations at 48 CFR Chapter 99 (FAR Appendix); and Part 50). Submit requests per (HSAR) 48 CFR 3001.7000, including complete documentation of the justification for the deviation (See HSAM 3001.403)

3001.404 Class deviations.

(a) Unless precluded by law, executive order, or other regulation, the CPO is authorized to approve FAR class deviations except (FAR) 48 CFR 30.201-3, and 30.201-4 (the requirements of the Cost Accounting Standards); 48 CFR Chapter 99 (FAR Appendix); and Part 50). Prior to authorizing a FAR class deviation, the CPO shall consult with the chairperson of the Civilian Agency Acquisition Council (CAA Council), unless the CPO

determines that urgency precludes such consultation. FAR class deviation requests shall be submitted to the CPO per (HSAR) 48 CFR 3001.7000 (a) including complete documentation of the justification for the deviation, and the estimated number and type of contract actions affected. The CPO will transmit a copy of each approved FAR deviation to the FAR Secretariat.

Subpart 3001.6 Career Development, Contracting Authority, and Responsibilities

3001.601 General.

DHS Delegation Number 0200.1, Delegation to the Directorate of Management, delegates authority from the Secretary to the Under Secretary of Management to manage the acquisition function. DHS Delegation 0700, Delegation to the Chief Procurement Officer for Acquisition and Financial Assistance Management, delegates this authority from the Under Secretary of Management to the Chief Procurement Officer.

3001.602 Contracting officers.

3001.602-3 Ratification of unauthorized commitments.

DHS policy requires that acquisitions be made only by Government officials having authority to enter into such acquisitions. Acquisitions made by other than authorized personnel are contrary to Departmental policy and may be considered matters of serious misconduct on the part of an employee making an unauthorized commitment, and may result in disciplinary action being taken against an employee who makes an unauthorized commitment.

3001.603 Selection, appointment, and termination of appointment.

3001.603-1 General.

Under DHS Delegations, the Heads of the Contracting Activity (HCA), with authority to redelegate no lower than the Chief of the Contracting Office (COCO), are authorized to select and appoint contracting officers and terminate their appointment.

Subpart 3001.7 Determinations and Findings

3001.704 Content.

The following format shall be used for all determinations and findings (D&Fs), unless otherwise specified in the FAR or the HSAR. The contracting officer is responsible for preparing D&Fs, and requirements and technical personnel are responsible for the accuracy and adequacy of the supporting factual information, which shall be furnished to the contracting officer.

Insert specific information indicated in brackets.

Determination and Findings

Under [insert citation for appropriate statutory and/or regulatory basis for D&F], the Department of Homeland Security, [insert contracting activity], is granted authority to [insert nature and/or description of the action being approved].

Findings

[Findings that detail the particular circumstances, facts, or reasoning essential to support the determination.]

Determination

[A determination, based on the findings, that the proposed action is justified under the applicable statute or regulation.]

[Expiration date of the D&F, if required.]

[Signature of authorized official] [month, day, and year]
Name and Title Date

Subpart 3001.70 Other Determinations, Waivers, Exceptions, Approvals, Reviews, and Submittals

3001.7000 Coordination and approval.

Documents requiring CPO approval.

Requests shall be prepared in writing by the contracting officer and submitted through the HCA to the CPO for approval.

3001.7001 Content.

The general format at (HSAR) 48 CFR 3001.704 shall be used to provide a justification to support the requested determination, waiver, exception or approval.

PART 3002 DEFINITIONS OF WORDS AND TERMS

Subpart 3002.1 Definitions
3002.101 Definitions.

Subpart 3002.2 Abbreviations
3002.270 Abbreviations.

3002.101 Definitions.

Chief Information Officer (CIO) means the Director of the Office of the CIO.

Chief of the Contracting Office (COCO) means the individual(s) responsible for managing the contracting office(s) within a Component.

Chief Procurement Officer (CPO) means the Senior Procurement Executive (SPE).

Component means the following entities for purposes of this chapter:

(1) DHS Management (MGMT), including the Office of Procurement Operations (OPO) and the Office of Selective Acquisitions (OSA);
(2) Federal Emergency Management Agency (FEMA);
(3) Federal Law Enforcement Training Center (FLETC);
(4) Transportation Security Administration (TSA);
(5) U.S. Coast Guard (USCG);
(6) U.S. Customs and Border Protection (CBP);
(7) U.S. Immigration and Customs Enforcement (ICE); and
(8) U.S. Secret Service (USSS).

Contracting activity includes all the contracting offices within a Component and is the same as the term "procuring activity."

Contracting officer means an individual authorized by virtue of position or by appointment to perform the functions assigned by the Federal Acquisition Regulation and the Homeland Security Acquisition Regulation.

Head of the Agency means the Secretary of the Department of Homeland Security, or, by delegation, the Under Secretary of Management.

Head of the Contracting Activity (HCA) means the official who has overall responsibility for managing the contracting activity. For DHS, the HCAs are:

(1) Director, Office of Procurement Operations (OPO);
(2) Director, Office of Selective Acquisitions (OSA);
(3) Director, Office of Acquisition Management (FEMA);
(4) Chief, Procurement Division (FLETC);

(5) Assistant Administrator for Acquisition (TSA);
(6) Director of Contracting and Procurement (USCG);
(7) Executive Director, Procurement (CBP);
(8) Director, Office of Acquisition Management (ICE); and
(9) Chief, Procurement Operations (USSS).

Legal counsel means the Department of Homeland Security Office of General Counsel or Component office providing legal services to the contracting organization.

Legal review means review by legal counsel**.**

Major system means, for DHS, that combination of elements that will function together to produce the capabilities required to fulfill a mission need, including hardware, equipment, software, or any combination thereof, but excluding construction or other improvements to real property. A DHS major system is one where the total lifecycle costs for the system are estimated to equal or exceed $300M (in constant 2009 dollars), or if the Deputy Secretary has designated a program or project as a major system. This corresponds to a DHS level 1 or 2 capital investment acquisition.

Micro-purchase threshold is defined as in (FAR) 48 CFR 2.101, except when (HSAR) 48 CFR 3013.7003(a) applies.

Senior Procurement Executive (SPE) for the Department of Homeland Security means the DHS Chief Procurement Officer (CPO), who is the individual appointed pursuant to 41 U.S.C. 1702 to be responsible for management direction of the procurement system of DHS, including implementation of the unique procurement policies, regulations, and standards of DHS .

*Sensitive Information***,** as used in this chapter, means any information which if lost, misused, disclosed, or, without authorization, is accessed or modified, could adversely affect the national or homeland security interest, the conduct of Federal programs, or the privacy to which individuals are entitled under 5 U.S.C. 552a (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense, homeland security or foreign policy. This definition includes the following categories of information:

(1) Protected Critical Infrastructure Information (PCII) as set out in the Critical Infrastructure Information Act of 2002 (Title II, Subtitle B, of the Homeland Security Act, Public Law 107-296, 196 Stat. 2135), as amended, the implementing regulations thereto (Title 6, Code of Federal Regulations, Part 29) as amended, the applicable PCII Procedures Manual, as amended, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security (including the PCII Program Manager or his/her designee);

(2) Sensitive Security Information (SSI), as defined in Title 49, Code of Federal

Regulations, Part 1520, as amended, "Policies and Procedures of Safeguarding and Control of SSI," as amended, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security (including the Assistant Secretary for the Transportation Security Administration or his/her designee);

(3) Information designated as "For Official Use Only," which is unclassified information of a sensitive nature and the unauthorized disclosure of which could adversely impact a person's privacy or welfare, the conduct of Federal programs, or other programs or operations essential to the national or homeland security interest; and

(4) Any information that is designated "sensitive" or subject to other controls, safeguards or protections in accordance with subsequently adopted homeland security information handling procedures.

Subpart 3002.2 Abbreviations

Subpart 3002.270 Abbreviations.

CBCA Civilian Board of Contract Appeals
CFO Chief Financial Officer
CIO Chief Information Officer
COCO Chief of the Contracting Office
COR Contracting Officers Representative
COTR Contracting Officer's Technical Representative
CPO Chief Procurement Officer
D&F Determination and Findings
FOIA Freedom of Information Act
HCA Head of the Contracting Activity
J & A Justification and Approval for Other than Full and Open Competition
KO Contracting officer
MD Management Directive
OCPO Office of the Chief Procurement Officer
OIG Office of the Inspector General
OSDBU Office of Small and Disadvantaged Business Utilization
PCR SBA's Procurement Center Representative
RFP Request for Proposal
SBA Small Business Administration
SBS Small Business Specialist
SPE Senior Procurement Executive

PART 3003 IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 3003.1 Safeguards
3003.101 Standards of conduct.
3003.101-3 Agency regulations.

Subpart 3003.2 Contractor Gratuities to Government Personnel
3003.203 Reporting suspected violations of the Gratuities clause.
3003.204 Treatment of violations.

Subpart 3003.3 Reports Of Suspected Antitrust Violations
3003.301 General.

Subpart 3003.4 Contingent Fees
3003.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

Subpart 3003.5 Other Improper Business Practices
3003.502 Subcontractor kickbacks.
3003.502-2 Subcontractor kickbacks.

Subpart 3003.9 Whistleblower Protections for Contractor Employees
3003.901 Definitions.

Subpart 3003.10 Contractor Code of Business Ethics and Conduct
3003.1003 Requirements.
3003.1004 Contract clauses.

Subpart 3003.1 Safeguards

3003.101 Standards of conduct.

3003.101-3 Agency regulations.

The United States Office of Government Ethics has promulgated regulations applicable to the entire Executive Branch that address the conduct matters referenced in (FAR) 48 CFR 3.101-3. *See* 5 CFR vol. 3, ch. XVI, subch. B. The Department of Homeland Security has also issued Management Directive 0480.1, Ethics/Standards of Conduct.

Subpart 3003.2 Contractor Gratuities to Government Personnel

3003.203 Reporting suspected violations of the Gratuities clause.

(a) Suspected violations shall be reported to the contracting officer responsible for the acquisition (or the COCO if the contracting officer is suspected of the violation). The

contracting officer (or the COCO) shall obtain from the person reporting the violation, and any witnesses to the violation, the following information:

(1) The date, time, and place of the suspected violation;
(2) The name and title (if known) of the individual(s) involved in the violation; and
(3) The details of the violation (e.g., the gratuity offered or intended) to obtain a contract or favorable treatment under a contract.
(4) The person reporting the violation and witnesses (if any) shall be requested to sign and date the information certifying that the information furnished is true and correct. (b) The contracting officer shall submit the report to the COCO (unless the alleged violation was directly reported to the COCO) and the Head of the Contracting Activity (HCA) for further action. The COCO and HCA will determine, with the advice of Component legal counsel, whether the case warrants submission to the OIG, or other investigatory organization.

3003.204 Treatment of violations.

(a) The HCA is the official designated to make the determination under (FAR) 48 CFR 3.204(a) whether a gratuities violation has occurred. If the HCA has been personally and substantially involved in the specific procurement, the advice of legal counsel should be sought to determine whether the CPO should designate an alternate decision maker.

(b) The HCA shall ensure that the hearing procedures required by (FAR) 48 CFR 3.204(b) are afforded to the contractor. Legal counsel shall be consulted regarding the appropriateness of the hearing procedures that are established.

(c) If the HCA determines that the alleged gratuities violation occurred the HCA shall consult with legal counsel regarding appropriate action and notify the Office of Inspector General.

Subpart 3003.3 Reports Of Suspected Antitrust Violations

3003.301 General.

(b) The procedures at (HSAR) 48 CFR 3003.203 shall be followed for suspected antitrust violations, except reports of suspected antitrust violations shall be coordinated with legal counsel for referral to the Department of Justice, if deemed appropriate.

Subpart 3003.4 Contingent Fees

3003.405 Misrepresentations or violations of the Covenant Against Contingent Fees.

(a) The procedures at (HSAR) 48 CFR 3003.203 shall be followed for misrepresentation or violations of the covenant against contingent fees. (b)(4) The procedures at (HSAR) 48 CFR 3003.203 shall be followed for misrepresentation or violations of the covenant against contingent fees, except reports of misrepresentation or violations of the covenant

against contingent fees shall be coordinated with legal counsel for referral to the Department of Justice, if deemed appropriate.

Subpart 3003.5 Other Improper Business Practices

3003.502 Subcontractor kickbacks.

3003.502-2 Subcontractor kickbacks.

(g) The DHS OIG shall receive the prime contractor or subcontractors written report.

Subpart 3003.9 Whistleblower Protections for Contractor Employees

3003.901 Definitions.

Authorized official of an agency means the Department of Homeland Security's CPO.

Subpart 3003.10 Contractor Code of Business Ethics and Conduct

3003.1003 Requirements.

(a) Contractor requirements. Contractors making written disclosures under the clause at (FAR) 48 CFR 52.203-13 must use the electronic Contractor Disclosure Form at http://www.oig.dhs.gov. Contractors making disclosures under contracts which do not contain the clause at (FAR) 48 CFR 52.203-13 are encouraged to also use this electronic form.

3003.1004 Contract clauses.

(a) The contracting officer shall insert the clause at (HSAR) 48 CFR 3052.203-70, Instructions for Contractor Disclosure of Violations, in solicitations and contracts containing the clause at (FAR) 48 CFR 52.203-13.

PART 3004 ADMINISTRATIVE MATTERS

Subpart 3004.1 Contract Execution
3004.103 Contract clause.

Subpart 3004.4 Safeguarding Classified and Sensitive Information within Industry.
3004.470 Security requirements for access to unclassified facilities Information Technology resources and sensitive information.
3004.470-1 Scope.
3004.470-2 Policy.
3004.470-3 Contract clauses.

Subpart 3004.8 Government Contract Files
3004.804 Closeout of contract files.
3004.804-1 Closeout by the office administering the contract.
3004.804-5 Procedures for closing out contract files
3004.804-570 Supporting closeout documents.

Subpart 3004.1 Contract Execution

3004.103 Contract clause.

Insert the clause at (FAR) 48 CFR 52.204-1, Approval of Contract, in each solicitation where approval to award the resulting contract is required above the contracting officer level.

3004.4 Safeguarding Classified and Sensitive Information within Industry.

3004.470 Security requirements for access to unclassified facilities, Information Technology resources, and sensitive information.

3004.470-1 Scope.

This section implements DHS's policies for assuring the security of unclassified facilities, Information Technology (IT) resources, and sensitive information during the acquisition process and contract performance.

3004.470-2 Policy.

(a) DHS's policies and procedures on contractor personnel security requirements are set forth in various management directives (MDs), Directives, and Instructions. MD 11042.1, Safeguarding Sensitive But Unclassified (For Official Use Only) Information describes how contractors must handle sensitive but unclassified information. The DHS Sensitive Systems Policy Directive 4300A and the DHS 4300A Sensitive Systems Handbook, provide the policies and procedures on security for Information Technology resources. Compliance with these policies and procedures, as amended, is required.

(b) The contractor must not use or redistribute any DHS information processed, stored, or transmitted by the contractor except as specified in the contract.

3004.470-3 Contract clauses.

(a) Contracting officers shall insert a clause substantially the same as the clause at (HSAR) 48 CFR 3052.204-70, Security Requirements for Unclassified Information Technology Resources, in solicitations and contracts that require submission of an IT Security Plan.

(b) Contracting officers shall insert the basic clause at (HSAR) 48 CFR 3052.204-71, Contractor Employee Access, in solicitations and contracts when contractor employees require recurring access to Government facilities or access to sensitive information. Contracting officers shall insert the basic clause with its Alternate I for acquisitions requiring contractor access to IT resources. For acquisitions in which the contractor will not have access to IT resources, but the Department has determined contractor employee access to sensitive information or Government facilities must be limited to U.S. citizens and lawful permanent residents, the contracting officer shall insert the clause with its Alternate II. Neither the basic clause nor its alternates shall be used unless contractor employees will require recurring access to Government facilities or access to sensitive information. Neither the basic clause nor its alternates should ordinarily be used in contracts with educational institutions.

Subpart 3004.8 Government Contract Files

3004.804 Closeout of contract files.

3004.804-5 Procedures for closing out contract files.

3004.804-570 Supporting closeout documents.

(a) When applicable and prior to contract closure, the contracting officer shall obtain the listed DHS and Department of Defense (DOD) forms from the contractor for closeout.

(1) DHS Form 700-3, Contractor's Release (e.g., see (FAR) 48 CFR 52.216-7);

(2) DHS Form 700-2, Contractor's Assignment of Refunds, Rebates, Credits and Other Amounts (e.g., see (FAR) 48 CFR 52.216-7);

(3) DHS Form 700-1, Cumulative Claim and Reconciliation Statement (e.g., see (FAR) 48 CFR 4.804-5(a)(13)); and

(4) DD Form 882, Report of Inventions and Subcontracts (e.g., see (FAR) 48 CFR 52.227-14).

(b) The forms listed in this section (see (HSAR) 48 CFR Part 3053) are used primarily for the closeout of cost-reimbursement, time-and-materials, and labor-hour contracts. The forms may also be used for closeout of other contract types to protect the Government's interest.

PART 3005 PUBLICIZING CONTRACT ACTIONS

Subpart 3005.4 Release of Information
3005.402 General Public.
3005.470 Contractor award announcements, advertisements, and releases.
3005.470-1 Policy.
3005.470-2 Contract clauses.

Subpart 3005.90 Publicizing Contract Actions for Personal Services Contracting
3005.9000 Applicability (USCG).

Subpart 3005.4 Release of Information

3005.402 General public.

Requests for other specific records information shall be processed according to the DHS Freedom of Information Act rules and regulations (HSAR) 48 CFR 3024.203.

Subpart 3005.470 Contractor award announcements, advertisements, and releases.

3005.470-1 Policy.

(a) DHS policy requires its contracting officers to restrict DHS contractors from referring to its DHS contract(s) in commercial advertising in a manner that states or implies the Government approves or endorses the contractor's products or services or considers them superior to other products or services. The intent of this policy is to prevent the appearance of Government bias toward any product or service.

(b) The Department's contractors share the responsibility for protecting sensitive and classified information related to efforts under their contracts. For any contract that involves sensitive or classified information, prior to the release of any contract award announcement, advertisement, or other release of information pertaining to the contract, the contractor must obtain the approval of the responsible contracting officer.

3005.470-2 Contract clauses.

(a) Insert the clause at (HSAR) 48 CFR 3052.205-70, Advertisements, Publicizing Awards, and Releases, in all solicitations and contracts that exceed the simplified acquisition threshold.

(b) Except for research contracts with educational institutions, if the contract involves sensitive or classified information, use the clause with its Alternate I. For research contracts with educational institutions, see (HSAR) 48 CFR 3035.70-2(b).

Subpart 3005.90 Publicizing Contract Actions for Personal Services Contracting.

3005.9000 Applicability (USCG).

Contracts awarded by the U.S. Coast Guard using the procedures in (HSAR) 48 CFR 3037.104-91 are expressly authorized under 10 U.S.C. 1091, as amended by section 1512(d) of the Homeland Security Act, 6 U.S.C. 552(d), and are exempt from the requirements of (FAR) 48 CFR Part 5.

PART 3006 COMPETITION REQUIREMENTS

Subpart 3006.1 Full and Open Competition
3006.101 Policy.
3006.101-70 Definitions.

Subpart 3006.2 Full and Open Competition After Exclusion of Sources
3006.202 Establishing or maintaining alternative sources.

Subpart 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.
3006.302-270 Unusual and compelling urgency.
3006.302-7 Public interest.
3006.303 Justifications.
3006.303-270 Content.
3006.304 Approval of justification.
3006.304-70 DHS Approval of justification.

Subpart 3006.5 Competition Advocates
3006.501 Requirements.
3006.502 [Removed]

Subpart 3006.90 Competition Requirements for Personal Services Contracting
3006.9000 Applicability (USCG).

Subpart 3006.1 Full and Open Competition Subpart

3006.101 Policy.

Subpart 3006.101-70 Definitions.

As used in this part:

Agency competition advocate means an individual designated by the Chief Procurement Officer (CPO) to perform, at a minimum, the functions under (FAR) 48 CFR 6.502(b) and is synonymous with "Departmental Competition Advocate" and "Senior Competition Advocate (SCA)."

Competition advocate for the procuring activity means the individual who has been designated by the Component to approve Justifications and Approvals (J & A) for other than full and open competition as permitted by the (FAR) 48 CFR 6.304 and to perform the duties and responsibilities assigned under (FAR) 48 CFR 6.502 . This term is synonymous with “procuring activity competition advocate.”

Subpart 3006.2 Full and Open Competition After Exclusion of Sources

3006.202 Establishing or maintaining alternative sources.

(b)(1) The HCA is delegated authority to approve a D&F in support of a contract action award under the authority of (FAR) 48 CFR 6.202(a). Submit D&F in the format per (HSAR) 48 CFR 3001.704.

Subpart 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 contracting officer may rely on this exception in the case where only one source is available to provide additional units or replacement items under a specific make and model requirement, but only where the CPO has determined in accordance with the agency's standardization program that only the specific make(s) and model(s) will satisfy the agency's needs.

3006.302-270 Unusual and compelling urgency.

(d)(1)(iii) For contract awards to facilitate the response to or recovery from a natural disaster, act of terrorism, or other man-made disaster, that relies on this exception, the period of performance shall be limited to the minimum period necessary to meet the urgent and compelling requirements of the work to be performed and to enter into another contract for the required goods or services through the use of competitive procedures, but in no event shall the period of performance exceed 150 days, unless the Head of the Contracting Activity (or higher approval authority if required by (FAR) 48 CFR 6.304 or DHS procedures) determines that exceptional circumstances apply, approving the justification as set forth in (HSAR) 48 CFR 3006.304. The limitation on the period of performance applies to contracts awarded in response to, or to recovery from:

(A) A major disaster or emergency declared by the President under Title IV or Title V of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121-5207) (see http://www.fema.gov/news/disasters.fema#sev2 for a list of declarations);

(B) An uncontrolled fire or fire complex, threatening such destruction as would constitute a major disaster, and for which the Federal Emergency Management Agency has approved a fire management assistance declaration in accordance with regulatory criteria at 44 CFR 204.21 (see http://www.fema.gov/news/disasters.fema#sev2 for a list of declarations); or

(C) An incident for which the National Operations Center (NOC), through the National Response Coordination Center (NRCC), coordinates the activation of the appropriate Emergency Support Functions and the Secretary of Homeland Security has designated a Federal Resource Coordinator (FRC) to manage Federal resource support.

3006.302-7 Public interest.

(c)(1)(ii) Requests shall be prepared in writing by the contracting officer, using the format found in (HSAR) 48 CFR 3001.704, and submitted through the HCA to the CPO for review and transmittal to the Secretary for approval.

3006.303 Justifications.

3006.303-270 Content.

(a)(9)(iv) For a proposed contract subject to the restrictions of (HSAR) 48 CFR 3006.302-270(d)(1)(iii)and where (FAR) 48 CFR 6.302-2 is cited as the authority, the exceptional circumstances allowing for an award for a period of performance in excess of 150 days.

3006.304 Approval of justification.

3006.304-70 DHS Approval of justification.

A justification for other than full and open competition that cites (FAR) 48 CFR Part 6.302-2 as its authority shall be approved in writing by the HCA (unless a higher approval authority is required in accordance with (FAR) 48 CFR Part 6.304 or DHS procedures) for a proposed DHS 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 in excess of 150 days. The justification should make plain the exceptional circumstances that justify the duration of the contract. This authority may not be redelegated by the HCA.

Subpart 3006.5 Competition Advocates

3006.501 Requirement.

The DHS Senior Competition Advocate (SCA) is located in the Office of the Chief Procurement Officer (OCPO).

3006.502 [Removed]

Subpart 3006.90 Competition Requirements For Personal Services Contracting

3006.9000 Applicability (USCG).

Contracts awarded by the U.S. Coast Guard using the procedures in (HSAR) 48 CFR 3037.104-91 are expressly authorized under Section 1091 of Title 10 U.S.C. as amended, for the Coast Guard and are exempt from the competition requirements of (FAR) 48 CFR Part 6.

PART 3007 ACQUISITION PLANNING

Subpart 3007.1 Acquisition Plans

3007.106 Additional Requirements for Major Systems.
3007.106-70 Limitations on Lead System Integrators.

Subpart 3007.1 Acquisition Plans

3007.106 Additional Requirements for Major Systems.

3007.106-70 Limitations on Lead System Integrators

See (HSAR) 48 CFR 3009.570 for policy applicable to acquisition strategies that consider the use of lead system integrators.

HOMELAND SECURITY ACQUISITION REGULATION
PART 3008
REQUIRED SOURCES OF SUPPLIES AND SERVICES
[RESERVED]

PART 3009 CONTRACTOR QUALIFICATIONS

Subpart 3009.1 Responsible Prospective Contractors

3009.108-70 Prohibition on contracts with corporate expatriates.
3009.108-7001 General.
3009.108-7002 Definitions.
3009.108-7003 Special rules.
3009.108-7004 Waivers.
3009.108-7005 Clause.

3009.170 Reserved.

3009.171 Prohibition on Federal Protective Service guard services contracts with business concerns owned, controlled, or operated by an individual convicted of a felony.
3009.171-1 General.
3009.171-2 Definitions.
3009.171-3 Determination of eligibility for award of FPS guard service contracts.
3009.171-4 Determination of ownership, control, or operation.
3009.171-5 Serious felonies prohibiting award.
3009.171-6 Guidelines for contracting officers.
3009.171-7 Contract award approval procedures for contractors with felony convictions.
3009.171-8 Ineligible contractors.
3009.171-9 Clause.

Subpart 3009.4 Debarment, Suspension, and Ineligibility

3009.470 Reserve Officer Training Corps and Military Recruiting on Campus.
3009.470-1 Definition.
3009.470-2 Policy.
3009.470-3 Procedures.
3009.470-4 Contract clauses.

Subpart 3009.5 Organizational and Consultant Conflicts of Interest

3009.507 Solicitation provision and clause.
3009.507-1 Solicitation provision.
3009.507-2 Contract clause.

Subpart 3009.570 Limitations on contractors acting as lead system integrators

3009.570-1 Definitions.
3009.570-2 Policy.
3009.570-3 Procedures.
3009.570-4 Solicitation provision and contract clause.

Subpart 3009.1 Responsible Prospective Contractors

3009.108-70 Prohibition on contracts corporate expatriates.

3009.108-7001 General.

Except as provided in (HSAR) 48 CFR 3009.108-7004, DHS may not enter into any contract with a foreign incorporated entity which is treated as an inverted domestic corporation under subsection (b) of Section 835 of the Homeland Security Act, 6 U.S.C. 395(b), or any subsidiary of such an entity.

3009.108-7002 Definitions.

As used in this subpart—

Expanded Affiliated Group means an affiliated group as defined in section 1504(a) of the Internal Revenue Code of 1986 (without regard to section 1504(b) of such Code), except that section 1504 of such Code shall be applied by substituting `more than 50 percent' for `at least 80 percent' each place it appears.

Foreign Incorporated Entity means any entity which is, or but for section 835(b) of the Homeland Security Act, 6 U.S.C. 395(b), would be, treated as a foreign corporation for purposes of the Internal Revenue Code of 1986.

Inverted Domestic Corporation. A foreign incorporated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

(1) The entity completes the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership;

(2) After the acquisition at least 80 percent of the stock (by vote or value) of the entity is held—

(i) In the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation; or

(ii) In the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership; and

(3) The expanded affiliated group which after the acquisition includes the entity does not have substantial business activities in the foreign country in which or under the law of

which the entity is created or organized when compared to the total business activities of such expanded affiliated group.

Person, domestic, and foreign have the meanings given such terms by paragraphs (1), (4), and (5) of section 7701(a) of the Internal Revenue Code of 1986, respectively.

3009.108-7003 Special Rules.

The following special rules shall apply when determining whether a foreign incorporated entity should be treated as an inverted domestic corporation.

(a) *Certain stock disregarded*. For the purpose of treating a foreign incorporated entity as an inverted domestic corporation these shall not be taken into account in determining ownership:

(1) Stock held by members of the expanded affiliated group which includes the foreign incorporated entity; or

(2) Stock of such entity which is sold in a public offering related to the acquisition described in subsection (b)(1) of Section 835 of the Homeland Security Act, 6 U.S.C. 395(b)(1).

(b) *Plan deemed in certain cases.* If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is 2 years before the ownership requirements of section 835(b)(2) of the Act are met, such actions shall be treated as pursuant to a plan.

(c) *Certain transfers disregarded.* The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

(d) *Special Rule for Related Partnerships.* For purposes of applying subsection (b) to the acquisition of a domestic partnership, except as provided in regulations, all domestic partnerships which are under common control (within the meaning of section 482 of the Internal Revenue Code of 1986) shall be treated as a partnership.

(e) *Treatment of Certain Rights.*

(1) Certain rights shall be treated as stocks to the extent necessary to reflect the present value of all equitable interests incident to the transaction, as follows:

(i) Warrants;
(ii) Options;
(iii) Contracts to acquire stock;
(iv) Convertible debt instruments;

(v) Others similar interests.

(2) Rights labeled as stocks shall not be treated as stocks whenever it is deemed appropriate to do so to reflect the present value of the transaction or to disregard transactions whose recognition would defeat the purpose of Section 835 of the Act.

3009.108-7004 Waivers.

(a) The Secretary shall waive the provisions of (HSAR) 48 CFR 3009.108-7001 with respect to any specific contract if the Secretary determines that the waiver is required in the interest of national security.

(b) Contractors shall submit waiver requests to the CPO. A copy of the waiver request or the approved waiver shall be attached with the bid or proposal.

3009.108-7005 Clause.

Insert the provision (HSAR) 48 CFR 3052.209-70, Prohibition on Contracts with Corporate Expatriates, in all solicitations and contracts.

Subpart 3009.170 Reserved.

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

3009.171-1 General.

Except as provided in (HSAR) 48 CFR 3009.171-6 and 3009.171-7, Department of Homeland Security (DHS) contracting officers shall not enter into a contract for guard services under the Federal Protective Service (FPS) guard services program with any business concern owned, controlled, or operated by an individual convicted of a serious felony.

3009.171-2 Definitions.

As used in this subpart--
Business concern means a commercial enterprise and the people who constitute it.
Felony means an offense which, if committed by a natural person, is punishable by death or imprisonment for a term exceeding one year.

Convicted of a felony means any conviction of a felony in violation of state or federal criminal statutes, including the Uniform Code of Military Justice, whether entered on a verdict or plea, including a plea of nolo contendere, for which a sentence has been imposed.

Individual means any person, corporation, partnership, or other entity with a legally independent status.

3009.171-3 Determination of eligibility for award of FPS guard service contracts.

(a) Contracting officers shall make a determination of eligibility for award of FPS guard service contracts upon identification of the apparent successful offeror as a result of a solicitation for offers.

(b) Contractors shall be required to immediately notify the contracting officer in writing upon any felony conviction of personnel who own, control or operate a business concern as defined in (HSAR) 48 CFR 3009.171-4 at any time during the duration of an Indefinite Delivery/Indefinite Quantity Contract, Blanket Purchase Agreements, or other contractual instrument that may result in the issuance of task orders or calls, or exercise of an option or options to extend the term of a contract. Upon notification of a felony conviction, the contracting officer shall review and make a new determination of eligibility prior to the issuance of any task order, call or exercise of an option.

3009.171-4 Determination of ownership, control, or operation.

(a) Whether an individual owns, controls, or operates a business concern is determined on the specific facts of the case, with reference to the factors identified in paragraphs (b) and (c) of this subsection. Prior to contract award, such individual must provide any additional documentation to the contracting officer upon the contracting officer's request for the agency's use in determining ownership, control, or operation. The refusal to provide or to timely provide such documentation may serve as grounds for the contracting officer to refuse making contract award to the business concern.

(b) Any financial, voting, operational, or employment interest in the business concern of a spouse, child, or other family member of, or person sharing a household with, the individual will be imputed to the individual in determining whether and the extent to which the individual owns, controls, or operates the business concern.

(c) An individual owns, controls, or operates a business concern by fulfilling or holding the following types of roles or interests with respect to the business concern:

(1) Director or officer, including incumbents of boards and offices that perform duties ordinarily performed by a chairman or member of a board of directors, a secretary, treasurer, president, a vice president, or other chief official of a business concern, including Chief Financial Officer, Chief Operating Officer, or Chief contracting official.

(2) Officials of comparable function and status to those described in paragraph (c)(1) of this subsection as exist in partnerships of all kind and other business organizations, including sole proprietorships.

(3) A general partner in a general or limited partnership.

(4) An individual with a limited partnership interest of 25% or more.

(5) An individual that has the:

(i) Power to vote, directly or indirectly, 25% or more interest in any class of voting stock of the business concern;

(ii) Ability to direct in any manner the election of a majority of the business concern's directors or trustees; or

(iii) Ability to exercise a controlling influence over the business concern's management, policies, or decision making.

(d) Generally, the existence of one or more of the roles or interests set forth in paragraph (c) of this subsection, including roles or interests attributed to the individual, will be sufficient to determine that the individual owns, controls or operates the business concern. However, specific facts of the case may warrant a different determination by the contracting officer, where, for example, an indicator in paragraph (c) of this subsection, in light of all of the facts and circumstances, suggests that the individual lacks sufficient authority or autonomy to exert authority customarily associated with ownership or control or the assertion of operational prerogatives (e.g. the individual is one of twenty on a board of directors, plays no other role, and holds no other interest). Conversely, ownership, control, or the ability to operate the business concern, if it exists in fact, can be reflected by other roles or interests.

3009.171-5 Serious felonies prohibiting award.

(a) Only serious felony convictions will prohibit a business concern from being awarded a contract for FPS guard services. Serious felonies that will prohibit contract award are any felonies that involve dishonesty, fraud, deceit, misrepresentation, or deliberate violence; that reflect adversely on the individual's honesty, trustworthiness, or fitness to own, control, or operate a business concern; that cast doubt on the integrity or business ethics of the business concern; or are of a nature that is inconsistent with the mission of FPS, including, without limitation, those felonies listed in paragraphs (b)(1) through (12) of this subsection.

(b) The following is a list of offenses determined by DHS to be serious felonies for purposes of the Federal Protective Service Guard Reform Act of 2008. Except as provided in (HSAR) 48 CFR 3009.171-7(f), award of a contract for FPS guard services will not be made to any business that is owned, controlled, or operated by an individual who has been convicted of a felony involving:

(1) Fraud of any type, including those arising out of a procurement contract, cooperative agreement, grant or other assistance relationship with the federal, state or local government, as well as, without limitation, embezzlement, fraudulent conversion, false

claims or statements, kickbacks, misappropriations of property, unfair or deceptive trade practices, or restraint of trade;

(2) Bribery, graft, or a conflict of interest;

(3) Threatened or actual harm to a government official or family member;

(4) Threatened or actual harm to government property;

(5) A crime of violence;

(6) A threat to national security;

(7) Commercial bribery, counterfeiting, or forgery;

(8) Obstruction of justice, perjury or subornation of perjury, or bribery of a witness;

(9) An attempt to evade or defeat Federal tax;

(10) Willful failure to collect or pay over Federal tax;

(11) Trafficking in illegal drugs, alcohol, firearms, explosives, or other weapons;

(12) Immigration violations (e.g., 8 U.S.C. 1324, 1324c, 1326); and

(13) Any other felony that involves dishonesty, fraud, deceit, misrepresentation, or deliberate violence; that reflects adversely on the individual's honesty, trustworthiness, or fitness to own, control, or operate a business concern; that casts doubt on the integrity or business ethics of the business concern; or is of a nature that is inconsistent with the mission of FPS.

3009.171-6 Guidelines for contracting officers.

(a) In accordance with FAR Subpart 9.4 (48 CFR subpart 9.4), a contracting officer may not award a contract for FPS guard services to any business concern that is suspended, debarred or proposed for debarment unless the agency head determines that there is a compelling reason for such action.

(b) The contracting officer shall not award a contract for FPS guard services to any business concern that is otherwise nonresponsible on the same contract.

(c) The contracting officer shall not award an FPS guard services contract to any business concern that is owned, controlled or operated by an individual convicted of a serious felony as defined in (HSAR) 48 CFR 3009.171-5 except as provided in under (HSAR) 48 CFR 3009.171-7.

(d) In considering an award request under (HSAR) 48 CFR 3009.171-7, the contracting officer may not review the fact of the conviction itself, but may consider any information provided by the individual or business concern, and any information known to the contracting officer. Factors that the contracting officer may consider include, but are not limited to:

(1) The age of the conviction.

(2) The nature and circumstances surrounding the conviction.

(3) Protective measures taken by the individual or business concern to reduce or eliminate the risk of further misconduct.

(4) Whether the individual has made full restitution for the felony.

(5) Whether the individual has accepted responsibility for past misconduct resulting in the felony conviction.

3009.171-7 Contract award approval procedures for contractors with felony convictions.

(a) The HCA has sole discretion to approve a request to permit award of a contract for FPS guard services to a business concern owned, controlled, or operated by an individual convicted of a felony, for any reason permitted by this regulation. This authority is not delegable.

(b) A business concern owned, operated or controlled by an individual convicted of any felony (including a serious felony) may submit an award request to the contracting officer. The basis for such request shall be that the subject felony is not a serious felony as defined by this regulation; that such individual does not or no longer owns, controls or operates the business concern; or that the commission of a serious felony no longer poses the contract risk the Act and this regulation were designed to guard against. The business concern shall bear the burden of proof for award requests.

(c) A copy of the award approval request with supporting documentation or a previously approved award request shall be attached with the bid or proposal.

(d) An award approval request shall contain the basis for the request, including, at a minimum, the following information:

(1) Name and date of birth of individual convicted of a felony;

(2) A full description of which roles or interests indicate that the individual owns, controls, or operates, or may own control or operate the business concern;

(3) Date sentenced;

(4) Statute/Charge;

(5) Docket/Case Number;

(6) Court/Jurisdiction;

(7) The nature and circumstances surrounding the conviction;

(8) Protective measures taken by the individual or business concern to reduce or eliminate the risk of further misconduct;

(9) Whether the individual has made full restitution for the felony; and

(10) Whether the individual has accepted responsibility for past misconduct resulting in the felony conviction.

(e) If the contracting officer is unable to affirmatively determine that the subject felony is not a serious felony as defined in (HSAR) 48 CFR 3009.171-5; that such individual no longer owns, controls or operates the business concern; or that the commission of a serious felony no longer calls into question the individual or business concern's integrity or business ethics and would be consistent with the mission of FPS, then the contracting officer shall deny the award approval request and not forward such request to the HCA.

(f) For a felony that meets any of the following conditions, the contracting officer shall refer the award request, with a copy of the contracting officer's determination, to the HCA with a recommendation for approval:

(1) The subject felony is not a serious felony as defined by this regulation;

(2) The convicted individual does not or no longer owns, controls or operates the business concern; or

(3) The commission of a serious felony no longer calls into question the individual or business concern's integrity or business ethics and that an award would be consistent with the mission of the FPS.

(g) The HCA shall make a final written decision on the award approval request following referral and after any necessary additional inquiry.

3009.171-8 Ineligible contractors.

Any business concern determined to be ineligible for award under (HSAR) 48 CFR 3009.171-5 to 3009.171-7 shall be ineligible to receive a contract for guard services under the FPS guard program until such time as:

(a) The concern demonstrates that it has addressed and resolved the issues that resulted in the determination of ineligibility, and

(b) The HCA approves an award request under (HSAR) 48 CFR 3009.171-7.

3009.171-9 Clause.

Insert the clause (HSAR) 48 CFR 3052.209-76, Prohibition on Federal Protective Service guard services contracts with business concerns owned, controlled, or operated by an individual convicted of a felony, in all solicitations and contracts for FPS guard services.

Subpart 3009.4 Debarment, Suspension, and Ineligibility

3009.470 Reserve Officer Training Corps and military recruiting on campus.

3009.470-1 Definition.

Institution of higher education as used in this section, means an institution that meets the requirements of 20 U.S.C. 1001 and includes all subelements of such an institution.

3009.470-2 Policy.

(a) Except as provided in paragraph (b) of this subsection, 10 U.S.C. 983 prohibits the Department of Homeland Security from providing funds by contract or grant to an institution of higher education if the Secretary of Defense determines that the institution has a policy or practice that prohibits or in effect prevents-

(1) The Secretary of a military department from maintaining, establishing, or operating a unit of the Senior Reserve Officer Training Corps (ROTC) at that institution; (2) A student at that institution from enrolling in a unit of the Senior ROTC at another institution of higher education; (3) The Secretary of a military department or the Secretary of Homeland Security from gaining entry to campuses, or access to students on campuses, for purposes of military recruiting; or

(4) Military recruiters from accessing certain information pertaining to students enrolled at that institution.

(b) The prohibition in paragraph (a) of this subsection does not apply to an institution of higher education if the Secretary of Defense determines that- (1) The institution (and each subelement of that institution) has ceased the policy or practice described in paragraph (a) of this subsection; or (2) The institution involved has a long-standing policy of pacifism based on historical religious affiliation.

3009.470-3 Procedures.

Whenever the Secretary of Defense determines that an institution of higher education (including any subelement of such institution) is ineligible and the provisions of 10 U.S.C. 983 apply:

(a) The Secretary of Defense will list the institution on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs published by the General Services Administration (also see (FAR) 48 CFR 9.404 and 32 CFR Part 216); and (b) The

Department of Homeland Security- (1) Shall not solicit offers from, award contracts to, or consent to subcontracts with the institution; (2) Shall make no further payments under existing contracts with the institution; and (3) Shall terminate existing contracts with the institution.

3009.470-4 Contract clause.

Insert the clause at (HSAR) 48 CFR 3052.209-71, Reserve Officer Training Corps and Military Recruiting on Campus, in all solicitations and contracts with institutions of higher education.

Subpart 3009.5 Organizational and Consultant Conflicts of Interest

3009.507 Solicitation provision and contract clause.

3009.507-1 Solicitation provision.

The contracting officer shall insert a provision substantially the same as (HSAR) 3052.209-72, Organizational Conflict of Interest, in solicitations and contracts where a potential organizational conflict of interest exists and mitigation may be possible. The contracting officer shall ensure the conditions enumerated in (FAR) 48 CFR Subpart 9.5 warrant inclusion. The contracting officer shall include the information required by (FAR) 48 CFR 9.507-1 and (HSAR) 3052.209-72(a).

3009.507-2 Contract clause.

The contracting officer shall insert a clause substantially the same as the clause at (HSAR) 48 CFR 3052.209-73, Limitation of Contracting, in solicitations and contracts when a potential organizational conflict of interest exists and mitigation is not feasible.

3009.570 Limitations on contractors acting as lead system integrators.

3009.570-1 Definitions.

"Direct Financial Interest," as used in this section, is defined in the clause at HSAR 48 CFR 3052.209-75, Prohibited Financial Interests for Lead System Integrators.

"Lead system integrator," as used in this section, is defined in the clause at (HSAR) 48 CFR 3052.209-75, Prohibited Financial Interests for Lead System Integrators.

3009.570-2 Policy.

(a) Except as provided in paragraph (b) of this subsection, under 6 U.S.C. 396, no entity performing lead system integrator functions in the acquisition of a major system (See (HSAR) 48 CFR 3002.101) by DHS may have any direct financial interest in the development or construction of any individual system or element of any system of systems under the program in which the entity is performing lead system integrator functions.

(b) The prohibition in paragraph (a) of this subsection does not apply 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

(ii) DHS took appropriate steps to prevent any organizational conflict of interest in the selection process; or

(2) 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 3009.570 shall be construed to preclude an entity described in paragraph (a) of this subsection from performing work necessary to integrate two or more individual systems or elements of a system of systems with each other.

3009.570-3 Procedures.

In making a responsibility determination before awarding a contract for the acquisition of a major system, the contracting officer shall—

(a) Determine whether the prospective contractor meets the definition of "lead system integrator";

(b) Consider all information regarding the prospective contractor's direct financial interests in view of the prohibition at (HSAR) 48 CFR 3009.570-2(a); and

(c) Apply the following procedures:

(1) After assessing the offeror's direct financial interests in the development or construction of any individual system or element of any system of systems, if the offeror—

(i) Has no direct financial interest in such systems, the contracting officer shall document the contract file to that effect and may then further consider the offeror for award of the contract;

(ii) Has a direct financial interest in such systems, but the exception in (HSAR) 3009.570-2(b)(2) applies, the contracting officer shall document the contract file

to that effect and may then further consider the offeror for award of the contract;

(iii) Has a direct financial interest in such systems and the exception in (HSAR) 3009.570-2(b)(2) does not apply, but the conditions in (HSAR) 3009.570-2(b)(1)(i) and (ii) do apply, the contracting officer—

(A) Shall document the contract file to that effect;

(B) May, in coordination with program officials, request an exception for the offeror from the Secretary of Homeland Security, in accordance with Homeland Security Acquisition Manual section 3009.570; and

(C) Shall not award to the offeror unless the Secretary of Homeland Security grants the exception and provides the required certification to Congress; or

(iv) Has a direct financial interest in such systems and the exceptions in (HSAR) 3009.570-2(b)(1) and (2) do not apply, the contracting officer shall not award to the offeror.

3009.570-4 Solicitation provision and contract clause.

(a) Use the provision at (HSAR) 48 CFR 3052.209-74, Limitations on Contractors Acting as Lead System Integrators, in solicitations for the acquisition of a major system when the acquisition strategy envisions the use of a lead system integrator.

(b) Use the clause at (HSAR) 48 CFR 3052.209-75, Prohibited Financial Interests for Lead System Integrators—

(1) In solicitations that include the provision at (HSAR) 48 CFR 3052.209-74; and

(2) In contracts when the contractor will fill the role of a lead system integrator for the acquisition of a major system.

HOMELAND SECURITY ACQUISITION REGULATION
PART 3010
MARKET RESEARCH
[RESERVED]

PART 3011 DESCRIBING AGENCY NEEDS

Subpart 3011.1 Selecting and Developing Requirements Documents
3011.103 Market acceptance.

Subpart 3011.2 Using and Maintaining Requirements Documents
3011.204-70 Solicitation provisions and contract clauses.
3011.204-90 [Removed]

Subpart 3011.5 Liquidated Damages
3011.501 Policy.

Subpart 3011.6 Priorities and Allocations
3011.602 General.

Subpart 3011.1 Selecting and Developing Requirements Documents

3011.103 Market acceptance.

(a) Contracting officers may act on behalf of the head of the agency in this subpart only. Contracting officers may, under appropriate circumstances, require offerors to make the required demonstrations.

Subpart 3011.2 Using and Maintaining Requirements Documents

3011.204-70 Solicitation provisions and contract clauses.

The contracting officer shall insert the clause at (HSAR) 48 CFR 3052.211-70, Index for Specifications, when an index or table of contents may be furnished with the specification.

3011.204-90 [Removed]

Subpart 3011.5 Liquidated Damages

3011.501 Policy.

(d) The HCA may reduce or waive the amount of liquidated damages assessed under a contract, if the Commissioner, Financial Management Service, or designee approves.

Subpart 3011.6 Priorities and Allocations

3011.602 General.

(c) The following DHS Components may assign priority ratings on contracts and orders placed with contractors to acquire products, materials, and services under the Defense

Priorities and Allocations System (DPAS) regulations (15 CFR Part 700):

(1) The U.S. Coast Guard in support of certified national defense related programs; and

(2) The Federal Emergency Management Agency in support of emergency preparedness activities.

PART 3012 ACQUISITION OF COMMERCIAL ITEMS

Subpart 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.

Subpart 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.

(f) Solicitation provisions and contracts clauses. Insert (HSAR) 48 CFR 3052.212-70, Contract Terms and Conditions Applicable to DHS Acquisition of Commercial Items, in any solicitation or contract for commercial items when any of the provisions or clauses listed therein applies and where incorporation by reference of each selected provision or clause is, to the maximum extent practicable, consistent with customary commercial practice. If necessary, tailor this clause.

PART 3013 SIMPLIFIED ACQUSITION PROCEDURES

Subpart 3013.1 [Removed]

Subpart 3013.3 [Removed]

Subpart 3013.70 [Removed and reserved]

HOMELAND SECURITY ACQUISITION REGULATION
PART 3014
SEALED BIDDING
[RESERVED]

PART 3015 CONTRACTING BY NEGOTIATION

Subpart 3015.2 Solicitation and Receipt of Proposals and Information
3015.204-3 Contract clauses.
3015.207-70 Handling proposals and information.

Subpart 3015.4 [Removed]

Subpart 3015.6 Unsolicited Proposals
3015.602 Policy.
3015.603 [Removed and reserved]
3015.604 Agency points of contact.
3015.606 Agency procedures.
3015.606-1 Receipt and initial review
3015.606-2 Evaluation.

Subpart 3015.2 Solicitation and Receipt of Proposals and Information

3015.204-3 Contract clauses.

The contracting officer shall insert clause (HSAR) 48 CFR 3052.215-70, Key Personnel or Facilities, in solicitations and contracts when the selection for award is substantially based on the offeror's possession of special capabilities regarding personnel or facilities.

3015.207-70 Handling proposals and information.

(b) Proposals and information may be released outside the Government for evaluation and similar purposes if qualified personnel are not available to thoroughly evaluate or analyze proposals or information. The contracting officer shall document the file in such cases.

Subpart 3015.4 [Removed]

Subpart 3015.6 Unsolicited Proposals

3015.602 Policy.

The Department of Homeland Security (DHS) encourages new and innovative proposals and ideas that will sustain or enhance the DHS mission.

3015.603 [Removed and Reserved]

3015.604 Agency points of contact.

(a) The DHS does not have a central clearinghouse for distributing information or

assistance regarding unsolicited proposals. Each HCA is responsible for disseminating the information required at (FAR) 48 CFR 15.604(a). General information concerning DHS's scope of responsibilities and functions is available at http://www.dhs.gov/dhspublic/

3015.606 Agency procedures.

(a) The agency authority to establish procedures for receiving, reviewing and evaluating, and timely disposing of unsolicited proposals, consistent with the requirements of (FAR) 48 CFR 15.6 and this subpart, is delegated to each HCA.

(b) The agency authority to establish points of contact (see (FAR) 48 CFR 15.604) to coordinate the receipt and handling of unsolicited proposals is delegated to each HCA. Contracting offices are designated as the receiving point for unsolicited proposals. Persons within DHS (e.g., technical personnel) who receive proposals shall forward them to their cognizant contracting office.

3015.606-1 Receipt and initial review.

(a) The agency contact point shall make an initial review determination within seven calendar days after receiving a proposal.

(b) If the proposal meets the requirements at (FAR) 48 CFR 15.606-1(a), the agency contact point shall acknowledge receipt within three calendar days after making the initial review determination and advise the offeror of the general timeframe for completing the evaluation.

(c) If the proposal does not meet the requirements of (FAR) 48 CFR 15.606-1(a), the agency contact point shall return the proposal within three calendar days after making the determination. The offeror shall be informed, in writing, of the reasons for returning the proposal.

3015.606-2 Evaluation.

(a) Comprehensive evaluations should be completed within sixty calendar days after making the initial review determination. If additional time is needed, then the agency contact point shall advise the offeror accordingly and provide a new evaluation completion date. The evaluating office shall neither reproduce nor disseminate the proposal to other offices without the consent of the contracting office from which the proposal was received for evaluation. If the evaluating office requires additional information from the offeror, the evaluator shall convey this request to the responsible contracting office. The evaluator shall not directly contact the proposal originator.

(b) If the evaluators recommend accepting the proposal, the responsible contracting officer shall ensure compliance with all of the requirements of (FAR) 48 CFR 15.607.

PART 3016 TYPES OF CONTRACTS

Subpart 3016.1 Selecting Contract Types
3016.170 Contracts with Lead System Integrators.

Subpart 3016.2 Fixed-Price Contracts
3016.203 Fixed-price contracts with economic price adjustment.
3016.203-4 Contract clauses.
3016.203-470 Solicitation provisions.

Subpart 3016.4 Incentive Contracts
3016.406 Contract clauses.

Subpart 3016.5 Indefinite-Delivery Contracts
3016.505 Ordering.

Subpart 3016.6 Time-and-Materials, Labor-Hour, and Letter Contracts
3016.603 Letter contracts.
3016.603-4 Contract clauses.

Subpart 3016.1 Selecting Contract Types

3016.170 Contracts with Lead System Integrators.

The contracting officer should negotiate the most appropriate contract type and fee structure based on risks inherent in the work to be performed, in accordance with (FAR) 48 CFR 16.103(a). Contract type and fee structure should be commensurate with the work to be performed and the risks assumed. Worthwhile existing guidance on contract type selection, pricing, and fee structures, such as exists in Vol. I, Ch. 4 of the Contract Reference Pricing Guides [http://www.acq.osd.mil/dpap/cpf/docs/contract_pricing_finance_guide/vol4_ch1.pdf] can be consulted to determine the appropriate contract type and fee structure for use in varied contracts with lead system integrators in the production, fielding and sustainment of complex systems.

Subpart 3016.2 Fixed-Price Contracts

3016.203 Fixed price contracts with economic price adjustments.

3016.203-4 Contract clauses.

(d)(2) Any clause using this method shall be prepared and approved by the contracting officer.

3016.203-470 Solicitation provision.

The contracting officer shall insert a provision substantially the same as (HSAR) 48 CFR 3052.216-70, Evaluation of Offers Subject to an Economic Price Adjustment Clause, in solicitations containing an economic price adjustment clause.

Subpart 3016.4 Incentive Contracts

3016.406 Contract clauses.

(e)(1)(i) The contracting officer shall insert a clause substantially the same as (HSAR) 48 CFR 3052.216-71, Determination of Award Fee, in solicitations and contracts that include an award fee.

(ii) The contracting officer shall insert a clause substantially the same as (HSAR) 48 CFR 3052.216-72, Performance Evaluation Plan, in all solicitations and contracts that include an award fee.

(iii) The contracting officer shall insert a clause substantially the same as (HSAR) 48 CFR 3052.216-73, Distribution of Award Fee, in all solicitations and contracts that include an award fee.

Subpart 3016.5 Indefinite-Delivery Contracts

3016.505 Ordering.

(b)(5) The Component Competition Advocate is designated as the Component Task and Delivery Order Ombudsman, unless otherwise provided in Component procedures.

(i) If any corrective action is needed after reviewing complaints from contractors on task and delivery order contracts, the Component Ombudsman shall provide a written determination of such action to the contracting officer.

(ii) Issues that cannot be resolved within the Component shall be forwarded to the DHS Task and Delivery Order Ombudsman, who is also the DHS Senior Competition Advocate, for review and resolution.

Subpart 3016.6 Time-and-Materials, Labor-Hour, and Letter Contracts

3016.603 Letter contracts.

3016.603-4 Contract clauses.

The contracting officer shall insert a clause substantially the same as (HSAR) 48 CFR 3052.216-74, Settlement of Letter Contract, in all definitized letter contracts.

PART 3017 SPECIAL CONTRACTING METHODS

Subpart 3017.2 Options
3017.202 Use of options.
3017.204-90 Detention Facilities and Services (ICE).

Subpart 3017.4 Leader Company Contracting
3017.402 Limitations.

Subpart 3017.70 [Removed]

Subpart 3017.90 Fixed Price Contracts for Vessel Repair, Alteration or Conversion
3017.9000 Clauses (USCG).

Subpart 3017.2 Options

3017.202 Use of options.

(a) Contracting officers shall not use unpriced options.

Subpart 3017.204-90 Detention Facilities and Services (ICE).

The U.S. ICE Head of the Contracting Activity (HCA), without delegation, may enter into contracts of up to fifteen years' duration for detention or incarceration space or facilities, including related services.

Subpart 3017.4 Leader Company Contracting

3017.402 Limitations.

(a)(4) Submit requests per (HSAR) 48 CFR 3001.7000.

Subpart 3017.70 [Removed]

Subpart 3017.90 Fixed Price Contracts for Vessel Repair, Alteration or Conversion

3017.9000 Clauses (USCG).

For the U.S. Coast Guard, the following clauses are to be used in specific solicitations and contracts:

(a) The clauses in (HSAR) 48 CFR 3052.217-90 through (HSAR) 48 CFR 3052.217-93 and (HSAR) 48 CFR 3052.217-95 through (HSAR) 48 CFR 3052.217-99 shall be included and clause (HSAR) 48 CFR 3052.217-94 may be included in sealed bid fixed-price solicitations and contracts for vessel repair, alteration, or conversion which are to be performed within the United States, its possessions, or Puerto Rico. The contracting

officer may, in whole or in part (such as after incidents), increase the dollar amounts in the clause at (HSAR) 48 CFR 3052.217-95(b)(6) and (c)(1) consistent with contract size, inflation, and other circumstances.

(b) Unless inappropriate, the clauses in (HSAR) 48 CFR 3052.217-90 through (HSAR) 48 CFR 3052.217-93 and (HSAR) 48 CFR 3052.217-95 through (HSAR) 48 CFR 3052.217-99 should be included and (HSAR) 48 CFR 3052.217-94 may be included in negotiated solicitations and contracts to be performed outside the United States. The contracting officer may, in whole or in part (such as after incidents), increase the dollar amounts in the clause at (HSAR) 48 CFR 3052.217-95(b)(6) and (c)(1) consistent with contract size, inflation, and other circumstances.

(c) The clause at (HSAR) 48 CFR 3052.217-100, Guarantee, shall be used where general guarantee provisions are deemed desirable by the contracting officer.
(1) When inspection and acceptance tests will afford full protection to the Government in ascertaining conformance to specifications and the absence of defects and deficiencies, no guarantee clause for that purpose shall be included in the contract.

(2) The customary guarantee period, to be inserted in the first sentence of the clause at (HSAR) 48 CFR 3052.217-100, Guarantee, is 60 days. However, in certain instances, the contracting officer may desire to include a clause in a contract for a guarantee period of more than 60 days. In such instances:

(i) Where, after full inquiry, it has been determined that such longer guarantee period will not involve increased costs, a longer guarantee period may be substituted by the contracting officer for the usual 60 days; or

(ii) Where the full inquiry discloses that such longer guarantee period will involve, or is reasonably expected to involve, increased costs, such facts and the reasons for the need for such longer period shall be set forth in letter form to the COCO, requesting approval for use of guarantee period in excess of 60 days. Upon approval, the longer period may be inserted by the contracting officer in the first sentence of the clause at (HSAR) 48 CFR 3052.217-100, Guarantee.

PART 3018 EMERGENCY ACQUISITIONS

Subpart 3018.1 Available Acquisition Flexibilities
3018.109 Priorities and allocations.

Subpart 3018.1 Available Acquisition Flexibilities

3018.109 Priorities and allocations.

DHS Components may assign priority ratings on contracts and orders as authorized by the Defense Priorities and Allocation System (DPAS). (See (HSAR) 48 CFR 3011.602.)

PART 3019 SMALL BUSINESS PROGRAMS

Subpart 3019.2 Policies
3019.201 General policy.

Subpart 3019.7 The Small Business Subcontracting Program
3019.705 Responsibilities of the contracting officer under the subcontracting assistance program.
3019.705-1 General support for the program.
3019.708 Contract clauses.
3019.708-70 Solicitation provision and contract clauses.

Subpart 3019.2 Policies

3019.201 General policy.

(d) DHS is committed to a unified team approach involving senior management, small business specialists, acquisition personnel and program staff to support both critical homeland security missions and meet public policy objectives concerning small business participation in departmental procurements. The Director, Office of Small and Disadvantaged Business Utilization, is responsible for the implementation and execution of programs to assist small businesses, veteran owned small businesses, service-disabled veteran owned small businesses, HUBZone small businesses, small disadvantaged businesses, and women-owned small business concerns as required by the Small Business Act.

Subpart 3019.7 The Small Business Subcontracting Program

3019.705 Responsibilities for the contracting officer under the subcontracting program.

3019.705-1 General Support for the Program.

In any solicitation where subcontracting plans will be required for one or more offerors, contracting officers may include evaluation factors that consider the quality of proposed subcontracting plans and past performance under previous subcontracting plans. Contracting officers must ensure that these factors do not penalize companies not required to submit subcontracting plans.

3019.708 Contract clauses.

3019.708-70 Solicitation provision and contract clauses.

(a) The contracting officer shall insert the clause at (HSAR) 48 CFR 3052.219-70, Small Business Subcontracting Plan Reporting, in solicitations and contracts containing the clause at (FAR) 48 CFR 52.219-9 .

(b) The contracting officer shall insert the clause at (HSAR) 48 CFR 3052.219-71, DHS Mentor-Protégé Program in all solicitations that anticipate the need for a subcontracting plan.

(c) The contracting officer shall insert the provision at (HSAR) 48 CFR 3052.219-72, Evaluation of Prime Contractor Participation in the DHS Mentor-Protégé Program, in all solicitations containing (HSAR) 48 CFR 3052.219-71, DHS Mentor-Protégé Program and (FAR) 48 CFR 52.219-9 Small Business Subcontracting Plan.

HOMELAND SECURITY ACQUISITION REGULATION
PART 3020
[RESERVED]

HOMELAND SECURITY ACQUISITION REGULATION
PART 3021
[RESERVED]

PART 3022 APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 3022.1 Basic Labor Policies
3022.101 Labor relations.
3022.101-70 Admittance of union representatives to DHS installations.
3022.101-71 Contract clauses.

Subpart 3022.4 Labor Standards for Contracts Involving Construction
3022.406 Administration and enforcement.
3022.406-9 Withholding from or suspension of contract payments.

Subpart 3022.90 Local Hire (USCG).
3022.9000 Policy (USCG).
3022.9001 Contract clause (USCG).

Subpart 3022.1 Basic Labor Policies

3022.101 Labor relations.

3022.101-70 Admittance of union representatives to DHS installations.

(a) Admittance of union representatives to Transportation Security Administration or United States Secret Service installations and work sites is not governed by this rule, but by laws, rules, regulations, Executive Orders and policies applicable to those Components. It is the policy of DHS to admit non-employee labor union representatives of contractor employees to DHS installations to visit work sites and transact labor union business with contractors, their employees, and union stewards pursuant to existing union collective bargaining agreements. Their presence must not interfere with the contractor's work under a DHS contract nor violate safety or security regulations that may be applicable to persons visiting the installation. However, if there have been incidents of vandalism, illegal work stoppages, or interference with work, the non-employee labor union representatives may be subject to access limitations. Non-employee labor union representatives will not be permitted to conduct meetings, collect union dues, or make speeches concerning union matters while visiting a work site during working hours.

(b) Whenever a non-employee labor union representative is denied entry to a work site, the person denying entry shall make a written report to the DHS labor coordinator and Component labor advisor, if any, within two working days after the request for entry is denied. The report shall include the reason(s) for the denial, the name of the representative denied entry, the union affiliation and number, and the name and title of the person that denied the entry.

3022.101-71 Contract clauses.

(a) The contracting officer, may, when applicable, insert the clause at (HSAR) 48 CFR

3052.222-70, Strikes or Picketing Affecting Timely Completion of the Contract Work, in solicitations and contracts.

(b) The contracting officer may, when applicable, insert the clause at (HSAR) 48 CFR 3052.222-71, Strikes or Picketing Affecting Access to a DHS Facility, in solicitations and contracts.

Subpart 3022.4 Labor Standards for Contracts Involving Construction

3022.406 Administration and enforcement.

3022.406-9 Withholding from or suspension of contract payments.

(c) Disposition of contract payments withheld or suspended.

(1) Forwarding wage underpayments to the Comptroller General. The contracting officer shall ensure that a completed DHS Form 700-4, Employee Claim for Wage Restitution, is obtained from each employee claiming restitution under the contract. The Comptroller General (Claims Division) shall receive this form with a completed SF 1093, Schedule of Withholding Under the Davis-Bacon Act and/or the Contract Work Hours and Safety Standards Act, before payment can be made to the employee.

Subpart 3022.90 Local Hire (USCG).

3022.9000 Policy (USCG).

As required by 14 U.S.C. 666, the U.S. Coast Guard shall include a provision for local hire in each contract 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.

3022.9001 Contract clause (USCG).

For the U.S. Coast Guard, the contracting officer shall insert the USCG clause at (HSAR) 48 CFR 3052.222-90, Local Hire (USCG), in all solicitations and contracts as stated in (HSAR) 48 CFR 3022.9000.

PART 3023 ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

Subpart 3023.3 Hazardous Material Identification and Material Safety Data
3023.303 Contract clause.

Subpart 3023.5 Drug-Free Workplace
3023.501 Applicability.
3022.506 Suspension of payments, termination of contract, and debarment and suspension actions.

Subpart 3023.10 Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements
3023.1004 Requirements.

Subpart 3023.90 Safety Requirements for USCG Contracts
3023.9000 Contract clause (USCG).

Subpart 3023.3 Hazardous Material Identification and Material Safety Data

3023.303 Contract clause.

The contracting officer shall insert the clause at (HSAR) 48 CFR 3052.223-70, Removal or Disposal of Hazardous Substances - Applicable Licenses and Permits, in solicitations and contracts involving the removal or disposal of hazardous waste material.

Subpart 3023.5 Drug-Free Workplace

3023.501 Applicability.

(d) The head of any Component may issue a determination under (FAR) 48 CFR 23.501(d) to exclude Drug-Free Workplace requirements of FAR subpart 23.5 in contracts supporting undercover law enforcement operations.

3023.506 Suspension of payments, termination of contract, and debarment and suspension actions.

(e) Submit requests per (HSAR) 48 CFR 3001.7000.

3023.10 Federal Compliance with Right-to-Know Laws and Pollution Prevention Requirements

3023.1004 Requirements.

DHS Directive 023-02 Environmental Compliance Program provides guidance and

direction for compliance with environmental laws, regulations and executive orders. DHS Directive 025-01, Sustainable Practices for Environmental, Energy and Transportation, provides guidance and direction for compliance with green purchasing and other sustainable practices contained in Executive Order 13423. Contracting officers shall ensure that solicitations and contracts contain appropriate sustainable practices requirements, provisions and clauses. Contractors shall support the DHS Environmental Policy by taking appropriate actions to eliminate or reduce their impacts on the environment.

Subpart 3023.90 Safety Requirements for USCG Contracts

3023.9000 Contract clause (USCG).

For the U.S. Coast Guard, where all or part of a contract will be performed on Government-owned or leased property, the contracting officer shall insert the clause at (HSAR) 48 CFR 3052.223-90, Accident and Fire Reporting.

PART 3024 PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 3024.1 Protection of Individual Privacy
3024.102-70 General.

Subpart 3024.2 Freedom of Information Act
3024.203 Policy.

Subpart 3024.1 Protection of Individual Privacy

3024.102-70 General.

Procedures for implementing the Privacy Act of 1974 are contained in Departmental regulations under 6 CFR Part 5, Subpart B, Privacy Act.

Subpart 3024.2 Freedom of Information Act

3024.203 Policy.

(a) The Department's implementation of the Freedom of Information Act is codified in regulations 6 CFR part 5, Subpart B, FOIA. Information request concerning awards beyond those routinely handled by contracting officers (e.g., identification of successful offerors, public announcements, debriefings, surety notices under HSAR 3028.106-6) shall be submitted to the FOIA Office of the Component making the award. The FOIA office for the DHS Office of Operations only, is Departmental Disclosure Officer (DDO), DHS, Washington, D.C., 20528 or foia@dhs.gov.

(b) See (FAR) 48 CFR 15.207(b) on safeguarding proposals.

PART 3025 FOREIGN ACQUISITION

Subpart 3025.70 American Recovery and Reinvestment Act Restrictions on Foreign Acquisition
3025.7000 Scope of subpart.
3025.7001 Definitions.
3025.7002 Restrictions on clothing, fabrics, and related items.
3025.7002-1 Restrictions.
3025.7002-2 Exceptions.
3025.7002-3 Specific application of trade agreements.
3025.7003 Contract clauses.

Subpart 3025.70 American Recovery and Reinvestment Act Restrictions on Foreign Acquisition

3025.7000 Scope of subpart.

This subpart contains restrictions on the acquisition of certain foreign textile products imposed by the American Recovery and Reinvestment Act of 2009 on contracts, exercising of an option and orders entered into on or after August 16, 2009 with funds appropriated or otherwise provided on or before February 17, 2009.

3025.7001 Definitions.

As used in this subpart—

(a) ``Commercial,'' as applied to an item described in (HSAR) 48 CFR 3025.7002-1, means an item of supply, whether an end product or component, that meets the definition of ``commercial item'' set forth in (FAR) 48 CFR 2.101.

(b) ``Component'' means any item supplied to the Government as part of an end product or of another component.

(c) ``End product'' means supplies delivered under a line item of a contract.

(d) ``Non-commercial,'' as applied to an item described in (HSAR) 48 CFR 3025.7002-1, means an item of supply, whether an end product or component, that does not meet the definition of ``commercial item'' set forth in (FAR) 48 CFR 2.101.

(e) ``Item directly related to national security interests'' means an item intended for use in a Department of Homeland Security action protecting the nation from internal or external threats, including protecting the nation's borders, transportation system, maritime domain or critical infrastructure, as determined by the contracting officer.

3025.7002 Restrictions on clothing, fabrics, and related items.

3025.7002-1 Restrictions.

The following restrictions implement section 604 of the American Recovery and Reinvestment Act of 2009 and they apply to all types of actions, orders, exercising of an option and contracts. Except as provided in subsection (HSAR) 48 CFR 3025.7002-2, do not acquire, either as end products or components, any item listed in paragraphs (a) or (b) of this section, if the item is directly related to the national security interests of the United States and the item has not been grown, reprocessed, reused, or produced in the United States:

(a) Commercial or non-commercial items--(1) Clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing (and the materials and components thereof); or (2) Tents, tarpaulins, covers, textile belts, bags, protective equipment (such as body armor), sleep systems (sleeping bags), load carrying equipment (such as fieldpacks), textile marine equipment, parachutes or bandages.

(b) Non-commercial items--

(1) Cotton and other natural fiber products.
(2) Woven silk or woven silk blends.
(3) Spun silk yarn for cartridge cloth.
(4) Synthetic fabric or coated synthetic fabric (including all textile fibers and yarns that are for use in such fabrics).
(5) Canvas products.
(6) Wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles).
(7) Any item of individual equipment manufactured from or containing any of the fibers, yarns, fabrics, or materials listed in this paragraph (b).

3025.7002-2 Exceptions.

Acquisitions in the following categories are not subject to the restrictions in (HSAR) 48 CFR 3025.7002-1:

(a) Acquisitions at or below the simplified acquisition threshold.

(b) Acquisition of items not directly related to national security interests of the United States.

(c) Acquisitions of any of the items otherwise covered by (HSAR) 48 CFR 3025.7002-1, if the Chief Procurement Officer determines that the item grown, reprocessed, reused, or produced in the United States cannot be acquired as and when needed in a satisfactory quality and sufficient quantity at United States market prices. When this exception is used--

(1) Only the DHS Chief Procurement Officer is authorized to make the domestic nonavailability determination.

(2) The DHS Component, not later than 7 days after the award of the contract, must post a notification that the exception has been applied on the Government-wide point of entry, which may be combined with any synopsis of award.

(3) The supporting documentation for the CPO determination prepared by the DHS Component(s) shall include--

(i) An analysis of alternatives that would not require a domestic nonavailability determination; and

(ii) A written justification by the requiring activity, with specificity, why such alternatives are unacceptable.

(d) Acquisitions of items listed in FAR 48 CFR 25.104.

(e) Emergency acquisitions by activities located outside the United States.

(f) Acquisitions by vessels in foreign waters.

(g) Acquisitions of incidental amounts of cotton, other natural fibers, wool or other item covered by (HSAR) 48 CFR 3025.7002-1(a)-(b) incorporated in an end product, for which the estimated value of the item so covered is not more than 10 percent of the total price of the end product.

(h) Acquisitions of items otherwise covered by (HSAR) 48 CFR 3025.7002-1(a) and (b) for which restricting a procurement of the items to those that have been grown, reprocessed, reused, or produced in the United States would be inconsistent with United States obligations under international agreements. Acquisitions of products that are eligible products per (FAR) 48 CFR Subpart 25.4 are not covered by these restrictions; see (HSAR) 48 CFR 3025.7003-2 for specific application of trade agreements.

3025.7002-3 Specific application of trade agreements.

(a) For covered items entitled to non-discriminatory treatment under the World Trade Organization Agreement on Government Procurement (WTO GPA), or any Free Trade Agreement (FTA) listed in (FAR) 48 CFR Subpart 25.4, this subpart is applied as follows--

(1) For solicitations, orders, exercising of an option and contracts issued by any component other than Transportation Security Administration (TSA), in which any covered items will be procured with a value that is both above the simplified acquisition threshold, and below the applicable trade agreement threshold in (FAR) 48 CFR 25.402, apply (HSAR) 48 CFR 3025.7002-1. Section 3025.7002-2(h) will exclude eligible

products of designated countries with FTA thresholds beneath the simplified acquisition threshold from coverage of section 604.

(2) For solicitations, orders, exercising of an option and contracts issued by any component other than Transportation Security Administration (TSA), in which any covered items will be procured with a value exceeding $194,000 (or the superseding threshold upon updating of (FAR) 48 CFR 25.402), (HSAR) 48 CFR 3025.7002-1 does not apply if the items are eligible products per FAR 48 CFR Subpart 25.4; follow (FAR) 48 CFR part 25 instead.

(3) For solicitations, orders, exercising of an option and contracts issued by TSA in which any covered items will be procured with a value exceeding the simplified acquisition threshold, (HSAR) 48 CFR 3025.7002 applies to all covered items except those from Mexico, Canada or Chile because TSA is listed as a covered governmental entity in the North American Free Trade Agreement (NAFTA) and the U.S.-Chile Free Trade Agreement but TSA is excluded from all other trade agreements.

(b) For covered items from a country that is not entitled to non-discriminatory treatment under the WTO GPA, or any FTA listed in (FAR) 48 CFR subpart 25.4, apply the restrictions of (HSAR) 48 CFR 3025.7002 to all solicitations, orders, exercising of an option and contracts exceeding the simplified acquisition threshold in place of the Buy America Act policies at (FAR) 48 CFR Subpart 25.1.

3025.7003 Contract clauses.

Unless an exception under (HSAR) 48 CFR 3025.7002-2(a), (b), (e) or (f) applies, insert the clause at (HSAR) 48 CFR 3052.225-70, Requirement for Use of Certain Domestic Commodities, in solicitations, exercising of an option, contract modifications that add new items (or which make a cardinal change) and contracts with a value exceeding the simplified acquisition threshold when procuring any item covered under (HSAR) 48 CFR 3025.7002-1(a) or (b).

HOMELAND SECURITY ACQUISITION REGULATION
PART 3026 OTHER SOCIOECONOMIC PROGRAMS
[RESERVED]

PART 3027 PATENTS, DATA, AND COPYRIGHTS

Subpart 3027.2 Patents
3027.205 Adjustment of royalties.
3027.208 Use of patented technology under the North American Free Trade Agreement.

Subpart 3027.3 Patent Rights Under Government Contracts
3027.304-1 General.
3027.304-5 Appeals.
3027.305-4 Administration of Patent Rights Clause.
3027.306 Licensing background patent rights to third parties..

Subpart 3027.4 Rights in Data and Copyrights
3027.404 Basic Rights in Data clause.
3027.409 Solicitation provisions and contract clauses.

Subpart 3027.2 Patents

3027.205 Adjustment of royalties.

(a) Reports shall be made to Component legal counsel. Contracting Officers shall coordinate actions with the COCO and HCA.

3027.208 Use of patented technology under the North American Free Trade Agreements.

(f) Contracting officers shall ensure compliance.

Subpart 3027.3 Patent Rights under Government Contracts

3027.304-1 General.

Interim and final invention reports and notification of all subcontracts for experimental, developmental, or research work (FAR) 48 CFR 27.304-1(e)(2)(ii) may be submitted on DD Form 882, Report of Inventions and Subcontracts.

3027.304-5 Appeals.

(a) Contracting officers are authorized to take the specified actions.

(b) Appeals shall be made to the CPO.

3027.305 Administration of Patent Rights Clauses.

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

The contracting officer shall ensure that solicitations and contracts which include a patent rights clause include a means for the contractor to report inventions made in the course of contract performance and at contract completion. This requirement may be fulfilled by requiring the contractor to submit a DD Form 882, Report of Inventions and Subcontract.

3027.306 Licensing background patent rights to third parties.

(b) The CPO shall make the required determinations and notifications under this subpart.

Subpart 3027.4 Rights in Data and Copyrights

3027.404 Basic rights in data clause.

(f)(1)(iii) The DHS will use Alternate IV of the (FAR) 48 CFR clause 52.227-14 in all contracts containing the basic clause, unless the HCA approves an exclusion. Approval at a level above the contracting officer is required for the contract to exclude items or categories of data from Alternative IV.

3027.409 Solicitation provisions and contract clauses.

Alternate IV of the (FAR) 48 CFR clause 52.227-14 shall be included in solicitations and contracts containing the basic clause unless the HCA approves an exclusion. Additional non-conflicting alternates may be used.

PART 3028 BONDS AND INSURANCE

Subpart 3028.1 Bonds and Other Financial Protections
3028.106 Administration.
3028.106-6 Furnishing information.
3028.106-70 Execution and administration of bonds.
3028.106-490 Contract clause (USCG

Subpart 3028.3 Insurance
3028.306 Insurance under fixed-price contracts.
3028.306-90 Contracts for lease of aircraft (USCG).
3028.307 Insurance under cost reimbursement contracts.
3028.307-1 Group insurance plans.
3028.310 Contract clause for work on a Government installation.
3028.310-70 Contract clause.
3028.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.
3028.311-1 Contract clause.

Subpart 3028.1 Bonds and Other Financial Protections

3028.106 Administration.

3028.106-6 Furnishing information.

(b) The contracting officer shall, upon request, furnish the name and address of the prime contractor's surety or sureties to employees, suppliers, and subcontractors having a contractual or employment relationship with prime contractors, subcontractors or suppliers. When furnishing surety information, the inquirer may also be informed that:

(1) Persons believing that they have legal remedies under the Miller Act are cautioned to consult their own legal advisor regarding the proper steps to take to obtain remedies.

(2) On construction contracts exceeding $2,000, if the contracting officer is informed (through routine compliance checking, a complaint, or a request for information) that a laborer, mechanic, apprentice, trainee, watchman, or guard employed by the contractor or subcontractor at any tier may have been paid wages less than those required by the applicable labor standards provisions of the contract, the contracting officer shall promptly initiate an investigation in accordance with (FAR) 48 CFR Subpart 22.4, irrespective of the employee's rights under the Miller Act. When an employee's request for information is involved, the contracting officer shall inform the inquirer that such investigation will be made. Such investigation is required pursuant to the provisions of the Davis-Bacon Act, Contract Work Hours and Safety Standards Act, and Copeland (Anti-Kickback) Act for assuring proper payment to such employees.

(c) When furnishing a copy of a payment bond and contract in accordance with (FAR) 48 CFR 28.106-6(c), the requirement for a copy of the contract's cover page~~s~~ which show the contract number and date, the contractor's name and signature, the contracting officer's signature, and the description of the contract work. The contracting officer furnishing the copies shall place the statement "Certified to be a true and correct copy" followed by a signature, title and name of the Component. The fee for furnishing the requested certified copies shall be determined according to the DHS Freedom of Information Act regulation, 6 CFR Part 5, Subpart B.

3028.106-70 Execution and administration of bonds.

(a) The contracting officer shall notify the surety within 30 days, of the contractor's failure to perform in accordance with the terms of the contract.

(b) When a partnership is a principal on a bond, the names of all the members of the firm shall be listed in the bond following the name of the firm, and the phrase "a partnership composed of." If a principal is a corporation, the state of incorporation shall also appear on the bond.

(c) Performance or payment bond(s) other than an annual bond shall not predate the contract to which it pertains.

(d) Bonds may be filed with the original contract to which they apply, or all bonds can be separately maintained and reviewed quarterly for validity. If separately maintained, each contract file shall cross-reference the applicable bonds.

3028.106-490 Contract clause (USCG).

For the U.S. Coast Guard, the contracting officer shall insert the USCG clause at (HSAR) 48 CFR 3052.228-90**,** Notification of Miller Act Payment Bond Protection (USCG), in solicitations and contracts, and shall require its first-tier subcontractors to insert the clause in all of their subcontracts, when payment bonds are required.

Subpart 3028.3 Insurance

3028.306 Insurance under fixed-price contracts.

3028.306-90 Contracts for lease of aircraft (USCG).

(a) For the U.S. Coast Guard, the contracting officer shall insert the clauses at (HSAR) 48 CFR 3052.228-91 through 3052.228-93, unless otherwise indicated by the specific instructions for their use, in any contract for the lease of aircraft (including aircraft used in out-service flight training).

(b) For the U.S. Coast Guard, the contracting officer shall insert the clause at (HSAR) 48

CFR 3052.228-91, Loss of or Damage to Leased Aircraft, in any contract for the lease of aircraft, except in the following circumstances:

(1) When the hourly rental rate does not exceed $250 and the total rental cost for any single transaction is not in excess of $2,500:

(2) When the cost of hull insurance does not exceed 10 percent of the contract rate; or

(3) When the lessor's insurer does not grant a credit for uninsured hours, thereby preventing the lessor from granting the same to the Government.

(c) For the U.S. Coast Guard, the contracting officer shall insert the clause at (HSAR) 48 CFR 3052.228-92, Fair Market Value of Aircraft, when fair market value of the aircraft can be determined.

(d) 49 U.S.C. 44112, as amended, provides that no lessor of an aircraft under a bona fide lease of 30 days or more shall be liable by reason of his interest as lessor or title-holder of the aircraft for any injury to or death of persons, or damage to or loss of property, unless such aircraft is in the actual possession or control of such person at the time of such injury, death, damage or loss. On short-term or intermittent-use leases, however, the owner may be liable for damage caused by operation of the aircraft. It is usual for the aircraft owner to retain insurance covering this liability during the term of such lease. Such insurance can, often for little or no increase in premium, be made to cover the Government's exposure to liability as well. In order to take advantage of this coverage, the Risks and Indemnities clause at (HSAR) 48 CFR 3052.228-93 prescribed in paragraph (d)(1) of this section shall be used.

(1) For the U.S. Coast Guard, the contracting officer shall insert the clause at (HSAR) 48 CFR 3052.228-93, Risk and Indemnities, in any contract for out-service flight training or for the lease of aircraft when the Government will have exclusive use of the aircraft for a period of less than thirty days.

(2) For the U.S. Coast Guard, any contract for out-service flight training shall include a clause in the contract schedule stating substantially that the contractor's personnel shall at all times during the course of the training be in command of the aircraft and that at no time shall other personnel be permitted to take command of the aircraft.

3028.307 Insurance under cost-reimbursement contracts.

3028.307-1 Group insurance plans.

Plans shall be submitted to the contracting officer, who must obtain the advice of legal counsel.

3028.310 Contract clause for work on a Government installation.

3028.310-70 Contract clause.

Insert a clause substantially similar to (HSAR) 48 CFR 3052.228-70, "Insurance," in all solicitations and contracts that contain the clause at (FAR) 47 CFR 52.228-5.

3028.311 Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts.

3028.311-1 Contract clause.

Insert a clause substantially similar to (HSAR) 48 CFR 3052.228-70, "Insurance," in all solicitations and contracts that contain the clause at (FAR) 48 CFR 52.228-7, unless waived by an official one level above the contracting officer.

HOMELAND SECURITY ACQUISITION REGULATION
PART 3029 TAXES
[RESERVED]

PART 3030 COST ACCOUNTING STANDARDS ADMINISTRATION

Subpart 3030.2 CAS Program Requirements
3030.201 Contract requirements.
3030.201-5 Waiver.

Subpart 3030.2 CAS Program Requirements

3030.201 Contract requirements.

3030.201-5 Waiver.

(a) The CPO is authorized to waive the applicability of the Cost Accounting Standards (CAS) under (FAR) 48 CFR 30.201-5(b). This authority may not be redelegated.

(c) Waiver requests must conform to (HSAR) 48 CFR 3001.70.

PART 3031 CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 3031.2 Contracts with Commercial Organizations.
3031.205 Selected costs.
3031.205-32 Precontract costs.

Subpart 3031.2 Contracts with Commercial Organizations

3031.205 Selected costs.

3031.205-32 Precontract costs.

(a) The decision to incur precontract costs is that of the contractor. DHS employees may not authorize, demand, or require a contractor to incur precontract costs. The contracting officer must advise the prospective contractor that any costs incurred before contract award are incurred at the contractor's sole risk and that if negotiations fail to result in a binding contract, payment of these costs will not be made by the Government. See (HSAR) 48 CFR 3031.205-32(b) regarding exception due to reconciliation of costs.

(b) When the contracting officer determines that incurring precontract costs was necessary to meet the proposed contract delivery schedule of a cost-reimbursement contract, the clause at (HSAR) 48 CFR 3052.231-70, Precontract Costs, may be inserted in the resultant contract.

PART 3032 CONTRACT FINANCING

Subpart 3032.000 Scope of part
3032.003 Simplified acquisition procedures financing.
3032.006 Reduction or suspension of contact payments upon finding of fraud.
3032.006-2 Definition.
3032.006-3 Responsibilities.

Subpart 3032.11 Electronic Funds Transfer
3032.1110 Solicitation provision and contract clauses.

Subpart 3032.000 Scope of part

3032.003 Simplified acquisition procedures financing.

Contract financing may be permitted for purchases made under the authority of (FAR) 48 CFR Part 13. This authority is delegated to COCO and may not be redelegated.

3032.006 Reduction or suspension of contract payments upon finding of fraud.

3032.006-2 Definition.

The CPO is the DHS remedy coordination official (RCO).

3032.006-3 Responsibilities.

(a) The CPO is authorized to establish specific procedures.

(b) Reports shall be made through the HCA to the CPO.

3032.11 Electronic Funds Transfer

3032.1110 Solicitation provision and contract clauses.

(a)(1) Contracting officer shall insert FAR 48 CFR 52.232-33, Payment by Electronic Funds Transfer--Central Contractor Registration, in all proposed solicitations and contracts.

PART 3033 PROTESTS, DISPUTES, AND APPEALS

Subpart 3033.1 Protests
3033.102 General.
3033.102-90 Protests on classified solicitations (OSA).

Subpart 3033.2 Disputes and Appeals
3033.201 Definitions.
3033.211 Contracting officer's decision.
3033.214 Alternative disputes resolution (ADR).

Subpart 3033.1 Protests

3033.102 General.

3033.102-90 Protests on classified solicitations (OSA).

To ensure that classified information is protected and appropriate security measures are coordinated as required, protests involving classified solicitations issued by the Office of Selective Acquisitions (OSA) shall be submitted directly to the contracting officer for further transmission to the GAO, the United States Court of Federal Claims, or for internal resolution in the case of agency protests. Specific instructions will be provided in Section L of the solicitation.

Subpart 3033.2 Disputes and Appeals

3033.201 Definitions.

"Agency Board of Contract Appeals" means the Civilian Board of Contract Appeals (CBCA).

3033.211 Contracting officer's decision.

For DHS contracts, the Board of Contract Appeals (BCA) noted in (FAR) 48 CFR 33.211 is the Civilian Board of Contract Appeals (CBCA), 1800 F Street, N.W., Washington, DC, 20450.

3033.214 Alternative dispute resolution (ADR).

(c) The Administrative Dispute Resolution Act (ADRA) of 1996, as amended, 5 U.S.C. 571, *et. seq.*, authorizes and encourages agencies to use mediation, conciliation, arbitration, and other techniques for the prompt and informal resolution of disputes, and for other purposes. CBCA guidance on ADR may be obtained at http://www.gsbca.gsa.gov/CBCA-17712-v1-CBCA_ADR_INFORMATION.pdf or

from the CBCA upon request. ADR procedures may be used --

(1) When there is mutual consent by the parties to participate in the ADR process (with consent being obtained either before or after an issue in controversy has arisen);

(2) Prior to the submission of a claim; and

(3) In resolution of a formal claim.

PART 3034 MAJOR SYSTEM ACQUISITION

Subpart 3034.0 General
3034.004 Acquisition strategy

3034.0 General

3034.004 Acquisition strategy.

See (HSAR) 48 CFR 3009.570 for policy applicable to acquisition strategies that consider the use of lead system integrators.

PART 3035 RESEARCH AND DEVELOPMENT CONTRACTING

Subpart 3035.000 Scope of Part
3035.003 Policy.
3035.008 Evaluation for Award.
3035.017 Federally Funded Research and Development Centers.

Subpart 3035.70 Information Dissemination by Educational Institutions
3035.70-1 Policy.
3035.70-2 Contract clause.

Subpart 3035.000 Scope of Part

3035.003 Policy.

(b) Cost sharing shall be determined on a case by case basis. Components may establish procedures for cost sharing.

(c) Recoupment shall be determined on a case-by-case basis. Recoupment not otherwise required by law should be structured to address factors such as recovering the Department's fair share of its investment in nonrecurring costs related to the items acquired. Advice of legal counsel shall be obtained prior to establishing cost sharing policies and recoupment mechanisms under (FAR) 48 CFR 35.003(b) and (c).

3035.008 Evaluation for Award.

See (HSAR) 48 CFR 3009.570 for limitations on the award of contracts to contractors acting as lead system integrators.

3035.017 Federally Funded Research and Development Centers.

(a) In accordance with Section 309(b) of the Homeland Security Act, 6 U.S.C. 189(b), DHS may be a joint sponsor under a multiple agency sponsorship arrangement with the Department of Energy (DOE) of one or more DOE national laboratories or sites. DOE shall be the primary sponsor under any multiple agency sponsorship arrangement with DOE laboratories or sites. Work performed by a DOE national laboratory or site under a joint sponsorship arrangement with DHS Components shall comply with policy on the use of Federally Funded Research and Development Centers (FFRDCs) in (FAR) 48 CFR 35.017.

3035.70 Information Dissemination by Educational Institutions

3035.70-1 Policy.

The Department of Homeland Security (DHS) desires widespread dissemination of the results of funded non-sensitive research. The Contractor, therefore, may publish (subject to the provisions of the “Data Rights” and “Patent Rights” clauses of the contract)

research results in professional journals, books, trade publications, or other appropriate media.

3035.70-2 Contract clause.

(a) The contracting officer shall use the clause at (HSAR) 48 CFR 3052.235-70, Dissemination of Information – Educational Institutions, in contracts with educational institutions for research that is not sensitive or classified.

(b) If the contract involves sensitive or classified research, the contracting officer shall prepare and insert a Special Contract Requirement that conditions dissemination upon the approval of a designated Government official.

PART 3036 CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subpart 3036.1 General
3036.104 Policy.
3036.104-90 Authority for one-step turn-key design-build contracting for the United States Coast Guard (USCG).

Subpart 3036.2 Special Aspects of Contracting for Construction
3036.201 [Removed]

Subpart 3036.5 Contract Clauses
3036.570 Special precautions for work at operating airports.

Subpart 3036.1 General

3036.104 Policy.

3036.104-90 Authority for one-step turn-key design-build contracting for the United States Coast Guard (USCG).

The Head of the Contracting Activity (HCA) of the U.S. Coast Guard may use one-step turn-key selection procedures to enter into fixed-price design-build contracts in accordance with 14 U.S.C. 677.

Subpart 3036.2 Special Aspects of Contracting for Construction

3036.201 [Removed]

Subpart 3036.5 Contract Clauses.

3036.570 Special precautions for work at operating airports.

Where any acquisition will require work at an operating airport, insert the clause at (HSAR) 48 CFR 3052.236-70, Special Precautions for Work at Operating Airports, in solicitations and contracts.

PART 3037 SERVICE CONTRACTING

Subpart 3037.1 Service Contracts – General
3037.103 [Removed and reserved.]
3037.103-70 [Removed].
3037.103-71 [Removed].
3037.104 Personal services contracts.
3037.104-70 Personal services contracts.
3037.104-90 Personal services contracts (USCG).
3037.104-91 Personal services with individuals under the authority of 10 U.S.C. 1091 (USCG
3037.110-70 [Removed and reserved].

Subpart 3037.1 Service Contracts – General

3037.103 [Removed and reserved]

3037.103-70 [Removed]

3037.103-71 [Removed]

3037.104 Personal services contracts.

3037.104-70 Personal services contracts.

(b) Authorization to acquire the personal services of experts and consultants is included in section 832 of the Homeland Security Act, 6 U.S.C. 392. This section includes authority to use personal service contracts without regard to the pay limitation of 5 U.S.C. 3109 when the services are necessary due to an urgent homeland security need.

3037.104-90 Personal services contracts (USCG).

The U.S. Coast Guard HCA may enter into medical personal services contracts in accordance with 10 U.S.C. 1091.

3037.104-91 Personal services contracts with individuals under the authority of 10 U.S.C. 1091 (USCG).

(a) Health care personal services contracts awarded to individuals shall be selected through procedures established in this section. Selections made using the procedures in this section are exempt by statute from (HSAR) 48 CFR part 3006 competition requirements (see (HSAR) 48 CFR 3006.9000 (USCG)) and from (FAR) 48 CFR Part 6 competition requirements.

(b) The contracting officer shall provide adequate advance notice of contracting opportunities to individuals residing in the area of the facility. The notice should include the qualification criteria against which individuals responding shall be evaluated. Contracting officers shall solicit

offerors through the most effective means of seeking competition, such as a local publication, which serves the area of the facility. Acquisitions of health care services using personal services contracts are exempt from posting and synopsis requirements of (FAR) 48 CFR Part 5.

(c) The contracting officer shall provide the qualifications of individuals responding to the notice to the representative(s) responsible for evaluation and ranking according to the evaluation procedures. Individuals shall be considered solely on the professional qualifications established for the particular health care services being acquired and the Government's estimate of reasonable rates, fees, or costs. The representative(s) responsible for the evaluation and ranking shall provide the contracting officer with rationale for the ranking of the individuals consistent with the required qualifications.

(d) Upon receipt of the ranked listing of offerors, the contracting officer shall either:
(1) Enter into negotiations with the highest ranked offeror. If a mutually satisfactory contract cannot be negotiated, the contracting officer shall terminate negotiations with the highest ranked offeror and enter into negotiations with the next highest, or;
(2) Enter into negotiations with all qualified offerors and select on the basis of qualifications and rates, fees, or other costs.

(e) In the event only one individual responds to an advertised requirement, the contracting officer is authorized to negotiate the contract award. In this case, the individual must still meet the minimum qualifications of the requirement and the contracting officer must be able to make a determination that the price is fair and reasonable.

(f) If a fair and reasonable price cannot be obtained from a qualified individual, the requirement should be canceled and acquired using procedures other than those set forth in this section.

(g) The total amount paid to an individual in any year for health care services under a personal services contract shall not exceed the paycap in COMDTINST M4200.19 (series), Coast Guard Acquisition Procedures.

(h) 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.

(i) Coordinate benefits, taxes and maintenance of records with the appropriate office(s).

(j) The contracting officer shall insure that contract funds are sufficient to cover all contingency items that may be cited in the statement of work for health care services.

3037.110 [Removed and reserved]

3037.110-70 [Removed]

HOMELAND SECURITY ACQUISITION REGULATION
PART 3038
FEDERAL SUPPLY SCHEDULE CONTRACTING
[RESERVED]

HOMELAND SECURITY ACQUISITION REGULATION
PART 3039
ACQUISITION OF INFORMATION TECHNOLOGY
[RESERVED]

HOMELAND SECURITY ACQUISITION REGULATION
PART 3040
[RESERVED]

HOMELAND SECURITY ACQUISITION REGULATION
PART 3041
ACQUSITION OF UTILITY SERVICES
[RESERVED]

PART 3042 CONTRACT ADMINISTRATION AND AUDIT SERVICES

Subpart 3042.2 [Removed]

Subpart 3042.15 Contractor Performance Information
3042.1502 Policy.

Subpart 3042.70 Contracting Officer's Technical Representative
3042.7000 Contract clause.

Subpart 3042.15 Contractor Performance Information

3042.1502 Policy.

(a) Components shall use the Contractor Performance Assessment Reporting System (CPARS) or other performance reporting system as designated by the DHS Chief Procurement Officer for evaluating contractor performance in accordance with (FAR) 48 CFR sections 42.1502 and 42.1503.

(e) Components shall use the Construction Contractor Appraisal Support System (CCASS) module of CPARS, or other performance reporting system as designated by the DHS Chief Procurement Officer for evaluating construction contractor performance in accordance with (FAR) 48 CFR sections 42.1502 and 42.1503.

(f) Components shall use the Architect-Engineer Contract Administration Support System (ACASS) module of CPARS or other performance reporting system as designated by the DHS Chief Procurement Officer for evaluating architect-engineer contractor performance in accordance with (FAR) 48 CFR sections 42.1502 and 42.1503.

Subpart 3042.70 Contracting Officer's Technical Representative

3042.7000 Contract clause.

The contracting officer shall insert the clause at (HSAR) 48 CFR 3052.242-72, Contracting Officer's Technical Representative, in solicitations and contracts when it is intended that a representative will be assigned to the contract to perform functions of a technical nature.

HOMELAND SECURITY ACQUISITION REGULATION

PART 3043
CONTRACT MODIFICATIONS
[RESERVED]

HOMELAND SECURITY ACQUISITION REGULATION
PART 3044
SUBCONTRACTING POLICIES AND PROCEDURES
[RESERVED]

HOMELAND SECURITY ACQUISITION REGULATION
PART 3045
GOVERNMENT PROPERTY
[REMOVED AND RESERVED]

PART 3046 QUALITY ASSURANCE

Subpart 3046.7 Warranties
3046.702 [Removed and reserved.]
3046.702-70 [Removed.]
3046.703 [Removed and reserved.]
3046.705 [Removed and reserved.]
3046.706 [Removed and reserved.]
3046.790 Use of warranties in major systems acquisitions by the USCG (USCG).
3046.790-1 Scope (USCG).
3046.790-2 Definitions (USCG).
3046.790-3 Policy (USCG).
3046.790-4 Waiver (USCG).

3046.7 Warranties

3046.702 [Removed and reserved.]

3046.703 [Removed and reserved.]

3046.705 [Removed and reserved.]

3046.706 [Removed and reserved.]

3046.790 Use of warranties in major systems acquisitions by the (USCG).

3046.790-1 Scope (USCG).

This subpart provides the policy for the USCG to use in obtaining warranties from contractors when contracting for the acquisition of a major system.

3046.790-2 Definitions (USCG).

As used in this part:

At no additional cost to the Government means without an increase in price for firm-fixed-price contracts, without an increase in target or ceiling price for fixed price incentive contracts (see (FAR) 48 CFR 46.707).

Defect means any condition or characteristic in any supplies or services furnished by the contractor under the contract that is not in compliance with the requirements of the contract.

Design and manufacturing requirement means structural and engineering plans and manufacturing particulars, including precise measurements, tolerances, materials and

finished product tests for the major system being produced.

Performance requirements means the operating capabilities, maintenance, and reliability characteristics of a system that are determined to be necessary for it to fulfill the requirement for which the system is designed.

3046.790-3 Policy (USCG).

(a) Major Systems. The use of warranties by the USCG in the procurement of major systems valued at $10,000,000 or higher is mandatory, unless waived (see (HSAR) 48 CFR 3046.790-4).

(b) Any warranty on major system acquisitions shall not apply in the case of any system or component thereof which has been furnished by the Government to a contractor except as indicated in paragraph (c)(4) of this section.

(c) When drafting warranty provisions/clauses for major systems acquisitions, the contracting officer shall ensure that the items listed at the Homeland Security Acquisition Manual (HSAM) Chapter 3046 have been considered. The warranty shall also meet the following requirements:

(1) For systems or components that are commercially available, such warranty as is normally provided by the manufacturer or supplier shall be obtained in accordance with (FAR) 48 CFR 46.703(d) and 46.710(b)(2).

(2) For systems or components provided in accordance with either design and manufacturing or performance requirements as specified in the contract or any modification to that contract, a warranty of compliance with the stated requirements shall be obtained.

(3) Any warranty obtained shall specifically exclude coverage for combat damage.

(4) A contractor for a major systems acquisition shall not be required to provide the warranties specified in this section on any property furnished to that contractor by the Government except for defects in installation.

3046.790-4 Waiver (USCG).

(a) The Secretary of Homeland Security may waive the requirement for a warranty for USCG major system acquisitions when the waiver is in the interest of national defense or if the warranty obtained would not be cost beneficial. A waiver may be granted provided that the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Commerce, Science and Transportation of the Senate, and the Committee on Merchant Marine and Fisheries of the House of Representatives are notified, in writing, of the Secretary's intention to waive the warranty requirements and the reasons supporting such a determination, prior to granting the waiver. The request for

Secretarial waiver shall include, as a minimum:

(1) A brief description of the major system and its stage of production (e.g., the number of units delivered and anticipated to be delivered during the life of the program);

(2) The specific waiver requested, the duration of the waiver if it is to involve more than one contract, and the rationale for the waiver; and

(3) All documentation supporting the request for waiver, such as a cost-benefit analysis.

(b) The waiver request shall be forwarded to the Secretary, via the CPO. The USCG shall maintain a written record of each waiver granted and the Congressional notification and report made, together with supporting documentation.

PART 3047 TRANSPORTATION

Subpart 3047.3 Transportation in Supply Contracts
3047.305 Solicitation provisions, contract clauses, and transportation factors.
3047.305-70 Solicitation provision

Subpart 3047.3 Transportation in Supply Contracts

3047.305 Solicitation provisions, contract clauses, and transportation factors.

3047.305-70 Solicitation provisions.

The contracting officer shall insert the following provisions in solicitations, as applicable:

(a) (HSAR) 48 CFR 3052.247-70, F.o.b. Origin Information, with Alternates I or II, as applicable, shall be inserted in accordance with (FAR) 48 CFR 47.305-3(b);

(b) (HSAR) 48 CFR 3052.247-71, F.o.b. Origin Only, shall be inserted in accordance with (FAR) 48 CFR 47.305-3(e); and

(c) (HSAR) 48 CFR 3052.247-72, F.o.b. Destination Only, shall be inserted in accordance with (FAR) 48 CFR 47.305-4(b).

HOMELAND SECURITY ACQUISITION REGULATION
PART 3048
VALUE ENGINEERING
[RESERVED]

HOMELAND SECURITY ACQUISITION REGULATION
PART 3049
TERMINATION OF CONTRACTS
[RESERVED]

HOMELAND SECURITY ACQUISITION REGULATION
PART 3050
EXTRAORDINARY CONTRACTUAL ACTIONS
[RESERVED]

HOMELAND SECURITY ACQUISITION REGULATION
PART 3051
USE OF GOVERNMENT SOURCES BY CONTRACTORS
[RESERVED]

PART 3052 SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 3052.1 Instructions for Using Provisions and Clauses

3052.101 Using Part 3052.

Subpart 3052.2 Texts of Provisions and Clauses

3052.203-70 Instructions for Contractor Disclosure of Violations.
3052.204-70 Security Requirements for Unclassified Information Technology Resources.
3052.204-71 Contractor Employee Access.
3052.205-70 Advertisements, Publicizing Awards, and Releases.
3052.209-70 Prohibition on Contracts With Corporate Expatriates.
3052.209-71 Reserve Officer Training Corps and Military Recruiting on Campus.
3052.209-72 Organizational Conflict of Interest.
3052.209-73 Limitation on Future Contracting.
3052.209-74 Limitations on Contractors Acting as Lead System Integrators
3052.209-75 Prohibited Financial Interests for Lead System Integrators
3052.209-76 Prohibition on Federal Protective Service Guard Services Contracts with Business Concerns Owned, Controlled, or Operated by an Individual Convicted of a Felony.
3052.211-70 Index for Specifications.
3052.211-90 [Removed]
3052.212.70 Contract Terms and Conditions Applicable to DHS Acquisition of Commercial Items.
3052.213-90 [Removed]
3052.215-70 Key Personnel or Facilities.
3052.216-70 Evaluation of Offers Subject to an Economic Price Adjustment Clause.
3052.216-71 Determination of Award Fee.
3052.216-72 Performance Evaluation Plan.
3052.216-73 Distribution of Award Fee.
3052.216-74 Settlement of Letter Contract.
3052.217-90 Delivery and Shifting of Vessel (USCG).
3052.217-91 Performance (USCG).
3052.217-92 Inspection and Manner of Doing Work (USCG).
3052.217-93 Subcontracts (USCG).
3052.217-94 Lay Days (USCG).
3052.217-95 Liability and Insurance (USCG).
3052.217-96 Title (USCG).
3052.217-97 Discharge of Liens (USCG).
3052.217-98 Delays (USCG).
3052.217-99 Department of Labor Safety and Health Regulations for Ship Repair (USCG).
3052.217-100 Guarantee (USCG).
3052.219-70 Small Business Subcontracting Plan Reporting.
3052.219-71 DHS Mentor-Protégé Program.
3052.219-72 Evaluation of Prime Contractor Participation in the DHS Mentor-Protégé

Program.
3052.222-70 Strikes or Picketing Affecting Timely Completion of the Contract Work.
3052.222-71 Strikes or Picketing Affecting Access to a DHS Facility.
3052.222-90 Local Hire (USCG).
3052.223-70 Removal or Disposal of Hazardous Substances-Applicable Licenses and Permits.
3052.223-90 Accident and Fire Reporting (USCG).
3052.225-70 Requirement for use of Certain Domestic Commodities. (August 2009)
3052.228-70 Insurance.
3052.228-90 Notification of Miller Act Payment Bond Protection (USCG).
3052.228-91 Loss of or Damage to Leased Aircraft (USCG).
3052.228-92 Fair Market Value of Aircraft (USCG).
3052.228-93 Risk and Indemnities (USCG).
3052.231-70 Precontract Costs.
3052.235.70 Dissemination of Information-Educational Institutions.
3052.236-70 Special Provisions for Work at Operating Airports.
3052.237-70 [Removed]
3052.237-71 [Removed]
3052.237-72 [Removed]
3052.242.70 [Removed and reserved]
3052.242-71 [Removed and reserved]
3052.242-72 Contracting Officer's Technical Representative.
3052.245-70 [Removed and reserved]
3052.247-70 F.o.B. Origin Information.
3052.247-71 F.o.B. Origin Only.
3052.247-72 F.o.B. Destination Only.

Subpart 3052.1 Instructions for Using Provisions and Clauses

3052.101 Using Part 3052.

(b) Numbering.

(2)(i) Provisions or clauses that supplement the FAR.

(A) Agency-prescribed provisions and clauses permitted by HSAR and used on a standard basis (i.e., normally used in two or more solicitations or contracts regardless of contract type) shall be prescribed and contained in the HSAR. Components desiring to use a provision or a clause on a standard basis shall submit a request containing a copy of the clause(s), justification for its use, and evidence of legal counsel review to the CPO in accordance with (HSAR) 48 CFR 3001.304 for possible inclusion in the HSAR.

(B) Provisions and clauses used on a one-time basis (i.e., non-standard provisions and clauses) may be approved by the contracting officer, unless a higher level is designated by the Component. This authority is subject to:

(1) Evidence of legal counsel review in the contract file;
(2) Inserting these clauses in the appropriate sections of the uniform contract format; and
(3) Ensuring the provisions and clauses do not deviate from the requirements of the FAR and HSAR.

NOTE to 3052.101: The solicitation provisions and contract clauses matrix referencing all HSAR provisions and clauses is available at http://www.dhs.gov/xopnbiz/ under Policy and Regulations, Homeland Security Acquisition Regulation (HSAR).

Subpart 3052.2 Text of Provisions and Clauses

3052.203-70 Instructions for Contractor Disclosure of Violations.

As prescribed in (HSAR) 48 CFR 3003.1004(a), insert the following clause:

INSTRUCTIONS FOR CONTRACTOR DISCLOSURE OF VIOLATIONS (SEP 2012)

When making a written disclosure under the clause at FAR 52.203-13, paragraph (b)(3), the Contractor shall use the Contractor Disclosure Form at http://www.oig.dhs.gov and submit the disclosure electronically to the Department of Homeland Security Office of Inspector General. The Contractor shall provide a copy of the disclosure to the Contracting Officer by email or facsimile on the same business day as the submission to the Office of Inspector General. The Contractor shall provide the Contracting Officer a concurrent copy of any supporting materials submitted to the Office of Inspector General.

(End of clause)

3052.204-70 Security requirements for unclassified information technology resources.

As prescribed in (HSAR) 48 CFR 3004.470-3 Contract clauses, insert a clause substantially the same as follows:

SECURITY REQUIREMENTS FOR UNCLASSIFIED INFORMATION TECHNOLOGY RESOURCES (JUN 2006)

(a) The Contractor shall be responsible for Information Technology (IT) security for all systems connected to a DHS network or operated by the Contractor for DHS, regardless of location. This clause applies to all or any part of the contract that includes information technology resources or services for which the Contractor must have physical or electronic access to sensitive information contained in DHS unclassified systems that directly support the agency's mission.

(b) The Contractor shall provide, implement, and maintain an IT Security Plan. This plan shall describe the processes and procedures that will be followed to ensure appropriate security of IT resources that are developed, processed, or used under this contract.

(1) Within ____["insert number of days"] days after contract award, the contractor shall submit for approval its IT Security Plan, which shall be consistent with and further detail the approach contained in the offeror's proposal. The plan, as approved by the Contracting Officer, shall be incorporated into the contract as a compliance document.

(2) The Contractor's IT Security Plan shall comply with Federal laws that include, but are not limited to, the Computer Security Act of 1987 (40 U.S.C. 1441 et seq.); the Government Information Security Reform Act of 2000; and the Federal Information Security Management Act of 2002; and with Federal policies and procedures that include, but are not limited to, OMB Circular A-130.

(3) The security plan shall specifically include instructions regarding handling and protecting sensitive information at the Contractor's site (including any information stored, processed, or transmitted using the Contractor's computer systems), and the secure management, operation, maintenance, programming, and system administration of computer systems, networks, and telecommunications systems.

(c) Examples of tasks that require security provisions include--

(1) Acquisition, transmission or analysis of data owned by DHS with significant replacement cost should the contractor's copy be corrupted; and

(2) Access to DHS networks or computers at a level beyond that granted the general public (e.g., such as bypassing a firewall).

(d) At the expiration of the contract, the contractor shall return all sensitive DHS information and IT resources provided to the contractor during the contract, and certify that all non-public DHS information has been purged from any contractor-owned system. Components shall conduct reviews to ensure that the security requirements in the contract are implemented and enforced.

(e) Within 6 months after contract award, the contractor shall submit written proof of IT Security accreditation to DHS for approval by the DHS Contracting Officer. Accreditation will proceed according to the criteria of the DHS Sensitive System Policy Publication, 4300A (Version 2.1, July 26, 2004) or any replacement publication, which the Contracting Officer will provide upon request. This accreditation will include a final security plan, risk assessment, security test and evaluation, and disaster recovery plan/continuity of operations plan. This accreditation, when accepted by the Contracting Officer, shall be incorporated into the contract as a compliance document. The contractor shall comply with the approved accreditation documentation.

(End of clause)

3052.204-71 Contractor employee access.

As prescribed in (HSAR) 48 CFR 3004.470-3(b), insert a clause substantially the same as

follows with appropriate alternates:

CONTRACTOR EMPLOYEE ACCESS
(SEP 2012)

(a) *Sensitive Information*, as used in this clause, means any information, which if lost, misused, disclosed, or, without authorization is accessed, or modified, could adversely affect the national or homeland security interest, the conduct of Federal programs, or the privacy to which individuals are entitled under section 552a of title 5, United States Code (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense, homeland security or foreign policy. This definition includes the following categories of information:

(1) Protected Critical Infrastructure Information (PCII) as set out in the Critical Infrastructure Information Act of 2002 (Title II, Subtitle B, of the Homeland Security Act, Public Law 107-296, 196 Stat. 2135), as amended, the implementing regulations thereto (Title 6, Code of Federal Regulations, Part 29) as amended, the applicable PCII Procedures Manual, as amended, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security (including the PCII Program Manager or his/her designee);

(2) Sensitive Security Information (SSI), as defined in Title 49, Code of Federal Regulations, Part 1520, as amended, "Policies and Procedures of Safeguarding and Control of SSI," as amended, and any supplementary guidance officially communicated by an authorized official of the Department of Homeland Security (including the Assistant Secretary for the Transportation Security Administration or his/her designee);

(3) Information designated as "For Official Use Only," which is unclassified information of a sensitive nature and the unauthorized disclosure of which could adversely impact a person's privacy or welfare, the conduct of Federal programs, or other programs or operations essential to the national or homeland security interest; and

(4) Any information that is designated "sensitive" or subject to other controls, safeguards or protections in accordance with subsequently adopted homeland security information handling procedures.

(b) "Information Technology Resources" include, but are not limited to, computer equipment, networking equipment, telecommunications equipment, cabling, network drives, computer drives, network software, computer software, software programs, intranet sites, and internet sites.

(c) Contractor employees working on this contract must complete such forms as may be necessary for security or other reasons, including the conduct of background investigations to determine suitability. Completed forms shall be submitted as directed by the Contracting Officer. Upon the Contracting Officer's request, the Contractor's

employees shall be fingerprinted, or subject to other investigations as required. All Contractor employees requiring recurring access to Government facilities or access to sensitive information or IT resources are required to have a favorably adjudicated background investigation prior to commencing work on this contract unless this requirement is waived under Departmental procedures.

(d) The Contracting Officer may require the Contractor to prohibit individuals from working on the contract if the Government deems their initial or continued employment contrary to the public interest for any reason, including, but not limited to, carelessness, insubordination, incompetence, or security concerns.

(e) Work under this contract may involve access to sensitive information. Therefore, the Contractor shall not disclose, orally or in writing, any sensitive information to any person unless authorized in writing by the Contracting Officer. For those Contractor employees authorized access to sensitive information, the Contractor shall ensure that these persons receive training concerning the protection and disclosure of sensitive information both during and after contract performance.

(f) The Contractor shall include the substance of this clause in all subcontracts at any tier where the subcontractor may have access to Government facilities, sensitive information, or resources.

(End of clause)

ALTERNATE I
(SEP 2012)

When the contract will require contractor employees to have access to Information Technology (IT) resources, add the following paragraphs:

(g) Before receiving access to IT resources under this contract the individual must receive a security briefing, which the Contracting Officer's Technical Representative (COTR) will arrange, and complete any nondisclosure agreement furnished by DHS.

(h) The Contractor shall have access only to those areas of DHS information technology resources explicitly stated in this contract or approved by the COTR in writing as necessary for performance of the work under this contract. Any attempts by Contractor personnel to gain access to any information technology resources not expressly authorized by the statement of work, other terms and conditions in this contract, or as approved in writing by the COTR, is strictly prohibited. In the event of violation of this provision, DHS will take appropriate actions with regard to the contract and the individual(s) involved.

(i) Contractor access to DHS networks from a remote location is a temporary privilege for mutual convenience while the Contractor performs business for the DHS Component. It is not a right, a guarantee of access, a condition of the contract, or Government

Furnished Equipment (GFE).

(j) Contractor access will be terminated for unauthorized use. The Contractor agrees to hold and save DHS harmless from any unauthorized use and agrees not to request additional time or money under the contract for any delays resulting from unauthorized use or access.

(k) Non-U.S. citizens shall not be authorized to access or assist in the development, operation, management or maintenance of Department IT systems under the contract, unless a waiver has been granted by the Head of the Component or designee, with the concurrence of both the Department's Chief Security Officer (CSO) and the Chief Information Officer (CIO) or their designees. Within DHS Headquarters, the waiver may be granted only with the approval of both the CSO and the CIO or their designees. In order for a waiver to be granted:

(1) There must be a compelling reason for using this individual as opposed to a U. S. citizen; and

(2) The waiver must be in the best interest of the Government.

(l) Contractors shall identify in their proposals the names and citizenship of all non-U.S. citizens proposed to work under the contract. Any additions or deletions of non-U.S. citizens after contract award shall also be reported to the Contracting Officer.

(End of clause)

ALTERNATE II
(JUN 2006)

When the Department has determined contract employee access to sensitive information or Government facilities must be limited to U.S. citizens and lawful permanent residents, but the contract will not require access to IT resources, add the following paragraphs:

(g) Each individual employed under the contract shall be a citizen of the United States of America, or an alien who has been lawfully admitted for permanent residence as evidenced by a Permanent Resident Card (USCIS I-551). Any exceptions must be approved by the Department's Chief Security Officer or designee.

(h) Contractors shall identify in their proposals, the names and citizenship of all non-U.S. citizens proposed to work under the contract. Any additions or deletions of non-U.S. citizens after contract award shall also be reported to the contracting officer.

(End of clause)

3052.205-70 Advertisements, Publicizing Awards, and Releases.

As prescribed in (HSAR) 48 CFR 3005.470-2, insert the following clause:

ADVERTISEMENTS, PUBLICIZING AWARDS, AND RELEASES (SEP 2012)

The Contractor shall not refer to this contract in commercial advertising or similar promotions in such a manner as to state or imply that the product or service provided is endorsed or preferred by the Federal Government or is considered by the Government to be superior to other products or services.

(End of clause)

ALTERNATE I (SEP 2012)

If a contract involves sensitive or classified information, designate the paragraph in the base clause as (a) and add the following paragraph (b) to the clause:

(b) All advertisements, releases, announcements, or other publication regarding this contract or the agency programs and projects covered under it, or the results or conclusions made pursuant to performance, must be approved by the Contracting Officer. Under no circumstances shall the Contractor, or anyone acting on behalf of the Contractor, refer to the supplies, services, or equipment furnished pursuant to the provisions of this contract in any publicity, release, or commercial advertising without first obtaining explicit written consent to do so from the Contracting Officer.

(End of clause)

3052.209-70 - Prohibition on contracts with corporate expatriates.

As prescribed at (HSAR) 48 CFR 3009.108-7005, insert the following clause:

PROHIBITION ON CONTRACTS WITH CORPORATE EXPATRIATES (JUN 2006)

(a) Prohibitions.

Section 835 of the Homeland Security Act, 6 U.S.C. 395, prohibits the Department of Homeland Security from entering into any contract with a foreign incorporated entity which is treated as an inverted domestic corporation as defined in this clause, or with any subsidiary of such an entity. The Secretary shall waive the prohibition with respect to any specific contract if the Secretary determines that the waiver is required in the interest of national security.

(b) Definitions. As used in this clause:

Expanded Affiliated Group means an affiliated group as defined in section 1504(a) of the Internal Revenue Code of 1986 (without regard to section 1504(b) of such Code), except that section 1504 of such Code shall be applied by substituting `more than 50 percent' for `at least 80 percent' each place it appears.

Foreign Incorporated Entity means any entity which is, or but for subsection (b) of section 835 of the Homeland Security Act, 6 U.S.C. 395, would be, treated as a foreign corporation for purposes of the Internal Revenue Code of 1986.

Inverted Domestic Corporation. A foreign incorporated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

(1) The entity completes the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership;

(2) After the acquisition at least 80 percent of the stock (by vote or value) of the entity is held—

(i) In the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation; or

(ii) In the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership; and

(3) The expanded affiliated group which after the acquisition includes the entity does not have substantial business activities in the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group.

Person, domestic, and foreign have the meanings given such terms by paragraphs (1), (4), and (5) of section 7701(a) of the Internal Revenue Code of 1986, respectively.

(c) Special rules. The following definitions and special rules shall apply when determining whether a foreign incorporated entity should be treated as an inverted domestic corporation.

(1) *Certain stock disregarded*. For the purpose of treating a foreign incorporated entity as an inverted domestic corporation these shall not be taken into account in determining ownership:

(i) Stock held by members of the expanded affiliated group which includes the foreign incorporated entity; or

(ii) Stock of such entity which is sold in a public offering related to an acquisition described in section 835(b)(1) of the Homeland Security Act, 6 U.S.C. 395(b)(1).

(2) *Plan deemed in certain cases*. If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership

during the 4-year period beginning on the date which is 2 years before the ownership requirements of subsection (b)(2) are met, such actions shall be treated as pursuant to a plan.

(3) *Certain transfers disregarded*. The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

(d) *Special rule for related partnerships*. For purposes of applying section 835(b) of the Homeland Security Act, 6 U.S.C. 395(b) to the acquisition of a domestic partnership, except as provided in regulations, all domestic partnerships which are under common control (within the meaning of section 482 of the Internal Revenue Code of 1986) shall be treated as a partnership.

(e) Treatment of Certain Rights.

(1) Certain rights shall be treated as stocks to the extent necessary to reflect the present value of all equitable interests incident to the transaction, as follows:

(i) warrants;
(ii) options;
(iii) contracts to acquire stock;
(iv) convertible debt instruments; and
(v) others similar interests.

(2) Rights labeled as stocks shall not be treated as stocks whenever it is deemed appropriate to do so to reflect the present value of the transaction or to disregard transactions whose recognition would defeat the purpose of Section 835.

(f) *Disclosure*. The offeror under this solicitation represents that [Check one]:

__ it is not a foreign incorporated entity that should be treated as an inverted domestic corporation pursuant to the criteria of (HSAR) 48 CFR 3009.108-7001 through 3009.108-7003;

__ it is a foreign incorporated entity that should be treated as an inverted domestic corporation pursuant to the criteria of (HSAR) 48 CFR 3009.108-7001 through 3009.108-7003, but it has submitted a request for waiver pursuant to 3009.108-7004, which has not been denied; or

__ it is a foreign incorporated entity that should be treated as an inverted domestic corporation pursuant to the criteria of (HSAR) 48 CFR 3009.108-7001 through 3009.108-7003, but it plans to submit a request for waiver pursuant to 3009.108-7004.

(g) A copy of the approved waiver, if a waiver has already been granted, or the waiver request, if a waiver has been applied for, shall be attached to the bid or proposal.

(End of clause)

3052.209-71 Reserve Officer Training Corps and military recruiting on campus.

As prescribed in (HSAR) 48 CFR 3009.470-4, use the following clause:

RESERVE OFFICER TRAINING CORPS AND MILITARY RECRUITING ON CAMPUS (DEC 2003)

(a) Definitions. "Institution of higher education," as used in this clause, means an institution that meets the requirements of 20 U.S.C. 1001 and includes all subelements of such an institution.

(b) Limitation on contract award. Except as provided in paragraph (c) of this clause, an institution of higher education is ineligible for contract award if the Secretary of Defense determines that the institution has a policy or practice (regardless of when implemented) that prohibits or in effect prevents-

(1) The Secretary of a military department from maintaining, establishing, or operating a unit of the Senior Reserve Officer Training Corps (ROTC) (in accordance with 10 U.S.C. 654 and other applicable Federal laws) at that institution;

(2) A student at that institution from enrolling in a unit of the Senior ROTC at another institution of higher education;

(3) The Secretary of a military department or the Secretary of Homeland Security from gaining entry to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting; or

(4) Military recruiters from accessing, for purposes of military recruiting, the following information pertaining to students (who are 17 years of age or older) enrolled at that institution:

(i) Name.
(ii) Address.
(iii) Telephone number.
(iv) Date and place of birth.
(v) Educational level.
(vi) Academic major.
(vii) Degrees received.
(viii) Most recent educational institution enrollment.

(c) Exception. The limitation in paragraph (b) of this clause does not apply to an

institution of higher education if the Secretary of Defense determines that-

(1) The institution has ceased the policy or practice described in paragraph (b) of this clause; or

(2) The institution has a long-standing policy of pacifism based on historical religious affiliation.

(d) Agreement. The Contractor represents that it does not now have, and agrees that during performance of this contract it will not adopt, any policy or practice described in paragraph (b) of this clause, unless the Secretary of Defense has granted an exception in accordance with paragraph (c)(2) of this clause.

(e) Notwithstanding any other clause of this contract, if the Secretary of Defense determines that the Contractor misrepresented its policies and practices at the time of contract award or has violated the agreement in paragraph (d) of this clause-

(1) The Contractor will be ineligible for further payments under this and any other contracts with the Department of Homeland Security; and

(2) The Government will terminate this contract for default for the Contractor's material failure to comply with the terms and conditions of award.

(End of clause)

3052.209-72 Organizational Conflict of Interest.

As prescribed in (HSAR) 48 CFR 3009.507-1, insert the following provision:

ORGANIZATIONAL CONFLICT OF INTEREST
(JUN 2006)

(a) Determination. The Government has determined that this effort may result in an actual or potential conflict of interest, or may provide one or more offerors with the potential to attain an unfair competitive advantage. The nature of the conflict of interest and the limitation on future contracting _____[“contracting officer shall insert description here”]_____.

(b) If any such conflict of interest is found to exist, the Contracting Officer may (1) disqualify the offeror, or (2) determine that it is otherwise in the best interest of the United States to contract with the offeror and include the appropriate provisions to avoid, neutralize, mitigate, or waive such conflict in the contract awarded. After discussion with the offeror, the Contracting Officer may determine that the actual conflict cannot be avoided, neutralized, mitigated or otherwise resolved to the satisfaction of the Government, and the offeror may be found ineligible for award.

(c) Disclosure: The offeror hereby represents, to the best of its knowledge that:
___ (1) It is not aware of any facts which create any actual or potential organizational conflicts of interest relating to the award of this contract, or ___ (2) It has included information in its proposal, providing all current information bearing on the existence of any actual or potential organizational conflicts of interest, and has included a mitigation plan in accordance with paragraph (d) of this provision.

(d) Mitigation. If an offeror with a potential or actual conflict of interest or unfair competitive advantage believes the conflict can be avoided, neutralized, or mitigated, the offeror shall submit a mitigation plan to the Government for review. Award of a contract where an actual or potential conflict of interest exists shall not occur before Government approval of the mitigation plan. If a mitigation plan is approved, the restrictions of this provision do not apply to the extent defined in the mitigation plan.

(e) Other Relevant Information: In addition to the mitigation plan, the Contracting Officer may require further relevant information from the offeror. The Contracting Officer will use all information submitted by the offeror, and any other relevant information known to DHS, to determine whether an award to the offeror may take place, and whether the mitigation plan adequately neutralizes or mitigates the conflict.

(f) Corporation Change. The successful offeror shall inform the Contracting Officer within thirty (30) calendar days of the effective date of any corporate mergers, acquisitions, and/or divestures that may affect this provision.

(g) Flow-down. The contractor shall insert the substance of this clause in each first tier subcontract that exceeds the simplified acquisition threshold.

(End of provision)

3052.209-73 Limitation of future contracting.

As prescribed in 3009.507-2, the contracting officer may insert a clause substantially as follows in solicitations and contracts:

LIMITATION OF FUTURE CONTRACTING
(JUN 2006)

(a) The Contracting Officer has determined that this acquisition may give rise to a potential organizational conflict of interest. Accordingly, the attention of prospective offerors is invited to FAR Subpart 9.5 --Organizational Conflicts of Interest.
(b) The nature of this conflict is [describe the conflict].
(c) The restrictions upon future contracting are as follows:
(1) If the Contractor, under the terms of this contract, or through the performance of tasks pursuant to this contract, is required to develop specifications or statements of work that are to be incorporated into a solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime or first-tier subcontractor under an ensuing DHS contract. This restriction shall remain in effect for a reasonable time, as agreed to by the Contracting Officer and the Contractor, sufficient to avoid unfair competitive

advantage or potential bias (this time shall in no case be less than the duration of the initial production contract). DHS shall not unilaterally require the Contractor to prepare such specifications or statements of work under this contract.

(2) To the extent that the work under this contract requires access to proprietary, business confidential, or financial data of other companies, and as long as these data remain proprietary or confidential, the Contractor shall protect these data from unauthorized use and disclosure and agrees not to use them to compete with those other companies.

(End of clause)

3052.209-74 Limitations on Contractors Acting as Lead System Integrators

As prescribed in (HSAR) 48 CFR 3009.570-4(a), use the following provision:

LIMITATIONS ON CONTRACTORS ACTING AS LEAD SYSTEM INTEGRATORS
(JUL 2010)

(a) *Definitions*. "Direct financial interest," "lead system integrator," "lead system integrator with system responsibility," and "lead system integrator without system responsibility," as used in this provision, have the meanings given in the clause of this solicitation entitled "Prohibited Financial Interests for Lead System Integrators" ((HSAR) 48 CFR 3052.209-75).

(b) *General*. Unless an exception is granted, no contractor performing lead system integrator functions in the acquisition of a major system by the Department of Homeland Security may have any direct financial interest in the development or construction of any individual system or element of any system of systems.

(c) *Representations*. (1) The offeror represents that it does [ ] does not [ ] propose to perform this contract as a lead system integrator with system responsibility.

(2) The offeror represents that it does [ ] does not [ ] propose to perform this contract as a lead system integrator without system responsibility.

(3) If the offeror answered in the affirmative in paragraph (c)(1) or (2) of this provision, the offeror represents that it does [ ] does not [ ] have any direct financial interest in the development or construction of any system(s), subsystem(s), system of systems, element of any system of systems, or services it proposes or intends to seek to satisfy this solicitation.

(d) If the offeror answered in the affirmative in paragraph (c)(3) of this provision, the offeror should contact the Contracting Officer for guidance on whether an exception may apply and what responsibilities the offeror may have in qualifying for an exception.

(e) If the offeror does have a direct financial interest, the offeror shall be prohibited from receiving an award under this solicitation, unless:

(1) the offeror submits to the Contracting Officer appropriate evidence that the offeror was selected by a subcontractor to serve as a lower-tier subcontractor through a process over which the offeror exercised no control; or

(2) the conditions described in (HSAR) 48 CFR 3009.570-2(b)(1)(i) and (ii) exist, after an opportunity is afforded to the offeror to provide information or commitments as may be necessary to meet (HSAR) 48 CFR 3009.570-2(b)(1)(ii), assuming any such information or commitment will allow DHS to meet that standard.

(f) This provision implements the requirements of 6 U.S.C. 396, as added by Section 6405 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, And Iraq Accountability Appropriations Act, 2007 (Pub. L. 110-28).

(End of provision)

3052.209-75 Prohibited Financial Interests for Lead System Integrators

As prescribed in (HSAR) 48 CFR 3009.570-4(b), use the following clause:

PROHIBITED FINANCIAL INTERESTS FOR LEAD SYSTEM INTEGRATORS (JUL 2010)

(a) *Definitions*. As used in this clause—

(1) "Direct financial interest," for the purpose of this clause and contract, and subject to exceptions set forth 6 U.S.C. 396(b) as implemented, means:

(i) Developing or constructing any individual system or element of any system of systems for which the Contractor is the lead system integrator;

(ii) Owning or being in a position to exert corporate control over a subcontractor at any level under the prime contract;

(iii) Owning, or being in a position to exert corporate control over an entity that either—

(A) Is a subcontractor at any level under the prime contract, or

(B) Owns or is in a position to control another entity that is a subcontractor at any level under the prime contract; and

(iv) Participating or sharing in the profits of another firm's development or construction of any individual system or element of any system of systems for which the Contractor is the lead system integrator or agreeing to participate in the profits of the firm from such development or construction.

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

(3) "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 to perform a substantial portion of the work on the system and the major subsystems.

(4) "Lead system integrator without system responsibility" means a prime contractor under a contract for the procurement of services, the primary purpose of which is to perform acquisition functions closely associated with inherently governmental functions (see section 7.503(d) of the Federal Acquisition Regulation) with regard to the development or production of a major system.

(5) 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.

(b) *Limitations*. The Contracting Officer has determined that the Contractor meets the definition of lead system integrator with [ ] without [ ] system responsibility. Unless an exception is granted, the Contractor shall not have any direct financial interest in the development or construction of any individual system or element of any system of systems while performing lead system integrator functions in the acquisition of a major system by the Department of Homeland Security under this contract.

(c) *Agreement*. The Contractor agrees that during performance of this contract it will not acquire any direct financial interest as described in paragraph (b) of this clause, or, if it does acquire or plan to acquire such interest, it will immediately notify the Contracting Officer. The Contractor further agrees to provide to the Contracting Officer all relevant information regarding the change in financial interests so that the Contracting Officer can determine whether an exception applies or whether the Contractor will be allowed to continue performance on this contract. If an organizational conflict of interest in the performance of this contract that is attributable to the Contractor's direct financial interest cannot be avoided, eliminated, or mitigated to the Contracting Officer's satisfaction, the Contracting Officer may terminate this contract for default or may take other remedial measures as appropriate in the Contracting Officer's sole discretion.

(d) Notwithstanding any other clause of this contract, if the Contracting Officer determines that the Contractor misrepresented its financial interests at the time of award or has violated the agreement in paragraph (c) of this clause, the Government may terminate this contract for default or may take other remedial measures as appropriate in the Contracting Officer's sole discretion.

(e) This clause implements the requirements of 6 U.S.C. 396, as added by Section 6405 of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, And Iraq Accountability Appropriations Act, 2007 (Pub. L. 110-28).

(End of clause)

3052.209-76 Prohibition on Federal Protective Service guard services contracts with business concerns owned, controlled, or operated by an individual convicted of a felony.

As prescribed at (HSAR) 48 CFR 3009.171-9, insert the following clause:

PROHIBITION ON FEDERAL PROTECTIVE SERVICE GUARD SERVICES CONTRACTS WITH BUSINESS CONCERNS OWNED, CONTROLLED, OR OPERATED BY AN INDIVIDUAL CONVICTED OF A FELONY (DEC 2009)

(a) Prohibitions. Section 2 of the Federal Protective Service Guard Contracting Reform Act of 2008, Public Law 110-356, generally prohibits the Department of Homeland Security from entering into a contract for guard services under the Federal Protective Service (FPS) guard services program with any business concern owned, controlled, or operated by an individual convicted of a serious felony.

(b) Definitions. As used in this clause:

Business concern means a commercial enterprise and the people who constitute it.

Felony means an offense which, if committed by a natural person, would be punishable by death or imprisonment for a term exceeding one year.

Individual means any person, corporation, partnership, or other entity with a legally independent status.

Convicted of a felony means any conviction of a felony in violation of state or federal criminal statutes, including the Uniform Code of Military Justice, whether entered on a verdict or plea, including a plea of nolo contendere, for which a sentence has been imposed.

(c) A business concern that is owned, controlled, or operated by an individual who has been convicted of any felony, and that wishes to submit a bid, proposal, or other offer on a solicitation to obtain a FPS contract for guard services, must submit with its offer an award request as specified in paragraph (d) of this clause.

(1) A financial, voting, operational, or employment interest in the business concern of the individual's spouse, child, or other family member, or person with whom the individual shares his or her household, will be imputed to the individual in determining whether the individual owns, controls, or operates a business concern.

(2) An individual owns, controls, or operates a business concern by fulfilling or holding the following types of roles or interests with respect to the business concern:

(i) Director or officer, including incumbents of boards and offices that perform duties ordinarily performed by a chairman or member of a board of directors, a secretary, treasurer, president, a vice president, or other chief official of a business concern, including Chief Financial Officer, Chief Operating Officer, or Chief contracting official.

(ii) Officials of comparable function and status to those described in paragraph (c)(2)(i) of this clause as exist in partnerships of all kind and other business organizations, including sole proprietorships.

(iii) A general partner in a general or limited partnership.

(iv) An individual with a limited partnership interest of 25% or more.

(v) An individual that has the:

(A) Power to vote, directly or indirectly, 25% or more interest in any class of voting stock of the business concern;

(B) Ability to direct in any manner the election of a majority of the business concern's directors or trustees; or

(C) Ability to exercise a controlling influence over the business concern's management and policies.

(3) Generally, the existence of one or more of the roles or interests set forth in paragraph (c)(2) of this clause, including roles or interests attributed to the individual, will be sufficient to determine that the individual owns, controls or operates the business concern. However, specific facts of the case may warrant a different determination by Government in light of all of the facts and circumstances. Conversely, ownership, control, or the ability to operate the business concern, if it exists in fact, can be reflected by other roles or interests, and the offeror or contractor should reveal the existence of felony convictions if there is doubt as to whether the individual owns, controls or operates the business concern.

(d) Award request.

(1) A business concern owned, operated or controlled by an individual convicted of any felony may submit an award request to the Contracting Officer. The basis for such request shall be either that the subject felony is not a serious felony as defined in (HSAR) 48 CFR 3009.171-5; that such individual no longer owns, controls or operates the business concern; or that commission of the serious felony no longer calls into question the individual or business concern's integrity or business ethics and that an award would be consistent with the mission of FPS. The business concern shall bear the burden of proof for award requests.

(2) If the Contracting Officer in his or her sole discretion, is unable to affirmatively determine that the subject felony is not a serious felony as defined in (HSAR) 48 CFR 3009.171-5 or that such individual no longer owns, controls or operates the business concern, then the Contracting Officer shall deny the award request.

(3) The Head of the Contracting Activity has sole discretion to approve an award request.

(4) A copy of the award request with supporting documentation or a copy of a previously approved award request shall be attached with the bid or proposal.

(5) An award request shall contain the basis for the request (i.e., that the subject felony is not a serious felony as defined by this regulation; that the convicted individual does not or no longer owns, controls or operates the business concern; or that the commission of a serious felony no longer calls into question the individual or business concern's integrity or business ethics and that an award would be consistent with the mission of FPS). The award request shall contain, at a minimum, the following information:

(i) Name and Date of Birth of Individual Convicted of a felony.

(ii) A full description of which roles or interests indicate that the individual owns, controls, or operates or may own control or operate the business concern.

(iii) Date sentenced.

(iv) Statute/Charge.

(v) Docket/Case Number.

(vi) Court/Jurisdiction.

(vii) The nature and circumstances surrounding the conviction.

(viii) Protective measures taken by the individual or business concern to reduce or eliminate the risk of further misconduct.

(ix) Whether the individual has made full restitution for the felony.

(x) Whether the individual has accepted responsibility for past misconduct resulting in the felony conviction.

(6) Upon the request of the Contracting Officer, and prior to contract award, in addition to information described in paragraph (d)(5) of this clause, the business concern must provide such other documentation as is requested by the Contracting Officer to use in determining and evaluating ownership, control, or operation; the nature of the felonies committed; and such other information as is needed to make a decision on whether award should be made to the offeror under the Federal Protective Service Guard Contracting Reform Act of 2008. The refusal to timely provide such documentation may serve as grounds to preclude contract award.

(e)(1) Privacy Statement. The offeror shall provide the following statement to any individual whose information will be submitted in an award request pursuant to (d)(5) and (6) of this clause.

(2) Privacy Notice. The collection of this information is authorized by the Federal Protective Service Guard Contracting Reform Act of 2008 (Pub. L. 110-356) and Department of Homeland Security (DHS) implementing regulations at Homeland Security Acquisition Regulation (HSAR) 48 CFR 3009.171. This information is being collected to determine whether an individual that owns, controls, or operates the business concern submitting this offer has been convicted of a felony that would disqualify the offeror from receiving an award. This information will be used by and disclosed to DHS personnel and contractors or other agents who require this information to determine whether an award request should be approved or denied. Additionally, DHS may share this personal information with the U.S. Justice Department and other Federal and State agencies for collection, enforcement, investigatory, or litigation purposes, or as otherwise authorized. Submission of this information by the individual is voluntary, however, failure to provide it may result in denial of an award to the offeror. Individuals who wish to correct inaccurate information in or to remove their information from an offer that has been submitted should contact the business concern submitting the offer and request correction. Should individuals seek to correct inaccurate information or remove their information from an offer that has been submitted in response to a solicitation for FPS guard services prior to contract award, an authorized representative of the business concern submitting the offer must contact the contracting officer of record and request that the firm's offer be formally withdrawn or submit a correction to the award request. After contract award, it is recommended that an authorized representative of the business concern that submitted the inaccurate or erroneous information contact the contracting officer of record. The contracting officer will handle such requests on a case by case basis.

(f) Disclosure. The offeror under this solicitation represents that [Check one]:

--It is not a business concern owned, controlled, or operated by an individual convicted of a felony.

--It is a business concern owned, controlled, or operated by an individual convicted of a felony, and has submitted an award request pursuant to paragraph (d) of this clause.

(g) If an award request is applied for, the offeror shall attach the request with supporting documentation, to the bid or proposal. The supporting documentation may include copies of prior award requests granted to the offeror.

(h) The notification in this paragraph applies if this is an indefinite delivery/indefinite quantity contract, blanket purchase agreement, or other contractual instrument that may result in the issuance of task orders, calls or option to extend the terms of a contract. The Contractor must immediately notify the Contracting Officer in writing upon any felony conviction of personnel who own, control or operate a business concern as defined in paragraph (c) of this clause at any time during the performance of this contract. Upon notification of a felony conviction the Contracting Officer will review and make a new determination of eligibility prior to the issuance of any task order, call or exercise of an option.

(End of clause)

3052.211-70 Index for specifications.

As prescribed in (HSAR) 48 CFR 3011.204-70, insert the following clause:

INDEX FOR SPECIFICATIONS
(DEC 2003)

If an index or table of contents is furnished in connection with specifications, it is understood that such index or table of contents is for convenience only. Its accuracy and completeness is not guaranteed, and it is not to be considered as part of the specifications. In case of discrepancy between the index or table of contents and the specifications, the specifications shall govern.

(End of clause)

3052.211-90 [Removed]

3052.212-70 Contract Terms and Conditions Applicable to DHS Acquisition of Commercial Items.

As prescribed in (HSAR) 48 CFR 3012.301, insert the following clause:

CONTRACT TERMS AND CONDITIONS APPLICABLE TO DHS ACQUISITION OF COMMERCIAL ITEMS (SEP 2012)

The Contractor agrees to comply with any provision or clause that is incorporated herein by reference to implement agency policy applicable to acquisition of commercial items or components. The provision or clause in effect based on the applicable regulation cited on the date the solicitation is issued applies unless otherwise stated herein. The following provisions and clauses are incorporated by reference:

[The Contracting Officer should either check the provisions and clauses that apply or delete the provisions and clauses that do not apply from the list. The Contracting Officer may add the date of the provision or clause if desired for clarity.]

(a) *Provisions*.

____3052.209-72 Organizational Conflicts of Interest.

____3052.216-70 Evaluation of Offers Subject to An Economic Price

Adjustment Clause.

____3052.219-72 Evaluation of Prime Contractor Participation in the DHS

Mentor Protégé Program.

(b) *Clauses*.

____3052.203-70 Instructions for Contractor Disclosure of Violations.

____3052.204-70 Security Requirements for Unclassified Information Technology Resources.

____3052.204-71 Contractor Employee Access.

____Alternate I

____3052.205-70 Advertisement, Publicizing Awards, and Releases.

____3052.209-73 Limitation on Future Contracting.

____3052.215-70 Key Personnel or Facilities.

____3052.216-71 Determination of Award Fee.

____3052.216-72 Performance Evaluation Plan.

____3052.216-73 Distribution of Award Fee.

____3052.217-91 Performance. (USCG)

____3052.217-92 Inspection and Manner of Doing Work. (USCG)

____3052.217-93 Subcontracts. (USCG)

____3052.217-94 Lay Days. (USCG)

____3052.217-95 Liability and Insurance. (USCG)

____3052.217-96 Title. (USCG)

____3052.217-97 Discharge of Liens. (USCG)

____3052.217-98 Delays. (USCG)

____3052.217-99 Department of Labor Safety and Health Regulations for Ship Repair.

(USCG)

____3052.217-100 Guarantee. (USCG)

____3052.219-70 Small Business Subcontracting Plan Reporting.

____3052.219-71 DHS Mentor Protégé Program.

____3052.228-70 Insurance.

____3052.228-90 Notification of Miller Act Payment Bond Protection. (USCG)

____3052.228-91 Loss of or Damage to Leased Aircraft. (USCG)

____3052.228-92 Fair Market Value of Aircraft. (USCG)

____3052.228-93 Risk and Indemnities. (USCG)

____3052.236-70 Special Provisions for Work at Operating Airports.

____3052.242-72 Contracting Officer's Technical Representative.

____3052.247-70 F.o.B. Origin Information.

____Alternate I

____Alternate II

____3052.247-71 F.o.B. Origin Only.

____3052.247-72 F.o.B. Destination Only.

(End of clause)

3052.213-90 [Removed]

3052.215-70 Key personnel or facilities.

As prescribed in (HSAR) 48 CFR 3015.204-3, insert the following clause:

KEY PERSONNEL OR FACILITIES
(DEC 2003)

(a) The personnel or facilities specified below are considered essential to the work being

performed under this contract and may, with the consent of the contracting parties, be changed from time to time during the course of the contract by adding or deleting personnel or facilities, as appropriate.

(b) Before removing or replacing any of the specified individuals or facilities, the Contractor shall notify the Contracting Officer, in writing, before the change becomes effective. The Contractor shall submit sufficient information to support the proposed action and to enable the Contracting Officer to evaluate the potential impact of the change on this contract. The Contractor shall not remove or replace personnel or facilities until the Contracting Officer approves the change.
The Key Personnel or Facilities under this Contract:
(specify key personnel or facilities)

(End of clause)

3052.216-70 Evaluation of offers subject to an economic price adjustment clause.

As prescribed in (HSAR) 48 CFR 3016.203-470, insert a provision substantially the same as the following:

EVALUATION OF OFFERS SUBJECT TO AN ECONOMIC PRICE ADJUSTMENT CLAUSE
(JUN 2006)

Offers shall be evaluated without adding an amount for an economic price adjustment. Offers may be rejected which: (1) increase the stipulated ceiling; (2) limit the downward adjustment; or (3) delete the economic price adjustment clause. If the offer stipulates a ceiling lower than that included in the solicitation, the lower ceiling will be incorporated into any resulting contract.

(End of provision)

3052.216-71 Determination of award fee.

As prescribed in (HSAR) 48 CFR 3016.406(e)(1)(i), insert a clause substantially the same as the following:

DETERMINATION OF AWARD FEE
(SEP 2012)

(a) The Government shall evaluate contractor performance at the end of each specified evaluation period(s) to determine the amount of award. The contractor agrees that the amount of award and the award fee methodology are unilateral decisions to be made at the sole discretion of the Government.

(b) Contractor performance shall be evaluated according to a Performance Evaluation

Plan. The contractor shall be periodically informed of the quality of its performance and areas in which improvements are expected.

(c) The contractor shall be promptly advised, in writing, of the determination and reasons why the award fee was or was not earned. The contractor may submit a performance self-evaluation for each evaluation period. The amount of award is at the sole discretion of the Government but any self-evaluation received within (insert number) days after the end of the current evaluation period will be given such consideration, as may be deemed appropriate by the Government.

(End of clause)

3052.216-72 Performance evaluation plan.

As prescribed in (HSAR) 48 CFR 3016.406(e)(i)(ii), insert a clause substantially the same as the following:

PERFORMANCE EVALUATION PLAN
(DEC 2003)

(a) A Performance Evaluation Plan shall be unilaterally established by the Government based on the criteria stated in the contract and used for the determination of award fee. This plan shall include the criteria used to evaluate each area and the percentage of award fee (if any) available for each area. A copy of the plan shall be provided to the contractor _____(insert number)__ calendar days prior to the start of the first evaluation period.

(b) The criteria contained within the Performance Evaluation Plan may relate to: (1) Technical (including schedule) requirements if appropriate; (2) Management; and (3) Cost.

(c) The Performance Evaluation Plan may, consistent with the contract, be revised unilaterally by the Government at any time during the period of performance. Notification of such changes shall be provided to the contractor____(insert number)__ calendar days prior to the start of the evaluation period to which the change will apply.

(End of clause)

3052.216-73 Distribution of award fee.

As prescribed in (HSAR) 48 CFR 3016.406(e)(1)(iii), insert a clause substantially the same as the following:

DISTRIBUTION OF AWARD FEE
(DEC 2003)

(a) The total amount of award fee available under this contract is assigned according to

the following evaluation periods and amounts:

Evaluation Period:

Available Award Fee:

(insert appropriate information)

(b) Payment of the base fee and award fee shall be made, provided that after payment of 85 percent of the base fee and potential award fee, the Government may withhold further payment of the base fee and award fee until a reserve is set aside in an amount that the Government considers necessary to protect its interest. This reserve shall not exceed 15 percent of the total base fee and potential award fee or $100,000, whichever is less.

(c) In the event of contract termination, either in whole or in part, the amount of award fee available shall represent a pro rata distribution associated with evaluation period activities or events as determined by the Government.

(d) The Government will promptly make payment of any award fee upon the submission by the contractor to the contracting officer's authorized representative, of a public voucher or invoice in the amount of the total fee earned for the period evaluated. Payment may be made without using a contract modification.

(End of clause)

3052.216-74 Settlement of letter contract.

As prescribed in (HSAR) 48 CFR 3016.603-4, insert a clause substantially the same as the following:

SETTLEMENT OF LETTER CONTRACT
(DEC 2003)

(a) This contract constitutes the definitive contract contemplated by letter contract _____(insert number) __issued on ___(insert effective date)_____ . It supersedes the letter contract and its modification numbered _(insert number(s))____. To the extent there are inconsistencies between the definitive contract and the letter contract, the former governs.

(b) The cost(s) and fee(s), or price(s), established in this definitive contract represents full and complete settlement of letter contract _____(insert number)___ and modification numbered _____(insert number(s))_____. Payment of the fee agreed upon or profit withheld pending definitization of the letter contract, may start immediately at the rate and times stated within this contract.

(End of clause)

3052.217-90 Delivery and Shifting of Vessel (USCG).

As prescribed in the USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

DELIVERY AND SHIFTING OF VESSEL
(DEC 2003)

The Government shall deliver the vessel to the Contractor at his place of business. Upon completion of the work, the Government shall accept delivery of the vessel at the Contractor's place of business. The Contractor shall provide, at no additional charge, upon 24 hours' advance notice, a tug or tugs and docking pilot, acceptable to the Contracting Officer, to assist in handling the vessel between (to and from) the Contractor's plant and the nearest point in a waterway regularly navigated by vessels of equal or greater draft and length. While the vessel is in the hands of the Contractor, any necessary towage, cartage, or other transportation between ship and shop or elsewhere, which may be incident to the work herein specified, shall be furnished by the Contractor without additional charge to the Government.

(End of clause)

3052.217-91 Performance (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

PERFORMANCE
(DEC 2003)

(a) Upon the award of the contract, the Contractor shall promptly start the work specified and shall diligently prosecute the work to completion. The Contractor shall not start work until the contract has been awarded except in the case of emergency work ordered by the Contracting Officer in writing.

(b) The Government shall deliver the vessel described in the contract at the time and location specified in the contract. Upon completion of the work, the Government shall accept delivery of the vessel at the time and location specified in the contract.

(c) The Contractor shall without charge,--

(1) Make available to personnel of the vessel while in dry dock or on a marine railway, sanitary lavatory and similar facilities at the plant acceptable to the Contracting Officer;

(2) Supply and maintain suitable brows and gangways from the pier, dry dock, or marine railway to the vessel;

(3) Treat salvage, scrap or other ship's material of the Government resulting from performance of the work as items of Government-furnished property, in accordance with the Government Property (Fixed Price Contracts) clause;

(4) Perform, or pay the cost of, any repair, reconditioning or replacement made necessary as the result of the use by the Contractor of any of the vessel's machinery, equipment or fittings, including, but not limited to, winches, pumps, rigging, or pipe lines; and

(5) Furnish suitable offices, office equipment and telephones at or near the site of the work for the Government's use.

(d) The contract will state whether dock and sea trials are required to determine whether or not the Contractor has satisfactorily performed the work.

(1) If dock and sea trials are required, the vessel shall be under the control of the vessel's commander and crew.

(2) The Contractor shall not conduct dock and sea trials not specified in the contract without advance approval of the Contracting Officer. Dock and sea trials not specified in the contract shall be at the Contractor's expense and risk.
(3) The Contractor shall provide and install all fittings and appliances necessary for dock and sea trials. The Contractor shall be responsible for care, installation, and removal of instruments and apparatus furnished by the Government for use in the trials.

(End of clause)

3052.217-92 Inspection and manner of doing work (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

INSPECTION AND MANNER OF DOING WORK
(DEC 2003)

(a) The Contractor shall perform work in accordance with the contract, any drawings and specifications made a part of the job order, and any change or modification issued under the Changes clause.

(b)(1) Except as provided in paragraph (b)(2) of this clause, and unless otherwise specifically provided in the contract, all operational practices of the Contractor and all workmanship, material, equipment, and articles used in the performance of work under this contract shall be in accordance with the best commercial marine practices and the rules and requirements of all appropriate regulatory bodies including, but not limited to the American Bureau of Shipping, the U.S. Coast Guard, and the Institute of Electrical and Electronic Engineers, in effect at the time of Contractor's submission of offer, and shall be intended and approved for marine use.

(2) When Navy specifications are specified in the contract, the Contractor shall follow Navy standards of material and workmanship.
(c) The Government may inspect and test all material and workmanship at any time

during the Contractor's performance of the work.

(1) If, prior to delivery, the Government finds any material or workmanship is defective or not in accordance with the contract, in addition to its rights under the Guarantee clause, the Government may reject the defective or nonconforming material or workmanship and require the Contractor to correct or replace it at the Contractor's expense.

(2) If the Contractor fails to proceed promptly with the replacement or correction of the material or workmanship, the Government may replace or correct the defective or nonconforming material or workmanship and charge the Contractor the excess costs incurred.

(3) As specified in the contract, the Contractor shall provide and maintain an inspection system acceptable to the Government.

(4) The Contractor shall maintain complete records of all inspection work and shall make them available to the Government during performance of the contract and for 90 days after the completion of all work required.

(d) The Contractor shall not permit any welder to work on a vessel unless the welder is, at the time of the work, qualified to the standards established by the U.S. Coast Guard, American Bureau of Shipping, or Department of the Navy for the type of welding being performed. Qualifications of a welder shall be as specified in the contract.

(e) The Contractor shall--

(1) Exercise reasonable care to protect the vessel from fire;

(2) Maintain a reasonable system of inspection over activities taking place in the vicinity of the vessel's magazines, fuel oil tanks, or storerooms containing flammable materials.

(3) Maintain a reasonable number of hose lines ready for immediate use on the vessel at all times while the vessel is berthed alongside the Contractor's pier or in dry dock or on a marine railway;

(4) Unless otherwise provided in the contract, provide sufficient security patrols to reasonably maintain a fire watch for protection of the vessel when it is in the Contractor's custody;

(5) To the extent necessary, clean, wash, and steam out or otherwise make safe, all tanks under alteration or repair.

(6) Furnish the Contracting Officer a "gas-free" or "safe-for-hotwork" certificate before any hot work is done on a tank;

(7) Treat the contents of any tank as Government property in accordance with the Government Property (Fixed-Price Contracts) clause; and

(8) Dispose of the contents of any tank only at the direction, or with the concurrence, of the Contracting Officer.

(9) Be responsible for the proper closing of all openings to the vessel's underwater structure upon which work has been performed. The contractor additionally must advise the COTR of the status of all valves closures and openings for which the contractor's workers were responsible.

(f) Except as otherwise provided in the contract, when the vessel is in the custody of the Contractor or in dry dock or on a marine railway and the temperature is expected to go as low as 35 Fahrenheit, the Contractor shall take all necessary steps to--

(1) Keep all hose pipe lines, fixtures, traps, tanks, and other receptacles on the vessel from freezing; and

(2) Protect the stern tube and propeller hubs from frost damage.

(g) The Contractor shall, whenever practicable--

(1) Perform the required work in a manner that will not interfere with the berthing and messing of Government personnel attached to the vessel; and

(2) Provide Government personnel attached to the vessel access to the vessel at all times.

(h) Government personnel attached to the vessel shall not interfere with the Contractor's work or workers.

(i)(1) The Government does not guarantee the correctness of the dimensions, sizes, and shapes set forth in any contract, sketches, drawings, plans, or specifications prepared or furnished by the Government, unless the contract requires that the Contractor perform the work prior to any opportunity to inspect.

(2) Except as stated in paragraph (i)(1) of this clause, and other than those parts furnished by the Government, and the Contractor shall be responsible for the correctness of the dimensions, sizes, and shapes of parts furnished under this agreement.

(j) The Contractor shall at all times keep the site of the work on the vessel free from accumulation of waste material or rubbish caused by its employees or the work. At the completion of the work, unless the contract specifies otherwise, the Contractor shall remove all rubbish from the site of the work and leave the immediate vicinity of the work area "broom clean."

(End of clause)

3052.217-93 Subcontracts (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

SUBCONTRACTS
(DEC 2003)

(a) Nothing contained in the contract shall be construed as creating any contractual relationship between any subcontractor and the Government. The divisions or sections of the specifications are not intended to control the Contractor in dividing the work among subcontractors or to limit the work performed by any trade.

(b) The Contractor shall be responsible to the Government for acts and omissions of its own employees, and of subcontractors and their employees. The Contractor shall also be responsible for the coordination of the work of the trades, subcontractors, and material men.

(c) The Contractor shall, without additional expense to the Government, employ specialty subcontractors where required by the specifications.

(d) The Government or its representatives will not undertake to settle any differences between the Contractor and its subcontractors, or between subcontractors.

(End of clause)

3052.217-94 Lay days (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

LAY DAYS
(DEC 2003)

(a) Lay day time will be paid by the Government at the Contractor's stipulated bid price for this item of the contract when the vessel remains on the dry dock or marine railway as a result of any change that involves work in addition to that required under the basic contract.

(b) No lay day time shall be paid until all items of the basic contract for which a price was established by the Contractor and for which docking of the vessel was required have been satisfactorily completed and accepted.

(c) Days of hauling out and floating, whatever the hour, shall not be paid as lay day time, and days when no work is performed by the Contractor shall not be paid as lay day time.

(d) Payment of lay day time shall constitute complete compensation for all costs, direct

and indirect, to reimburse the Contractor for use of dry dock or marine railway.
(End of clause)

3052.217-95 Liability and insurance (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

LIABILITY AND INSURANCE
(DEC 2003)

(a) The Contractor shall exercise its best efforts to prevent accidents, injury, or damage to all employees, persons, and property, in and about the work, and to the vessel or part of the vessel upon which work is done.

(b) Loss or damage to the vessel, materials, or equipment. (1) Unless otherwise directed or approved in writing by the Contracting Officer, the Contractor shall not carry insurance against any form of loss or damage to the vessel(s) or to the materials or equipment to which the Government has title or which have been furnished by the Government for installation by the Contractor. The Government assumes the risks of loss of and damage to that property.

(2) The Government does not assume any risk with respect to loss or damage compensated for by insurance or otherwise or resulting from risks with respect to which the Contractor has failed to maintain insurance, if available, as required or approved by the Contracting Officer.

3) The Government does not assume risk of and will not pay for any costs of the following:

(i) Inspection, repair, replacement, or renewal of any defects in the vessel(s) or material and equipment due to--

(A) Defective workmanship performed by the Contractor or its subcontractors;

(B) Defective materials or equipment furnished by the Contractor or its subcontractors; or

(C) Workmanship, materials, or equipment which do not conform to the requirements of the contract, whether or not the defect is latent or whether or not the nonconformance is the result of negligence.

(ii) Loss, damage, liability, or expense caused by, resulting from, or incurred as a consequence of any delay or disruption, willful misconduct or lack of good faith by the Contractor or any of its representatives that have supervision or direction of--

(A) All or substantially all of the Contractor's business; or

(B) All or substantially all of the Contractor's operation at any one plant.

(4) As to any risk that is assumed by the Government, the Government shall be subrogated to any claim, demand or cause of action against third parties that exists in favor of the Contractor. If required by the Contracting Officer, the Contractor shall execute a formal assignment or transfer of the claim, demand, or cause of action.

(5) No party other than the Contractor shall have any right to proceed directly against the Government or join the Government as a codefendant in any action.

(6) Notwithstanding the foregoing, the Contractor shall bear the first $5,000 of loss or damage from each occurrence or incident, the risk of which the Government would have assumed under the provision of this paragraph (b).

(c) *Indemnification.* The Contractor indemnifies the Government and the vessel and its owners against all claims, demands, or causes of action to which the Government, the vessel or its owner(s) might be subject as a result of damage or injury (including death) to the property or person of anyone other than the Government or its employees, or the vessel or its owner, arising in whole or in part from the negligence or other wrongful act of the Contractor, or its agents or employees, or any subcontractor, or its agents or employees.

(1) The Contractor's obligation to indemnify under this paragraph shall not exceed the sum of $300,000 as a consequence of any single occurrence with respect to any one vessel.

(2) The indemnity includes, without limitation, suits, actions, claims, costs, or demands of any kind, resulting from death, personal injury, or property damage occurring during the period of performance of work on the vessel or within 90 days after redelivery of the vessel. For any claim, etc., made after 90 days, the rights of the parties shall be as determined by other provisions of this contract and by law. The indemnity does apply to death occurring after 90 days where the injury was received during the period covered by the indemnity.

(d) *Insurance.* (1) The Contractor shall, at its own expense, obtain and maintain the following insurance--

(i) Casualty, accident, and liability insurance, as approved by the Contracting Officer, insuring the performance of its obligations under paragraph (c) of this clause.

(ii) Workers Compensation Insurance (or its equivalent) covering the employees engaged on the work.

(2) The Contractor shall ensure that all subcontractors engaged on the work obtain and maintain the insurance required in paragraph (d)(1) of this clause.

(3) Upon request of the Contracting Officer, the Contractor shall provide evidence of the insurance required by paragraph (d) of this clause.

(e) The Contractor shall not make any allowance in the contract price for the inclusion of any premium expense or charge for any reserve made on account of self-insurance for coverage against any risk assumed by the Government under this clause.

(f) The Contractor shall give the Contracting Officer written notice as soon as practicable after the occurrence of a loss or damage for which the Government has assumed the risk.

(1) The notice shall contain full details of the loss or damage.

(2) If a claim or suit is later filed against the Contractor as a result of the event, the Contractor shall immediately deliver to the Government every demand, notice, summons, or other process received by the Contractor or its employees or representatives.

(3) The Contractor shall cooperate with the Government and, upon request, shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses, and in the conduct of suits. The Government shall reimburse the Contractor for expenses incurred in this effort, other than the cost of maintaining the Contractor's usual organization.

(4) The Contractor shall not, except at its own expense, voluntarily make any payments, assume any obligation, or incur any expense other than what would be imperative for the protection of the vessel(s) at the time of the event.

(g) In the event of loss of or damage to any vessel(s), material, or equipment which may result in a claim against the Government under the insurance provisions of this contract, the Contractor shall promptly notify the Contracting Officer of the loss or damage. The Contracting Officer may, without prejudice to any right of the Government, either--

(1) Order the Contractor to proceed with replacement or repair, in which event the Contractor shall effect the replacement or repair;

(i) The Contractor shall submit to the Contracting Officer a request for reimbursement of the cost of the replacement or repair together with whatever supporting documentation the Contracting Officer may reasonably require, and shall identify the request as being submitted under the Insurance clause of this contract.

(ii) If the Government determines that the risk of the loss or damage is within the scope of the risks assumed by the Government under this clause, the Government will reimburse the Contractor for the reasonable allowable cost of the replacement or repair, plus a reasonable profit (if the work or replacement or repair was performed by the Contractor) less the deductible amount specified in paragraph (b) of this clause.

(iii) Payments by the Government to the Contractor under this clause are outside the scope of and shall not affect the pricing structure of the contract, and are additional to the compensation otherwise payable to the Contractor under this contract; or

(2) Decide that the loss or damage shall not be replaced or repaired and in that event, the Contracting Officer shall--

(i) Modify the contract appropriately, consistent with the reduced requirements reflected by the unreplaced or unrepaired loss or damage; or

(ii) Terminate the repair of any part or all of the vessel(s) under the Termination for Convenience of the Government clause of this contract.

(End of clause)

3052.217-96 Title (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

TITLE
(DEC 2003)

(a) Unless otherwise provided, title to all materials and equipment to be incorporated in a vessel in the performance of this contract shall vest in the Government upon delivery at the location specified for the performance of the work.

(b) Upon completion of the contract, or with the approval of the Contracting Officer during performance of the contract, all Contractor-furnished materials and equipment not incorporated in, or placed on, any vessel, shall become the property of the Contractor, unless the Government has reimbursed the Contractor for the cost of the materials and equipments.

(c) The vessel, its equipment, movable stores, cargo, or other ship's materials shall not be considered Government-furnished property.

(End of clause)

3052.217-97 Discharge of liens (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

DISCHARGE OF LIENS
(DEC 2003)

(a) The Contractor shall immediately discharge or cause to be discharged, any lien or right *in rem* of any kind, other than in favor of the Government, that exists or arises in

connection with work done or materials furnished under this contract.

(b) If any such lien or right *in rem* is not immediately discharged, the Government, at the expense of the Contractor, may discharge, or cause to be discharged, the lien or right.

(End of clause)

3052.217-98 Delays (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

DELAYS
(DEC 2003)

When during the performance of this contract the Contractor is required to delay work on a vessel temporarily, due to orders or actions of the Government respecting stoppage of work to permit shifting the vessel, stoppage of hot work to permit bunkering, stoppage of work due to embarking or debarking passengers and loading or discharging cargo, and the Contractor is not given sufficient advance notice or is otherwise unable to avoid incurring additional costs on account thereof, an equitable adjustment shall be made in the price of the contract pursuant to the "Changes" clause.

(End of clause)

3052.217-99 Department of Labor Safety and Health Regulations for ship repairing (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(a) and (b), insert the following clause:

DEPARTMENT OF LABOR SAFETY AND HEALTH
REGULATIONS FOR SHIP REPAIR
(DEC 2003)

Nothing contained in this contract shall relieve the Contractor of any obligations it may have to comply with—

(a) The Occupational Safety and Health Act of 1970 (29 U.S.C. 651, *et seq.*);

(b) The Safety and Health Regulations for Ship Repairing (29 CFR part 1915); or

(c) Any other applicable Federal, State, and local laws, codes, ordinances, and regulations.

(End of clause)

3052.217-100 Guarantee (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3017.9000(c), insert the following clause:

GUARANTEE
(JUN 2006)

(a) In the event any work performed or materials furnished by the contractor prove defective or deficient within 60 days from the date of redelivery of the vessel(s), the Contractor, as directed by the Contracting Officer and at its own expense, shall correct and repair the deficiency to the satisfaction of the Contracting Officer.

(b) If the Contractor or any subcontractor has a guarantee for work performed or materials furnished that exceeds the 60 day period, the Government shall be entitled to rely upon the longer guarantee until its expiration.

(c) With respect to any individual work item identified as incomplete at the time of redelivery of the vessel(s), the guarantee period shall run from the date the item is completed.

(d) If practicable, the Government shall give the Contractor an opportunity to correct the deficiency.

(1) If the Contracting Officer determines it is not practicable or is otherwise not advisable to return the vessel(s) to the Contractor, or the Contractor fails to proceed with the repairs promptly, the Contracting Officer may direct that the repairs be performed elsewhere, at the Contractor's expense.

(2) If correction and repairs are performed by other than the Contractor, the Contracting Officer may discharge the Contractor's liability by making an equitable deduction in the price of the contract.

(e) The Contractor's liability shall extend for an additional 60-day guarantee period on those defects or deficiencies that the Contractor corrected.

(f) At the option of the Contracting officer, defects and deficiencies may be left uncorrected. In that event, the Contractor and Contracting Officer shall negotiate an equitable reduction in the contract price. Failure to agree upon an equitable reduction shall constitute a dispute under the Disputes clause of this contract.

(End of clause)

3052.219-70 Small Business subcontracting plan reporting.

As prescribed in (HSAR) 48 CFR 3019.708-70(a), insert the following clause:

SMALL BUSINESS SUBCONTRACTING PLAN REPORTING
(JUN 2006)

(a) The Contractor shall enter the information for the Subcontracting Report for Individual Contracts (formally the Standard Form 294 (SF 294)) and the Summary Subcontract Report (formally the Standard Form 295 (SF-295)) into the Electronic Subcontracting Reporting System (eSRS) at www.esrs.gov.

(b) The Contractor shall include this clause in all subcontracts that include the clause at (FAR) 48 CFR 52.219-9.

(End of clause)

3052.219-71 DHS mentor-protégé program

As prescribed in (HSAR) 48 CFR 3019.708-70(b), insert the following clause:

DHS MENTOR-PROTÉGÉ PROGRAM
(JUN 2006)

(a) Large businesses are encouraged to participate in the DHS Mentor-Protégé program for the purpose of providing developmental assistance to eligible small business protégé entities to enhance their capabilities and increase their participation in DHS contracts.

(b) The program consists of:

(1) Mentor firms, which are large prime contractors capable of providing developmental assistance;

(2) Protégé firms, which are small businesses, veteran-owned small businesses, service-disabled veteran-owned small businesses, HUBZone small businesses, small disadvantaged businesses, and women-owned small business concerns; and

(3) Mentor-Protégé agreements, approved by the DHS OSDBU.

(c) Mentor participation in the program means providing business developmental assistance to aid protégés in developing the requisite expertise to effectively compete for and successfully perform DHS contracts and subcontracts.

(d) Large business prime contractors serving as mentors in the DHS Mentor-Protégé program are eligible for a post-award incentive for subcontracting plan credit. The mentor may receive credit for costs it incurs to provide assistance to a protégé firm. The mentor may use this additional credit towards attaining its subcontracting plan participation goal under the same or another DHS contract. The amount of credit given to a mentor firm for these protégé developmental assistance costs shall be calculated on a dollar for dollar basis and reported in the Summary Subcontract Report via the Electronic Subcontracting Reporting System (eSRS) at www.esrs.gov. For example, a mentor/large business prime contractor would report a $10,000 subcontract to the protégé/small business subcontractor and $5,000 of developmental assistance to the protégé/small

business subcontractor as $15,000. The Mentor and Protégé will submit a signed joint statement agreeing on the dollar value of the developmental assistance and the Summary Subcontract Report.

(e) Contractors interested in participating in the program are encouraged to contact the DHS OSDBU for more information.

(End of clause)

3052.219-72 Evaluation of prime contractor participation in the DHS mentor protégé program

As prescribed in (HSAR) 48 CFR 3019.708-70(c), insert the following provision:

EVALUATION OF PRIME CONTRACTOR PARTICIPATION IN THE DHS MENTOR-PROTÉGÉ PROGRAM (JUN 2006)

This solicitation contains a source selection factor or subfactor regarding participation in the DHS Mentor-Protégé Program. In order to receive credit under the source selection factor or subfactor, the offeror shall provide a signed letter of mentor-protégé agreement approval from the DHS Office of Small Business and Disadvantaged Business Utilization (OSDBU) before initial evaluation of proposals. The contracting officer may, in his or her discretion, give credit for approvals that occur after initial evaluation of proposals, but before final evaluation.

(End of provision)

3052.222-70 Strikes or picketing affecting timely completion of the contract work.

As prescribed in (HSAR) 48 CFR 3022.101-71(a), insert the following clause:

STRIKES OR PICKETING AFFECTING TIMELY COMPLETION OF THE CONTRACT WORK (DEC 2003)

Notwithstanding any other provision hereof, the Contractor is responsible for delays arising out of labor disputes, including but not limited to strikes, if such strikes are reasonably avoidable. A delay caused by a strike or by picketing which constitutes an unfair labor practice is not excusable unless the Contractor takes all reasonable and appropriate action to end such a strike or picketing, such as the filing of a charge with the National Labor Relations Board, the use of other available Government procedures, and the use of private boards or organizations for the settlement of disputes.

(End of clause)

3052.222-71 Strikes or picketing affecting access to a DHS facility.

As prescribed in (HSAR) 48 CFR 3022.101-71(b), insert the following clause:

STRIKES OR PICKETING AFFECTING ACCESS TO A DHS FACILITY (DEC 2003)

If the Contracting Officer notifies the Contractor in writing that a strike or picketing: (a) is directed at the Contractor or subcontractor or any employee of either; and (b) impedes or threatens to impede access by any person to a DHS facility where the site of the work is located, the Contractor shall take all appropriate action to end such strike or picketing, including, if necessary, the filing of a charge of unfair labor practice with the National Labor Relations Board or the use of other available judicial or administrative remedies.

(End of clause)

3052.222-90 Local hire (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3022.9001, insert the following clause:

LOCAL HIRE (JUN 2006)

(a) When performing a contract in whole or in part in a State with an unemployment rate in excess of the national average determined by the Secretary of Labor, the Contractor shall employ, for the purpose of performing the portion of the contract in that State, individuals who are local residents and who, in the case of any craft or trade, possess or would be able to acquire promptly, the necessary skills.

(b) Local resident defined. As used in this section, “local resident” means a resident of, or an individual who commutes daily to, a State described in subsection (a).

(c) The Secretary of Homeland Security may waive the requirements of paragraph (a) the interest of national security or economic efficiency.

(End of clause)

3052.223-70 Removal or disposal of hazardous substances – applicable licenses and permits

As prescribed in (HSAR) 48 CFR 3023.303, insert the following clause:

REMOVAL OR DISPOSAL OF HAZARDOUS SUBSTANCES - APPLICABLE LICENSES AND PERMITS (JUN 2006)

The Contractor shall have all licenses and permits required by Federal, state, and local laws to perform hazardous substance(s) removal or disposal services. If the Contractor does not currently possess these documents, it shall obtain all requisite licenses and

permits within ___ ["insert days"]___ days after date of award. The Contractor shall provide evidence of said documents to the Contracting Officer or designated Government representative prior to commencement of work under the contract.

(End of clause)

3052.223-90 Accident and fire reporting (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3023.9000(a), insert the following clause:

ACCIDENT AND FIRE REPORTING
(DEC 2003)

(a) The Contractor shall report to the Contracting Officer any accident or fire occurring at the site of the work that causes:

(1) A fatality or the loss as much as of at least one lost workday on the part of any employee of the Contractor or subcontractor at any tier;

(2) Damage of $1,000 or more to Federal real or personal property; either real or personal;

(3) Damage of $1,000 or more to Contractor or subcontractor owned or leased motor vehicles or mobile equipment; or

(4) Damage for which a contract time extension may be requested.

(b) Accident and fire reports required by paragraph (a) above shall be accomplished by the following means:

(1) Accidents or fires resulting in a death, hospitalization of five or more persons, or destruction of Federal real or personal property, the total value of which is estimated at $100,000 or more, shall be reported immediately by telephone to the Contracting Officer or his/her authorized representative and shall be confirmed by telegram, facsimile or e-mail transmission within 24 hours to the Contracting Officer. Such telegram or facsimile transmission shall state all known facts as to extent of injury and damage and as to cause of the accident or fire.

(2) Other accident and fire reports required by paragraph (a) above may be reported by the Contractor using a state, private insurance carrier, or Contractor accident report form which provides for the statement of:

(i) The extent of injury; and

(ii) The damage and cause of the accident or fire.
Such report shall be mailed or otherwise delivered to the Contracting Officer within 48

hours of the occurrence of the accident or fire.

(c) The Contractor shall assure compliance by subcontractors at all tiers with the requirements of this clause.

(End of clause)

3052.225-70 Requirement for Use of Certain Domestic Commodities.

As prescribed in (HSAR) 48 CFR 3025.7003, use the following clause:

REQUIREMENT FOR USE OF CERTAIN DOMESTIC COMMODITIES (AUG 2009)

(a) Definitions. As used in this clause--

(1) ``Commercial," as applied to an item described in subsection (b) of this clause, means an item of supply, whether an end product or component, that meets the definition of ``commercial item" set forth in (FAR) 48 CFR 2.101.

(2) ``Component" means any item supplied to the Government as part of an end product or of another component.

(3) ``End product" means supplies delivered under a line item of this contract.

(4) ``Non-commercial," as applied to an item described in subsections (b) or (c) of this clause, means an item of supply, whether an end product or component, that does not meet the definition of ``commercial item" set forth in (FAR) 48 CFR 2.101.

(5) ``Qualifying country" means a country with a memorandum of understanding or international agreement with the United States under which DHS procurement is covered.

(6) ``United States" includes the possessions of the United States.

(b) The Contractor shall deliver under this contract only such of the following commercial or non-commercial items, either as end products or components, that have been grown, reprocessed, reused, or produced in the United States:

(1) Clothing and the materials and components thereof, other than sensors, electronics, or other items added to, and not normally associated with, clothing and the materials and components thereof; or

(2) Tents, tarpaulins, covers, textile belts, bags, protective equipment (such as body armor), sleep systems, load carrying equipment (such as fieldpacks), textile marine equipment, parachutes or bandages.

(c) The Contractor shall deliver under this contract only such of the following non

commercial items, either as end products or components, that have been grown, reprocessed, reused, or produced in the United States:

(1) Cotton and other natural fiber products.
(2) Woven silk or woven silk blends.
(3) Spun silk yarn for cartridge cloth.
(4) Synthetic fabric or coated synthetic fabric (including all textile fibers and yarns that are for use in such fabrics).
(5) Canvas products.
(6) Wool (whether in the form of fiber or yarn or contained in fabrics, materials, or manufactured articles).
(7) Any item of individual equipment manufactured from or containing any of the fibers, yarns, fabrics, or materials listed in this paragraph (c).

(d) This clause does not apply--

(1) To items listed in (FAR) 48 CFR 25.104, or other items for which the Government has determined that a satisfactory quality and sufficient quantity cannot be acquired as and when needed at United States market prices;

(2) To incidental amounts of cotton, other natural fibers, or wool incorporated in an end product, for which the estimated value of the cotton, other natural fibers, or wool is not more than 10 percent of the total price of the end product; or

(3) To items that are eligible products per (FAR) 48 CFR Subpart 25.4.

(End of clause.)

3052.228-70 Insurance.

As prescribed in (HSAR) 48 CFR 3028.310-70 and 3028.311-1, insert a clause substantially the same as follows. The contracting officer may specify additional kinds (e.g., aircraft public and passenger liability, vessel liability) or increased amounts of insurance.

INSURANCE
(DEC 2003)

In accordance with the clause entitled “Insurance - Work on a Government Installation" [*or Insurance - Liability to Third Persons*] in Section I, insurance of the following kinds and minimum amounts shall be provided and maintained during the period of performance of this contract:

(a) Worker's compensation and employer's liability. The contractor shall, as a minimum, meet the requirements specified at (FAR) 48 CFR 28.307-2(a).

(b) General liability. The contractor shall, as a minimum, meet the requirements specified at (FAR) 48 CFR 28.307-2(b).

(c) Automobile liability. The contractor shall, as a minimum, meet the requirements specified at (FAR) 48 CFR 28.307-2(c).

(End of clause)

3052.228-90 Notification of Miller Act payment bond protection (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3028.106-490, insert the following clause:

NOTIFICATION OF MILLER ACT PAYMENT BOND PROTECTION (DEC 2003)

This notice clause shall be inserted by first tier subcontractors in all their subcontracts and shall contain information pertaining to the surety that provided the payment bond under the prime contract.

(a) The prime contract is subject to the Miller Act (40 U.S.C. 270), under which the prime contractor has obtained a payment bond. This payment bond may provide certain unpaid employees, suppliers, and subcontractors a right to sue the bonding surety under the Miller Act for amounts owned for work performed and materials delivery under the prime contract.

(b) Persons believing that they have legal remedies under the Miller Act should consult their legal advisor regarding the proper steps to take to obtain these remedies. This notice clause does not provide any party any rights against the Federal Government, or create any relationship, contractual or otherwise, between the Federal Government and any private party.

(c) The surety which has provided the payment bond under the prime contract is:

_____
(Name)

_____
(Street Address)

_____
(City, State, Zip Code)

_____
(Contact & Tel. No.)

_____
(End of clause)

3052.228-91 Loss of or damage to leased aircraft (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3028.306-90(a) and (b), insert the following clause:

LOSS OF OR DAMAGE TO LEASED AIRCRAFT
(DEC 2003)

(a) The Government assumes all risk of loss of, or damage (except normal wear and tear) to, the leased aircraft during the term of this lease while the aircraft is in the possession of the Government.

(b) In the event of damage to the aircraft, the Government, at its option, shall make the necessary repairs with its own facilities or by contract, or pay the Contractor the reasonable cost of repair of the aircraft.

(c) In the event the aircraft is lost or damaged beyond repair, the Government shall pay the Contractor a sum equal to the fair market value of the aircraft at the time of such loss or damage, which value may be specifically agreed to in clause 3052.228-92-, "Fair Market Value of Aircraft," less the salvage value of the aircraft. However, the Government may retain the damaged aircraft or dispose of it as it wishes. In that event, the Contractor will be paid the fair market value of the aircraft as stated in the clause.

(d) The Contractor agrees that the contract price does not include any cost attributable to hull insurance or to any reserve fund it has established to protect its interest in the aircraft. If, in the event of loss or damage to the leased aircraft, the Contractor receives compensation for such loss or damage in any form from any source, the amount of such compensation shall be:

(1) Credited to the Government in determining the amount of the Government's liability; or
(2) For an increment of value of the aircraft beyond the value for which the Government is responsible.

(e) In the event of loss of or damage to the aircraft, the Government shall be subrogated to all rights of recovery by the Contractor against third parties for such loss or damage and the Contractor shall promptly assign such rights in writing to the Government.
(End of clause)

3052.228-92 Fair market value of aircraft (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3028.306-90(a) and (c), insert the following clause:

FAIR MARKET VALUE OF AIRCRAFT
(DEC 2003)

For purposes of the clause entitled "Loss of or Damage to Leased Aircraft," the fair

market value of the aircraft to be used in the performance of this contract shall be the lesser of the two values set out in paragraphs (a) and (b) below:

(a) $_____; or

(b) If the contractor has insured the same aircraft against loss or destruction in connection with other operations, the amount of such insurance coverage on the date of the loss or damage for which the Government may be responsible under this contract.

(End of clause)

3052.228-93 Risk and indemnities (USCG).

As prescribed in USCG guidance at (HSAR) 48 CFR 3028.306-90(a) and (d), insert the following clause:

RISK AND INDEMNITIES
(DEC 2003)

The Contractor hereby agrees to indemnify and hold harmless the Government, its officers and employees from and against all claims, demands, damages, liabilities, losses, suits and judgments (including all costs and expenses incident thereto) which may be suffered by, accrue against, be charged to or recoverable from the Government, its officers and employees by reason of injury to or death of any person other than officers, agents, or employees of the Government or by reason of damage to property of others of whatsoever kind (other than the property of the Government, its officers, agents or employees) arising out of the operation of the aircraft. In the event the Contractor holds or obtains insurance in support of this covenant, evidence of insurance shall be delivered to the Contracting Officer.

(End of clause)

3052.231-70 Precontract costs.

As prescribed in (HSAR) 48 CFR 3031.205-32, insert the following clause:

PRECONTRACT COSTS
(DEC 2003)

The Contractor shall be entitled to reimbursement for pre-contract costs incurred on or after _____ in an amount not to exceed $_____ that, if incurred after this contract had been entered into, would have been reimbursable under this contract.

(End of clause)

3052.235-70 Dissemination of information - educational institutions.

As prescribed in (HSAR) 48 CFR 3035.70-2, insert the following clause:

DISSEMINATION OF INFORMATION - EDUCATIONAL INSTITUTIONS (JUN 2006)

(a) The Department of Homeland Security (DHS) desires widespread dissemination of the results of funded non-sensitive research. The Contractor, therefore, may publish (subject to the provisions of the "Data Rights" and "Patent Rights" clauses of the contract) research results in professional journals, books, trade publications, or other appropriate media (a thesis or collection of theses should not be used to distribute results because dissemination will not be sufficiently widespread). All costs of publication pursuant to this clause shall be borne by the Contractor and shall not be charged to the Government under this or any other Federal contract.

(b) Any copy of material published under this clause shall contain acknowledgment of DHS's sponsorship of the research effort and a disclaimer stating that the published material represents the position of the author(s) and not necessarily that of DHS. Articles for publication or papers to be presented to professional societies do not require the authorization of the Contracting Officer prior to release. However, a printed or electronic copy of each article shall be transmitted to the Contracting Officer at least two weeks prior to release or publication.

(c) Publication under the terms of this clause does not release the Contractor from the obligation of preparing and submitting to the Contracting Officer a final report containing the findings and results of research, as set forth in the schedule of the contract.

(End of clause)

3052.236-70 Special precautions for work at operating airports.

As prescribed in (HSAR) 48 CFR 3036.570, insert the following clause:

SPECIAL PRECAUTIONS FOR WORK AT OPERATING AIRPORTS (DEC 2003)

(a) When work is to be performed at an operating airport, the Contractor must arrange its work schedule so as not to interfere with flight operations. Such operations will take precedence over construction convenience. Any operations of the Contractor which would otherwise interfere with or endanger the operations of aircraft shall be performed only at times and in the manner directed by the Contracting Officer. The Government will make every effort to reduce the disruption of the Contractor's operation.

(b) Unless otherwise specified by local regulations, all areas in which construction operations are underway shall be marked by yellow flags during daylight hours and by red lights at other times. The red lights along the edge of the construction areas within the existing aprons shall be the electric type of not less than 100 watts intensity placed and

supported as required. All other construction markings on roads and adjacent parking lots may be either electric or battery type lights. These lights and flags shall be placed so as to outline the construction areas and the distance between any two flags or lights shall not be greater than 25 feet. The Contractor shall provide adequate watch to maintain the lights in working condition at all times other than daylight hours. The hour of beginning and the hour of ending of daylight will be determined by the Contracting Officer.

(c) All equipment and material in the construction areas or when moved outside the construction area shall be marked with airport safety flags during the day and when directed by the Contracting Officer, with red obstruction lights at nights. All equipment operating on the apron, taxiway, runway, and intermediate areas after darkness hours shall have clearance lights in conformance with instructions from the Contracting Officer. No construction equipment shall operate within 50 feet of aircraft undergoing fuel operations. Open flames are not allowed on the ramp except at times authorized by the Contracting Officer.

(d) Trucks and other motorized equipment entering the airport or construction area shall do so only over routes determined by the Contracting Officer. Use of runways, aprons, taxiways, or parking areas as truck or equipment routes will not be permitted unless specifically authorized for such use. Flag personnel shall be furnished by the Contractor at points on apron and taxiway for safe guidance of its equipment over these areas to assure right of way to aircraft. Areas and routes used during the contract must be returned to their original condition by the Contractor. Airport management shall establish the maximum speed allowed at the airport. Vehicles shall be operated so as to be under safe control at all times, weather and traffic conditions considered. Vehicles must be equipped with head and taillights during the hours of darkness.

(End of clause)

3052.237-70 [Removed]

3052.237-71 [Removed]

3052.237-72 [Removed]

3052.242-70 [Removed and reserved]

3052.242-71 [Removed and reserved]

3052.242-72 Contracting officer's technical representative.

As prescribed in (HSAR) 48 CFR 3042.7000, insert the following clause:

CONTRACTING OFFICER'S TECHNICAL REPRESENTATIVE (DEC 2003)

(a) The Contracting Officer may designate Government personnel to act as the Contracting Officer's Technical Representative (COTR) to perform functions under the

contract such as review or inspection and acceptance of supplies, services, including construction, and other functions of a technical nature. The Contracting Officer will provide a written notice of such designation to the Contractor within five working days after contract award or for construction, not less than five working days prior to giving the contractor the notice to proceed. The designation letter will set forth the authorities and limitations of the COTR under the contract.

(b) The Contracting Officer cannot authorize the COTR or any other representative to sign documents, such as contracts, contract modifications, etc., that require the signature of the Contracting Officer.

(End of clause)

3052.245-70 [Removed]

3052.247-70 F.o.b. origin information.

As prescribed in (HSAR) 48 CFR 3047.305-70(a), insert the following provision:

F.O.B. ORIGIN INFORMATION
(DEC 2003)

The offeror shall furnish information with the offer:

(a) Location of the offeror's actual shipping point(s) (street address, city, state, and zip code) from which supplies will be delivered to the Government;

(b) Whether the offered shipping point has a private railroad siding, and the name of the rail carrier serving it;

(c) When the offered shipping point does not have a private siding, the names and addresses of the nearest public rail siding and of the carrier serving it; and

(d) The quantity of supplies to be shipped from each shipping point.

(End of provision)

ALTERNATE I
(DEC 2003)

If delivery is "f.o.b. origin, contractor's facility," and the designated facility is not covered by the line-haul transportation rate, add the following paragraph to the basic provision:

(e) The charges required to deliver the shipment to the point where the line-haul rate is applicable.

ALTERNATE II
(DEC 2003)

When delivery is "f.o.b. origin, freight allowed," add the following paragraph to the basic provision:

(e) The basis on which transportation charges will be allowed, including the origin and destination from and to which transportation charges will be allowed.

3052.247-71 F.o.b. origin only.

As prescribed in (HSAR) 48 CFR 3047.305-70(b), insert the following provision:

F.O.B. ORIGIN ONLY
(DEC 2003)

Offers are invited on the basis of f.o.b. origin only. Offers submitted on any other basis will be rejected as nonresponsive.

(End of provision)

3052.247-72 F.o.b. destination only.

As prescribed in (HSAR) 48 CFR 3047.305-70(c), insert the following provision:

F.O.B. DESTINATION ONLY
(DEC 2003)

Offers are invited on the basis of f.o.b. destination only. Offers submitted on any other basis will be rejected as nonresponsive.

PART 3053 FORMS

Subpart 3053.1 General
3053.101 Requirements for use of forms.
3053.103 Exceptions.

Subpart 3053.2 Prescription of Forms
3053.204-70 Administrative matters.
3053.222-70 Application of labor laws to Government acquisitions.
3053.227-70 Conveyance of invention rights acquired by the Government
3053.245-70. [Removed and reserved].

Subpart 3053.3 Illustrations of Forms

3053.303 Agency forms.

Subpart 3053.1 General

3053.101 Requirements for use of forms.

Unless excepted, forms prescribed in (FAR) 48 CFR part 53 and (HSAR) 48 CFR part 3053 are required for use by all Components.

3053.103 Exceptions.

Requests for exceptions to forms contained in (FAR) 48 CFR part 53 and to DHS forms in (HSAR) 48 CFR part 3053 shall be submitted, as prescribed in (FAR) 48 CFR 53.103, to the CPO.

Subpart 3053.2 Prescription of Forms

3053.204-70 Administrative matters.

The following forms are prescribed for use in the closeout of applicable contracts, as specified in (HSAR) 48 CFR 3004.804-570:

(a) DHS Form 700-1, Cumulative Claim and Reconciliation Statement. (See (HSAR) 48 CFR 3004.804-570(a)(3).)

(b) DHS Form 700-2, Contractor's Assignment of Refunds, Rebates, Credits and Other Amounts. (See (HSAR) 48 CFR 3004.804-570(a)(2).)

(c) DHS Form 700-3, Contractor Release. (See (HSAR) 48 CFR 3004.804-570(a)(1).)

3053.222-70 Application of labor laws to Government acquisitions.

The following form is prescribed for use in connection with the application of labor laws, as specified in (HSAR) 48 CFR 3022.406-9:

DHS Form 700-4, Employee's Claim for Wage Restitution.

3053.227-70 Conveyance of invention rights acquired by the Government.

The following form is prescribed for including a means for contractors to report inventions made in the course of contract performance, as specified in (HSAR) 48 CFR 3027.305-4:

DD Form 882, Report of Inventions and Subcontracts.

3053.245-70 [Removed and Reserved]

Subpart 3053.3 Illustrations of Forms

3053.303 Agency forms.

This section illustrates agency-specified forms. To access these forms go to: http://www.dhs.gov (under Business", Acquisition Information) or https://dhsonline.dhs.gov/portal/jhtml/general/forms.jhmtl.

FORM NAME	FORM NUMBER
Cumulative Claim and Reconciliation Statement	DHS Form 700-1
Contractor's Assignment of Refunds, Rebates, Credits and Other Amounts	DHS Form 700-2
Contractor Release	DHS Form 700-3
Employee's Claim for Wage Restitution.	DHS Form 700-4
Report of Inventions and Subcontract.	DD 882