Department of Homeland Security Acquisition Manual

October 2009

FOREWORD

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

The HSAM third edition, effective October 1, 2009 includes new or updated appendices to include guides for Justifications and Approvals, Acquisition Planning, Market Research, and Affirmative Procurement Plan. All HSAM appendices have been relocated to the end of the electronic version. Relevant internet links are included wherever external references are made. The DHS Office of Acquisition Policy and Legislation focuses information dissemination efforts to the internet, and does not publish any hard copies of the manual. Please provide any suggestions or comments to the DHS Office of Acquisition Policy and Legislation.

/s/
Richard K. Gunderson
Acting Chief Procurement Officer

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

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October 2009 Edition
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2011-04	April 18, 2011	Appendices TOC; pages 8-1 through 8-3, 13-1 through 13-4, 15-1 through 15-7, 16-5 through 16-6; and add new Appendix AA.
2011-05	June 21, 2011	Appendices TOC; pages 4-1, 4-11 through 4-11.1, 5-4 through 5-9, 6-1 through 6-4, 8-1 through 8-3, 16-4, 19-1, 19-3 through 19-4, 32-8 through 32-10, 36-3, 53-1 through 53-3; and, Appendices A (pg A-1), G (pgs G-1 through G-32), L (new pgs L-4 through L-6), Q (pg Q-2), and U (pgs U-1 through U-11).
2011-06	June 29, 2011	HSAM Chapter 3007 (pages 7-1 thru 7-20) and Appendix H (Version 6.1).
2011-07	August 5, 2011	Pages 42-1 and 43-1 through 43-2.
2011-08	September 12, 2011	Pages 15-1, 15-6 through 15-7, and 42-8 through 42-9.
2012-01	January 6, 2012	Entire HSAM Appendix AA, Debriefing Guide.
2012-02	February 3, 2012	Pages 19-3, 42-1, 42-5 through 42-10 and global change from “COTR” to “COR”.
2012-03	February 7, 2012	Pages 7-3 and 7-9 through 7-11.
2012-04	March 8, 2012	Pages 9-2.1 through 9-2.2.
2012-05	April 17, 2012	Pages 4-2 through 4-2.1, and 4-13 through 4-19.
2012-06	May 2, 2012	Appendices TOC, pages 32-1 through 32-2, 32-5 through 32-11, 33-1 through 33-2, and new Appendix AB (AB-1 through AB-14).
2012-07	August 15, 2012	Pages 16-6 through 16-7

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Subchapter 3001.1 Purpose, Authority, Issuance

3001.101 Purpose.

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

3001.102 Statement of guiding principles for the Federal Acquisition System

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

3001.103 Authority

The HSAM is issued pursuant to the DHS Delegation Number 0700, Delegation to the CPO for Acquisition and Financial Assistance Management and MD Number 0003, Acquisition Line of Business Integration and Management or successor directive.

3001.104 Applicability.

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

3001.105 Issuance.

3001.105-170 Publication of HSAM.

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

3001.105-270 Arrangement of HSAM.

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

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

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

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

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

3001.105-3 Copies.

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

3001.106 OMB approval under the Paperwork Reduction Act.

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

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

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

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

Subchapter 3001.2 Administration

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

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

Subchapter 3001.3 Agency Acquisition Regulations

3001.301 Policy.

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

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

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

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

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

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

3001.301-70 Amendment of HSAM.

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

(b) Updates to the HSAM will be summarized in a HSAM Notice published on the Internet at http://www.dhs.gov/dhspublic under "Business". An announcement of the HSAM Notice issuance will be made to the HCAs. This announcement is used as the mechanism to alert users that the HSAM has changed. When the HSAM Notice is issued, the electronic HSAM is updated to incorporate the changes.

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

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

(2) *HSAM Notices.*

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

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

(3) *HSAM Appendices, Attachments, and Exhibits.* At the end of the HSAM, Notices, and Bulletins, appendices may be used to provide supplementary material not suitable for insertion in the HSAM issuance itself (e.g., tables, other agency issuances). Appendices may contain attachments with or without exhibits. Attachment(s) supplement the appendix, and exhibit(s) supplement the attachment. Both are made part of the appendix.

3001.301-71 Effective date of HSAM Notice.

Unless otherwise stated, the following applies--

(a) Statements in HSAM Notices that the content is "effective upon receipt," "upon a specified date," or that changes set forth in the document are "to be used upon receipt," mean that any new or revised procedures or forms shall be used when issuing solicitations, contracts, or modifications thereafter; and

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

3001.301-72 HSAM Notice numbering.

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

3001.304 Agency control and compliance procedures.

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

(b) *Component acquisition regulations* shall:

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

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

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

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

(5) Pertain only to that Component.

(c) *Component acquisition procedures* shall:

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

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

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

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

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

Subchapter 3001.4 Deviations from the FAR, HSAR, and HSAM

3001.403 Individual deviations.

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

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

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

(3) Set forth the nature of the deviation;

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

(5) State the known impact of the deviation.

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

3001.404 Class deviations.

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

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

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

Subchapter 3001.6 Career Development, Contracting Authority, and Responsibilities

Subchapter 3001.601 General.

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

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

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

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

3001.602 Contracting officers.

3001.602-2 Responsibilities.

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

3001.602-3 Ratification of unauthorized commitments.

(a) *Definitions.*

(1) "Ratifying official" means the individual having the authority to authorize the issuance of a contract award, purchase order, or other procurement instrument providing

for the ratification of an unauthorized commitment.

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

(b) *Policy.*

(2) The HCA may delegate the authority to ratify unauthorized commitments to no lower than the COCO.

(c) *Limitations.*

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

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

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

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

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

(D) Whether any benefit was received;

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

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

(G) Status of performance;

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

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

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

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

(ii) If the individual who made the unauthorized commitment is not available, the office responsible for the commitment shall provide the information described in subparagraph (i) above with the name (vice signature) of the individual who made the unauthorized commitment.

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

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

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

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

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

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

(iv) Each contracting office shall establish a file system to ensure those actions for which a ratification was requested can be identified with the documentation below in paragraphs (A) through (G). Each ratification request included in the office file shall be retained for 6 years and 3 months after final payment or after the ratifying official determines that the action will not be ratified. The office file pertaining to a ratification action shall contain the following:

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

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

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

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

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

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

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

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

3001.603 Selection, appointment, and termination of appointment.

3001.603-1 General.

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

3001.603-2 Selection.

The DHS MD Number 0740.2, Contracting Officer Warrant Program, establishes DHS policy and procedures on obtaining and maintaining contracting officer warrants.

3001.670 Responsibility of other Government personnel.

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

(b) Program personnel, using the contracting process to accomplish their programs, shall

support the contracting officer in ensuring that:

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

(2) Requirements are clearly defined and specified;

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

(4) Quality standards are prescribed and met;

(5) Performance or delivery is timely;

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

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

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

3001.671-1 General.

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

3001.671-2 Selection.

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

3001.671-3 Procedures.

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

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

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

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

(b) Appointment of ordering officials.

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

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

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

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

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

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

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

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

3001.671-4 Specialized Training.

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

3001.671-5 Temporary Appointment.

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

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

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

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

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

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

3001.671-6 Surveillance of ordering officials.

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

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

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

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

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

CHAPTER 3002 DEFINITION OF WORDS AND TERMS

Subchapter 3002.1 Definitions
3002.101 Definitions.

3002.1 Definitions.

3002.101 Definitions.

"Acquisition" The conceptualization, initiation, design, development, test, contracting, production, deployment, logistic support, modification, and disposal of systems, supplies, or services (including construction) to satisfy DHS needs. Acquisitions result from investment decisions, respond to approved requirements, align to strategic direction, and are guided by approved baselines. Acquisition does not include establishment of agency needs (requirements determination) or financial management. Acquisition includes all functions managed by the DHS Chief Procurement Officer (CPO) and Component Heads of the Contracting Activities.

"DHS Head of the Contracting Activity (HCA) Council" is an advisory body comprised of: the Chief Procurement Officer (CPO); Deputy CPO; OSDBU; Division Directors of Policy and Acquisition Workforce, Oversight & Strategic Support, Cost Analysis, Chief of Staff, and Acquisition Program Management; and the Heads of the Contracting Activity (or designee) from each Component. The DHS HCA Council Charter establishes the role of the Council and the HCA members, who are listed at HSAM Appendix A.

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

CHAPTER 3003 IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subchapter	**3003.1**	**Safeguards**
	3003.104	Procurement Integrity.
	3003.104-1	Definitions.
	3003.104-3	Statutory and related prohibitions, restrictions, and requirements.
	3003.104-4	Disclosure, protection, and marking of contractor bid or proposal information and source selection information.
	3003.104-5	Disqualification.
	3003.104-7	Violations or possible violations.
	3003.104-570	Information security.
Subchapter	**3003.6**	**Contracts with Government Employees or Organizations, Owned or Controlled by Them**
	3003.602	Exceptions.
Subchapter	**3003.7**	**Voiding and Rescinding Contracts**
	3003.704	Policy.
	3003.705	Procedures.
Subchapter	**3003.8**	**Limitation on the Payment of Funds to Influence Federal Transactions**
	3003.804	Policy.
	3003.806	Processing suspected violations.
Subchapter	**3003.9**	**Whistleblower Protections for Contractor Employees**
	3003.905	Procedures for investigating complaints.
	3003.906	Remedies.
	3003.907	Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (the Recovery Act).
	3003.907-2	Policy.
	3003.907-3	Procedures for filing complaints.
	3003.907-6	Remedies and enforcement authority.
Subchapter	**3003.10**	**Contractor Code of Business Ethics and Conduct**
	3003.1003	Requirements.

Subchapter 3003.1 Safeguards

3003.104 Procurement integrity.

3003.104-1 Definitions.

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

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

(a) The contracting officer is delegated this authority.

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

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

(ii) Use DHS Form 700-14, Cover Page Proprietary Information, to notify the recipient that the information or portions thereof is proprietary information related to the conduct of a Federal agency procurement;

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

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

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

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

3003.104-5 Disqualification.

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

3003.104-7 Violations or possible violations.

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

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

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

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

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

3003.104-570 Information security.

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

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

3003.602 Exceptions.

The HCA, without redelegation, is delegated this authority.

Subchapter 3003.7 Voiding and Rescinding Contracts

3003.700 Scope of subpart.

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

3003.703 Authority.

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

3003.704 Policy.

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

3003.705 Procedures.

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

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

3003.804 Policy.

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

3003.806 Processing suspected violations.

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

Subchapter 3003.9 Whistleblower Protections for Contractor Employees

3003.905 Procedures for investigating complaints.

The HCA is delegated the responsibilities at FAR 3.905.

3003.906 Remedies.

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

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

3003.907-2 Policy.

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

3003.907-3 Procedures for filing complaints.

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

(i) The Component HCA and Component legal counsel;

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

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

3003.907-6 Remedies and enforcement authority.

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

3003.907-7 Contract Clause.

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

Subchapter 3003.10 Contractor Code of Business Ethics and Conduct

3003.1003 Requirements

(a) Contractor requirements.

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

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

(A) Notify and coordinate with the Component HCA and Component legal counsel, and

(B) Notify the Office of Inspector General.

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

(A) Contractor name;

(B) Contractor DUNS;

(C) Contract number;

(D) Order number (if applicable);

(E) Invoice number;

(F) Invoice amount;

(G) Amount of overpayment;

(H) Whether there were previous overpayments on this contract;

(I) Invoice date;

(J) Invoice approval date;

(K) Payment date;

(L) COR or program point of contact;

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

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

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

(b) Notification of possible contractor violation.

(2) Agency procedures.

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

(A) The DHS Office of Inspector General, Office of Investigations;

(B) The Component HCA and Component legal counsel;

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

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

(ii) Access to information obtained pursuant to the disclosure shall be limited to authorized persons and treated as For Official Use Only. In addition, any DHS employee

with access to information obtained pursuant to a disclosure, to the extent permitted by law and regulation, shall safeguard and treat the information as confidential where the information has been marked "confidential" or "proprietary" by the contractor.

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

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

(A) The DHS Office of Inspector General, Office of Investigations;

(B) The Component HCA and Component legal counsel;

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

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

CHAPTER 3004 ADMINISTRATIVE MATTERS

Subchapter	**3004.1**	**Contract Execution**
	3004.101	Contracting officer's signature.
	3004.101-70	Contract execution in contract writing systems.
Subchapter	**3004.2**	**Contract Distribution**
	3004.202	Agency distribution requirements.
	3004.203	Taxpayer identification number information (TIN).
Subchapter	**3004.4**	**Safeguarding Classified Information Within Industry**
	3004.403	Responsibilities of contracting officers.
	3004.470	Security requirements for contractor access to unclassified facilities, IT resources, and sensitive information.
	3004.470-1	Responsibilities.
	3004.470-2	Conditional access to sensitive but unclassified information.
Subchapter	**3004.5**	**Electronic Commerce in Contracting**
	3004.502	Policy.
	3004.502-70	Acquisition-Related Systems.
	3004.502-7000	User account maintenance responsibilities for acquisition-related systems.
Subchapter	**3004.6**	**Contract Reporting**
	3004.603	Policy.
	3004.604	Responsibilities.
	3004.605	Procedures.
	3004.606	Reporting data.
	3004.670	Acquisition related reporting requirements.
Subchapter	**3004.8**	**Government Contract Files**
	3004.801	General.
	3004.803-70	Contents of contract files.
	3004.804	Closeout of contract files.
	3004.804-1	Closeout by the office administering the contract.
	3004.804-170	Monitoring contract closeouts.
	3004.804-5	Procedures for closing out contract files.
	3004.805	Storage, handling, and disposal of contract files.
	3004.805-70	Storage, handling and disposal of Governmentwide commercial purchase card records.
Subchapter	**3004.9**	**Taxpayer Identification Number Information**
	3004.903	Reporting contract information to the IRS.

	3004.904	Reporting payment information to the IRS.
Subchapter	**3004.11**	**Central Contractor Registration**
	3004.1102	Policy.
	3004.1103	Procedures.
Subchapter	**3004.13**	**Personal Identity Verification**
	3004.1301	Policy.
	3004.1301-70	Definition.
	3004.1301-71	Other official's responsibilities.
	3004.1302	Acquisition of approved products and services for personal identity verification.
	3004.1303	Contract clause.
Subchapter	**3004.15**	**American recovery and reinvestment Act-Reporting**
	3004.1501	Procedures.
Subchapter	**3004.70**	**Review and Approval of Proposed Contract Actions**
	3004.7000	Scope.
	3004.7001	Definitions.
	3004.7002	Component internal review and approval procedures.
	3004.7003	Legal reviews.
	3004.7004	Office of the Chief Procurement Officer (OCPO) review and approval.
	3004.7005	Periodic compliance reviews.

Subchapter 3004.1 Contract Execution

3004.101 Contracting officer's signature.

3004.101-70 Contract execution in contract writing systems.

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

Subchapter 3004.2 Contract Distribution

3004.202 Agency distribution requirements.

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

(1) The Component property management office or property administrator when Government property is furnished to the contractor or when acquiring personal property as that term is defined in FAR 2.101;

(2) The requiring office; and

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

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

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

3004.203 Taxpayer identification number information (TIN).

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

Subchapter 3004.4 Safeguarding Classified Information Within Industry

3004.403 Responsibilities of contracting officers.

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

(1) Executive Order 12829, National Industrial Security Program (NISP);

(2) DHS MD 11035, Industrial Security Program;

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

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

(5) FAR Subpart 4.4.

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

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

(c) *Award phase*. Contracting officers shall ensure that DD Form 254, including solicitation or contract number and required classified guidance, is forwarded to their cognizant Security Office prior to the release of classified information. (A DD 254 may need to be prepared and included in the contract although no DD 254 was required for the solicitation.)

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

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

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

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

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

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

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

3004.470-1 Responsibilities.

(a) The requiring office is responsible for determining if contractor employee access to unclassified Government facilities, IT resources, or sensitive but unclassified information will be required during contract performance. The DHS Headquarters or Component Security Offices shall assist requiring and contracting offices with identifying the risk level, suitability requirements and other access matters relating to sensitive but

unclassified information and recurring access of contractor employees to Government facilities, information systems, security items or products. All DHS OPO procurements that require contractor employees to have access to DHS facilities, sensitive information and/or resources shall be coordinated with the DHS Headquarters Office of Security prior to release of the solicitation. Contracting officers and requiring officials shall coordinate the requirements for access investigations with the cognizant Component Security Office.

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

3004.470-2 Access to sensitive but unclassified information.

(a) Contractor personnel who will require access to sensitive but unclassified information as part of contract performance shall complete the DHS Non-disclosure Agreement (NDA), DHS Form 11000.6, before starting work under the contract.

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

Subchapter 3004.5 Electronic Commerce in Contracting

3004.502 Policy.

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

(c) The CPO must ensure that the agency systems are capable of ensuring authentication and confidentiality commensurate with the risk and magnitude of the harm from loss, misuse, or unauthorized access to or modification of the information, before using electronic commerce.

3004.502-70 Acquisition-Related Systems

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

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

Subchapter 3004.6 Contract Reporting

3004.603 Policy.

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

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

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

3004.604 Responsibilities.

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

(1) The methods used to review the data;

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

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

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

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

3004.605 Procedures.

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

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

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

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

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

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

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

Letter	Purpose
A	***Agreement***: Use for a basic agreement, basic ordering agreement (BOA), or blanket purchase agreement (BPA) as defined under FAR 13.3, 16.7, and Federal Supply Schedules. Do NOT use for Cooperative Agreements.
B	***Sealed Bidding***: Use for solicitations as defined under FAR 14.2. (*Character "B" use is at the Component's discretion.*)
C	***Contracts:*** Use for all contracts (e.g., letter, 8(a), etc.) Also, includes contracts for appraisals, surveys, title, closing, and other work related to leasing or acquiring real estate rights. Do NOT use this code for Task or Delivery Order contracts.
D	***Task or Delivery Order Contracts:*** Use for Indefinite Quantity, Definite Quantity, and Requirements contracts as defined under FAR 16.5.
F	***Task or Delivery Orders:*** Use when placing orders against (1) a contract administered by another Government agency or department e.g., General Services Administration (Federal Supply Schedule), the Department of Veterans Affairs, or the Office of Personnel Management, (2) contracts administered by agencies other than DHS including the National Industries for the Blind, National Industries for the Severely Handicapped, and the Federal Prison Industries (UNICOR). (Also see HSAM 3004.605(a)(8)(i) and (ii).)
G	***Reserved.***
H	***Reserved.***
I	***Request for Information:*** Use when placing an announcement in FedBizOpps for informational purposes.
J	***Task or Delivery Orders:*** Use when placing orders against DHS contracts. This does not include Component BPA orders placed under GSA Schedules. (Also see HSAM 3004.605(a)(8)(i)and (ii.)
K	***Land Purchases and Condemnations:*** Use for acquisition of permanent real estate interests (fee simple or easement) by purchase or condemnation. Does not include leasehold interests (land or space) in real property.
L	***Lease Agreement***: Use for leasing real property and supplies or equipment. Also, includes instruments for both land and space where the Government obtains real estate rights and aerial easements for a limited period of time, and may or may not be monetary in consideration. Do NOT use this code for Interagency Agreements.
N	***Construction or Service Purchase Orders:*** Use only when contracting officer approval is necessary before contractor payment.
P	***Purchase Orders:*** Use for purchase orders described under FAR Part 13 (assign V, then W when numbering capacity of P becomes exhausted during a fiscal year). Also, includes orders for appraisals, surveys, title, closing, and other work related to leasing or acquiring real estate rights.
Q	***Request for Quotation:*** Use when the procedures under FAR Part 13 are followed.
R	***Request for Proposal:*** Use when the procedures under FAR Part 15 are followed. (*Character "R" use is at the Component's discretion.*)
S	***Sales Contract:*** Use for sales and other disposal of real and personal property.
U	***Utilities:*** Use for contracts for electric, telephone, water, natural gas, and other utilities.
X	***Interagency Agreements***: Use when placing an order with any other Government agency or Component for supplies or services that the servicing agency may be in a position or equipped to supply, render, or obtain by contract. FAR 17.502 applies.
	Use of the letters E, M, T, Y and Z is retained by the OCPO.

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

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

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

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

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

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

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

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

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

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

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

3004.606 Reporting Data.

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

3004.670 Acquisition related reporting requirements.

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

Subchapter 3004.8 Government Contract Files.

3004.801 General.

The COCO is designated as the head of each office performing contracting and contract administration functions. The Chief of the Finance Office of the Component is designated as the head of the office performing paying functions.

3004.803-70 Contents of contract files.

There shall be an official contract file folder for every contract awarded, order issued, or agreement entered into by DHS Components. Each contract file shall be organized by sections with an applicable contract file checklist. Each checklist must contain a listing of items and sub-items included in the file, the respective location of the items or sub-item (e.g., documents), and a cross reference to the specific requirement in the Federal Acquisition Regulation, HSAR, HSAM, and other DHS Directives as applicable. Each Component shall develop policies and procedures for ensuring that the appropriate check list is completed and placed in each contract file. At a minimum, each checklist shall contain the data elements at FAR 4.803.

3004.804 Closeout of contract files.

3004.804-1 Closeout by the office administering the contract.

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

3004.804-170 Monitoring contract closeouts.

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

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

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

accordance with FAR 4.8, HSAR 3004.8, and this subchapter.

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

3004.804-5 Procedures for closing out contract files.

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

3004.805 Storage, handling, and disposal of contract files.

(a) Contract and order files shall be disposed of in accordance with DHS MD Number 0550.1, Records Management. Contracting officers shall seek the guidance of their Component's Records Manager or their Records Coordinator for additional information concerning the requirements. In no case may the files be destroyed before the timeframes specified in FAR 4.805. The GSA and the National Archives and Records Administration (NARA) are authorized by law to establish, operate and maintain records centers for Federal agencies. The list of Records Centers (RC) is located at **http://www.archives.gov/locations/index.html**.

(b) Files sent to a Federal Records Center (FRC) shall have a disposal date annotated on the front of the file. This is the date the file can and will be destroyed by the FRC. Contracting officers shall determine this date based on the retention period specified in FAR 4.805.

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

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

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

Subchapter 3004.9 Taxpayer Identification Number Information

3004.903 Reporting contract information to the IRS.

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

3004.904 Reporting payment information to the IRS.

In addition to the requirements cited under FAR 4.904, 26 U.S.C. §6041 and §6041A, require Federal agencies to report to the IRS all individuals, partnerships, proprietorships, etc. that will be paid $600 or more in a calendar year. This means that any contractor who paid $600 or more a year must be reported to the IRS.

3004.11 Central Contractor Registration

3004.1102 Policy.

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

3004.1103 Procedures.

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

3004.13 Personal Identity Verification

3004.1301 Policy.

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

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

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

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

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

3004.1301-70 Definition.

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

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

3004.1301-71 Other officials' responsibilities.

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

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

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

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

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

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

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

3004.1303 Contract clause.

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

3004.15 American Recovery and Reinvestment Act-Reporting Requirements

3004.1501 Procedures.

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

Subchapter 3004.70 Review and Approval of Proposed Contract Actions

3004.7000 Scope.

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

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

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

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

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

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

(5) Proposed intra/inter-agency agreements;

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

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

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

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

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

3004.7001 Definitions.

The following definitions are only applicable to HSAM 3004.70:

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

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

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

3004.7002 Component Internal review and approval procedures.

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

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

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

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

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

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

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

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

Subchapter 3004.7003 Legal review.

(a) Basic Rule for Legal Review: Legal counsel shall review the contract actions listed in subchapter 3004.7000(a)(1) through (6) expected to exceed $500,000 (inclusive of optional amounts and periods) for legal sufficiency. Legal counsel shall review J&As for Other Than Full And Open Competition (3004.7000(a)(8)) expected to exceed the simplified acquisition threshold (also see J&A Guide, Appendix G). The contract action submitted for review shall be accompanied by the contract file, which must contain all documentation necessary to support the proposed action, including documentation of all contracting office reviews, approvals, and resolution of all issues and comments (unless parallel reviews are authorized in accordance with the HSAM and HCA procedures.) The HCA, with the concurrence of the Component's legal counsel, may adjust the $500,000 threshold. For the DHS HQ Office of Procurement Operations (OPO), the HCA must obtain the concurrence of the DHS Headquarters Office of General Counsel."

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

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

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

(d) Additional Requirements for Legal Review:

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

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

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

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

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

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

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

(1) Specific actions requiring approval.

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

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

(b) Information required for OCPO review.

(1) General.

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

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

3004.7005 Periodic compliance reviews.

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

CHAPTER 3005 PUBLIZING CONTRACT ACTIONS

Subchapter	**3005.000**	**Scope**
	3005.003	Governmentwide point of entry (GPE).
Subchapter	**3005.1**	**Dissemination of Information**
	3005.102	Availability of solicitations.
Subchapter	**3005.2**	**Synopses of Proposed Contract Actions**
	3005.202	Exceptions.
	3005.207	Preparation and transmittal of synopses.
Subchapter	**3005.3**	**Synopses of Contract Awards**
	3005.301	General.
	3005.301-70	Synopsis of contracts containing Public Law 95-507 subcontracting plans and goals.
	3005.303	Announcement of contract awards.
	3005.303-70	Congressional notification of contract actions.
Subchapter	**3005.4**	**Release of Information**
	3005.401	General.
	3005.403	Requests from Members of Congress.
	3005.404	Release of long-range acquisition estimates.
	3005.404-1	Release procedures.
Subchapter	**3005.5**	**Paid Advertisements**
	3005.501	Authority.
Subchapter	**3005.7**	**Publicizing Requirements under the American Recovery and Reinvestment Act of 2009**
	3005.701	Scope.
	3005.770	Interagency agreements.

Subchapter 3005.000 Scope

Subchapter 3005.003 Governmentwide point of entry (GPE).

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

Subchapter 3005.1 Dissemination of Information

3005.102 Availability of solicitations.

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

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

Subchapter 3005.2 Synopses of Proposed Contract Actions

3005.202 Exceptions.

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

3005.207 Preparation and transmittal of synopses.

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

(5) CLASSIFICATION CODE. The FedBizOpps staff is not authorized to determine the classification code for any FedBizOpps notice. Because a misclassified contract action fails to notify the firms most likely to respond and therefore may violate the Competition in Contracting Act, the contracting officer is held responsible for correctly classifying a FedBizOpps notice. A misclassified contract action must be corrected and re-synopsized in the FedBizOpps. Detailed classification codes are available on the FedBizOpps website at: http://www.fbo.gov.

Subchapter 3005.3 Synopses of Contract Awards

3005.301 General.

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

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

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

3005.303 Announcement of contract awards.

(a) Public announcement. Contract actions valued in excess of $1 million shall not be awarded or distributed, nor any information released to any source outside of DHS (except as described in FAR 15.503(a)), until the requirements of HSAM 3005.303-70 have been accomplished. Neither contracting officers nor any other DHS employee shall issue an award synopsis, public announcement, or any press release until the requirements in this subsection has been satisfied, when applicable.

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

3005.303-70 Congressional notification of contract actions.

(a) In accordance with Section 508 of Division E of Public Law 110-116; Section 507 of Division D of Public Law 110-329, Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009; Section 507 of the FY 2010 DHS Appropriations Act and subsequent similar Appropriations Act provisions, DHS Components are required to provide Congressional notification for any contract award, including letter contracts and awards to small businesses, in excess of $1 million. Additionally, for awards being made with FY 2010 and later appropriated funds with similar provisions, Congressional notification is required for task and delivery orders made under DHS multiple award contracts. The contract and order notification procedures contained in the successor DHS Directive to DHS Management Directive (MD) Number 2140.1, Congressional Notification of Contract Awards, this subsection, and Component supplementary procedures, shall be used to transmit the required contract or order information on actions in excess of $1 million.

(b) Contracts, and orders obligating FY 2010 funds under DHS multiple award contracts, valued in excess of $1 million shall not be awarded, issued or distributed, nor any information released to any source outside of DHS (except as described in FAR 15.503(a)), until the requirements of this subsection have been accomplished. Neither contracting officers nor any other DHS employee shall issue an award synopsis, public announcement, or any press release until the requirements in this subsection has been satisfied, when applicable.

(c) The DHS Office of Legislative Affairs will use the information contained on the DHS Form 2140-01 to notify Senate and House of Representative Appropriations Committees at least three (3) full business days prior to contract award, or issuance of orders under

DHS multiple award contracts using FY 2010 funds, in accordance with legislative provisions. The DHS Office of Legislative Affairs may also elect to have the Component's Office of Legislative Affairs provide required information to Congress.

(d) Announcement and notification procedures.

(1) Contracting officers or other officials designated by the Component shall prepare and submit (after internal Component coordination as required) DHS Form 2140-01 via electronic mail to Contracts@dhs.gov at least five (5) full business days prior to the planned award of the contract, or issuance of an order under a DHS multiple award contract using FY 2010 or later appropriated funds. The business day begins at 9:00 a.m. Eastern Time (ET). For notifications received after 9:00 a.m. ET, the first full business day will be the day following receipt. For example, if a contract or order is to be awarded on a Friday, DHS Form 2140-01 shall have been received by DHS Office of Legislative Affairs no later than 9:00 a.m. the previous Friday. This requirement also applies to Interagency Agreements for Assisted Acquisitions. The following or similar language shall be incorporated in the terms and conditions of Interagency Agreements for Assisted Acquisitions -

In accordance with Section 508 of Division E of Public Law 110-116; Section 507 of Division D of Public Law 110-329, Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009; Section 507 of the FY 2010 DHS Appropriations Act and subsequent similar Appropriations Act provisions, DHS Components are required to ensure that Congressional notification is provided for any contract award, including new contract actions being awarded on behalf of DHS by a Servicing Agency through an assisted acquisition in excess of $1 million (including the base value and all options). Failure to properly make Congressional notice is a violation of the Anti-Deficiency Act. DHS Form 2140-01Congressional Award Notification is attached.

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

Contracts@dhs.gov
Contracting Officer (name)

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

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

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

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

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

(e) Coverage. Congressional notification requirements apply to contract actions funded with FY 2008, FY 2009, and subsequent years' appropriations. Additionally, Congressional notification requirements apply to orders issued under DHS multiple award contracts funded with FY 2010 and subsequent years' appropriations. Appendix D, Congressional Notification Requirements, identifies both covered and not covered actions.

(f) Discretionary notification. HCAs are authorized to provide discretionary Congressional notification of special interest contract actions at or below $1 million, task or delivery orders under indefinite-delivery type contracts using FY 2009 and prior funds, or on any award not otherwise required. Discretionary Congressional notification must be made under the same procedures and timeframe as required Congressional notification. HCAs or their designated representative must coordinate with the DHS Office of Legislative Affairs prior to submission of DHS Form 2140-01 to the electronic mailbox.

(g) Contracts Using FY2008 Funds – No Waiver. Congressional notification to the Committees of Appropriations of the Senate and House of Representatives for covered contracts being awarded using FY 2008 funds may not be waived and the notification must occur at least three (3) full business days prior to contract award.

(h) Contracts Using FY2009 and FY 2010 Funds – Limited Waiver. Congressional notification to the Committees of Appropriation of the Senate and House of Representatives for covered contract actions using FY 2009 funds, FY 2010, or subsequent years' appropriations may be waived only in very limited circumstances. Those circumstances are limited to those situations where compliance with Congressional notification procedures prior to contract award would pose a substantial risk to human life, health, or safety. Notification should be made concurrent with awarding a contract or issuing an order or immediately thereafter. If a contracting officer determines substantial risk to human life, health, or safety exists, the following procedures apply:

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

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

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

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

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

Subchapter 3005.4 Release of Information

3005.401 General.

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

3005.403 Requests from Members of Congress.

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

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

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

counsel must also be notified.

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

3005.404 Release of long-range acquisition estimates.

3005.404-1 Release procedures.

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

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

Additionally, individual APFS entries may be copied into the contract file and serve as an Acquisition Plan for procurement actions above the simplified acquisition threshold up to $10 million dollars. This information may be found at http://APFS.DHS.GOV. For more details on acquisition planning see HSAM 3007.

Subchapter 3005.5 Paid Advertisements

3005.502 Authority.

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

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

3005.701 Scope.

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

3005.705 Announcement of contract awards.

(a) Congressional and OMB notification of contract actions.

(1) As provided under HSAM 3005.303-70(f), DHS has determined that it will make discretionary Congressional notifications for all contract actions, regardless of type, funded by the Recovery Act valued at more than $1 million. In addition, DHS retains the discretion to

issue Congressional notifications for actions funded by the Recovery act valued at less than $1 million on a case-by case basis. Pre-award notification of Recovery Act funded awards to the Office of Management and Budget (OMB) and Congressional notifications are not required for purchase card transactions at or below the micro-purchase threshold.

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

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

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

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

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

(iv) The DHS Recovery Act Leadership Team and OLA monitor contracts@dhs.gov and RecoveryLeadership@hq.dhs.gov to identify Recovery Act contract actions.

(v) The DHS Recovery Act Leadership Team will forward the Congressional notification to OMB for approval to release.

(vi) Upon notification of approval from OMB, OLA forwards the DHS 2140-1 to the Appropriations committees.

(vii) For actions valued in excess of $1 million, OMB review and approval may extend the normal processing time for Congressional notification beyond the customary 5 full business days. The contracting officer must not make award until OLA confirms that the Congressional notification has been submitted to the Appropriations committees. OLA's confirmation will provide the date that award can be made.

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

(ix) If the contracting officer has any questions on the status of OMB's response, he/she should coordinate, through the HCA or a designee identified in writing, with the DHS Recovery Act Leadership Team.

3005.771 Interagency Agreements.

(a) If a Component uses Recovery Act funds in an interagency agreement, the agreement must

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

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

(i) The contracting officer prepares award information, providing the same data elements that appear on the DHS Form 2140-1.

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

(iii) The DHS Recovery Act Leadership Team monitors RecoveryLeadership@hq.dhs.gov to identify Recovery Act interagency agreements.

(iv) The DHS Recovery Act Leadership Team will forward the award information to OMB for approval to release to the Appropriations committees.

(v) Upon notification of approval from OMB, the DHS Recovery Act Leadership Team will forward the approval to the HCA (or designee identified in writing).

(vi) The contracting officer must not make award until the DHS Recovery Act Leadership Team confirms that DHS has received OMB approval.

(vii) If the contracting officer has any questions on the status of OMB's response, he/she should coordinate, through the HCA, with the DHS Recovery Act Leadership Team.

CHAPTER 3006 COMPETITION REQUIREMENTS

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	3006.303	Justification.
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Subchapter 3006.1 Full and Open Competition

3006.102 Use of competitive procedures.

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

Subchapter 3006.3 Other Than Full and Open Competition

3006.302 Circumstances permitting other than full and open competition.

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

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

3006.302-2 Unusual and compelling urgency.

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

3006.302-270 Contract awards to facilitate the response to or recovery from a natural disaster, act of terrorism, or other man-made disaster.

(d)(1) 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 the exception at FAR 6.302-2, 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 exceed 150 days, unless the HCA (or higher approval authority if required by FAR 6.304 or DHS procedures) determines that exceptional circumstances apply, approving the justification as set forth in HSAR 3006.304. The limitation on the period of performance applies to contracts awarded in response to, or recovery from:

(i) 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);

(ii) 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 206.390 (see http://www.fema.gov/news/disasters.fema#sev2 for a list of declarations); or

(iii) 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. (see HSAM 3006.303-2(a)(9)(iv)).

3006.303 Justification.

3006.303-1 Requirements.

(a) Appendix G, DHS Justification and Approval (J&A) Guide for Other than Full and Open Competition, Version 2.1, provides additional requirements and guidance, including a sample format for J&As.

3006.303-2 Content.

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

3006.304 Approval of the justification.

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

(e) All justification and approvals for other than full and open competition submitted to OCPO for approval (see HSAM 3006.302-1 and HSAM Appendix G, Part 4) shall be accompanied by the approved acquisition plan. Any previous justification and approval for other than full and open competition shall also be submitted.

3006.304-70 Legal review.

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

3006.305 Availability of the justification.

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

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

Subchapter 3006.5 Competition Advocates

3006.501 Requirement.

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

3006.502 Duties and responsibilities.

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

3006.570 Competition advocates for the procuring activity.

A listing with point of contact information for the Department Competition Advocate and Procuring Activity Competition Advocates is maintained by the CPO on DHS Open for Business, and is accessible at:
http://www.dhs.gov/xopnbiz/regulations/gc_1204658767888.shtm.

CHAPTER 3007 ACQUISITION PLANNING

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Subchapter 3007.1 Acquisition Plans

3007.101 Definitions.

See Appendix H, Part III, Definitions

3007.102 Policy.

(a)(3) In addition to promoting the acquisition of commercial items and full and open competition, acquisition planning is required for all acquisitions in order to determine the appropriate selection of contract types, address all technical, business, management, and other significant considerations as described in FAR Part 7 and as supplemented herein.

(b)(1) The acquisition planner shall integrate the efforts of all personnel in accordance with FAR 7.102(b). At DHS, the PM will coordinate with members of an Integrated Project (or Product) Team (IPT) comprised of all personnel responsible for significant aspects of the plan (e.g., contracting, Contracting Officer's Representatives, fiscal, legal, small business, technical, security, environmental, privacy, and logistics). The contracting officer must play a key role in the planning effort. Working together, the PM and the IPT prepare the acquisition plan and are responsible for executing it.

(2) No solicitations may be issued, or funds transferred within or outside the Department until an acquisition plan (AP) has been completed and approved. Acquisition plans for major system acquisitions must include all program contractual actions including interagency agreements appropriate to the particular Acquisition Decision Event or program phase for which it is being reviewed. The major system acquisition plan must demonstrate how each contractual action contributes to meeting the program's objectives. In addition, the plan must document annual funding for contractual actions, including interagency agreements (IA) and intra-agency agreements.

(3) In the case of interagency (to other Federal agencies) or intra-agency (between DHS Components) agreements, the following requirements apply:

(i) For IAs resulting in an assisted acquisition, the requesting agency program manager/requisitioner may delegate preparation of an acquisition plan to the servicing agency program manager, but the requesting agency program manager/requisitioner will provide support and assistance as needed and must approve the AP. If the preparation of the AP is delegated to the servicing agency, the Advanced Acquisition Plan (AAP) is not required to be entered into the Acquisition Planning Forecast System (APFS). However, if the preparation of the AP is prepared by DHS and not delegated to the serving agency, then the AAP must be entered into the APFS.

(A) Whenever an IA is contemplated, and an acquisition plan is <u>not</u> required, as when executing IAs under the Economy Act that do <u>not</u> result in an assisted acquisition, or IAs under statutes other than the Economy Act that do not result in an assisted acquisition, DHS program managers/requisitioners will prepare an Analysis of

Alternatives as described in DHS Instruction 125-02-001, "Instruction Guide on Interagency Agreements," or its successor.

(B) The Analysis of Alternatives describes in detail why an IA is the appropriate vehicle to fulfill a DHS requirement.

(ii) Contract awards using FY 2008 and subsequent years' appropriated funds and orders under DHS multiple award contracts using FY 2010 and subsequent years' appropriated funds in excess of $1 million issued on behalf of DHS by a servicing agency through an assisted acquisition or by one DHS Component on behalf of another DHS Component are considered covered contract actions for the purpose of Congressional notification. Program managers and contracting officers shall ensure that Congressional notifications occur in accordance with the requirements at HSAM 3005.303, Announcement of contract awards. The servicing agency may not make award or issue an order until the notification requirements have been met.

3007.103 Agency-head responsibilities.

(e) DHS's procedures which supplement the responsibilities identified in FAR 7.103 are as follows:

(1) An acquisition plan's detail will reflect the dollar value and complexity of the single or multiple acquisition(s) for which it is prepared. Acquisition plans for major system acquisitions will be tailored to a particular major system acquisition program.

(2) Criteria and Thresholds.

(i) For acquisitions that are less than $10 million, entry of acquisition planning information in the Acquisition Planning Forecast System (APFS) (http://apfs.dhs.gov) satisfies the written acquisition plan requirement. Where an AAP is not prepared and submitted into the APFS Database, a written plan is required as described herein.

A copy of the Advanced Acquisition Plan (AAP) and its reference number obtained through the APFS Database must be included in the contract file as evidence of acquisition planning.

(ii) Acquisitions containing sensitive information shall not be included in the APFS Database. With the exception of the Office of Selective Acquisitions (OSA), Abbreviated acquisition plans are required for requirements valued at less than $10 million (including options) and that contain sensitive information. As appropriate to the requirement's complexity and the circumstances, the Abbreviated plan should contain the following information in the DHS Acquisition Planning Guide, Appendix H: A1, A2, A3, A5, A6, A7, B2, B3, B4, B5, B9, B10, B13, B15, B17, B19, applicable questions in B20, and B21. The acquisition plan must include B18, Security Considerations. Prior to entering certain acquisition data in the APFS Database, program personnel and contracting officers should consult with the

appropriate representatives from the Office of General Counsel, Privacy Office, Security Office, and Freedom of Information Act Office to determine if the acquisition information qualifies as sensitive information. If information is determined **not** to be sensitive, prepare a AAP in the APFS Database. Also see HSAM 3007.172, Acquisition Planning Forecast System.

(iii) Acquisitions with values equal to or greater than $10 million, including options require a written acquisition plan that complies with the planning requirements of FAR Subpart 7.1, this Chapter, and Appendix H, DHS Acquisition Planning Guide, Version 6.1 for all contract types.

(iv) FAR 34.004 require acquisition planning for major system acquisitions. Acquisition plans for major system acquisitions as detailed in this Chapter and Appendix H meet the requirements of FAR 34.004. A system is classified as major if: (1) for supplies, its total life cycle cost is estimated to be equal to or exceed $300 million; or (2) for an enterprise service acquisition, its annual expenditure level exceeds $100 million; or (3) if the Deputy Secretary has designated a program/project as a major system. (See DHS Directive Number 102-01, Acquisition Management Directive.) Acquisition plans for major system acquisitions must:

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

(B) Provide the program manager's overall plan for satisfying the mission need in the most effective, economical, and timely manner through one major or a portfolio of multiple acquisitions. (The information provided in acquisition plans for major system acquisitions evolves and becomes more detailed as more information becomes available and planning progresses in later program phases.);

(C) Include as part of the acquisition planning process and acquisition plan, a comprehensive vendor engagement strategy that:

- includes at least one industry day, a pre-solicitation or pre-proposal conference, or the issuance of a Request for Information (RFI); and
- allows for a reasonable amount of one-on-one engagement; and
- allows time for discussions, as needed and in accordance with FAR Part 15, during the proposal evaluation process; <u>or</u>
- provide a written justification in this section of their acquisition plan as to why those steps are unnecessary.

(D) Be in writing and include the appropriate approval signatures; and

(E) Conform to the requirements of FAR Subpart 7.1.

(v) Acquisition plans for other than major system programs equal to or greater than $10 million may be standalone or consolidated acquisition plans, the thresholds of which are based on total contract or order value (including options). Both of these types of plans must:

(A) Not be associated with a major system program for which an acquisition plan is, or has been developed;

(B) Address the need for the acquisition(s) as well as the technical, business, management, and other significant considerations that will control an acquisition(s).

(C) Be in writing and include the appropriate approval signatures;

(D) Follow the requirements of FAR Subpart 7.1 and HSAM Subchapter 3007.1, and its Appendix.

Planners of acquisitions for other than major system programs equal to or greater than $10 million are encouraged to develop and include as part of their acquisition planning process and acquisition plans, a vendor engagement strategy that:

- includes at least one industry day, a pre-solicitation or pre-proposal conference, or the issuance of a Request for Information (RFI); and
- allows for a reasonable amount of one-on-one engagement; and
- allows time for discussions, as needed and in accordance with FAR Part 15, during the proposal evaluation process.

(vi) When an acquisition involves contract bundling, the plan shall also include and be supported by the acquisition research and analysis requirements of FAR 7.107.

(vii) When using the DHS EAGLE, FirstSource, or PACTS contracts, streamlined APs are authorized. Access to templates for streamlined APs is through the Office of Procurement Operations (OPO) website:
http://dhsconnect.dhs.gov/org/comp/mgmt/cpo/opo/Pages/default.aspx.

(viii) Appendix H, DHS Acquisition Planning Guide, Version 6.1, provides additional requirements and guidance on preparing written acquisition plans.

(3) Acquisition plans are not required for:

(i) Agreements between DHS Components in which all work is performed by DHS personnel (however, see HSAM 3007.102(b) related to intra-agency agreements in which funding is transferred);

(ii) Emergency acquisitions. An acquisition is considered an emergency acquisition when the need for the supplies/services is of such an unusual and compelling urgency that the Government would be seriously injured if the supplies/services were not immediately acquired. However, for acquisitions in support of disaster or emergency relief activities, planners must consult the Disaster Response Registry at www.ccr.gov, which provides a list of contractors willing to perform debris removal, distribution of supplies, reconstruction, and/or other disaster or emergency relief activities inside the United States and outlying areas (see FAR 26.205).

(iii) Actions subsequent to the initial submittal of a plan which have already been included as part of an approved plan, for example, exercise of options. However, see HSAM 3007.103-70(a)(5), Other officials' responsibilities;

(iv) Procurements conducted under the Small Business Innovative Research Program (SBIR);

(v) Individual procurements in support of construction projects if the procurements are covered in the construction project plan; and

(vi) Individual procurements where written acquisition plans for a program have already been approved.

(h) Approval of Acquisition Plans.

(1) Approval.

(i) Acquisition plans must be properly coordinated with pertinent functional offices/stakeholders prior to submission to the CPO for approval.

(ii) For the acquisition of supplies, including initial plans and substantive revisions thereto, with total contract values equal to or greater than $300 million, all Component HCAs shall submit acquisition plans to the CPO for approval not later than 45 days prior to the scheduled Acquisition Review Board (ARB). If an ARB is anticipated, but has not been scheduled, the plan shall be submitted for review 30 days prior to the issuance of the solicitation. If an ARB is not required, the plan shall be submitted for review 14 days prior to the issuance of the solicitation. Acquisition plan shall be submitted for CPO approval to the Director Oversight & Strategic Support Division at: procurement.support@dhs.gov.

(1) HCA approval is required for acquisitions of supplies with total contract values less than $300 million. If the acquisition plan is part of a Level 1 or 2 program as defined in section VI. A, Directive 102-01, a copy of the HCA approved plan shall be forwarded to the Acquisition Program Management Division (APMD) in accordance with Directive 102-01.

(2) In instances where the initial acquisition plan is valued less than $300 million, but a revised acquisition plan is subsequently prepared that results in a value equal to or greater than $300 million, the revised plan must be submitted to the CPO for approval.

For supplies with a total life cycle cost equal to or greater than $300 million, the CPO shall submit the plan to the appropriate Acquisition Decision Authority (ADA) in accordance with Directive Number 102-01.

(iii) For acquisition plans for services with an annual expenditure level (in any 12 month period) equal to or greater than $100 million, all Component HCAs shall submit acquisition plans to the CPO for approval not later than 45 business days prior to the scheduled ARB. If an ARB is anticipated, but has not been scheduled, the plan shall be submitted for review 30 days

prior to the issuance of the solicitation. If an ARB is not required, the plan shall be submitted 14 days prior to the issuance of the solicitation. The acquisition plan shall be submitted for CPO approval to the Director Oversight & Strategic Support Division at: procurement.support@dhs.gov.

(1) In those instances where the initial acquisition plan has an annual expenditure value of less than $100 million, but a revised acquisition plan is subsequently prepared that results in an annual expenditure equal to or greater than $100 million, the revised plan must be submitted to the CPO for approval.

(2) For services with an annual expenditure equal to or greater than $1 billion, the CPO shall submit the plan to the Chief Acquisition Officer for approval in accordance with Directive 102-01.

(iv) When the program approval has been delegated to the Component, the HCA shall be the approval authority for the plan.

(v) For those acquisition plans that are below the designated threshold in this section, the HCA shall be the approval authority for the plan unless the CPO specifically designates that the plan requires CPO approval.

(vi) For Abbreviated acquisition plans containing sensitive information valued less than $10 million, the Abbreviated plan shall be approved one level above the contracting officer.

(vii) Streamlined acquisition plans for EAGLE and FirstSource must be approved by the HCA above $50 million; streamlined acquisition plans for PACTS must be approved by the HCA above $25 million.

(viii) For IAAs resulting in an assisted acquisition, the requesting agency Program Manager/requisitioner must approve the resulting AP.

(ix) The HCA may request a waiver from the requirement for CPO approval of an acquisition plan. Any such waiver request shall be submitted by the HCA through the Director, Oversight & Strategic Support Division at: procurement.support@dhs.gov. Waiver requests shall be in writing and contain sufficient detail to clearly demonstrate the basis for the request. Waivers for major system acquisitions of services and supplies must also be approved by the appropriate Acquisition Decision Authority (ADA).

3007.103-70 Other officials' responsibilities.

(a) *Acquisition planner/Technical official*. The development of plans, and updates to them, is the responsibility of the acquisition planner (e.g., program manager). The acquisition planner is located within the requiring agency (if outside of DHS) or within the requiring Component (if within DHS). (However, see HSAM 3007.102(b)(1) and (2) regarding acquisition planning roles for inter- and intra-agency agreements.). The acquisition planner is usually a program manager/technical official, and is responsible for providing applicable input for the plan (e.g.,

quality, quantity, delivery requirements). The acquisition planner, among other functions identified in FAR 7.103 and 7.106, as appropriate to the acquisition/program, shall:

(1) Coordinate with an Integrated Project/Product Team comprised of personnel responsible for significant aspects of the plan (e.g., contracting, Contracting Officer's Representative, fiscal, legal, small business, technical, security and logistics, environment/energy/safety, earned value management (EVM), personnel security, information technology (IT), security and enterprise architecture).

(2) Provide input to the plan as necessary;

(3) Obtain applicable concurrences, e.g., small business, etc.;

(4) Forward the plan through the approval process; and

(5) Review the plan annually, and update as appropriate to section 1.9, Appendix H, DHS Acquisition Planning Guide, Part I; and

(6) Ensure that at least one qualified Contracting Officer's Representative (COR) is nominated as early as practicable in the acquisition process. For Indefinite Delivery/Indefinite Quantity (IDIQ) contracts, the planner may choose to nominate the COR at the order level instead of the contract level, in which case a COR should be appointed to an order prior to its award. A COR need not be nominated for a contract or IDIQ order valued at less than the simplified acquisition threshold.

(c) *Contracting officer*. The contracting officer, as a member of the Integrated Project/Product Team, is responsible for providing applicable input for the plan (e.g., type of contract to be used, procurement milestones, set-aside considerations). Among his/her acquisition planning duties, the contracting officer is responsible for documenting in the acquisition plan, the rationale for the selection of a cost-reimbursement contract type. Provisions of the rationale shall include: (1) an analysis of why a cost-reimbursement contract is appropriate (as compared to a fixed-price contract; and (2) an assessment regarding the adequacy of Government resources that are necessary to properly plan for, award, and administer cost-reimbursement contracts. The contracting officer is also responsible for documenting the rationale for the use of an incentive contract. (See Appendix H, DHS Acquisition Planning Guide, Part II, B4) In addition, the contracting officer will:

(1) Designate and authorize, in writing, a COR on contracts and orders, as appropriate, outlining the responsibilities associated with effectively managing the contract. The contracting officer should also outline the risks to the Government associated with the particular contract type. Cost-type contracts require additional skills and experience to manage their additional risks to the Government, and this fact shall be considered when designating a COR on cost contracts.

(2) Ensure that the COR nominee understands his or her roles and responsibilities as a COR related to the contract. The nominee shall have both technical and acquisition skills appropriate for managing the proposed contract type.

(3) CORs shall be certified in accordance with the Office of Management and Budget Memorandum entitled, "*Revisions to the Federal Acquisition Certification for Contracting Officer's Representatives (FAC-COR)"* dated September 6, 2011, and Departmentwide policies and procedures including HSAM 3042.270.

(d) *Procuring Activity Competition Advocate (PACA).* The cognizant PACA within the Component is responsible for reviewing acquisition plans for procurements with estimated values exceeding $550,000 (except when the *Public Interest* exception at FAR 6.302-7 is used.

(e) *Head of the Contracting Activity (HCA).* At the earliest market research and planning stage, the HCA shall report the intended acquisition of any information technology acquisition related systems to the DHS CPO for coordination, collaboration, and Approval. Also, HCAs must ensure that, in addition to complying with the DHS-unique Congressional Award Notifications requirements at HSAM 3005.303, and PACA review in HSAM 3007.103-70(d), acquisition plans involving contracts:

(1) For information technology, provide assurance that resulting transactions: (i) address protection of privacy in accordance with the Privacy Act (5 U.S.C. 552a) and FAR Part 24 and 39.105; and (ii) in accordance with FAR 39.101, include the appropriate information technology security configurations available from the National Institute of Standards and Technology's National Checklist Program Internet site at: http://checklists.nist.gov/;

(2) Meeting the threshold at FAR 7.104(d)(2)(i)(C) are coordinated with small business; and contracts involving bundling are coordinated with the Component, DHS small business representatives, and the SBA, as appropriate, and meet the review and approval requirements of FAR 7.107(b)(1);

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

(f) *Contracting Officer's Representative (COR).* CORs are responsible for performing contract administration duties as specified in the contracting officer's appointment letter. (See HSAM 3042.270)

3007.103-71 General procedures.

Component program officials must forecast ongoing and future requirements to ensure applicable projects are covered in acquisition plans. Additionally, Heads of Contracting Activities should issue instructions establishing procurement lead-times and cut-off dates. When

establishing procurement lead-times and cut-off dates, HCAs and contracting officers must remain cognizant of federal holidays and their possible impact to the procurement process. Acquisition planners must set realistic procurement-specific milestones that take into account federal holidays as non-business days for contracting staff and industry partners. Contractors must be given a reasonable amount of time near federal holidays to prepare submissions.

3007.104 General procedures.

In accordance with FAR 7.104(a), acquisition planning should begin as soon as the agency need is identified. Planners must pay close attention to the procurement administrative lead time (PALT) needed to award complex procurements using various methods of procurement and contract types, taking into consideration the need for vendor engagement, and the need to conduct the workforce assessment. Early formation of the IPT will ensure that the appropriate subject matter experts described at HSAM 3007.102(b)(1) and FAR 7.104 are involved in the development of the acquisition plan; that there is sufficient time to ensure that the contracting officer complies with all requirements of law, executive orders, regulations, and all other applicable procedures, including clearances; and that goods and services are procured in a timely manner and at a reasonable price to meet mission needs.

(d)(1) Planners shall ensure that acquisition plans are coordinated with the appropriate small business specialist pursuant with the threshold at FAR 7.104(d)(2)(i)(C).

3007.105 Contents of written acquisition plans.

Agency implementing procedures which include the instructions identified in FAR 7.105(a) and (b) are provided in Appendix H, DHS Acquisition Planning Guide, Version 6.1, Part II.

3007.107 Additional requirements for acquisitions involving bundling.

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

(c) The DHS Deputy Secretary, without redelegation, shall determine that bundling is necessary and justified under the circumstances at FAR 7.107(c). When the contracting officer believes that these circumstances apply to the acquisition, the HCA shall forward to the CPO the following: (1) A copy of the approved acquisition plan required by FAR 7.105 and 7.107; (2) A copy of the SBA representative's (e.g., Procurement Center Representative) concurrence with the bundling of requirements or the decision of the HCA (see HSAM 3019.505); and (3) A copy of the contracting officer's calculations showing how the expected benefits below the monetary thresholds under FAR 7.107(b) were derived. The documents may be submitted via email to the Director, Oversight & Strategic Support Division for CPO approval at procurement.support@dhs.gov. The CPO will review the information. If the CPO proposes to recommend disapproval to DHS Deputy Secretary, the reasons for disapproval will be discussed and resolved with the contracting officer and/or at a managerial level within the Component. The CPO findings on any unresolved issues will be forwarded by the CPO to the Deputy Secretary for a final decision.

3007.170 Reserved.

3007.171 Reserved.

3007.172 Advanced Acquisition Plans.

(a) Advanced Acquisition Plans (AAPs) shall be developed for all acquisitions over the simplified acquisition threshold. AAPs shall be placed in the Acquisition Planning Forecast System (APFS) Database. Where the total contract value of the planned acquisition is equal to or exceeds $10 million, a formal written acquisition plan must be prepared. For acquisition(s) less than $10 million, entry of Advanced Acquisition Plan information in the APFS Database (ref. http://apfs.dhs.gov) satisfies the written acquisition plan requirement (but see (f) below for qualification regarding Sensitive Information). Information entered into the APFS system, including the plan number, must also be included in the contract file(s) to provide evidence of acquisition planning. All Components shall assign an AAP Coordinator and a Small Business (SB) Coordinator.

(b) AAPs shall be developed on a fiscal year basis and shall be modified as necessary throughout the acquisition cycle using the DHS-wide electronic APFS available under http://apfs.dhs.gov. As a minimum, the information in the APFS shall be reviewed and updated on a semi-annual basis.

(c) The AAP contains the integrated/coordinated efforts of all personnel engaged in managing the acquisition process in the determination of requirements, finance, strategic planning, small business considerations, technical data requirements, contracting and contract administration. APFS ensures that the effort is coordinated between the program office and procurement office. Program Offices enter the detailed advanced acquisition plan into the APFS Database and electronically route the plan via APFS to the appropriate contracting office. Contracting Officers review, approve, or reject AAPs and route them to AAP/SB coordinators for action.

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

(e) No later than October 15 of each year, the OCPO will establish Component-specific acquisitions to be reviewed and notify each HCA. The HCA is responsible for notifying the specific contracting office of the required annual review and approvals as established by the OCPO.

(f) Acquisition plans created and managed in the APFS (http://apfs.dhs.gov) shall not contain Classified[1] or Sensitive Information. The DHS Management Directive 11042.1, Safeguarding Sensitive but Unclassified (For Official Use only) Information, limits the disclosure of information obtained or developed in carrying out certain security or research and development activities to the extent that it has been determined that disclosure of the information would be an unwarranted invasion of personal privacy; reveal a trade secret or privileged or confidential commercial or financial information; or be detrimental to the safety of passengers in transportation. Prior to entering certain acquisition data in the APFS Database, program personnel and contracting officers should consult with appropriate representatives from the Legal Counsel, Privacy Office, Security Office, and Freedom of Information Act Office regarding any questions or concerns they may have regarding the sensitivity of information. If the information is not determined to be sensitive, an acquisition plan should be prepared in the APFS Database.

Subchapter 3007.2 Planning for the Purchase of Supplies in Economic Quantities

3007.204 Responsibilities of contracting officers.

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

(b) All transmittals shall request a prompt response which is to indicate whether the acquisition should remain as is, be amended, or cancelled. Before continuing with the negotiation or award of the acquisition, the contracting officer shall decide, in conjunction with the program manager, if continuing outweighs the potential cost saving benefits of delaying the acquisition.

3007.270 Additional Requirements for Acquisitions Involving Strategically Sourced Commodities.

3007.270-1 Scope.

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

3007.270-2 Definitions.

Department-wide contract: A contract or agreement that has been established for use by multiple (two or more) Components. This is also known as a strategic sourcing contract.

Strategic sourcing: A collaborative and structured process of critically analyzing DHS spend and using an enterprise approach to make business decisions about acquiring and managing commodities and services more effectively and efficiently across multiple Components or the entire Department. This process helps achieve improvements in price, performance, total cost of ownership, and overall business efficiency.

[1] For guidance on classified information see Management Directive 11045, Protection of Classified National Security Information: Accountability, Control, and Storage.

DHS Commodity Council: A cross-Component advisory group comprised of executive or senior level leadership that identify and approve commodities for strategic sourcing initiatives, and appoint or recommend agency representatives from their Component to serve on the DHS Commodity Working Group.

DHS Commodity Working Group: A cross-Component working group comprised of agency representatives, procurement personnel, subject matter experts, and program managers that may identify strategic sourcing opportunities within a set of related commodities. The Commodity Working Group (CWG) performs detailed analysis of Component level budget, spend, and acquisition practices for a set of related commodities. The goal of the CWG is to gather data, identify opportunities, develop the scope of analysis, acquisition documentation, and communications plan to implement strategic sourcing initiatives.

DHS Integrated Project Team: A subset team of a commodity working group that is comprised of cross-Component subject matter expertise with a concentrated focus on a specific strategically sourced contract as identified by the CWG.

DHS Executive Agent: An Executive Agent means a designee who has been delegated authority by OCPO to a Component organization to act on the behalf of the Department to award and administer a Department-wide Contract.

Business Case: A document that contains the rationale for initiating a Department-wide contract and, at a minimum, addresses the business or mission need, viable alternatives, anticipated risks, expected program costs and metrics, and presents the most beneficial acquisition strategies for DHS to pursue. This high-level assessment is completed in phases. Refer to Business Case template, Appendix H, Attachment 5.

Stakeholders: Representatives of DHS Component contracting offices, program offices, and other acquisition professionals at every level of the organization with a vested interest in the strategic sourcing initiative.

3007.270-3 General requirements.

(a) The DHS Strategic Sourcing Program Office (SSPO) is responsible for implementing a Department-wide approach to acquiring goods and services. The SSPO collaborates with stakeholders to develop and deploy sourcing strategies that enhance mission performance and improve acquisition efficiency. SSPO utilizes the framework and process as outlined in the SSPO Concept of Operations available on the SSPO intranet site at http://dhsconnect.dhs.gov/org/comp/mgmt/cpo/oss/Pages/StrategicSourcing.aspx

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

(c) When developing Component-wide contracts, Components shall coordinate with the SSPO to determine if other Components have similar requirements for goods or services. If requirements are similar, the Components shall work with the SSPO to develop a Department-wide contract. Coordination includes, but is not limited to, identifying any common requirements, establishing ordering procedures, determining contract management and administrative processes, developing a methodology for calculating savings, and establishing reporting procedures to track purchase volume, spend, and savings.

(d) Components shall review the listing of Department-wide contracts on the SSPO website prior to pursuing their own acquisitions to determine if its needs can be met through a current or future Department-wide contract.

(e) Usage of all Department-wide contracts is "mandatory for consideration," unless otherwise approved by the Under Secretary for Management, and therefore must be considered by DHS Components prior to creating or using a non-Department-wide contract vehicle. If a DHS Component makes a decision to implement its own contract instead of a Department-wide contract, it must document in the acquisition plan and contract file the rationale for doing so (e.g., describe the greater savings or more favorable terms and conditions) and notify the CPO at ProcurementSupport@dhs.gov for review and approval.

3007.271 Department-wide Contracts.

3007.271-1 General requirements.

(a) The CPO must approve the designation of an acquisition as Department-wide based on review and approval of a Business Case. Written approval by the CPO must be received prior to issuing a pre-solicitation synopsis in FedBizOpps or other public notice. Working with program and procurement personnel, the SSPO will prepare and submit the Business Case to CPO for approval in cooperation with the appropriate Commodity Council, or Commodity Working Group.

(b) Upon written approval of the Business Case, the proposed acquisition office will develop a request for Executive Agent Designation for the specified Department-wide acquisition. See HSAM Appendix H, Attachment 5, Exhibit 1, sample Executive Agent Designation.

(c) Requests for Executive Agent Designation will be prepared and signed by the HCA prior to submitting the request to the CPO. Requests for Executive Agent Designation must be submitted to the CPO through the Director Oversight & Strategic Support Division at: ProcurementSupport@dhs.gov

(d) Requests for Department-wide Contract designation must be supported by a Business Case (see HSAM Appendix H, Attachment 5 for template). The purpose of the Business Case is to, at minimum:

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

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

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

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

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

3007.271-2 Post-award notification.

(a) The HCA must notify the CPO once the Department-wide contract is awarded so that information about the contract can be distributed and posted on the SSPO intranet site.

(b) Congressional notification requirements apply for orders valued in excess of $1 million issued against awarded Department-wide multiple award contracts.

See HSAM 3005.303-70 for requirements/procedures.

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

3007.272 DHS participation in Federal Strategic Sourcing Initiatives (FSSI).

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

3007.272-1 General. (Reserved)

3007.272-2 Definition.

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

3007.272-3 Procedures.

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

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

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

Subchapter 3007.4 Equipment Lease or Purchase

3007.401 Acquisition considerations.

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

Subchapter 3007.5 Inherently Governmental Functions

3007.502 Applicability.

The requirements of this subpart apply to all contracts for services.

3007.503 Policy.

(i) Program managers and contracting officers shall review all requirements to ensure that contracts shall not be used for the performance of inherently governmental functions. Inherently governmental activities require the exercise of substantial discretion; however, not every exercise of discretion is evidence that an inherently governmental activity is involved. Rather, the use of discretion must have the effect of committing the Government to a course of action when two or more alternative courses of action exist and decision making is not already limited or guided by existing policies, procedures, directions, orders or other guidance that:

(1) identify specified ranges of acceptable decisions or conduct; and

(2) subject the discretionary authority to final approval or regular oversight by agency officials. An activity may be properly awarded to contract or public reimbursable performance where the offeror does not have the authority to decide on the course of action, but is tasked to develop options or implement that course of action, with agency oversight. The following factors should be considered when deciding whether award to a private sector or public reimbursable provider might effect a transfer of inherently governmental authority:

(a) Congressional legislative restrictions or authorizations.

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

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

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

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

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

(ii) Contracts cannot be awarded for services/functions that have been formally approved as inherently governmental by law, the procedures of the Federal Activities Inventory Reform (FAIR) Act, Pub. L. 105-270, (31 U.S.C. § 501 note) and the OMB Circular No. A-76, "Performance of Commercial Activities," (Also see FAR 7.503.) The requiring office shall provide a written determination to the contracting officer with the purchase requests for services (either in whole or in part) which confirms that none of the services to be performed are inherently governmental pursuant to FAR 7.503(e). This determination is in addition to the professional service contract review and workforce assessment described at HSAM 3007.504 and 3007.505. Disagreement pertaining to the determination or the inclusion of the function into a larger full performance solicitation shall be resolved by the DHS Chief Procurement Officer or designee before release of the solicitation. The FAIR Act, the OMB Circular No. A-76, and related DHS privatization policy implementation is provided through DHS MD Number 0476, Performance of Commercial Activities**.**

3007.570 Professional Service contract review and workforce assessment.

(a) This section implements the requirements of the DHS Management Action Directive, dated May 26, 2009 (see Acquisition Alert 09-06) on professional service contracts, options, and task/delivery orders. The action directive, as well as this subpart, applies to all ***new*** contract

awards of professional services (as defined by the Federal Procurement Data System as Product Service Code "R") contracts, options, and task/delivery orders in excess of $1 million.

(b) The subject action directive requires a review of professional services contracts by the HCA, Chief Acquisition Executive (CAE), and/or CPO, as specified in (c) and (d) of this section. The purpose of these reviews are to ensure that any proposed contract award or option exercised for professional services does not include any inherently or nearly inherently governmental requirements, personal services, or otherwise adversely impact core functions that must be performed by federal employees. Prior to award, program managers are responsible for conducting a workforce assessment, providing the expected ratio of federal employees to contractor employees for the purpose of demonstrating that there are sufficient federal employees within the organization to provide adequate direction and oversight to the service contractor.

(c) All professional service contract awards, options, and task/delivery orders covered by this subpart with an annual value greater than $1 million and less than $50 million shall be reviewed by the HCA prior to issuance of the solicitation or exercise of the option. For task/delivery orders, such review shall be performed by the HCA for the contracting activity that is issuing the task/delivery order. This review may include the results of the Balanced Workforce assessment described at HSAM 3007.505, if applicable.

(d) All professional service contract awards, options, and task/delivery orders with an annual value of $50 million or more shall be reviewed by the CAE with concurrence from the CPO prior to issuance of the solicitation or exercise of the option. No solicitation may be issued or option exercised without CPO concurrence unless a waiver has been granted (see (h) in this section for guidance regarding requesting a waiver). The request for CPO concurrence shall be signed by the HCA and the CAO. For task/delivery orders, the HCA signature shall be by the HCA for the contracting activity that is issuing the task/delivery order. The request, along with the required documentation specified in (e) of this section, shall be submitted to procurement.support@dhs.gov.

(e) The following information shall be included as part of the workforce assessment submission for review by the HCA, CAE, and/or CPO:

1. Contract number.

2. Contractor name.

3. Dollar value (include total dollar value of the contract, including option periods)

4. Estimated number of federal employees within the organization providing oversight to the service contractor (including whether these employees are assigned to oversee the contract on a part-time or full-time basis, and whether those employees are located with the contractor at the contract place of performance, wherever that may be.

5. The ratio of federal employees to estimated contract employees.

6. A description of the work to be performed by the contractor.

7. How the work to be performed by the contractor relates to the mission of the DHS office.

8. The federal employees' function(s) within that mission.

9. Address how many federal employees are supporting the program under which the contractor is performing the work.

(f) Contracting activities shall maintain a record of the contracts reviewed, including the information contained in subparagraph (e) of this subpart.

(g) Disputes between the HCA and the program office regarding whether any function is or is not an inherently governmental function, nearly inherently governmental function, inappropriate personal service or protected in-house core function should be elevated to the CPO.

(h) The HCA may request a waiver from the requirement for CPO concurrence prior to issuance of the solicitation or exercise of the option. Any such waiver request shall be submitted by the HCA through the Director, CPO Oversight & Strategic Support Division via procurement.support@dhs.gov. Waiver requests shall contain sufficient detail to clearly demonstrate the basis for the request.

(i) The requirement of this section is separate and distinct from the determination requirement addressed in 3007.503(ii).

3007.571 Balanced Workforce Strategy.

The requiring activity, in consultation with the Chief Human Capital Office (OCHO) must employ a Balanced Workforce Strategy (BWS) for service contracts. The BWS is a systematic approach for determining the appropriate mix of federal employees and contractors to perform DHS work functions. The analysis uses a specifically designed tool to analyze current DHS service contracts. The results of the analysis, along with discussions with program managers will be applied to acquisition and workforce planning. Currently, the BWS tool is used to analyze existing contracts; however, effective on or about August 1, 2011, it will be used to analyze new work to ensure that DHS maintains control of its mission. The results obtained from the BWS tool should be provided to the contracting officer for placement in the contract file. The BWS analysis will provide insight into:

- What level of skills, experience, and expertise is needed to perform critical functions and functions that are closely associated with inherently governmental functions?

- Information and consideration of the management controls and oversight activities that may be needed to reduce the risk of contractor performance of work that is considered closely associated with inherently governmental or critical functions to ensure that the government maintains internal capability to exercise effective control over its mission.

If work is not reserved for Federal performance, and may be performed by either Federal employees or contractors, the acquisition plan must address whether a cost analysis performed commensurate with the size and complexity of the function to be performed as well as its importance to the Department's mission. Particular attention must be given to work that is closely associated with inherently governmental and critical functions to ensure proper oversight of service contracts pursuant to OFPP guidance on Managing the Multi-sector Workforce, Service Contract Inventories, and OFPP draft guidance on the Management of Inherently Governmental and Critical Functions. For further information on the BWS or Workforce Planning, please refer to the Balanced Workforce Connect site at: http://dhsconnect.dhs.gov/org/comp/mgmt/dhshr/mgr/Pages/BWF.aspx

CHAPTER 3008 REQUIRED SOURCES OF SUPPLIES AND SERVICES

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

Subchapter 3008.000 Scope of part.

3008.002 Priorities for use of Government supply sources.

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

Subchapter 3008.4 Federal Supply Schedules

3008.405 Ordering procedures for supplies and services.

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

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

3008.405-3 Blanket Purchase Agreements (BPAs).

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

3008.405-6 Limited sources justification and approval.

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

(b)(1) For proposed FSS orders expected to exceed $25,000 and up to the simplified acquisition threshold, the contracting officer is the approval official for the brand name documentation. The justification and approval requests for the use of brand name and limited sources for FSS as described in FAR Parts 8.405-6(b)(2) and (d) shall be submitted to the DHS or Component Competition officials designated at HSAM, Chapter 3006, Appendix G, DHS Justification and Approval (J&A) Guide for Other than Full and Open Competition, Version 2.0.

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

Subchapter 3008.8 Acquisition of Printing and Related Supplies

3008.802 Policy.

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

3008.870 Acquisition of DHS employee business cards.

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

Subchapter 3008.11 Leasing of Motor Vehicles

3008.1102 Presolicitation requirements.

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

Subpart 3008.90 Purchase of Motor Vehicles.

3008.9000 General.

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

CHAPTER 3009 CONTRACTOR QUALIFICATIONS

Subchapter	**3009.1**	**Responsible Prospective Contractors**
	3009.104	Standards.
	3009.104-5	Certification regarding responsibility matters.
	3009.105	Procedures.
	3009.105-2	Determinations and documentation.
	3009.171	Prohibition on Federal Protective Service guard services contracts with business concerns owned, controlled, or operated by an individual convicted of a felony
Subchapter	**3009.2**	**Qualification Requirements**
	3009.202	Policy.
	3009.204	Responsibilities for establishment of a qualification requirement.
	3009.206	Acquisitions subject to qualification requirement.
	3009.206-1	General.
Subchapter	**3009.3**	**First Article Testing and Approval**
	3009.302	General.
Subchapter	**3009.4**	**Debarment, Suspension, and Ineligibility**
	3009.402	Policy.
	3009.403	Definitions.
	3009.404	List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
	3009.405	Effect of listing.
	3009.405-1	Continuation of current contracts.
	3009.405-2	Restrictions on subcontracting.
	3009.406	Debarment.
	3009.406-1	General.
	3009.406-3	Procedures.
	3009.407	Suspension.
	3009.407-1	General.
	3009.407-3	Procedures.
Subchapter	**3009.5**	**Organizational and Consultant Conflicts of Interest**
	3009.501	Reserved.
	3009.503	Waiver.
	3009.570	Limitations on Lead System Integrators.
	3009.570-1	Reserved.
	3009.570-2	Reserved.
	3009.570-3	Procedures.

Subchapter 3009.1 Responsible Prospective Contractors

3009.104 Standards.

3009.104-5 Certification regarding responsibility matters.

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

3009.105 Procedures.

3009.105-2 Determinations and documentation.

(b) *Support documentation*.

(1) Pursuant to FAR 9.105-2(b)(1):

(i) For contract actions using other than simplified acquisition procedures: DHS Form 700-12, Determination of Contractor Responsibility, shall be used to make the determination and document that a contractor is or is not responsible before the award of any contract (e.g., contracts awarded using sealed bidding or negotiations, contracts for construction or A&E services, etc.) except for contract actions using simplified acquisition procedures.

(ii) For actions using simplified acquisition procedures:

(A) Use of the DHS Form 700-12 is required when documenting the determination that a firm is not responsible.

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

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

(2) Checking to ensure a satisfactory record of integrity and business ethics (including FAPIIS); and

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

(iii) For all contract awards, the contracting officer shall include supporting documentation in the contract file that the information regarding the awardee and applicable key personnel was reviewed in the Excluded Parties List System (EPLS) and the Federal Awardee Performance and Integrity Information System (FAPIIS). If there is no adverse information in either system, a statement indicating that the databases were reviewed on (*insert the date and time*) and there was no adverse information found is sufficient to document the file.

(2)(i) The contracting officer shall document the determination of nonresponsibility in FAPIIS directly (i.e., the responsibility is not delegable). For access to FAPIIS, contact the Component Focal Point for the Contractor Performance Assessment Reporting System (CPARS) as described at HSAM 3042.1503(a)(3).

(ii) For each determination of nonresponsibility documented in FAPIIS, the contracting officer shall submit a copy of the determination (see DHS Form 700-12, block 7) to the appropriate debarring and suspending official listed at HSAM 3009.403. In addition, the contracting officer shall submit to the appropriate debarring and suspending official a copy of each determination of nonresponsibility based on inability to qualify or ineligibility under applicable laws and regulations.

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

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

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

Subchapter 3009.2 Qualification Requirements

3009.202 Policy.

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

(b) The cognizant technical office shall prepare a written waiver request when applicable. The waiver shall be submitted to the contracting officer for coordination and signature of the Component competition advocate, and approval by the HCA.

(e) The HCA is authorized to approve procurements that do not need to be delayed in order to comply with FAR. 9.202(a). A written justification shall be prepared by the responsible technical office and submitted to the contracting officer for coordination and

signature of the Component competition advocate, and approval by the HCA.

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

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

3009.206 Acquisitions subject to qualification requirements.

3009.206-1 General.

(b) The authorities at FAR 9.206-1 are delegated to the HCA. The cognizant technical office shall prepare and submit a written justification for the emergency to the contracting officer, who shall coordinate the justification through the Component competition advocate for the HCA for approval.

Subchapter 3009.3 First Article Testing and Approval

3009.302 General.

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

Subchapter 3009.4 Debarment, Suspension, and Ineligibility

3009.402 Policy.

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

(1) The lead agency coordination information should include: name(s) of contractor or individual considered, addresses, business identification nomenclature, a brief summary of cause, and Component Point of Contact information.

(2) A Component must contact the DHS ISDC procurement representative (Acquisition Policy and Legislation (APL) Branch), for internal DHS coordination if multiple Components could be impacted or have an interest in a proposed suspension or debarment action of a contractor, prior to any Component's lead agency submittal to the ISDC.

(3) Lead agency coordination submittals by a Component to the ISDC Deputy Chairperson shall include a concurrent transmittal to the OCPO Director, Oversight & Strategic Support Division via PROCUREMENT.Support@dhs.gov .

(4) Under exceptional circumstances, the Component HCA may determine that an immediate suspension or debarment is needed to protect the Government's interest. The HCA shall clearly document the circumstances in the record and proceed with the suspension without prior coordination with the ISDC. The Component HCA shall provide a copy of the notice of suspension to the ISDC Deputy Chairperson, the OCPO Director, Oversight & Strategic Support Division via PROCUREMENT.Support@dhs.gov concurrent with the notice to the contractor.

(e) The DHS agency procedures to implement the debarment and suspension requirements of FAR Subpart 9.4 are established in this subchapter and HSAR 3009.4. Components may issue supplemental guidance as appropriate, consistent with the procedures at HSAM 3001.304.

3009.403 Definitions.

"Debarring official" means— The HCA. The authority of the HCA for debarments may not be redelegated.

"Suspending official" means—
(b) The HCA. The authority of the HCA for suspensions may not be redelegated.

"Unfair trade practices" means—
(3) The HCA is authorized to make the determination at FAR 9.403(3).

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

(c)(1) Each HCA shall provide a designated Component individual assigned to access the Excluded Parties List System (EPLS) for maintenance of Component debarment and suspension records. The assigned individual's name must be transmitted to the DHS Acquisition Policy and Legislation (APL) Branch representative for EPLS. The APL representative for EPLS will ensure that the assigned Component individual receives training, log-on, and a password for accessing EPLS from the General Services Administration's EPLS Program Office.

(c)(2) through (5) The Component assignee for EPLS access must ensure that all data is maintained and included in the EPLS in accordance with the FAR subparagraphs (c)(2) through (5) in accordance with the FAR and the EPLS User Manual located at www.epls.gov .

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

3009.405 Effect of listing.

(a) The Chief Procurement Officer (CPO) is the approval authority for the compelling reason determination under FAR 9.405(a), (d)(2), and (d)(3). The contracting officer shall submit the compelling reason determination [see format at HSAR 3001.7, Determinations and Findings (D&F)] to the Component Head of the Contracting Activity (HCA). The compelling reason determination shall include a legal sufficiency review by the cognizant Component Legal Counsel. If the HCA concurs, the compelling reason determination (D&F) shall be submitted through the OCPO Director, Oversight & Strategic Support Division via PROCUREMENT.Support@dhs.gov to the CPO for approval. Consideration should only be given to making award in emergency circumstances where only the debarred or suspended contractor is able to provide the supplies or services in a timely manner or where national security is an overriding consideration.

3009.405-1 Continuation of current contracts.

The CPO is the approval authority for the compelling reason determination under FAR 9.405-1(a) and (b). (See HSAM 3009.405(a)).

3009.405-2 Restrictions on subcontracting.

The CPO is the approval authority under FAR 9.405-2(a). (See HSAM 3009.405(a)).

3009.406 Debarment.

3009.406-1 General.

(c) The CPO is the approval authority under FAR 9.406-1(c), except under FAR 23.506(e). (See HSAR 3023.506(e)).

3009.406-3 Procedures.

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

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

the report;

(2) Name and address of the contractor;

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

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

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

(i) The contract number;

(ii) All office identifying numbers or symbols;

(iii) Description of supplies or services;

(iv) The amount;

(v) The percentage of completion;

(vi) The amount paid to the contractor;

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

(viii) The amount due to the contractor; and

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

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

(i) The contractor number(s);

(ii) The amount(s);

(iii) The amounts paid to the contractor;

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

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

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

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

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

(i) Whether to suspend or debar the contractor;

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

(iii) The period of any recommended debarment; and

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

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

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

(ii) Witness statements or affidavits;

(iii) Copies of investigative reports;

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

(v) A copy of any available determinations of nonresponsibility in accordance with FAR 9.105-2(a)(1); and

(vi) Any other appropriate exhibits or documents.

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

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

(c) *Notice of proposal to debar.* After reviewing the COCO's report, and any additional information received in accordance with paragraph (b) above, the Debarring official shall prepare and coordinate with the Component legal counsel, a written notice of proposed debarment. If a referral lacks sufficient evidence of a cause for debarment, the debarring

official may initiate a review or investigation, as appropriate, by reporting the referral to the appropriate Government entity, e.g., contracting activity, inspector general, or criminal investigative agency.

(d) *Debarring official's decision.* When it is found that the contractor's submission raises a genuine dispute over facts material to the proposed debarment, the Debarring official shall notify the Office of the Chief Procurement Officer, Acquisition Policy and Legislation Branch, to coordinate the designation of a fact-finding official. The fact-finding official shall conduct fact-finding and provide a report containing the results of the fact-finding.

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

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

(2) Chief Procurement Officer (CPO); and

(3) Component legal counsel.

3009.407 Suspension.

3009.407-1 General.

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

3009.407-3 Procedures.

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

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

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

(d) *Suspending official's decision.*

(2)(ii) When it is found that the contractor's submission raises a genuine dispute over facts material to the proposed suspension, the Suspending official shall notify the Office of the Chief Procurement Officer, Acquisition Policy and Legislation Branch, to coordinate the designation of a fact-finding official. The fact-finding official shall conduct fact-finding and provide a report containing the results of the fact-finding.

(4) In addition, the Suspending official shall notify the COCO of the decision to impose a suspension. The COCO shall ensure a copy of the suspension action is included in the contract file, and the information of the decision is submitted electronically to the following offices and web address:

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

(ii) CPO; and

(iii) Component legal counsel.

Subchapter 3009.5 Organizational and Consultant Conflicts of Interest

3009.501 Reserved.

3009.503 Waiver.

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

3009.570 Limitations on Lead System Integrators.

3009.570-1 Reserved.

3009.570-2 Reserved.

3009.570-3 Procedures

(c) (1)(iii) (B)(1) To process an exception under HSAR 3009.570-2(b)(1), the contracting officer shall submit the request and appropriate documentation through the HCA to Office of the Chief Procurement Officer (OCPO) at PROCUREMENT.Support@dhs.gov.

(2) The cognizant procurement analyst in the OCPO Oversight and Strategic Support Division will process the request through the Office of the Secretary of Homeland Security and, if approved, to the appropriate committees of Congress. The contracting officer shall not award a contract to the affected offeror until notified by the OCPO procurement analyst that the exception has been approved and transmitted to Congress.

CHAPTER 3010 MARKET RESEARCH

Subchapter 3010.001 Policy
3011.105 Items peculiar to one manufacturer.

3010.001 Policy.

(a) Appendix I, DHS Market Research Guide, implements policy and procedures at FAR 10.001 and 10.002, and provides additional department-wide guidance on the conduct of market research.

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

CHAPTER 3011 DESCRIBING AGENCY NEEDS

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

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

Subchapter 3011.6 Priorities and Allocations
3011.602 General.

Subchapter 3011.1 Selecting and developing requirement documents.

3011.105 Items peculiar to one manufacturer.

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

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

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

Subchapter 3011.2 Using and Maintaining Requirements Documents

3011.202 Maintenance of standardization documents.

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

Subchapter 3011.6 Priorities and Allocations

3011.602 General.

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

CHAPTER 3012 ACQUISITION OF COMMERCIAL ITEMS

Subchapter 3012.1 Acquisition of Commercial Items-General
3012.102 Applicability.

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

Subchapter 3012.1 Acquisition of Commercial Items-General

3012.102 Applicability.

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

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

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

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

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

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

CHAPTER 3013 SIMPLIFIED ACQUISITION PROCEDURES

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

Subchapter 3013.1 Procedures

3013.101 General.

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

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

3013.106-1 Soliciting competition.

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

documentation for soliciting from a single source. The ordering activity contracting officer for the action is the approval official for proposed actions exceeding $25,000 up to the simplified acquisition threshold.

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

3013.106-3 Award and documentation.

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

Subchapter 3013.2 Actions At or Below the Micro-Purchase Threshold

3013.201 General.

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

Subchapter 3013.3 Simplified Acquisition Methods

3013.301 Government-wide commercial purchase card.

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

3013.301-70 Acquisitions involving strategically sourced commodities.

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

3013.302 Purchase orders.

3013.302-3 Obtaining contractor acceptance and modifying purchase orders.

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

3013.303 Blanket purchase agreements (BPAs).

3013.303-3 Preparation of BPAs.

3013.303-370 Modification of a BPA.

The SF 30 shall be used to modify a BPA.

3013.303-6 Review procedures.

3013.303-670 Review responsibility.

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

3013.305 Imprest funds and third party drafts.

3013.305-2 Agency responsibilities.

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

3013.305-3 Conditions for use.

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

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

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

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

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

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

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

Subchapter 3013.5 Test Program for Certain Commercial Items

3013.501 Special documentation requirements.

(a)(2)(1) The justification and approval requests for the use of sole source (including brand name) as described in FAR 13.501(a)(1) and (2) shall be submitted to the DHS or Component Competition officials designated at HSAM, Appendix G, DHS Justification and Approval (J&A) Guide for Other than Full and Open Competition

CHAPTER 3014 SEALED BIDDING

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

Subchapter 3014.1 Use of Sealed Bidding

3014.101 Elements of sealed bidding.

3014.101-70 Independent Government Cost Estimates.

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

Subchapter 3014.2 Solicitation of Bids

3014.201 Preparation of invitation for bids.

3014.201-7 Contract clauses.

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

3014.202 General rules for solicitation of bids.

3014.202-4 Bid samples.

(c) *Justification.* The justification required by FAR 14.202-4(c) shall be prepared and signed by the technical official responsible for the procurement request; however, each justification must receive written concurrence from the contracting officer.

3014.202-5 Descriptive literature.

(b) *Justification.* The justification required by FAR 14.202-5(b) shall be prepared and signed by the technical official responsible for the procurement request; however, each justification must receive written concurrence from the contracting officer.

Subchapter 3014.4 Opening of Bids and Award of Contract

3014.404 Rejection of bids.

3014.404-1 Cancellation of invitations after opening.

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

3014.407 Mistakes in bids.

3014.407-3 Other mistakes disclosed before award.

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

CHAPTER 3015 CONTRACTING BY NEGOTIATION

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

Subchapter 3015.2 Solicitation and Receipt of Proposals and Information.

3015.204 Contract format.

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

3015.207 Handling proposals and information.

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

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

3015.209 Solicitation provisions and contract clauses.

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

Subchapter 3015.3 Source Selection

3015.303 Responsibilities.

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

3015.303-70 Responsibilities (Competitive Sourcing).

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

3015.304 Evaluation factors and significant subfactors.

(c)(3)(i) DHS Source Selection officials shall use the Past Performance Information Retrieval System (PPIRS), in addition to other sources, for obtaining contractor past performance information in source selections.

(c)(70) The use of recovered materials, environmentally preferable purchasing criteria developed by the Environmental Protection Agency (see http://www.ofee.gov), and the environmental objectives set forth in FAR 23.703(b), must be considered when developing source selection factors. (See HSAM 3023.4).

3015.305 Proposal evaluation.

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

Subchapter 3015.4 Contract Pricing

3015.400-70 Scope of subpart.

Whenever agreement on prices is necessary for prime contracts, contract modifications, and any order issued under a contract, the requirements of FAR 15.4 and this subchapter apply unless specifically excluded.

3015.404 Proposal analysis.

3015.404-2 Information to support proposal analysis.

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

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

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

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

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

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

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

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

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

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

3015.404-4 Profit.

(b) *Policy.*

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

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

(ii) The contracting officer may use an alternate structured approach in lieu of the weighted guidelines for the acquisitions listed below. The rationale for profit or fee determined by the alternate structured approach shall be substantiated in a manner similar to that used in the weighted guidelines method.

(A) Architect-engineering contracts;
(B) Management contracts for operation and/or maintenance of Government facilities;
(C) Construction contracts;
(D) Contracts primarily requiring delivery of material supplied by subcontractors;

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

(d) Profit-Analysis Factors.

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

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

3015.404-70 Independent Government Cost Estimate.

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

(b) The IGCE should reflect how the estimate was derived by delineating such costs as the major labor categories, materials, travel, consultant, computer usage, etc. Any previous cost experience the Government has had in acquiring the same or similar items also should be provided with the IGCE.

(c) Unless the contracting officer requires otherwise, an IGCE is not required for the following:

(1) Proposed awards using simplified acquisition procedures under FAR Part 13;

(2) Administrative modifications such as incremental funding;

(3) Modifications to exercise fixed-priced options;

(4) Modifications to resolve cost overruns under cost reimbursement contracts;

(5) Proposed acquisitions for items that meet the commercial item definition in FAR Part 2; and

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

3015.406 Documentation.

3015.406-170 Prenegotiation objectives.

(a) The Government's prenegotiation objective shall be in writing and have substance, rationale, and detail sufficient to explain to a third party how the overall reasonableness of the proposed prices were determined and how the objective represents a fair and reasonable amount.

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

3015.406-370 Documenting the negotiation.

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

3015.407 Special cost or pricing areas.

3015.407-1 Defective certified cost or pricing data.

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

3015.407-4 Should-cost review.

(b) *Program should-cost review*.

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

(a) Results of the review, including proposed versus recommended hours, tasks, or issues. Discuss each cost element in terms of review method, finding, and proposed or recommended cost. Do not accumulate the dollar value of individual recommendations into a recommended total price. Indicate team members available to support negotiations;

(b) Improvement recommendations, including long and short term benefits, to be passed on to the contractor or the Government, including monitoring approach;

(c) A list of lessons learned having value to later should-cost teams; and

(d) Attachments, including letters recommending changes, implementing plans, prenegotiation objectives, and price negotiation memorandum.

Subchapter 3015.5 Preaward, Award, and Postaward Notifications, Protests, and Mistakes

3015.505 Preaward debriefing of offerors.

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

3015.506 Postaward debriefing of offerors.

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

Subchapter 3015.6 Unsolicited Proposals.

3015.606-70 Agency procedures.

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

CHAPTER 3016 TYPES OF CONTRACTS

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

Subchapter 3016.4 Incentive Contracts

3016.401 General.

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

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

(2) Award fee is earned for successful outcomes;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subchapter 3016.5 Indefinite-Delivery Contracts

3016.501-2 General.

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

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

3016.504 Indefinite-quantity contracts.

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

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

3016.505 Ordering.

(a) *General*.

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

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

(b) *Orders under multiple award contracts.*

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

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

3016.601 Time-and-materials contracts.

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

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

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

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

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

(D) The reasonableness of materials used; and

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

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

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

3016.602 Labor-hour contracts.

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

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

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

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

3016.603 Letter contracts.

3016.603-2 Application.

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

3016.603-3 Limitations.

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

(1) The name and address of the proposed contractor;

(2) The location where the contract is to be performed;

(3) The contract number, including modification number, if applicable;

(4) A brief description of the work or services to be performed;

(5) The amount of the letter contract;

(6) The performance period or delivery schedule;

(7) The estimated total amount of the definitive contract;

(8) The type of definitive contract to be executed (firm-fixed-price, cost-plus-award-fee, etc.);

(9) A statement that the definitive contract will contain all required clauses or that deviations to the required clauses have been obtained;

(10) A statement as to the necessity and advantage to the Government of a letter contract and why no other contract type is suitable; and

(11) A statement as to the competition received pursuant to FAR 16.603-3(b)

CHAPTER 3017 SPECIAL CONTRACTING METHODS

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

Subchapter 3017.1 Multi-Year Contracting

3017.105 Policy.

3017.105-1 Uses.

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

3017.106 Procedures.

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

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

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

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

3017.108 Congressional notification.

(a) and (b) The Chief Procurement Officer (CPO) is delegated authority to provide all congressional notifications of proposed contracts and proposed cancellation ceilings for

those contracts. DHS Components shall prepare the written notification of the proposed contract and proposed cancellation ceiling and forward through the HCA to the CPO.

Subchapter 3017.2 Options

3017.204 Contracts.

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

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

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

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

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

(2) Paragraph (e)(1) of this section—

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

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

(iii) Does not apply to the following:

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

(B) Definite-quantity contracts.

(C) GSA schedule contracts.

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

(3) Obtain approval from the HCA before issuing an order against a task or delivery order contract subject to paragraph (e)(1) of this section if performance under the order is

expected to extend more than 1 year beyond the 10-year limit or extended limit described in paragraph (e)(1)(iii) of this section (see FAR 37.106 for funding and term of service contracts).

Subchapter 3017.5 Interagency Acquisitions Under The Economy Act

3017.500 Scope of subchapter.

This subchapter establishes DHS policy and procedures to assure the appropriate and consistent use of interagency acquisitions under the Economy Act (31 U.S.C. 1535) as prescribed by FAR 17.5. Additionally, this subchapter includes policy and guidance required for compliance with DHS Directive 125-02, "Interagency Agreements"; DHS Instruction 125-02, "Instruction Guide on Interagency Agreements"; and, the Office of Federal Procurement Policy's "Guide on Interagency Acquisitions."

3017.501 Definition.

"Requesting agency" means a Federal agency that has a requirement and desires to obtain goods or services from a servicing agency.

"Servicing agency" means a Federal agency that is willing and able to provide goods or services to a requesting agency.

"Assisted acquisition" means interagency acquisitions for which a requesting agency, at its discretion, has determined that it is in the best interest of the Government to seek the acquisition services of a servicing agency in the procurement of supplies or services from the private sector and where the servicing agency awards a contract or order on behalf of the requesting agency.

3017.502 General.

(a) Policy. Before transferring funds, pursuant to Economy Act authority, in an inter/intra-agency agreement (IA), the Component shall assure that the IA complies with the requirements in DHS Directive 125-02, "Interagency Agreements"; DHS Instruction 125-02, "Instruction Guide on Interagency Agreements"; and, the Office of Federal Procurement Policy's "Guide on Interagency Acquisitions." Review and approvals shall be in accordance with HSAM subchapter 3004.70. Announcement and notification requirements in accordance with HSAM 3005.303 apply to IAs. The inter/intra-agency agreement shall include the announcement/requirements among the terms and conditions of the agreement.

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

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

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

Small Business Act.

3017.503 Determinations and findings requirements.

The determination shall be prepared in the format as shown in DHS Instruction 125-02, *"Instruction Guide on Interagency Agreements."*

(c) The Head of the Contracting Activity (HCA) is delegated the authority to designate other authorized officials to approve Determinations and Findings (D&Fs); however, only DHS contracting officers may approve D&Fs in support of assisted acquisitions.

CHAPTER 3018 EMERGENCY ACQUISITIONS

Subchapter 3018.1 Available Acquisition Flexibilities
3018.108 Priorities and allocations.

Subchapter 3018.2 Emergency Acquisition Flexibilities
3018.201 Contingency operation.
3018.202 Defense or recovery from certain attacks.
3018.203 Emergency declaration major disaster declaration.

Subchapter 3018.1 Available Acquisition Flexibilities

3018.108 Priorities and allocations.

DHS Components should use the Defense Priorities and Allocation System (DPAS) procedures for assignment of ratings as appropriate. (See HSAR Part 3011.602 and HSAM Chapter 3011.602.)

Subchapter 3018.2 Emergency Acquisition Flexibilities

3018.201 Contingency operation.

(b) The Chief Procurement Officer (CPO) or designee shall make the required determination to increase the micro-purchase threshold to support a contingency operation.

(c) The CPO or designee shall make the required determination to increase the simplified acquisition threshold to support a contingency operation.

3018.202 Defense recovery from certain attacks.

(a) The CPO or designee shall make the required determination to increase the micro-purchase threshold to support defense against or recovery from nuclear, biological, chemical, or radiological attack.

(b) The CPO or designee shall make the required determination to increase the simplified acquisition threshold to support defense against or recovery from nuclear, biological, chemical, or radiological attack.

3018.203 Emergency declaration or major disaster declaration.

(a) DHS Components must comply with statutory requirements and guidance regarding preferences given to local organizations, firms, and individuals when contracting for major disaster or emergency assistance activities when the President has made a declaration under the Robert T. Stafford Disaster Relief Act. (See HSAM 3005.303 regarding Congressional notifications of covered contract actions (limited waiver). See

HSAR 3006.303 and HSAM 3006.303 for competition authorities. See HSAM Chapters 3026.202 and 3026.203 for guidance regarding local area set-aside preference and transition of work approval requirements.)

CHAPTER 3019 SMALL BUSINESS PROGRAMS

Subchapter	**3019.2**	**Policies**
	3019.201	General policy.
	3019.202	Specific policies.
	3019.202-270	Procurement forecast.
	3019.202-271	DHS Small Business Review Form.
Subchapter	**3019.5**	**Set-aside for Small Business**
	3019.501	General.
	3019.502	Setting aside acquisitions.
	3019.502-3	Partial set-asides.
	3019.505	Rejecting Small Business Administration recommendations.
	3019.505	Withdrawing or modifying small business set-asides.
Subchapter	**3019.6**	**Certificates of Competency and Determinations of Responsibility**
	3019.602	Procedures.
	3019.602-1	Referral.
	3019.602-3	Resolving differences between the agency and the Small Business Administration.
Subchapter	**3019.7**	**The Small Business Subcontracting Program**
	3019.704	Subcontracting plan requirements.
	3019.704-70	Reporting requirements.
	3019.705	Responsibilities of the contracting officer under the subcontracting assistance program.
	3019.705-2	Determining the need for a subcontracting plan.
	3019.705-470	Reviewing the subcontracting plan.
	3019.705-6	Postaward responsibilities of the contracting officer.
Subchapter	**3019.8**	**Contracting with the Small Business Administration (The 8(a) Program)**
	3019.800	General.
	3019.804	Evaluation, offering, and acceptance.
	3019.804-3	SBA acceptance.
	3019.804-470	Repetitive acquisitions.
	3019.810	SBA appeals.
	3019.811	Preparing the contracts.
	3019.811.1	Sole source.
	3019.812	Contract administration.

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Subchapter 3019.2 Policies

3019.201 General policy.

(d)(7) and (8) The Head of the Contracting Activity (HCA) is delegated the authority of the Director Office of Small and Disadvantaged Business Utilization (OSDBU) to assign a small business technical advisor (i.e., small business specialist) to each contracting activity within the agency to which the Small Business Administration (SBA) has assigned an SBA procurement center representative. A copy of the written assignment to the advisor must be provided to the Director, OSDBU.

(d)(9) The cognizant Component small business specialist acting on behalf of the OSDBU must review each procurement request to comply with the requirements of FAR 19.

(e) The HCA must appoint small business specialists in accordance with HSAM 3019.201(d)(7). The specialist must:

(1) Ensure that all small businesses are given an equal opportunity to compete for DHS acquisitions;

(2) Assist contracting officers in locating small businesses to participate in DHS acquisitions;

(3) Assist the Director, OSDBU in carrying out the purpose of the Small Business Act, particularly Sections 8 and 15;

(4) Cooperate with the SBA representatives in carrying out their assignments and responsibilities as related to DHS acquisitions;

(5) Seek alternatives to the practice of contract bundling and help mitigate the effects of any necessary and justified contract bundling;

(6) Participate in the evaluation of prime contractor's small business subcontracting programs;

(7) Assure that records are maintained and accurate reports prepared concerning small business participation in acquisition programs;

(8) Act as liaison with appropriate SBA office or representative on connection with set-asides, certificates of competency, size classification, and any other matter concerning the small business programs; and

(9) Participate in business opportunity, Federal procurement and other Government-industry conferences and meetings as required.

(f)(1) The Director, OSDBU, is the agency designee responsible for making the determination that there is an undue burden on non-Small Disadvantaged Business (SDB)

firms in one of the major industry groups and regions identified by the Department of Commerce. The HCA must notify the OSDBU when it is believed or if it receives public notification of undue burden on the information required by FAR 19.201(f)(1)(i) through (iv). The HCA or designee is encouraged to discuss specific situations of burden with OSDBU prior to submitting a formal notice to the OSDBU.

3019.202 Specific policies.

3019.202-270 Procurement forecast.

(b) Purpose. The purpose of the procurement forecast is to make available to small businesses, those expected contract opportunities that small business concerns, including those owned and controlled by socially and economically disadvantaged individuals, are capable of performing. The forecast is a summary of the advanced acquisition planning process conducted in each Component. The following requirements apply:

(1) Responsibility. The HCA or designee (written delegation required) must ensure the forecast and any updates to it are prepared for those expected contract opportunities valued over the simplified acquisition threshold which are proposed to result in contracts issued by DHS contracting officers. The forecast data collection and the Advance Acquisition Plan (AAP) are combined and captured in an electronic data system available under http://APFS.DHS.GOV (see HSAM Subchapter 3007.172).

(2) Preparation and approval. The forecast (combined with the AAP) must be completed the year prior to the fiscal year in which the procurement action will be initiated. In addition, the forecast should be updated throughout the fiscal year, as needed. As a minimum, the forecast shall be reviewed and updated semi-annually.

(c) Reporting. DHS OCPO will provide the initial forecast and any updates to it to the Administrator of the SBA and to small businesses as required by Public Law 100-656.

Subchapter 3019.202-271 DHS Small Business Review Form.

(a) Purpose. The DHS Form 700-22, Small Business Review, documents efforts to ensure small business concerns are considered for inclusion in Federal Government acquisitions and that market research is conducted for each open market procurement.

(b) Requirement. In accordance with FAR 19.202, Specific Policies, Components shall use the DHS Form 700-22 to comply with the small business review requirements and to document considerations and recommendations for applicable acquisitions prior to synopsis or solicitation release. This requirement is exclusive of EMALL use. The form shall be used as follows and dollar values include both base and option periods:

(1) Review for small business considerations in all open market actions over the simplified acquisition threshold (see FAR Part 19) and;

(2) Review for substantial bundling for all procurements of $2,000,000 or more planned under open market procurement as well as for pre-existing contract vehicles (e.g., Multiple Award Schedules (MAS), including GSA Federal Supply Schedules (FSS) delivery and task orders, Multi-Agency Contracts (MACs), Governmentwide Acquisition Contract (GWACs), DHS-wide contracts, multiple award contracts, and Blanket Purchase Agreements (BPAs). (See FAR 7.104(d), FAR 7.107 and FAR 19.202-1, and HSAM 3007.107 for bundling considerations and approval requirements.)

(c) Preparation and Approval. The small business specialist (SBS) and the SBA Procurement Center Representative (PCR) respectively shall complete the review process within 2 business days. The completed DHS Form 700-22, Small Business Review, shall be placed in the solicitation file.

Subchapter 3019.5 Set-Asides for Small Business

3019.501 General.

(c) Each DHS proposed acquisition exceeding the simplified acquisition threshold must be reviewed by the cognizant Component small business specialist prior to synopsizing the requirement and the results documented in the file. The requirement must be reviewed for potential inclusion in the socio-economic programs. The Chief of the Contracting Office (COCO) must resolve any disagreement between the specialist and the contracting officer on the determination. Disagreement between the contracting officer and personnel from the Small Business Administration will be resolved in accordance with FAR 19. The COCO must furnish a copy of the determination to the OSDBU.

3019.502 Setting aside acquisitions.

3019.502-3 Partial set-asides.

(a)(5) The COCO is authorized to make the determination.

3019.505 Rejecting Small Business Administration recommendations.

(b) and (d) The COCO is delegated the authority to make the decision and forward the justification for its decision to the agency head.

3019.506 Withdrawing or modifying small business set-asides.

(b) The COCO is responsible for resolution of disagreements between the contracting officer and the Component small business specialist, in coordination with the OSDBU.

Subchapter 3019.6 Certificates of Competency and Determinations of Responsibility

3019.602 Procedures.

3019.602-1 Referral.

(a)(2) The contracting officer shall forward to the OSDBU, a copy of the notice of nonresponsibility determination sent to SBA.

3019.602-3 Resolving differences between the agency and the Small Business Administration.

When following the procedures under FAR 19.602-3, the contracting officer shall coordinate through the HCA and the OSDBU prior to SBA taking a final action on a Certificate of Competency.

The designated official is the COCO. The COCO shall provide copies of all SBA correspondence to the OSDBU.

Subchapter 3019.7 The Small Business Subcontracting Program

3019.704 Subcontracting plan requirements.

3019.704-70 Reporting requirements.

Any contractor that meets the statutory requirements at FAR 19.702 shall submit subcontracting accomplishments on the Individual Subcontract Report (ISR) and the Summary Subcontract Report (SSR) by using the web-based Electronic Subcontracting Reporting System (eSRS) at http://www.esrs.gov.

3019.705 Responsibilities of the contracting officer under the subcontracting assistance program.

3019.705-2 Determining the need for a subcontracting plan.

A copy of the determination that there are no subcontracting opportunities (see FAR 19.705-2(c)) shall be provided to the Director, OSDBU.

3019.705-470 Reviewing the subcontracting plan.

The individuals responsible for the subcontracting plan review process include the contracting officer (CO), the Component small business specialist (SBS), and the SBA's Procurement Center Representative (PCR). The approval authority for the subcontracting plan is the contracting officer, with the SBS and the SBA PCR providing support in advisory and assistance roles in accordance with FAR 19.705-4(d)(7).

(a) The checklist for documenting the review process, Subcontracting Plan Review Checklist, DHS Form 700-23, is mandatory for all DHS Subcontracting Plan reviews.

The SBS assists with the overall review of the contractor's plan by initiating the checklist process, records the plan information in the DHS Subcontracting Plan Review Checklist, DHS Form 700-23 and obtains the PCR's advice or recommendations. The contracting officer approves the subcontracting plan if the contractor has satisfactorily addressed the 11 elements of FAR 19.704 and the subcontracting plan demonstrates a good faith effort in utilizing small businesses as subcontractors. After all signatures have been documented, the form shall be placed in the contract file.

(b) The SBS and SBA PCR review process and recommendations for the subcontracting plan should be completed within 3 working days of receipt of the plan from the contracting officer. The Government's objective is to approve or negotiate subcontracting plans that demonstrate the prime contractor's best efforts to subcontract with small business (SB), HUBZone small business (HUBZone), small disadvantaged business (SDB), women-owned small business (WOSB), veteran-owned small business (VOSB), and service disabled veteran-owned small business (SDVOSB) to the maximum extent practicable.

3019.705-6 Postaward responsibilities of the contracting officer.

A copy of the approved small business subcontracting plan shall be provided to the Director, OSDBU.

Subchapter 3019.8 Contracting with the Small Business Administration (The 8(A) Program)

3019.800 General.

(b) The current DHS and the SBA Partnership Agreement (PA) is effective through September 30, 2012 and applies to all new DHS acquisitions under the 8(a) Program. The PA amends and in some cases, supersedes certain requirements in FAR 19.8. The PA delegates to DHS HCAs the authority to contract directly with firms under the SBA 8(a) Program, on behalf of the SBA. The HCA may redelegate this authority to Component contracting officers, who must be designated as the "agency contracting officer." The current DHS and SBA PA is Appendix X of this Manual.

3019.804 Evaluation, offering, and acceptance.

3019.804-3 SBA acceptance.

(d)(2) The HCA is delegated this authority.

3019.804-470 Repetitive acquisitions.

Any requirement which has previously been procured through the 8(a) Program, but which is now being proposed for reprocurement outside of the 8(a) Program shall be

approved by the Director, OSDBU, in accordance with Component procedures. The clearance shall be obtained prior to any public notice or solicitation of the requirement.

3019.810 SBA appeals.

The HCA is delegated this authority.

3019.811 Preparing the contracts.

3019.811-1 Sole source.

(a) The contract to be awarded shall be prepared in accordance with the PA according to HSAM 3019.800(b).

3019.812 Contract administration.

(d) The COCO is delegated this authority.

CHAPTER 3020
(RESERVED)

CHAPTER 3021
(RESERVED)

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

CHAPTER 3022 APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subchapter	**3022**	**Scope**
	3022.001	Definition.
Subchapter	**3022.1**	**Basic Labor Policies**
	3022.101	Labor relations.
	3022.101-1	General.
	3022.101-170	DHS Procurement Labor Advisor.
	3022.101-3	Reporting labor disputes.
	3022.101-4	Removal of items from contractor's facilities affected by work stoppages.
	3022.103	Overtime.
	3022.103-4	Approvals.
Subchapter	**3022.3**	**Contract Work Hour and Safety Standards Act**
	3022.302	Liquidated damages and overtime pay.
Subchapter	**3022.4**	**Labor Standards for Contracts Involving Construction**
	3022.404	Davis-Bacon Act wage determinations.
	3022.404-1	Types of wage determinations.
	3022.404-6	Modifications of wage determinations.
	3022.404-10	Posting wage determinations and notice.
	3022.406	Administration and enforcement.
	3022.406-2	Wages, fringe benefits and overtime.
	3022.406-8	Investigations.
	3022.406-9	Withholding from or suspension of contract payments.
	3022.406-13	Semi-Annual enforcement reports.
Subchapter	**3022.6**	**Walsh-Healy Public Contracts Act**
	3022.604	Exemptions.
	3022.604-2	Regulatory exemptions.
	3022.608	Procedures.
Subchapter	**3022.8**	**Equal Employment Opportunity**
	3022.803	Responsibilities.
	3022.804	Affirmative action programs.
	3022.804-2	Construction.
	3022.8	Procedures.
	3022.807	Exemptions.
Subchapter	**3022.10**	**Service Contract Act of 1965, as amended**
	3022.1003	Applicability.

	3022.1003-4	Administrative limitations, variations, tolerances, and exemptions.
	3022.1008	Procedures for obtaining wage determinations.
	3022.1008-1	Obtaining wage determinations.
	3022.1008-2	Section 4(c) successorship with incumbent contractor collective bargaining agreement.
	3022.1013	Review of wage determination.
	3022.1021	Request for hearing.
	3022.1021-70	Additional hearings data.
	3022.1022	Withholding of contract payments.
Subchapter	**3022.13**	**Equal Opportunity for Veterans**
	3022.1305	Waivers.
	3022.1308	Compliant procedures.
	3022.1310	Solicitation provision and contract clauses.
Subchapter	**3022.14**	**Employment of Workers with Disabilities**
	3022.1403	Waivers.
	3022.1406	Compliant procedures.
	3022.1408	Contract clauses.
Subchapter	**3022.15**	**Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor**
	3022.1503	Procedures for acquiring end products on the List of Products requiring contractor certification as to forced indentured.
Subchapter	**3022.18**	**Employment Eligibility Verification**
	3022.1802	Policy.
Subchapter	**3022.90**	**Local Hire (USCG)**
	3022.9000	Policy (USCG).

Subchapter 3022.0 Scope

3022.001 Definition.

For the purpose of DHS, the term "contracting agency," wherever it appears under FAR Part 22 , means the Component.

Subchapter 3022.1 Basic Labor Policies

3022.101 Labor relations.

3022.101-1 General.

(e) The Head of the Contracting Activity (HCA) authority under FAR 22.101-1(e) is not redelegable.

3022.101-170 DHS Procurement Labor Advisor.

(a) The Procurement Labor Advisor for DHS is a member of the Acquisition Policy and Legislation Branch, Policy and Acquisition Workforce Division, Office of the Chief Procurement Officer.

(b) Each Component may appoint a labor advisor at the Headquarters level. If one is appointed, the Components shall advise, in writing, the contracting offices under their cognizance of the appointment. The labor advisor is responsible for coordinating and obtaining advice from the DHS Procurement Labor Advisor on contracting matters when deemed appropriate or as may be required by this chapter.

3022.101-3 Reporting labor disputes.

(a) Contracting officers shall report to their labor advisor or the DHS Procurement Labor Advisor if a Component labor advisor does not exist, any potential or actual labor disputes (e.g., strike) that may have a serious impact on the Department's programs. The following information shall be provided to the advisor:

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

(2) The date the strike began or is expected to begin;

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

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

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

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

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

(b) The contracting officer shall advise, as applicable, the cognizant Component labor advisor or DHS Procurement Labor Advisor when the strike is terminated and the work has resumed under the contract.

3022.101-4 Removal of items from contractors' facilities affected by work stoppages

(a) If the decision is made to remove items or materials from the contractor's/subcontractor's facility, the contracting officer shall follow the below procedures:

(1) Contact the Component's labor advisor or DHS Procurement Labor Advisor and apprise that person of the decision;

(2) Obtain a list of the contracts the contractor has with other Government agencies or DHS Components. If contracts of the agency or Component are or may become involved in the removal of items, advise the applicable contracting office of the decision to remove items and ensure proper coordination of actions; and

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

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

(ii) A full description (i.e., color, weight, dimensions, etc.), quantity, contract/subcontract number, contract line item number, etc.; and

(iii) A decision on whether personnel of the Government or contractor/subcontractors will remove the items from the location, and the mode of transportation and destination, if the delivery terms will not be the same as those in the contract.

(b) If the contractor or subcontractor and union representative grant the request for removal of items and Government personnel will remove the items, extreme care shall be taken to avoid the use or appearance of force and prevent incidents that might detrimentally affect labor-management relations.

(c) If a negative response is received from the contractor, subcontractor, or union representative and the items are still critical, the contracting officer shall seek advice from the Chief of the Contracting Office (COCO) and the DHS Labor Advisor/Coordinator on the next action to be taken. It may also become necessary to seek advice or assistance from the National Office of the Federal Mediation and Conciliation Service, 2100 K Street, N.W., Washington, DC, 20006, or other mediation agency.

3022.103 Overtime.

3022.103-4 Approvals.

(a) An official at one level above the contracting officer is designated to sign the D&F required by FAR 22.103-4. The D&F shall be written, in the format of Appendix N, and placed in the contract file.

(b) Approval of the use and total dollar amount of overtime must be obtained from the Contracting agency approving official designated in (HSAM) 3022.103-4 (a) above prior to including an amount in paragraph (a) of the clause at FAR 52.222-2, Payment for Overtime Premiums.

(f) If, during contract performance, the contracting officer receives a contractor request for overtime exceeding the amount indicated in paragraph (a) of the clause at FAR 52.222-2, and determines that the requested overtime should be approved in whole or in part, the contracting officer shall obtain approval from the designated Contracting agency approving official prior to modifying paragraph (a) to include the revised overtime amount.

Subchapter 3022.3 Contract Work Hours and Safety Standards Act

3022.302 Liquidated damages and overtime pay.

(c) The contracting officer is delegated authorities under FAR 22.302(c)(1) and (2). The contracting officer's recommendation in FAR 22.302(c)(3) shall be transmitted to the Secretary of Labor by the HCA.

(d) The contracting officer shall provide instructions to the cognizant finance office. The contractor shall be provided with a written decision on the disposition of funds withheld and the basis for the decision.

Subchapter 3022.4 Labor Standards for Contracts Involving Construction

3022.404 Davis-Bacon Act wage determinations.

3022.404-1 Types of wage determinations.

(a)(2) Wage determinations are available via the Internet at **www.wdol.gov.**

3022.404-6 Modifications of wage determinations.

(b)(6) The contracting officer is delegated this authority.

3022.404-10 Posting wage determinations and notice.

The contracting officer shall mail a copy of Department of Labor (DOL) Publication WH-1321 along with the executed copy of the contract to the contractor. Copies of the poster may be obtained by writing to the Department of Labor, 200 Constitution Avenue, N.W., Washington, DC, 20210, Attn: Wage and Hour-ESA Forms and Publications, Room S-3028. The poster is also available via the Internet at http://www.dol.gov/esa/whd/contracts/dbra.htm (Click on "Davis-Bacon Poster (Government Construction)") or by calling 1-866-4-USA-DOL.

3022.406 Administration and enforcement.

3022.406-2 Wages, fringe benefits, and overtime.

(b)(2) The contracting officer shall submit the information required by FAR 22.406-2(b)(2) to the Administrator, Wage and Hour Division, U.S. Department of Labor, Employment Standards Administration, Washington, DC 20210. The contracting officer shall advise interested parties of DOL's determination within 10 working days after receipt of the determination.

3022.406-8 Investigations.

(d) *Contracting officer's report.* The COCO is authorized to receive from the contracting officer the report of violations regarding labor standards. The contracting officer may use DHS Form 700-19, Summary of Underpayments or a form substantially similar if authorized according to Component procedures, to support the total number of employees cited on SF 1446, Labor Standards Investigation Summary Sheet.

(2)(iv) The report to the Attorney General of the United States shall be coordinated with, and forwarded to the Department of Justice by the DHS Office of the General Counsel.

3022.406-9 Withholding from or suspension of contract payments.

(c) *Disposition of contract payments withheld or suspended.*

(4) *Liquidated damages.* The contracting officer shall provide instructions to the cognizant finance office. The contractor shall be provided with a written decision on the disposition of funds withheld and the basis for the decision.

3022.406-13 Semiannual enforcement reports.

Each Component shall submit the semiannual report by April 25 and October 25 of each calendar year to DOL by email at Helm.Timothy@dol.gov and Dixon.Crystal@dol.gov. The format and instructions for the semiannual report are provided at Appendix O. Negative reports are required to be submitted.

Subchapter 3022.6 Walsh-Healey Public Contracts Act

3022.604 Exemptions.

3022.604-2 Regulatory exemptions.

(b)(1) The HCA is authorized to request the Secretary of Labor to exempt a specific contract.

3022.608 Procedures.

(a) *Award.* The contracting officer shall mail a copy of DOL Publication WH-1313 along with the executed copy of the contract to the contractor. Copies of the poster may be obtained by writing to the Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210, ATTN: Wage and Hour-ESA Forms and Publications, Room S-3028. The poster is also available via the Internet at http://www.dol.gov/esa/whd/contracts/pca.htm (under "Workplace Posters" click on "Service Contract Act/Walsh-Healy Public Contracts Act") or by calling 1-866-4-USA-DOL.

(b) *Breach of stipulation.* Unless otherwise specified by Component procedures, the contracting officer shall submit written notice of any violations to the applicable DOL region.

Subchapter 3022.8 Equal Employment Opportunity

3022.803 Responsibilities.

(d) The contracting officer shall obtain the assistance of the Component's legal counsel on matters concerning the applicability of E.O. 11246. If further assistance is required, the matter shall be referred to the nearest DOL Office of Federal Contracts Compliance Programs (OFCCP). (The OFCCP Nationwide Office Directory is accessible via the Internet at: http://www.dol.gov./esa/ofccp/contacts/ofnation2.htm.) Questions concerning the implementation of the E.O. in the FAR or DHS guidance shall be referred to the Chief Procurement Officer (CPO).

3022.804 Affirmative action programs.

3022.804-2 Construction.

(b) The Office of Federal Contract Compliance Program (OFCCP), DOL publishes in the Federal Register goals and timetables for minority and female utilization in the construction industry. This information is listed at http://www.dol-esa.gov/preaward/.

3022.805 Procedures.

(a) *Preaward clearances for contracts and subcontracts of $10 million or more (excluding construction).*

(1) Contracting officers may conduct an initial search of a contractor's compliance records via the Internet at: http://www.dol-esa.gov/preaward/.

(6) The contracting officer shall prepare a letter request in substantially the same format as Appendix C, in strict accordance with the instructions, to prevent premature disclosure of the proposed contractor, subcontractor, if any, and the amount of the award. Because

the OFCCP conducts the compliance review at the primary point of production of each contractor and first-tier subcontractor, contracting officers shall request the clearance from the OFCCP regional office which has jurisdiction over the contractor and subcontractor. (A listing of OFCCP regional offices is accessible via the Internet at: http://www.dol.gov/esa/ofccp/contacts/ofcpkeyp.htm)

(7) The 15 and 20-day preaward clearance requirement timeframes under FAR 22.805(a)(7) shall be included in the acquisition cycle milestone planning.

(8) The HCA authority is not redelegable.

(b) *Furnishing posters.* The contracting officer may order the poster titled "Equal Employment Opportunity is the Law, Discrimination is Prohibited" via telephone by calling 1-866-4-USA-DOL. The poster is also available via the Internet at http://www.dol.gov/esa/ofccp/regs/compliance/posters/ofccpost.htm.

3022.807 Exemptions.

(a)(1) The HCA, without redelegation, is authorized to determine for a contract, that national security precludes compliance with all or part of the requirements of E.O. 11246. A justification shall be in substantially the same format as Appendix N.

(c) The justification shall be in substantially the same format as Appendix N. All requests for exemptions shall be submitted via the HCA to the CPO for the Deputy Assistant Secretary's approval.

Subchapter 3022.10 Service Contract Act of 1965, as Amended

3022.1003 Applicability.

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

(a) The contracting officer shall submit requests for limitations, variations, tolerances, and exemptions under FAR Subpart 22.10 to the Wage and Hour Administrator via the Component labor attorney.

3022.1003-7 Questions concerning applicability of the Act.

Contracting officers may request written or oral advice from the Component labor attorney. Any Component requests or questions to the Administrator, Wage and Hour Division shall be submitted in writing with a copy provided to the Director, Acquisition Policy and Legislation Branch, Policy and Acquisition Workforce, Office of the Chief Procurement Officer.

3022.1008 Procedures for obtaining wage determinations.

3022.1008-1 Obtaining wage determinations.

(f) Contracting officers should request advice from the Component labor advisor, or if unavailable, the DHS Procurement Labor Advisor.

3022.1008-2 Section 4(c) successorship with incumbent contractor collective bargaining agreement.

(d)(3) Contracting officer should request advice from the Component labor advisor, or if unavailable, the DHS Procurement Labor Advisor.

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

3022.1013 Review of wage determination.

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

3022.1021 Request for hearing.

3022.1021-70 Additional hearings data.

(a) Contracting officers will forward requests for hearings to the Administrator, Wage and Hour Division, DOL, through their Component labor advisor or labor attorney, with a copy submitted to OCPO via the email address, PROCUREMENT.Support@dhs.gov. In addition to the requirements of FAR 22.1021(a), the request for a variance hearing shall include copies of the relevant wage determination, if issued, collective bargaining agreement, and the e98 that requested the wage determination in question. The statement shall contain an analysis concerning the differences between the collectively bargained rates issued and the rates contained in the following:

(1) Corresponding Federal wage board rates and surveys (while it is not necessary that the challenged rate be higher than the corresponding Federal rate, this is an important factor);

(2) Relevant Bureau of Labor Statistics survey data and the comparable Service Contract Act wage determination;

(3) Other wage data (e.g., rates paid in local hospitals would be appropriate for comparison on contracts for hospital antiseptic services, while rates paid in local schools could be of value in comparison for janitorial or food service workers); and

(4) Other collectively-bargained wages and benefits.

(b) If the Contracting officer cannot provide all of the information required in paragraph

(a) above with the request for a hearing, the approximate time needed to obtain the data or to develop the information shall be provided. The request shall clearly demonstrate the efforts being made to obtain or develop the information. A statement that data are not available will not be accepted by DOL.

(d) Unless the Administrator, Wage and Hour Division determines that extraordinary circumstances exist, requests for hearings that are not submitted within the timeframes referenced in FAR 22.1021(d)(1) and (2) will not receive consideration by DOL.

3022.1022 Withholding of contract payments.

Contracting officers will coordinate with the cognizant finance office regarding placement of any withheld funds in an agency-established deposit fund, and, upon order from appropriate parties (see (FAR 22.10), their transfer to DOL for disbursement.

Subchapter 3022.13 Equal Opportunity for Veterans

3022.1305 Waivers.

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

(a)(2) For a request for exemption under FAR 22.1305(a)(1), the signatory authority is the CPO.

(b) The HCA, without redelegation, may waive this requirement.

(c) The contracting officer shall prepare a D&F setting forth clear and convincing reasons why an exemption will be necessary. D&Fs shall be in substantially the same format as Appendix N.

3022.1308 Complaint procedures.

The contracting officer shall forward complaints about the administration of the Vietnam Era Veterans Readjustment Assistance Act of 1972, as amended, directly to the DOL's Veterans' Employment and Training Service. (A directory of Veterans' Employment and Training Service Regional and State offices is available by Internet at: http://www.dol.gov/vets/aboutvets/contacts/main.htm.) All questions concerning the complaints shall be directed to the appropriate office of the DOL.

3022.1310 Solicitation provision and contract clauses.

(a)(1)(ii) See HSAM 3022.1305(b) for the waiver authority granted to the HCA.

Subchapter 3022.14 Employment of Workers with Disabilities

3022.1403 Waivers.

(a)(1) The HCA is delegated this authority.

(a)(2) The CPO is delegated this authority.

(b)(1) The HCA is delegated this authority.

(c) The contracting officer shall prepare a D&F setting forth clear and convincing reasons for the exemption. The D&F shall be in substantially the same format as Appendix N.

3022.1406 Complaint procedures.

When oral complaints are received, contracting officers shall request that the nature of the complaint (e.g., by whom, against whom, the reason, etc.) signed by the plaintiff be submitted in writing directly to the OFCCP. Written complaints received by contracting officers shall be forwarded to the OFCCP by letter.

3022.1408 Contract clause.

(a)(2) See HSAM 3022.1403(a)(1), (a)(2) or (b)(1) for waiver authorities granted to specific individuals.

(b) See HSAM 3022.1403(a)(1), (a)(2) or (b)(1) for waiver authorities granted to specific individuals.

3022.15 Prohibition Of Acquisition Of Products Produced By Forced Or Indentured Child Labor

3022.1503 Procedures for acquiring end products on the List of Products Requiring Contractor Certification as to Forced Indentured Child Labor.

(e) Contracting officers shall refer the matter for investigation to the DHS, Office of General Counsel.

Subchapter 3022.90 Local Hire (USCG)

3022.9000 Policy (USCG).

(a) The Coast Guard HCA is authorized to waive the inclusion of HSAR 3052.222-90, Local Hire (USCG), in contracts for construction or services to be performed in whole or in part in a State that has an unemployment rate in excess of the National average rate of unemployment (as determined by the Secretary of Labor).

(b) Waiver requests shall be submitted to Commandant (CG-85) for processing to the Coast Guard HCA. Any request must describe the acquisition and clearly explain the reasons why it is in the interest of national security or economic efficiency to exclude the Local Hire clause.

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

Subchapter	**3023.2**	**Energy and Water Efficiency and Renewable Energy**
	3023.203	Energy-efficient products.
	3023.204	Procurement exemptions.
	3023.205	Energy-savings performance contracts.
Subchapter	**3023.4**	**Use of Recovered Materials and Biobased Products**
	3023.404	Agency affirmative procurement programs.
	3023.405	Procedures.
Subchapter	**3023.7**	**Contracting for Environmentally Preferable Products and Services**
	3023.703	Policy.
	3023.705	Electronic products environmental assessment tool (EPEAT).

Subchapter 3023.2 Energy and Water Efficiency and Renewable Energy

3023.203 Energy-efficient products.

(b) In addition to the ENERGY STAR® and Federal Energy Management Program (FEMP) websites, the DHS Affirmative Procurement Plan at Appendix Q, provides the Department's established affirmative program plan and policies for use in acquisition planning, solicitations and contract administration.

3023.204 Procurement exemptions.

DHS and Components shall specify products that are ENERGY STAR® or FEMP labeled/approved products. The authority to make the determination that no ENERGY STAR® or FEMP-designated product is reasonably available that meets the functional requirements of the Department; or no ENERGY STAR® or that no FEMP-designated product is cost effective over the life of the product taking energy cost savings into account, is the DHS Office of Occupational Safety and Environmental Programs. The contracting officer must coordinate the written approval when the purchase of non-ENERGY STAR® or FEMP-designated products meet the exemptions at FAR 23.204 and this paragraph. This approval document must be coordinated through the appropriate DHS Component's Environmental Program Office for technical review. The approved document shall be maintained in the contract file.

3023.205 Energy-savings performance contracts.

(c) DHS and its Components may enter into Energy Savings Performance Contracts (ESPC) under 42 U.S.C. 8287, as amended, subject to the requirements of 10 CFR Part 436. The Component contracting officer shall submit the Department of Energy (DOE)

schedule and the Measurement & Verification (M&V) protocols for any ESPC actions or order to: DHS Energy Program Manager, Office of Occupational Safety and Environmental Programs. The purpose of early notification is to provide DHS Office of Occupational Safety and Environmental Programs the opportunity to provide assistance and guidance to the contracting activity and program officials.

Subchapter 3023.4 Use of Recovered Materials and Biobased Products

3023.404 Agency Affirmative procurement programs.

(a) The DHS's *Affirmative Procurement Plan (APP)* is provided as Appendix Q and must be used by DHS and Components.

3023.405 Procedures.

(a)(1) *Recovered Materials.* Section 6002 of the Resource Conservation and Recovery Act (RCRA) requires the Department to apply purchasing preferences to products containing recovered materials. EPA's Comprehensive Procurement Guideline for Federal agencies at 40 CFR 247, implements the Federal Government's buy-recycled program and designates recovered materials items which Federal agencies must give preference. For items designated in EPA guidelines, procurements must include products composed of the highest percentage of recovered materials practicable. The EPA designated items include:

Paper and paper products	Vehicular products
Construction Products	Transportation products
Park and recreation products	Landscaping products
Non-paper office products	Floor tiles and patio blocks
Shower and restroom dividers/partitions	Reprocessed and consolidated latex paints
Parking stops	Channelizers and delineators
Plastic fencing	Garden and soaker hoses
Lawn and garden edging	Printer ribbons
Plastic envelopes	Pallets

(2) *Biobased products.* The Biobased Products Preference Program sponsored by the United States Department of Agriculture (USDA) is modeled after the EPA Recovered Material Program. The USDA has selected and prioritized items for designation as "preferred" biobased products. The USDA, other Government agencies, private industry groups, and independent manufacturers have evaluated these items against program criteria established collaboratively. See http://www.biopreferred.gov/DesignationItemList.aspx for a list of designated biobased preferred products.

(b)(2) When an exemption is used for an EPA-designated item or the procurement of a product containing recovered material does not meet or exceed the EPA recovered material content guidelines, the contracting officer shall place a written justification in

the contract file. The contracting officer's decision and written determination must be based on EPA criteria at http://www.epa.gov/epaoswer/non-hw/procure/backgrnd.htm or 40 CFR 247. The contracting officer must coordinate the determination and justification with the DHS Office of Occupational Safety and Environmental Programs or the Component Environmental Program Office before granting an exemption.

Subpart 3023.7 Contracting for Environmentally Preferable Products and Services

3023.703 Policy.

(b)(2) Where applicable, DHS and Components shall purchase WaterSense labeled products and choose irrigation contractors who are certified through a WaterSense labeled program. WaterSense is a voluntary Environmental Protection Agency public-private partnership that identifies and promotes high-performance products and programs that help preserve the nation's water supply. Additional information is available at www.epa.gov/watersense. Products currently included in the WaterSense label program include high efficiency toilets, showerheads, bathroom sink faucets, landscaping irrigation services and weather or sensor based irrigation technologies. The DHS Affirmative Procurement Plan at Appendix Q includes information about currently available products. The www.epa.gov/watersense website is routinely updated with new product information and should be consulted as needed.

3023.705 Electronic products environmental assessment tool (EPEAT).

(c) The authority to grant an exception that no-EPEAT-registered product meets agency requirements is delegated to the contracting officer. The contracting officer must coordinate the requirements or program official's submitted documentation with the DHS Environmental Program Manager, in the DHS Office of Occupational Safety and Environmental Programs or the Component Environmental Program Office before granting an exception. The exception shall be documented and placed in the contract file.

CHAPTER 3024
PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

(RESERVED)

There is no text implementing or supplementing FAR Part 24.

CHAPTER 3025 FOREIGN ACQUISITION

Subchapter	**3025.0**	**Scope of Part**
	3025.004	Reporting of acquisition of end products manufactured outside the United States.
Subchapter	**3025.1**	**Buy American Act-Supplies**
	3025.103	Exceptions.
	3025.104	Nonavailability of articles.
	3025.105	Determining reasonableness of cost.
Subchapter	**3025.2**	**Buy American Act—Construction Materials**
	3025.202	Exceptions.
	3025.204	Evaluating offers of foreign construction material.
Subchapter	**3025.10**	**Additional Foreign Acquisition Regulations**
	3025.1001	Waiver of right to examination of records.

Subchapter 3025.000 Scope of Part

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

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

(b) Components shall ensure that the information reported in FPDS data field 9H for the procurement of end products accurately reflects the place of manufacture of the end product and the associated exception category. Only those acquisitions that are predominantly for the acquisition of manufactured end products shall be reported. Exception categories are: Use Outside of the U.S; Resale; Commercial Information Technology; Public Interest Determination; Trade Agreements; Domestic Nonavailability; and Unreasonable Cost.

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

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

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

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

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

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

Subchapter 3025.1 Buy American Act—Supplies

3025.103 Exceptions.

(a) *Public Interest.* The Head of the Contracting Activity (HCA) is delegated this authority.

(b) *Nonavailability.*

(2)(i) The Chief of the Contracting Office (COCO) is delegated this authority.

(b)(2)(ii) Determinations required shall be submitted to the Chief Procurement Officer (CPO).

3025.104 Nonavailability of articles.

(b) Documentation shall be submitted to the CPO.

3025.105 Determining reasonableness of cost.

(a)(1) The COCO is delegated this authority. Determinations shall be sent to the CPO.

Subchapter 3025.2 Buy American Act—Construction Materials

3025.202 Exceptions.

(a)(1) The HCA is delegated this authority.

3025.204 Evaluating offers of foreign construction material.

(b) The HCA is delegated this authority.

Subchapter 3025.10 Additional Foreign Acquisition Regulations

3025.1001 Waiver of right to examination of records.

(a)(2)(iii) The HCA, without redelegation, is authorized to make the determination.

CHAPTER 3026 OTHER SOCIOECONOMIC PROGRAMS

Subchapter 3026.2 Disaster or Emergency Assistance Activities
3026.202 Local area preference.
3026.202-2 Evaluation preference.
3026.203 Transition of work.

Subchapter 3026.2 Disaster or Emergency Assistance Activities

26.202 Local area preference.

26.202-2 Evaluation preference.

DHS Components may establish additional guidance regarding preferences given to local organizations, firms, and individuals when contracting for major disaster or emergency assistance activities when the President has made a declaration under the Robert T. Stafford Disaster Relief Act.

3026.203 Transition of work.

(b) The authority to determine that transitioning work in the performance of response, relief, and reconstruction contracts or activities in effect on the date on which the President declares a major disaster or emergency to local firms is not feasible or practicable is delegated to the Head of the Contracting Activity.

CHAPTER 3027 PATENTS, DATA, AND COPYRIGHTS

Subchapter	**3027.2**	**Patents**
	3027.203	Patent indemnification of Government by contractor.
	3027.203-6	Clause for Government waiver of indemnity.
Subchapter	**3027.3**	**Patent Rights Under Government Contracts**
	3027.302	Policy.
	3027.303	Contract clauses.
	3027.304	Procedures.
	3027.304-1	General.
	3027.305	Administration of patent rights clauses.
	3027.305-4	Conveyance of invention rights acquired by the Government.

Subchapter 3027.2 Patents

3027.203 Patent indemnification of Government by contractor.

3027.203-6 Clause for Government waiver of indemnity.

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

Subchapter 3027.3 Patent Rights Under Government Contracts

3027.302 Policy.

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

3027.303 Contract clauses.

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

3027.304 Procedures.

3027.304-1 General.

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

3027.305 Administration of patent rights clauses.

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

(b) When a contractor discloses an invention under a contract, the contracting officer shall consult with the Component Patent Counsel to determine the proper action to be taken. Components without Patent Counsels should contact the DHS Office of General Counsel, Intellectual Property Attorney.

CHAPTER 3028 BONDS AND INSURANCE

Subchapter 3028.1 Bonds and Other Financial Protections
3028.101 Bid guarantees.
3028.101-1 Policy on use.
3028.105 Other types of bonds.
3028.106 Administration.
3028.106-2 Substitution of surety bonds.
3028.106-6 Furnishing information.

Subchapter 3028.2 Sureties and Other Security for Bonds
3028.202 Acceptability of corporate sureties.
3028.203 Acceptability of individual sureties.
3028.203-7 Exclusion of individual sureties.
3028.204 **Alternatives in lieu of corporate or individual sureties.**
3028.204-1 United States bonds or notes.

Subchapter 3028.3 Insurance
3028.305 Overseas workers' compensation and war-hazard insurance.
3028.307-2 Liability.

Subchapter 3028.1 Bonds

3028.101 Bid guarantees.

3028.101-1 Policy on use.

(c) The Head of the Contracting Activity (HCA) is authorized to approve a class waiver.

3028.105 Other types of bonds.

The contracting officer is delegated this authority.

3028.106 Administration.

3028.106-2 Substitution of surety bonds.

(a) The contracting officer is delegated this authority.

3028.106-6 Furnishing information.

(c) The contracting officer is delegated this authority after consultation with legal counsel. The contracting officer is the individual who will furnish to the requestor a certified copy of the payment bond and the contract for which it was given, and determine the reasonable and appropriate costs the requestor must pay for the preparation of copies.

Subchapter 3028.2 Sureties and Other Security for Bonds

3028.202 Acceptability of corporate sureties.

(d) Department of the Treasury's Listing of Approved Sureties (Department Circular 570) is available at http://www.fms.treas.gov/c570/index.html.

3028.203 Acceptability of individual sureties.

(g) Contracting officers, after consultation with the Component legal counsel, shall refer evidence through the HCA to the Office of Inspector General (OIG), or other investigatory organization, with a copy to the Chief Procurement Officer (CPO). The OIG shall provide a report of findings to the Debarring and Suspension official.

3028.203-7 Exclusion of individual sureties.

(a) The HCA is delegated this authority.

(d) Justifications shall be prepared by the contracting officer and forwarded to the Debarring and Suspension official for approval.

3028.204 Alternatives in lieu of corporate or individual sureties.

(a) HCAs shall establish required safeguards to protect against the loss of the security.

3028.204-1 United States bonds or notes.

(b) HCAs shall establish procedures consistent with Treasury Department Circular No. 154 for bonds and notes received by contracting officers located outside of the District of Columbia.

Subchapter 3028.3 Insurance

3028.305 Overseas workers' compensation and war-hazard insurance.

(d) The HCA shall make the recommendation to the Secretary of Labor.

3028.307-2 Liability.

(b)(2) HCAs may establish special circumstances and coverage limits, after consultation with Component legal counsel, when determined to be in the best interest of the Component.

(e) HCAs shall establish, in conjunction with Component legal counsel, appropriate and adequate vessel collision liability and protection and indemnity liability insurance coverage limits.

CHAPTER 3029 TAXES

Subchapter 3029.1 General
3029.101 Resolving tax problems.

Subchapter 3029.3 State and Local Taxes
3029.303 Application of State and local taxes to Government contractors and subcontractors.

Subchapter 3029.1 General

3029.101 Resolving tax problems.

(a) The agency designated legal counsel is the Component legal counsel. Any recommended changes to DHS policy or procedures concerning taxes resulting from consultation with Component legal counsel, shall be transmitted by the Head of the Contracting Activity (HCA) to the Chief Procurement Officer (CPO).

(1) All problems forwarded to the Component's legal counsel for review and/or resolution shall be accompanied by:

(i) A copy of the contract, when applicable;

(ii) A comprehensive statement of the facts, any substantiating documents or correspondence, the legal issues, and recommended course of action, if any; and

(iii) When applicable, a statement concerning the effect the problem has or will have on existing acquisition policy and procedures, and any recommended changes to them.

Subchapter 3029.3 State and Local Taxes

3029.303 Application of State and local taxes to Government contractors and subcontractors.

(a) The HCA is delegated authority, without redelegation, to review this designation. The HCA shall coordinate with the Component's legal counsel. The HCA shall provide a copy of the review documentation and designation to the Office of the Chief Procurement Officer (OCPO).

CHAPTER 3030 COST ACCOUNTING STANDARDS ADMINISTRATION

Subchapter 3030.2 CAS Program Requirements
3030.201 Contract requirements.
3030.201-5 Waiver.
3030.201-7 Cognizant Federal agency responsibilities.
3030.202 Disclosure requirements.
3030.202-2 Impracticality of submission.
3030.202-6 Responsibilities.
3030.202-8 Subcontractor disclosure requirements.

Subchapter 3030.2 CAS Program Requirements

3030.201 Contract requirements.

3030.201-5 Waiver.

(a) Requests for waiver of applicability of Cost Accounting Standards (CAS) under the conditions of FAR 30.201-5(b) shall be coordinated by the Head of the Contracting Activity (HCA) and forwarded to the Office of Chief Procurement Officer (OCPO) for review and approval.

(d) Requests for waiver of applicability of CAS under 48 CFR 9903.205-5(e) by the CAS Board shall be submitted to the OCPO through the HCA. OCPO will forward request to the Secretary for signature and subsequent submission to the Cost Accounting Standards Board (CASB).

3030.201-7 Cognizant Federal agency responsibilities.

Contracting officers should not individually administer CAS on a contract-by-contract basis. Accordingly, administration of CAS should be delegated to the cognizant Federal agency responsible for a particular contractor organization or location, which is usually the Federal agency responsible for negotiating indirect cost rates on behalf of the Government. Contracting officers will ensure that coordinated administrative actions provide assurances that individual contractors follow their cost accounting practices consistently under all their CAS-covered contracts and that change in cost accounting practices or CAS noncompliance issues are resolved, equitably, in a uniform overall manner.

3030.202 Disclosure requirements.

3030.202-2 Impracticality of submission.

The agency head authority determination is not delegable. All requests should be submitted using the procedures and format at HSAR 3001.7.

3030.202-6 Responsibilities.

(b) HCAs shall submit requests for the Secretary's approval to award a contract without obtaining submission of the required Disclosure Statement (See 48 CFR 9903.202-2) to the OCPO for coordination. The request shall include a description of the circumstances under which the award must be made, indicate coordination and agreement by the Cognizant Federal Agency Official (CFAO), and include a date by which a determination of adequacy is expected to be obtained. OCPO will staff the request through the appropriate DHS Headquarters' offices and submit it to the Secretary**.**

3030.202-8 Subcontractor disclosure statements.

HCAs shall follow the procedures in HSAM 3030.202-6 when requesting the Secretary's approval to award a subcontract without obtaining submission of the required Disclosure Statement.

CHAPTER 3031 CONTRACT COST PRINCIPLES AND PROCEDURES

Subchapter 3031.1 Applicability
3031.101 Objectives.
3031.109 Advance agreements.

Subchapter 3031.2 Contracts with Commercial Organizations
3031.205 Selected costs.
3031.205-6 Compensation for personal services.
3031.205-32 Precontract costs.

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Subchapter 3031.1 Applicability

3031.101 Objectives.

Requests for individual and class deviations concerning cost principles shall be submitted to the Office of Chief Procurement Officer (OCPO) for processing. The Chief Procurement Officer (CPO) is delegated the authority to grant individual deviations. The CPO will forward requests for class deviations to the Civilian Agency Acquisition Council (CAAC) for approval.

3031.109 Advance agreements.

See HSAM 3031.205-32.

Subchapter 3031.2 Contracts with Commercial Organizations

3031.205 Selected costs.

3031.205-6 Compensation for personal services.

(g)(6) The Head of the Contracting Activity (HCA) is delegated, without redelegation, authority to waive the cost allowability limitations.

3031.205-32 Precontract costs.

(b) To the extent practical, precontract costs should be addressed by establishing advance understandings as contemplated by FAR 31.109. When the contracting officer determines in writing that it is necessary to incur precontract costs to meet the proposed cost-reimbursable contract's delivery schedule, the determination shall be approved by the Chief of the Contracting Office (COCO) and include the following:

(1) Identification of the requirement and a brief description of the work for which precontract costs are necessary;

(2) A statement that all statutory and regulatory actions required to justify source

selection have occurred;

(3) Name of the prospective contractor;

(4) Total amount of precontract costs involved and a statement that the funds necessary to cover this amount have been provided to the contracting officer;

(5) Total estimated time of the effort requiring precontract costs;

(6) Discussion of reasons justifying the need for the contractor to proceed prior to contract award; and

(7) A signed agreement between the contracting officer and the prospective contractor that incurrence of precontract costs is solely at its own risk and in the event negotiations do not result in a contract, the Government shall be under no obligation to reimburse the contractor for precontract costs.

(c) Retroactive precontract cost authorization and the predating of contractual agreements shall not be used.

(d) Precontract cost authorizations shall not authorize the delivery or furnishing of any goods or services from a contractor until after the contract is executed.

CHAPTER 3032 CONTRACT FINANCING

Subchapter	**3032.000**	**Scope.**
	3032.003	Simplified acquisition procedures financing.
Subchapter	**3032.1**	**Non-Commercial Item Purchase Financing**
	3032.102	Description of contract financing methods.
	3032.113-70	Customary contract financing.
	3032.114	Unusual contract financing.
		.
Subchapter	**3032.2**	**Commercial Item Purchase Financing**
	3032.202-4	Security for Government financing.
	3032.206	Solicitation provisions and contract clauses.
Subchapter	**3032.4**	**Advance Payments for Non-Commercial Items**
	3032.402	General.
	3032.404	Exclusions.
	3032.409	Contracting officer action.
	3032.409-1	Recommendation for approval.
	3032.409-2	Recommendation for disapproval.
Subchapter	**3032.5**	**Progress Payments Based On Costs**
	3032.501-1	General.
	3032.501-2	Unusual progress payments.
	3032.502	Preaward matters.
	3032.502-2	Contract finance office clearance.
	3032.504	Subcontracts under prime contracts providing progress payments.
Subchapter	**3032.6**	**Contract Debts**
	3032.602	Responsibilities.
	3032.604	Demand for payment.
	3032.607	Installment payments and deferment of collection.
	3032.608-1	Interest charges.
Subchapter	**3032.7**	**Contract Funding**
	3032.702	Policy.
	3032.702-70	Procurement requests.
	3032.702-71	Use of private sector financing.
	3032.703-3	Contracts crossing fiscal years.
Subchapter	**3032.8**	**Assignment of Claims.**
	3032.802	Conditions.

	3032.803	Policies.
Subchapter	**3032.9**	**Prompt Payment**
	3032.903	Responsibilities.
	3032.904	Determining payment due date.
	3032.906	Making payments.
Subchapter	**3032.11**	**Electronic Funds Transfer**
	3032.1107-70	Payment Information.
Subchapter	**3032.70**	**Contract Payments**
	3032.7000	Scope of subchapter.
	3032.7001	Policy.
	3032.7002	Invoice and voucher review and approval.
	3032.7003	Record of payment.

Subchapter 3032.000 Scope

3032.003 Simplified acquisition procedures financing.

Where appropriate, the Chief of Contracting Office (COCO) may determine that contract financing for commercial items may be provided for purchases made under FAR Part 13. A written determination must be prepared detailing the rationale supporting the decision.

Subchapter 3032.1 Non-Commercial Item Purchase Financing

3032.102 Description of contract financing methods.

(e)(2) Progress payments based on a percentage or stage of completion are authorized only under contracts for construction, alteration, and repair, shipbuilding, and architect-engineering. Contracting officers must ensure that the payments are commensurate with the work and that the work meets the contract requirements. When contracting officers propose to make these types of payments under other contracts, a written Determination & Finding (D&F) in the format provided at Appendix R must be signed by the Head of the Contracting Activity (HCA). The D&F must provide the reasons that progress payments based on costs cannot be possible and why it is feasible to administer progress payments based on a percentage or stage of completion.

3032.113-70 Customary contract financing.

(a) It is DHS's expectation that contracts will be fully funded except as permitted by FAR 32.703.

(b) Financing of contracts and requirements using other than progress payments or performance-based payments requires:

(1) HCA approval and review; and

(2) Legal counsel review and approval for legal sufficiency.

3032.114 Unusual contract financing.

Authority to approve unusual contract financing is delegated to the HCA.

Subchapter 3032.2 Commercial Item Purchase Financing

3032.202-4 Security for Government financing.

(a)(2) The required determination shall be in writing, reviewed by legal counsel, and retained in the contract file.

3032.206 Solicitation provisions and contract clauses.

(g) The HCA is authorized to develop procedures under FAR 32.206.

(g)(2) The HCA is authorized to develop procedures under FAR 32.206.

Subchapter 3032.4 Advance Payments for Non-Commercial Items

3032.402 General.

(c)(1)(iii) The authority to make the determination prescribed in FAR 32.402(c)(1)(iii) is delegated, without power of re-delegation, to the HCA.

(e)(2) When the contracting officer proposes to provide advance payments to a contractor, the requisitioning office, legal counsel, and finance office shall be consulted prior to approving the D&F. The D&F shall be written in the format of FAR 32.410.

3032.404 Exclusions.

(a)(9) Unless otherwise approved by the Chief Procurement Officer (CPO), no other types of transactions are excluded from the requirements of FAR 32.4.

3032.409 Contracting officer action.

3032.409-1 Recommendation for approval.

After review by counsel, the D&F and the other items shall be forwarded through appropriate office(s) to the approving official (see HSAM 3032.402) for review and approval. Contracting officers shall also discuss the proposed payments with the applicable finance office to ensure compliance with all Department of Treasury regulations governing these payments.

3032.409-2 Recommendation for disapproval.

Contracting officers shall transmit the information required through appropriate office(s) to the approving official under HSAM 3032.402 for approval of the recommendation to disapprove the request for advance payment.

Subchapter 3032.5 Progress Payments Based On Costs

3032.501 General.

3032.501-2 Unusual progress payments.

(a)(3) The Chief of the Contracting Officer (COCO) is delegated authority to approve the contractor's request for unusual progress payments.

3032.502 Preaward matters.

3032.502-2 Contract finance office clearance.

Contracting officers shall obtain written approval and coordination from the officials named below before taking any of the following actions:

(a) From the COCO, to provide a progress payment rate higher than the customary rate (see FAR 32.501-1);

(b) From the COCO, to deviate from the progress payment terms prescribed in FAR Part 32; and

(c) When providing progress payments to a contractor--

(1) From the COCO (with advice from Component legal counsel), when the contractor's financial condition is in doubt;

(2) From the COCO (with advice from Component legal counsel), when the contractor has had an advance payment request or loan guarantee denied for financial reasons (or approved but withdrawn or lapsed) within the previous 12 months; and

(3) From the HCA (with advice from Component legal counsel), when the contractor is named in the consolidated list of contractors indebted to the United States (known commonly as the "Hold-up List").

3032.504 Subcontracts under prime contracts providing progress payments.

(c) The contracting officer shall obtain approval from the COCO to authorize contractors to make unusual progress payments to subcontractors. A written D&F is not required; however, if the contractor's request to make unusual progress payments is granted, the

contract file shall be documented to reflect the rationale for the decision.

Subchapter 3032.6 Contract Debts

3032.602 Responsibilities.

Contracting officers shall administer the collection of contract debts and applicable interest in accordance with DHS MD Number 1180.1, Collections and Deposits Processing as implemented by Component procedures, if any. If Component procedures do not exist, contracting officers shall consult with their finance office concerning debt collection. The contracting officer has primary responsibility for identifying and demanding payment of contract debts except those resulting from errors made by the payment office.

3032.604 Demand for payment.

(a) If the contracting officer has any indication that a contractor owes money to the Government under a contract, the contracting officer shall immediately determine if an actual debt is due and the amount. If a debt is due, the contracting officer shall promptly issue a demand for payment letter to the contractor in accordance with the standards and requirements of FAR 32.604, Demand for Payment. The demand for payment should be modeled after the template provided in HSAM Appendix AB, Demand for Payment Letter. Making an immediate demand for payment is intended to increase the timeliness of repayment of the debt and to begin accumulating interest if the contract provides that interest begins to accrue as of the date of a demand for payment.

(b) If a final decision under FAR 33.211, Contracting officer's decision, results in a contractor owing any amount to the government, the final decision notice to the contractor shall include a demand for payment per FAR 32.604 and HSAM Appendix AB. If the contractor appeals the final decision to the Board of Contract Appeals, the contracting officer must notify the component's payment office that an appeal has been filed.

3032.607 Installment payments and deferment of collection.

(a) The contracting officer is not authorized to approve or deny either a request for installment payments or a deferment of payment of a contractor's debt under a contract. If a contractor submits a request for installment payments or deferment of payment, the contracting officer shall:

(1) Analyze the request and determine the recommended course of action per FAR 32.607; and

(2) Submit the request and the recommendation (together will all other data required by FAR 32.607) to the component Chief Financial Officer (CFO) for a decision of whether the request should be approved.

3032.608-1 Interest charges.

(a) The contracting officer shall consult with the Component's finance office concerning contractor's debts that may be exempt from interest charges. If the contract under which a debt is created does not include a clause requiring the contractor to pay interest on an unpaid debt, DHS procedures authorized by 31. U.S.C. 3717 require collection of interest, penalties and fees on an unpaid debt (see Chapter 3 of the DHS CFO Financial Policy Manual). DHS contracts that include a requirement for a contractor to pay a specific rate of interest on an unpaid debt (such as by the clause at FAR 52.232-17, Interest) are exempt from the DHS CFO Financial Policy Manual policies on payment of interest, penalties and fees for that debt. Demand for payment templates at HSAM Appendix AB are available to be applied to either situation.

(b) The component's payment office may consult with the contracting officer about the proper interest charges to apply to any contract debt unpaid after 30 days from the issuance of a demand. Such interest charges and credits shall comply with FAR 32.608.

3032.610 Compromising debts.

Contracting officers are not authorized to compromise debts.

Subchapter 3032.7 Contract Funding

3032.702 Policy.

(c) Additionally, all contracts and requirements using private sector financing shall be approved by the Office of Chief Procurement Officer (OCPO). The HCA shall submit the action, including legal counsel review and approval for legal sufficiency, to the OCPO for approval.

(d) The minimum guaranteed quantity specified under indefinite delivery indefinite quantity contracts must be fully funded (obligated at the time of contract award.)

(e) To avoid violating the Anti-Deficiency Act, fixed-price, labor-hour, and the time portion of time-and-material contracts shall not be incrementally funded. Cost-type contracts and the material portion (including, if appropriate, material handling costs as part of material costs) of time-and-material contracts may be incrementally funded provided such contracts include FAR Clause 52.232-22, Limitation of Funds, as appropriate.

3032.702-70 Procurement requests.

(a) Acceptance of electronically submitted fund documents. The contracting officer shall accept certified funds submitted electronically via Component approved financial and procurement systems. The contracting officer may require a hardcopy procurement request only from units exempt from the use of Component approved financial and procurement systems.

(b) The requisitioning office/program office is responsible for nominating a qualified Federal employee to serve as a contracting officer's representative (COR), who is trained and certified

according to the DHS Acquisition Workforce Policy, number 064-04-003, Contracting Officer Representative Certification, Appointment and Termination or any successor. A procurement request submission for a new procurement lacking a COR nominee (unless otherwise exempted by HSAM 3042.270-1 or the DHS COR Directive) may result in rejection as an incomplete acquisition/procurement request.

(c) Treasury Account Symbol (TAS).

(1) The DHS Office of the Chief Financial Officer issued guidance to Component Budget Directors and Chief Financial Officers on March 18, 2008 mandating inclusion of the Fiscal Year and Treasury Account Symbol on all Procurement Requests (PR) prior to submission to the contracting office for action. The guidance stipulates that as of April 15, 2008, a PR will not be considered complete unless and until this funding information is included in the PR. Failure to include the Fiscal Year and Treasury Account Symbol on the PR constitutes grounds for the contracting office to reject the PR until such time as the information has been entered.

(2) Treasury Account Symbols were selected as the format for submission in order to be consistent with the Office of Management and Budget (OMB) guidance requiring agencies to migrate to Treasury Account Symbols for agency financial-reporting purposes (OMB Memorandum M-09-19 dated June 1, 2009, Guidance on Data Submissions under the Federal Funding Accountability and Transparency Act).
Accordingly, TAS submissions are necessary for Federal Procurement Data System (FPDS) reporting (see FAR 4.6 and HSAM 3004.6) and DHS Congressional Notification requirements (see HSAM 3005.303-70). Specific laws, such as the American Recovery and Reinvestment Act (Recovery Act) require reporting of transactions to include TAS data in accordance with FAR 4.605 and FAR 4.1501 (also see HSAM 3004.1501).

3032.702-71 Use of private sector financing.

All proposed contract actions, including orders under GSA FSS contracts and orders under indefinite delivery contracts, that use private sector financing shall be approved by the Office of Chief Procurement Officer (OCPO). The HCA shall submit the action, including legal counsel review and approval for legal sufficiency, to the OCPO for approvals.

3032.703-3 Contracts crossing fiscal years.

(b) The COCO is authorized to approve the award of contracts, options, or orders under contracts for severable services for a period beginning in one fiscal year and ending in the next, provided the period of the basic contract, option or order does not exceed one year. Documentation of the approval shall be retained in the contract file.

Subchapter 3032.8 Assignment of Claims

3032.802 Conditions.

(e)(1) The contracting officer is the designated recipient of the document.

3032.803 Policies.

(d) By Memorandum dated October 3, 1995, the President delegated the authority to determine whether to include a no-setoff commitment in any contract, except a contract under which full payment has been made, to the head of the agency. In addition, the memorandum states that the authority could be further delegated. The HCA is authorized, with further authority to redelegate, to determine whether to include a no-setoff commitment in any contract, except a contract where full payment has been made.

Subchapter 3032.9 Prompt Payment

3032.903 Responsibilities.

The Chief Financial Officer (CFO) is delegated the authority to prescribe policies and procedures for prompt payment.

3032.904 Determining payment due dates.

Prior to including a payment clause in a solicitation or contract that will require payments to be made earlier than those specified in the Prompt Payment Act, contracting officers shall consult with their cognizant finance office.

3032.906 Making payments.

(b) The contracting officer is delegated authority to determine whether to make invoice and contract financing payments earlier than 7 days prior to the due dates specified in the contract.

Subchapter 3032.11 Electronic Funds Transfer

3032.1107-70 Payment Information.

DHS has established with the Department of Treasury Regional Financial Center, Kansas City, MO, an electronic communication connection for payments via the Automated Clearinghouse (ACH) (a nationwide electronic payments network). DHS finance offices shall use the information in the Central Contractor Registration database to make EFT payments to contractors.

Subchapter 3032.70 Contract Payments

3032.7000 Scope of subchapter.

This subchapter prescribes policies and procedures for the submission, review, and approval of payments under contracts and orders as defined under FAR Part 16.

3032.7001 Policy.

It is the policy of DHS to perform an in-depth review of all invoices and vouchers submitted by contractors under contracts; therefore, the COCO must ensure that the requirements of this subchapter are met.

3032.7002 Invoice and voucher review and approval.

(a) Contracting officers are ultimately responsible for the review and approval of each invoice and/or voucher submitted by the contractor. However, the contracting officer may delegate to a representative the authority to review and approve invoices submitted for payment under fixed-price contracts. The person delegated this authority must provide a copy of the approved invoice and supporting documents to the contracting officer for the contract file. When invoices and vouchers are reviewed, the extent of the review is dependent upon the terms and conditions of the contract. Appropriate use of sampling is encouraged. The following list is representative of the tasks associated with reviewing and approving invoices and vouchers:

(1) Ensure that the contractor completes and submits the invoice or voucher in accordance with the contract;

(2) Ensure that the invoice or voucher is "proper" as that term is defined in the contract;

(3) Ensure that the billed costs are allocable to the contract and allowable in accordance with FAR Part 31 and any other terms and conditions of the contract;

(4) Ensure that evidence of receipt, inspection, and acceptance of the supplies or services has been received from a Government representative (this may be done electronically);

(5) Ensure that the contractor's progress under the contract is commensurate with the payment requested (i.e., the unliquidated progress payments do not exceed the fair value of the work to be accomplished on the undelivered portion of the contract); and

(6) Ensure that the correct amounts are withheld from the invoice or voucher as required by the contract (i.e., progress payment liquidation, percentage of fixed fee, etc.).

(b) Cost-reimbursement contracts.

(1) When cost-reimbursement payments will be made under the contract, the contracting officer shall obtain the recommendation of Government personnel (e.g., technical representatives, quality assurance inspectors, auditors, etc.) concerning payment of the voucher.

(2) The responsibility for reviewing and recommending approval of vouchers may be delegated by the contracting officer to either the COR or to the Defense Contract Audit Agency. Circumstances that would support delegating the voucher processing to DCAA would include situations where DCAA already audits the contractor. In such cases, it is typically more efficient to use DCAA to process vouchers.

(i) If DCAA is identified in a contract as the cognizant audit office, they are delegated responsibility to review vouchers per the MOU at HSAM Appendix U. The contracting officer shall require that the contractor submit vouchers directly to the cognizant DCAA auditor at the same time as the original is sent to the COR/contracting officer.

(ii) DCAA will review all vouchers in excess of $1 million and review all first vouchers submitted under the contract or delivery order. However, for any particular voucher, the contracting officer can request a DCAA review of that specific voucher if the contracting officer has concerns.

(c) If the contracting officer determines the amount billed is allocable and allowable, he/she shall furnish the designated payment office with written approval of the amount to be paid the contractor. (See Appendix S for a sample format).

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

(1) When processing vouchers for time-and-materials (T&M) or labor-hour contracts, appropriate use of sampling is encouraged for verifying the adequacy of supporting information for the voucher. The responsible Government official should verify:

(i) That the employees meet the qualifications for the labor categories to which they are being billed;

(ii) That the hourly rates for each category on the voucher match the rates specified in the contract for the period being invoiced;

(iii) That the material costs included in the voucher are adequately supported by invoices and/or payment;

(iv) The accuracy of the mathematical calculations contained in the voucher; and

(v) The hours worked against the hours billed for the period.

(2) The responsibility for reviewing and recommending approval of vouchers on T&M and labor-hour contracts may be delegated by the contracting officer to either the COR or to the Defense Contract Audit Agency (DCAA). Circumstances that would support delegating the voucher processing to DCAA would include situations where DCAA already audits the contractor. In such cases, it is typically more efficient to use DCAA to process vouchers.

(i) If DCAA is identified in a contract as the cognizant audit office, it is delegated responsibility to review vouchers per the MOU at HSAM Appendix U. The contracting officer shall require that the contractor submit vouchers directly to the cognizant DCAA auditor at the same time as the original is sent to the COR/contracting officer.

(ii) DCAA will review all vouchers in excess of $1 million and review all first vouchers submitted under the contract or delivery order. However, for any particular voucher, the

contracting officer can request a DCAA review of that specific voucher if the contracting officer has concerns.

3032.7003 Record of payment.

(a) The contracting officer shall establish a record (either hard copy or electronic) of payment file for each contract. The file must provide evidence of the amount paid; any amounts disallowed or withheld, and the rationale for the disallowances or withholdings; balance available for payment under the contract after the invoice or voucher has been paid, and any correspondence to the contractor concerning the payments.

CHAPTER 3033 PROTESTS, DISPUTES, AND APPEALS

Subchapter 3033.1 Protests
3033.102. General.
3033.103 Protests to the agency.
3033.104 Protests to the Government Accountability Office (GAO).

Subchapter 3033.2 Disputes and Appeals
3033.101 Definitions.
3033.203 Applicability.
3033.209 Suspected fraudulent claims.
3033.210 Contracting officer's authority.
3033.211 Contracting officer’s decision.
3033.212 Contracting officer's duties upon appeal.
3033.215 Contract clause.

Subchapter 3033.1 Protests

3033.102 General.

(b) The contracting officer may make the determination.

3033.103 Protests to the agency.

(d)(4) Procedures shall be developed by each Component. Such procedures must consider the use of Alternative Disputes Resolution (ADR) in all protest actions.

3033.104 Protests to the Government Accountability Office (GAO).

(a) *General procedure.* The Chief of the Contracting Office (COCO) shall prepare and provide to the GAO the required agency report. The agency report shall be coordinated with legal counsel before the report is signed and sent to GAO.

(a)(3)(iv)(B) If the protest is made before an award, the agency report shall contain either a statement regarding any urgency for the acquisition and the extent to which a delay in award may result in significant performance difficulties and/or additional Government expense, or, an estimate of the length of time an award may be delayed without difficulty in performance or significant expense.

(a)(4)(i) The protestor's copy shall be hand-carried or express mailed. (Regular mail delivery will not suffice.)

(b) *Protests before award.* The written finding shall be coordinated with legal counsel. A copy of the signed written finding and the signed written notice to GAO shall be provided to the Chief Procurement Officer (CPO) within 2 working days after documents are sent to GAO. In

addition, the applicable Congressional and Public Affairs offices shall be informed of this action in accordance with Component policies and procedures.

Subchapter 3033.2 Disputes and Appeals

3033.201 Definitions.

Agency Board of Contract Appeals (effective January 6, 2007) means the Civilian Board of Contract Appeals (CBCA), and replaces the previous, Department of Transportation Board of Contract Appeals (DOTBCA). The CBCA is the authorized representative of the Secretary of Homeland Security in hearing, considering, and determining all appeals of decisions of contracting officers filed by contractors pursuant to FAR Subpart 33.2.

3033.203 Applicability.

(b)(2) The Head of the Contracting Activity (HCA) shall make the determination that the application of the Contract Disputes Act (CDA) of 1978 to any contract with (1) a foreign government or agency of that government, or (2) an international organization or a subsidiary body of that organization would not be in the public interest. The Transportation Security Administration (TSA) will use the CBCA for CDA matters.

3033.209 Suspected fraudulent claims.

Chiefs of the Contracting Office (COCOs) shall refer these matters to the Office of the Inspector General (OIG) or other appropriate investigative organizations.

3033.210 Contracting officer's authority.

It is the DHS's policy to encourage the use of ADR procedures. A decision to use ADR procedures requires review and approval by legal counsel.

3033.211 Contracting officer's decision.

If a final decision under FAR 33.211, Contracting officer’s decision, results in a contractor owing any amount to the government, the final decision notice to the contractor shall include a demand for payment per FAR 32.604, HSAM 3032.604 and HSAM Appendix AB.

3033.212 Contracting officer's duties upon appeal.

Upon receipt of notice of appeal by a contractor, the contracting officer will notify Component legal counsel, who will appoint an attorney to represent the Government before the CBCA.

3033.213 Contract clause.

When using the clause at FAR 52.233-1, Disputes, with its Alternate I, the contracting officer shall make the determination that continued performance is necessary.

CHAPTER 3034 MAJOR SYSTEMS ACQUISITION

Subchapter 3034.0 General
3034.002 Policy.
3034.004 Acquisition strategy.

Subchapter 3034.2 Earned Value Management System
3034.200 General.
3034.201 Policy.
3034.202 Integrated Baseline Reviews.
3034.204 Procedures.
3034.205 Application of EVMS to other than major system acquisition.

3034.0 General

3034.002 Policy.

Refer to HSAM Chapter 3007 and DHS Directive, 102-01, Acquisition, (previously MD Number 1400, Investment Review process) review and approval requirements for major systems acquisitions.

3034.004 Acquisition strategy.

For the purposes of this section, acquisition strategies means acquisition plans for major system acquisitions. Acquisition plans for major system acquisitions shall be in writing and prepared in accordance with FAR Subpart 7.1, HSAM Chapter 3007, the DHS Acquisition Planning Guide (HSAM Appendix H), and DHS Directive 102-01, Acquisition Management Directive.

3034.2 Earned Value Management System

3034.200 General.

(a) Authority.

(1) Title V of the Federal Acquisition Streamlining Act of 1994 (FASA) requires agency heads to approve or define the cost, performance, and schedule goals for major acquisitions and achieve, on average, 90% of the cost, performance and schedule goals established.

(2) The Clinger-Cohen Act of 1996 requires the Director of Office of Management and Budget (OMB) to develop, as part of the budget process, a process for analyzing, tracking, and evaluating the risks and results of all major capital investments for information systems for the life of the system.

(3) OMB Circular No. A-11, Part 7, Planning, Budgeting, Acquisition, and Management of Capital Assets and its supplement, Capital Programming Guide, were written to meet the requirements of FASA and the Clinger Cohen Act. In addition, OMB Circular No. A-11 requires the use of an Earned Value Management System (EVMS) that meets the American National Standards Institute (ANSI)/Electronics Industries Alliance (EIA) Standard - 748 for both Government and contractors.

3034.201 Policy.

(a) This subchapter provides the policies and procedures for incorporating an Earned Value Management System (EVMS) in DHS contracts in accordance with OMB Circular No. A-11, Part 7 and DHS Guidance on EVMS. Earned Value Management (EVM) integrates the statement of work, schedule, and cost to create an aggregate picture of performance, which helps ensure that day-to-day decisions on performance for development efforts are consistent with program objectives. EVM can help to identify cost and/or schedule overruns and to provide a forecast of final cost and schedule outcomes.

(1) The policies and procedures set forth in this subchapter apply to all DHS programs. The program manager and contracting officer shall collaborate when incorporating EVMS in acquisitions as described in this subchapter. The contracting officer shall include the EVM requirements on all development contracts with a total contract value over $20 million regardless of contract type if there is a significant amount of cost, schedule or performance risk associated with the development. In addition, the DHS programs that meet the definitions in (i) or (ii) below shall include EVM in all development contracts regardless of the total contract value.

(i) Major system, as defined in HSAM Appendix H, Part III;

(ii) Major acquisitions or investments. As defined in OMB Circular No. A-11, Part 7, a major acquisition/investment means a system or project requiring special management attention because of its importance to the mission or function of the agency, a component of the agency or another organization; is for financial management and obligates more than $500,000 annually; has significant program or policy implications; has high executive visibility; has high development, operating, or maintenance costs; or is defined as major by the agency's capital planning and investment control process. For DHS programs, the DHS Chief Financial Officer and Chief Information Officer have implemented this to include Level 1, Level 2, and Level 3 investments, as defined in DHS Directive 102-01, Acquisition, and supplemental instructions.

(iii) EVMS may be used at the discretion of the program manager for contracts on programs meeting the criteria in 3034.201(a)(1) that are valued at less than $20 million but greater than $5 million, and on other than major systems acquisition for developmental contracts valued at less than $20 million but greater than $5 million. The program manager's decision shall be risk-based. A cost-benefit analysis shall be

conducted before deciding to implement EVM in contracts that are valued at less than $20 million.

(b) DHS will determine the adequacy of the contractor's proposed EVMS plan in accordance with the DHS Earned Value Management System Guidance version in effect at time of award.

(c) The contracting officer shall include a requirement for the prime contractor to report EVM data to the program office in accordance with the DHS Earned Value Management System Guidance version in effect at the time the solicitation is prepared.

3034.202 Integrated Baseline Reviews.

(d)(i) Integrated Baseline Reviews (IBR) are normally conducted after award. The program manager shall conduct the IBR in accordance with the DHS Earned Value Management System Guidance. Post-award IBRs shall be completed within ninety days of contract award.

(ii) If approved by the HCA, IBRs may be conducted before award. Pre-award IBRs are appropriate only when the IBR results are essential for the source selection process and the program has adequate funding to conduct IBRs.

3034.204 Procedures.

(a) When EVMS is included on a contract with a total contract value greater than $50 million, the DHS program office is responsible for verifying the adequacy of the EVMS plan for contracts in this category and for performing EVMS surveillance. Descriptions of EVM verification and surveillance procedures are described in the Office of Chief Information Officer's (OCIO's) EVM Guidance. If the contractor does not have a verified system at time of contract award, the contractor's EVM plan will be evaluated for approval prior to award.

(b) When EVMS is included on a contract with a total contract value greater than $20 million but less than $50 million, the contractor is responsible for verifying the adequacy of the EVMS plan for contracts in these categories, and the Government is responsible for performing surveillance. Descriptions of EVM verification and surveillance procedures are described in the OCIO's EVM Guidance. If the contractor does not have a verified system at time of contract award, the contractor's EVM plan will be evaluated for approval prior to award.

(c) Program managers and contracting officers shall collaborate to identify contracts for which EVMS will apply within programs and projects and to ensure that the following requirements are met:

(1) Adequate budget authority is provided for the conduct of the EVMS review, if required, and the Integrated Baseline Review (IBR);

(2) EVMS requirements are addressed appropriately in the Statement of Work and Contract Deliverables; using language substantially the same as the language provided in the DHS EVMS Earned Value Management System Guidance; and

(3) Acquisition planning is accomplished in accordance with FAR Part 7 and HSAM, Subchapter 3007.103 and Appendix H.

(d) DHS will determine the adequacy of the contractor's proposed EVMS plan in accordance with DHS Earned Value Management Guidance, version in effect at time of award.

(e) For contracts which contain EVM, the contracting officer shall include the requirement that the prime contractor submit EVM reports in accordance with DHS Earned Value Management Guidance version in effect at time of the solicitation. These reporting requirements shall be included as contract data deliverables in the applicable solicitation and contract.

3034.205 Application of EVMS to other than major systems acquisitions,

(a) EVMS is mandatory on other than major systems acquisition for developmental contracts greater than $20 million but less than $50 million. The contractor is responsible for verifying the adequacy of the EVMS plan for contracts in this category, and the Government is responsible for performing surveillance. Descriptions of EVM verification and surveillance procedures are described in the OCIO's EVM Guidance. If the contractor does not have a verified system at time of contract award, the contractor's EVM plan will be evaluated for approval prior to award.

(b) EVMS may be used at the discretion of the program manager on other than major systems acquisition for developmental contracts valued at less than $20 million but greater than $5 million. The program manager's decision shall be risk-based. A cost-benefit analysis shall be conducted before deciding to implement EVM in low value contracts.

CHAPTER 3035 RESEARCH AND DEVELOPMENT CONTRACTING

Subchapter 3035.0 Scope
3035.017 Federally Funded Research and Development Centers (FFRDC).
3035.017-2 Establishing or changing an FFRDC.

Subchapter 3035.0 Scope.

3035.017 Federally Funded Research and Development Centers.

3035.017-2 Establishing or changing an FFRDC.

(j) The Secretary, acting through the Under Secretary for Science and Technology is authorized to establish or change the basic purpose and mission of an FFRDC under FAR 35.017-2(j).

CHAPTER 3036 CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Subchapter	**3036.2**	**Special Aspects of Contracting for Construction**
	3036.203	Government estimate of construction costs.
	3036.206	Liquidated damages.
	3036.208	Concurrent performance of firm-fixed-price and other types of construction contracts.
	3036.209	Construction contracts with architect-engineer firms.
	3036.212	Preconstruction orientation.
	3036.212-70	Contracting with the National Institute of Building Sciences.
	3036.213	Special procedures for sealed bidding in construction contracting.
	3036.213-2	Presolicitation notices.
	3016.213-70	Report of proposed federal construction.
Subchapter	**3036.6**	**Architect-Engineer Services**
	3036.602	Selection of firms for architect-engineer contracts.
	3036.602-1	Selection criteria.
	3036.602-2	Evaluation boards.
	3036.602-3	Evaluation board functions.
	3036.602-4	Selection authority.
	3036.602-5	Short selection process for contracts not to exceed the simplified acquisition threshold.
	3036.603	Collecting data on and appraising firms' qualifications.
	3036.605	Government cost estimate for architect-engineer work.
	3036.606	Negotiations.
	3036.606-70	General.
	3036.609	Contract clauses.
	3036.609-1	Design within funding limitations.

Subchapter 3036.2 Special Aspects of Contracting for Construction

3036.203 Government estimate of construction costs.

(a) The Government estimate must be designated "For Official Use Only" unless the nature of the information therein requires a security classification, in which event it shall be handled in accordance with applicable security regulations. The "For Official Use Only" designation must be removed only when the estimate is made public in accordance with the instructions below.

(b) If the acquisition is by sealed bidding, a sealed copy of the detailed Government estimate must be filed with the bids until bid opening. After the bids are read and

recorded, the "For Official Use Only" designation must be removed and the estimate read and recorded in the same detail as the bids.

(c) If the acquisition is by negotiation, the following procedures apply:

(1) The overall amount of the Government estimate must not be disclosed prior to award;

(2) At the time of award, the "For Official Use Only" designation on the Government estimate must be removed; and

(3) After award, the Government estimate may be revealed, upon request.

3036.206 Liquidated damages.

Liquidated damages provisions are generally appropriate in construction contracts in accordance with the provisions of FAR 11.500.

3036.208 Concurrent performance of firm-fixed-price and other types of construction contracts.

The Chief of the Contracting Office (COCO) is delegated the authority to approve the use of cost-plus-fixed-fee, price-incentive, or other types of contracts with cost variation or cost adjustment features concurrently at the same work site with firm-fixed-price, lump sum, or unit price contracts.

3036.209 Construction contracts with architect-engineer firms.

The Head of the Contracting Activity (HCA) or designee no lower than a Senior Executive Service (SES) or flag officer level may approve the award of a contract for the construction of a project to the firm that designed the project or its subsidiaries or affiliates. COCOs must submit requests to include: (1) the reason(s) why award to the design firm is required; (2) an analysis of the facts involving potential or actual organizational conflicts of interest, including benefits and detriments to the Government and prospective contractor; and (3) measures to be taken to avoid, neutralize, or mitigate conflicts of interest.

3036.212 Preconstruction orientation.

(b) DHS Form 700-11, "Preconstruction Conference Agenda and Checklist," or a similar checklist, must be used as the agenda of, or checklist for, the preconstruction conference.

3036.212-70 Contracting with the National Institute of Building Sciences.

(a) The National Institute of Building Sciences (NIBS) was chartered in 1974 to provide advice to the public and private sectors on issues involving new building technology and the building regulatory process. Public Law 93-383, Housing and Community

Development Act of 1974, specifically authorizes agencies to contract with and accept contracts from the NIBS for specific services where deemed appropriate by the responsible Federal officials involved. NIBS provides assistance or advice on building-related matters by processing:

(1) On-line databases on current developments in building science and technology in areas such as architecture and engineering, products and materials, health and safety, and codes and standards; and

(2) Information pertaining to asbestos in public buildings and lead-based paint poisoning, energy efficiency in offices and industrial buildings, and seismic safety of buildings.

(b) Section 809(g)(3) of Public Law 93-383 expressly authorizes agencies and departments to contract with NIBS. In this regard, the exception to full and open competition at FAR 6.302-5 may be used, if the contracting officer determines this to be an appropriate exception, to award such contracts. However, the exception to full and open competition at FAR 6.302-1 should be used when it is determined that NIBS, because of its unique capabilities and charter, is the only source that will satisfy the requirement.

(c) The synopses requirements at FAR 5.2 are applicable unless a waiver is granted pursuant to FAR 5.202(b).

3036.213 Special procedures for sealed bidding in construction contracting.

3036.213-2 Presolicitation notices.

(a) The COCO may waive the requirement to send pre-solicitation notices to prospective bidders on any construction requirement when the proposed contract is expected to equal or exceed the simplified acquisition threshold.

3036.213-70 Report of proposed Federal construction.

(a) Section 1.4 of the Davis-Bacon Procedural Rules, 29 CFR Part 1, Procedures for Predetermination of Wage Rates, requires agencies using wage determinations under the Davis-Bacon Act, among other statutes, to furnish the Administrator, Department of Labor (DOL), a general outline of its proposed construction programs for the coming year indicating the estimated number of projects for which wage determinations will be required, the anticipated types of construction, and the locations of construction.

(b) Components shall include the anticipated types and locations for proposed construction projects in the DHS electronic Acquisition Planning Forecast System (APFS) database detailed at HSAM Subchapter 3007.172 and available at http://APFS.DHS.GOV. The OCPO will consolidate the Component reported data and transmit a collective report to DOL.

Subchapter 3036.6 Architect-Engineer Services

3036.602 Selection of firms for architect-engineer contracts.

3036.602-1 Selection criteria.

(b) The COCO is authorized to approve the use of design competition. Approval must be obtained prior to soliciting proposals.

3036.602-2 Evaluation boards.

The COCO must establish one or more ad hoc Architect-Engineer (A-E) evaluation boards for each acquisition of A-E services. For A-E acquisitions exceeding the simplified acquisition threshold, the following requirements apply in addition to FAR 36.602-2:

(a) The A-E evaluation board(s) must be composed of the following members:

(1) One member with experience in acquisition of A-E services (normally the contracting officer or contract specialist/negotiator);

(2) One or more members with technical experience in the fields of architecture, engineering or construction (normally someone from the organization responsible for establishing the A-E work requirements);

(3) One member with technical knowledge of the functional (user) requirements of the project; and

(4) Other special members as are deemed necessary.

(b) A-E board members may be appointed from among highly qualified professional employees of other Government agencies or the private sector who are engaged in the practice of architecture, engineering, construction, or related professions.

3036.602-3 Evaluation board functions.

The HCA retains the authority to direct the functions of the evaluation board.

(a) For A-E acquisitions exceeding the simplified acquisition threshold, the A-E evaluation board must perform the following functions in addition to, or in combination with, those of FAR 36.602-3, and in the sequence indicated:

(1) Analyze the nature and scope of the project work requirements.

(2) Develop the evaluation criteria and rating systems to be used in screening firms for the pre-selection list and in the final selection. The screening criteria should be based on

information provided by the Standard Form (SF) 330, Architect-Engineer Qualifications.

(3) Prepare the public announcement (see FAR 5.205(d)) for the project and provide it to the contracting officer for publication.

(4) Screen the SF 330s and any other qualification data received in response to the public announcement of the project and prepare a pre-selection list of the best qualified firms for further consideration. The preselection list must consist of at least three firms.

(5) When appropriate, obtain in writing more specific and detailed qualification, experience and past performance data (see FAR 36.602-1(a)) not provided by the SFs 330 that are needed to evaluate the firms using the established selection criteria. The firms should also be provided with a description of the nature and the scope of work to be accomplished to assist them in their responses. The A-E firms shall be advised not to submit price proposals, design sketches, drawings or design data at the time the qualification and past performance information is submitted.

(6) Conduct interviews with the firms on the preselection list. As part of the interview, the A-E firms shall be given an opportunity to make an oral presentation of their qualifications and experience, proposed project approach and any other relevant data. The program and project manager and other key project personnel and consultants proposed by a firm should participate in the interview.

(7) Whenever it is practical and advantageous, the A-E evaluation board should visit the offices of the A-E firms on the preselection list to inspect their facilities and work environments, to meet members of the proposed project team, and to see both work in progress and additional examples of completed projects.

(8) Review the SF 330s for other experience and qualification data for each firm on the preselection list, and perform a systematic numerical evaluation rating of the firms.

(9) Develop a rank order listing of at least three firms considered most highly qualified to perform the required work, based on the numerical evaluation ratings of the firms on the preselection list.

(10) Prepare a report which shall include in sufficient detail:

(i) The extent of the board's review and evaluation;

(ii) The list described in paragraph (i) of this section;

(iii) Recommendations; and

(iv) Considerations on which the recommendations are based.

(d) The COCO is delegated the authority to receive the report prepared by the evaluation

board.

3036.602-4 Selection authority.

(a) The COCO is authorized to make the final selection of the most highly qualified firms.

(b) The recommendations of the evaluation board will normally be approved, unless the report does not adequately support the recommendations. If recommendations are not approved, the A-E evaluation board shall be required to reconvene until an acceptable set of recommendations is agreed upon. The approved report serves as authorization for the contracting officer to commence negotiations with the A-E firm ranked number one by the A-E evaluation board.

3036.602-5 Short selection process for contracts not to exceed the simplified acquisition threshold.

Components are authorized to use either of the short selection processes of FAR 36.602-5.

(b) *Selection by the chairperson of the board.* The COCO is authorized to review and approve the selection report.

3036.603 Collecting data on and appraising firms' qualifications.

Because it is DHS policy to establish ad hoc evaluation boards instead of a permanent board to select A-E firms, each Component must establish or designate an office or offices to meet the requirements of FAR 36.603(a).

3036.605 Government cost estimate for architect-engineer work.

(b) Contracting officers may release Government estimates on an as-needed basis.

3036.606 Negotiations.

3036.606-70 General.

The limitation on A-E fees of six percent of the estimated construction cost (see FAR 15.404-4(c)(4)(i)(B)) applies to all services that are an integral part of the production and delivery of plans, designs, drawings and specifications of a construction project. The limitation, however, does not apply to the cost of investigative and other services including but not limited to the following:

(a) Development of program requirements (scope of work);

(b) Determination of project feasibility;

(c) Preparation of drawings of an existing facility, where current drawings are not available;

(d) Subsurface investigations (soil borings);

(e) Structural, electrical and mechanical investigations of an existing building, where current information is not available;

(f) Surveys: topographic, boundary, utility;

(g) Preparation of models, color renderings, photographs or other presentation materials;

(h) Travel and per diem for special presentations;

(i) Supervision and inspection of construction;

(j) Preparation of operating and maintenance manuals; and

(k) Master planning.

3036.609 Contract clauses.

3036.609-1 Design within funding limitations.

(c) The HCA may determine in writing not to include clause FAR 52.236-22, Design within Funding Limitations, in fixed-priced A-E contracts because: (1) cost limitations are secondary to performance consideration and additional project finding can be expected, if necessary, (2) the design is for a standard structure and is not intended for a specific location, or (3) there is little or no design effort involved.

CHAPTER 3037 SERVICE CONTRACTING

Subchapter	**3037.1**	**Service Contracts—General**
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	3037.104	Personal services contracts.
	3037.104-70	Personal services contracts.
	3037.106	Funding and term of service contracts.
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	3037.503	Agency-head responsibilities.
Subchapter	**3037.6**	**Performance-Based Acquisition**
	3037.601	General.

Subchapter 3037.1 Service Contracts-General

Subchapter 3037.103 Contracting officer responsibility.

(a) Ensure that procurement requests for Departmental branding strategies, seals and logos or similar services are consistent with guidance and policy contained in the Management Directive (MD) 0030, Use of Department of Homeland Security Seal.

(e) Consistent with FAR 7.503, contracting officers must review all requirements for services to ascertain whether a prohibition on contractor support in drafting congressional testimony, responses and reports (or other prohibitions identified in FAR 7.503(c)(20)) should be included within any resultant solicitation, contract or order. For those requirements identified by the contracting officer as requiring such a prohibition: ensure that all solicitations, contracts and orders for services include a prohibition against any form of contractor support in the preparation of congressional testimony, responses and reports (or other prohibitions identified in FAR 7.503(c)(20); further, ensure that all interagency agreements that may result in assisted acquisitions contain an identical prohibition with respect to any contracts or orders for services to be awarded by a servicing agency on behalf of DHS.

Subchapter 3037.104 Personal services contracts.

Subchapter 3037.104-70 Personal services contracts.

(b) The Department of Homeland Security was given the Personal Services Contracting (PSC) authority in the Homeland Security Act (HSA) Section 832(1) and (2).

(1) The rate of pay for services rendered by an expert or consultant cannot exceed the daily equivalent of the maximum rate payable for a senior-level position under 5 U.S.C. 3109 for PSCs authorized under the Homeland Security Act (HSA) Section 832(1). If the services are determined to be necessary due to urgent homeland security needs under HSA Section 832(2) and justified in a Determination and Findings (D&F), pay limitations do not apply (See 5 U.S.C. 5376).

(2) The duration of the PSC must conform to one of the following scenarios:

(i) HSA Section 832(1): The duties are of a temporary nature and the consultant will work on a full-time basis for a maximum of 2 years, an initial appointment not to exceed one year and a possible reappointment (option) not to exceed 1 additional year; or, the duties are of an intermittent or part-time nature and the total time will not exceed the 2 year limitation or the cumulative earnings will have a lifetime limit of twice the maximum annual rate payable under the annualized basic pay limitations of 5 U.S.C.3109 and 5 U.S.C. 5376.

(ii) HSA Section 832(2): The duties are in response to an urgent homeland security need, will not exceed an initial one year period, but may have a possible reappointment (option) not to exceed one additional year and the pay limitations of 5 U.S.C. 3109 are waived.

(3) The following are requirements that must be satisfied to use the authority.

(i) Verify it would not be practicable to obtain such services by other means (See FAR 37.104 for the definition of a PSC).

(ii) Verify that the contract will not involve the following:
(A) A position requiring Presidential appointment;
(B) A Senior Executive Service Position;
(C) Performance of managerial or supervisory work;
(D) Work currently being performed by your regular employees;
(E) Filling in for staffing shortages; and
(F) Providing that individual a career appointment.

(iii) Prepare a determination and findings (D&F) in accordance with FAR 1.7 and include a determination that states the following:

(A) The duties are of a temporary nature and the consultant will work on a full-time basis for a maximum of 2 years, an initial appointment not to exceed one year and a reappointment not to exceed one additional year; or, the duties are of an intermittent nature or part-time nature and the total time will not exceed the 2 year limitation or the

cumulative earnings will have a lifetime limit of twice the maximum annual rate payable under the annualized basic pay limitations of 5 U.S.C. 3109 and 5 U.S.C. 5376; or, HSA Section 832(2): The duties are in response to an urgent homeland security need, will not exceed an initial one year period, but may have a possible reappointment (option) not to exceed one additional year and the pay limitations of section 3109 are waived.

(B) DHS personnel with necessary skills are not available;

(C) The contract will not fill a staffing shortage;

(D) Excepted appointment cannot be obtained;

(F) A non-personal services contract is not practicable;

(G) If the pay limitation of 5 U.S.C. 3109 is exceeded, the D&F supports the rationale and includes the finding that the services are necessary due to urgent homeland security needs; and

(H) Any other determination required by statues has been made.

(iv) Coordinate benefits, taxes, personnel ceilings, or conflict of interest matters with the cognizant civilian personnel office.

(4) Legal Review: Legal review is required for personal services contracts in accordance with FAR 37.104(e).

(5) Approval: The Chief of the Contracting Office (COCO) shall approve the required D&F unless the personal services contract for experts and consultant services are acquired without regard to the pay limitation of 5 U.S.C. 3109 in which case, the Head of the Contracting Activity (HCA) shall approve.

(6) Additional Considerations: The contract may provide for the same per diem and travel expenses authorized for a Government employee, including actual transportation and per diem in lieu of subsistence for travel between home or place of business and official duty station and only for travel outside the local area in support of the statement of work.

(7) Reporting Requirements: In accordance with 5 U.S.C. 3109, each agency shall report to the Office of Personnel Management on an annual basis with respect to:

(i) The number of days each expert or consultant employed by the agency during the period was so employed; and

(ii) The total amount paid by the agency to each expert and consultant for such work during the period.

(iii) In order to comply with this requirement, each Component shall maintain a record of the above information for inclusion in a consolidated agency report.

3037.106 Funding and term of service contracts.

(b) The Chief of the Contracting Office (COCO) is delegated this authority.

3037.112 Government use of private sector temporaries.

(a) Definitions. The following words and terms are used in and defined for this subsection.

"*Critical need*" means a sudden or unexpected occurrence; an emergency; a pressing necessity; or an exigency. Such occasions are characterized by additional work or deadlines required by statute, executive order, court order, regulation, or formal directive from the Secretary of Homeland Security or designee. A recurring, cyclical peak workload, by itself, is not a critical need.

"*Federal supervisor*" means an individual employed by DHS to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment.

"*Parental and family responsibilities*" means situations such as absence for pregnancy, childbirth, child care, and care for elderly or infirm parents or other dependents.

"*Temporaries*" means those employees of a temporary help service firm who are supervised and paid by that firm and whom that firm assigns to perform the contract work assignments.

"*Temporary help service firm*" means a contractor which provides services that are performed by its pool of employees possessing the appropriate work skills for brief or intermittent periods. The firm is the legally responsible employer and maintains that relationship during the time its employees are assigned to the contract. The firm recruits, tests, hires, trains, assigns, pays, provides benefits and leave to, and as necessary, addresses performance problems, disciplines, and terminates its employees. The firm is responsible for payroll deductions and payment of income taxes, social security (FICA), unemployment insurance, and worker's compensation, and any required liability insurance and bonding.

(b) *Policy*. Temporary help services may be acquired for the brief or intermittent use of the skills of private sector temporaries. Acquisition of these services is subject to the following conditions:

(1) The temporary will be performing the work of an employee who will be absent from the position for a temporary period (short-term) because of a personal need including emergency, accident, illness, parental or family responsibilities, or mandatory jury service.

(2) In the judgment of the head of the requesting office, the temporary help is for a critical need which cannot be delayed.

(c) *Exceptions.* Temporary help services cannot be acquired--

(1) To displace a Federal employee;

(2) For the work of managerial or supervisory positions;

(3) For the work of or to fill an Senior Executive Service (SES) employee or position; or

(4) To circumvent the regular recruitment and hiring procedures under the civil service laws for permanent appointment in the competitive civil service.

(5) To circumvent controls on employment levels; or

(6) In lieu of appointing a surplus or displaced Federal employee as required by 5 CFR Part 330, Subpart F (Agency Career Transition Assistance Plan for Displaced Employees) and Subpart G (Interagency Career Transition Assistance Plan for Displaced Employees).

(d) *Certification of need.* The requirements office must submit a Checklist for Private Sector Temporary Personnel, Appendix T, with the procurement request (PR) for temporary help services. The entire checklist must be completed, including the certification of the regulatory requirements by the Chief Human Capital Officer or Component servicing Human Resource Official.

(e) *Acquisition and contract requirements.* The contracting officer shall comply, as applicable, with all of the policy and procedures of the FAR to acquire temporary help services by contract. The following limitations apply:

(1) The contract shall not create or imply an employer-employee relationship between the Government and the contractor's temporary, and the temporary shall not be eligible for civil service employee benefits, including retirement; and

(2) *Time limit on use of temporary help service firm.* The contract shall not require the use of a temporary help service firm in a single situation, as defined at HSAM 3037.112(a), initially for more than 120 workdays. However, if the Government employee's absence or DHS’s critical need continues to exist beyond the initial 120 workdays, the temporary help services may be extended up to a maximum limit of 240 workdays.

(3) *Time limit on use of individual employee of a temporary help service firm.* The contract shall not require that a temporary at an office work for more than 120 workdays in a 24-month period. The 24-month period begins on the first day of assignment. However, the temporary may work up to a maximum of 240 workdays if it is determined that using the services of the same individual for the same situation will prevent significant delay.

(f) *Approval for extended services by the Component personnel office.* If the requiring office desires to retain the services of the same temporary help service firm beyond 120 workdays, or needs to use a temporary beyond the 120 workdays, the requiring office must submit information to the Component personnel office for approval. The Component personnel office should receive the notification at least 10 working days before the 120 workday period expires. The information required for submission is:

(1) A full justification for the extension beyond the 120 workday period;

(2) The new termination date or number of extra workdays needed;

(3) The total number of days worked by the current temporary and the reason for using the individual;

(4) The importance of the work to be done and the impact of delay or interruption; and

(5) The actions taken to find other solutions, and the availability of external and internal candidates.

(g) *Contract administration.* The office receiving the temporary shall ensure that an employer-employee relationship is not established with the contractor's temporary. However, technical advice, assignment of task, task-related instructions, office orientation, and review of the temporary's work products are necessary to ensure that the temporary performs the requisite services.

3037.112-70 Stenographic reporting services.

(a) The contracting officer is delegated authority under 5 U.S.C. 3109 to procure stenographic services by contract.

3037.113-1 Waiver of cost allowability limitations.

(a) The Head of the Contracting Activity (HCA) is delegated this authority.

Subchapter 3037.2 Advisory and Assistance Services

3037.203 Policy.

3037.203-70 Services of individual experts and consultants.

(a) The Chief of the Contracting Officer (COCO) is delegated authority under 5 U.S.C. 3109 (to procure by contract the temporary or intermittent services of experts or consultants or an organization thereof, if such an acquisition is authorized by an appropriation or other statute).

(b) The rate of pay for services rendered by an expert or consultant is limited and cannot be exceeded unless specifically authorized by the appropriation or other statute which authorizes the acquisition of the services. The rate of pay for services rendered by a consultant to an advisory committee is governed 41 CFR, Subpart 101-6.10.

(c) Because the statutes governing the acquisition of and rate of pay for these services are subject to change, the contracting officer must seek the advice of the Component's legal counsel prior to taking action on the procurement request for such services.

3037.203-71 Third party benefits.

When a contract calls for providing technical assistance or advice that will benefit a third party, these services are advisory and assistance in the context of any regulation, statute, or guidance on these services. While these services may ultimately benefit an external or third party such as grantees or the states, the services are being acquired to accomplish the program objectives of DHS.

3037.204 Guidelines for determining availability of personnel.

(a), (b), and (d). The COCO is delegated the authorities at FAR 37.204.

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

3037.205 Contracting officer responsibilities.

In addition to the requirement of FAR 37.205, the contracting officer must ensure that the requirements of FAR 9.5 and HSAR 3052.209-70 are met regarding potential organizational and consultant conflicts of interest.

Subchapter 3037.5 Management Oversight of Service Contracts

3037.503 Agency-head responsibilities.

(a) and (b) The contracting officer must ensure that requirements for services are clearly defined, appropriate performance standards are developed, and that service contracts are awarded and administered in a manner that will provide the customer its supplies and services timely and within budget.

(c) and (d) The HCA must ensure that procedures are in place for service contracting to ensure that inherently governmental functions are performed by Government personnel and that appropriate strategies and training are initiated for performance-based acquisitions.

Subchapter 3037.6 Performance-Based Acquisition

3037.601 General.

DHS contracting officers should make use of the web-enabled guide entitled "Seven Steps to Performance-Based Acquisition," currently sponsored by GSA at the following website: http://www.acquisition.gov/comp/seven_steps/home.html.

CHAPTER 3038

FEDERAL SUPPLY SCHEDULE CONTRACTING

(RESERVED)

There is no text implementing or supplementing FAR Part 38.

CHAPTER 3039 ACQUISITION OF INFORMATION TECHNOLOGY

Subchapter 3039.1 General
3039.101 Policy.

Subchapter 3039.2 Electronic and Information Technology
3039.203 Applicability.
3039.204 Exceptions.

Subchapter 3039.1 General

3039.101 Policy.

(b)(1) Department of Homeland Security Management Directives (MDs) that apply to the acquisition of Information Technology (IT) and provide policy and guidance for the information resource management and IT program are:

(i) MD Number 4200.1, IT Capital Planning and Investment Control (CPIC) and Portfolio Management;

(ii) DHS Directive 102-01, Acquisition (previously MD Number 1400, Investment Review Process); and

(iii) MD Number 4300.1, Information Technology Systems Security.

(iv) MD Number 4010.2, Section 508 Program Management Office and Electronic and Information Technology Accessibility; and

(v) MD 0007.1, Information Technology Integration and Management.

(2) See HSAM 3004.470 for security requirements for contractor access to unclassified IT resources.

(3) See HSAM 3004.13 for HSPD-12 acquisition guidance. DHS supports continued implementation of HSPD-12 (see OMB Guidance No. M-11-11, dated February 3, 2011).

3039.2 Electronic and Information Technology

3039.203 Applicability.

(a)(1) Refer to the current version of DHS MD Number 4010, Section 508 Program Management Office & Electronic and Information Technology Accessibility. This MD applies to the acquisition of Electronic Information Technology (EIT). Exception determinations shall be justified in writing by the requiring official, approved in accordance with Component established procedures and forwarded with the Purchase request to the contracting officer to include in the contract file. See HSAM 3039.204(e)

regarding the additional review and approval requirements for the Undue Burden exception.

(2) Contracting offices shall review procurement requests to ensure that documentation required by MD Number 4010.2 is included. Contact the requiring activity to resolve discrepancies.

(3) Additional specific language for identification of applicable exceptions and standards can be obtained in consultation with the DHS Office of Accessible Systems and Technology (OAST) via the DHS Accessibility Help Desk at accessibility@dhs.gov. To implement the Section 508 requirements, requiring and ordering offices shall ensure that statements of work for solicitations of EIT developed, procured, maintained and/or used are in compliance with the "Electronic and Information Technology Accessibility Standards" set forth by the Architectural and Transportation Barriers Compliance Board (also referred to as the "Access Board") in 36 CFR Part 1194. The standards are also set forth in MD Number 4010.2, Appendices A through H. In addition to the FAR requirements for acquisitions to contain specific applicable standards or exceptions delineated, DHS solicitations shall require (where appropriate) that any deliverables produced as a result of a contract of EIT be accompanied by specific Section 508 test results and subject to further evaluation and verification by the Department of Homeland Security prior to final acceptance.

3039.204 Exceptions.

Pursuant to MD 4010.2, VI. A., all National Security and Undue Burden exception determinations shall be forwarded to the DHS Office of Accessible Systems and Technology for review and approval. All other exception requests shall be forwarded to the Component-level Section 508 Coordinator for review and approval.

CHAPTER 3040

(RESERVED

CHAPTER	**3041**	**ACQUISITION OF UTILITY SERVICES**
Subchapter	**3041.1**	**General**
	3041.103	Statutory and delegated authority.
Subchapter	**3041.2**	**Acquiring Utility Services**
	3041.201	Policy.
Subchapter	**3041.5**	**Solicitation Provision and Contract Clauses**
	3041.501	Solicitation provision and contract clauses.

Subchapter 3041.1 General

3041.103 Statutory and delegated authority.

(c) Requests for individual and class certifications, that allow for delegations of authority from GSA for utility service contracts for periods over one year and not greater than ten years, shall be referred by the Head of the Contracting Activity (HCA) to the Chief Procurement Officer (CPO) through PROCUREMENT.Support@dhs.gov. As part of the request, HCAs must attest in writing that the Component has:

(1) An established acquisition program;

(2) Personnel technically qualified to deal with specialized utilities problems; and

(3) The ability to accomplish its own pre-award contract review.

Subchapter 3041.2 Acquiring Utility Services

3041.201 Policy.

(d)(2)(i) The contracting officer is authorized to enter into a contract pursuant to 42 U.S.C. 8287 (which pertains to the subject of shared energy savings including cogeneration).

(d)(3) The contracting officer is delegated the authority for FAR 41.201(d)(3).

Subchapter 3041.5 Solicitation Provision and Contract Clauses

3041.501 Solicitation provision and contract clauses.

(a) Variations in the provisions and clauses shall be reviewed by counsel for legal sufficiency.

CHAPTER 3042 CONTRACT ADMINISTRATION AND AUDIT SERVICES

Subchapter	**3042.002**	**Interagency agreements**
Subchapter	**3042.1**	**Contract Audit Services**
	3042.102	Assignment of contract audit services.
	3042.170	Contract audit follow-up.
Subchapter	**3042.2**	**Contract Administration Services**
	3042.202	Assignment of contract administration.
Subchapter	**3042.270**	**Contracting Officer Representative (COR)**
	3042.270-1	Policy.
	3042.270-2	COR Appointment letter**.**
	3042.270-3	Procedures for issuance of COR Appointment Letter.
	3042.270-4	Procedures for issuance of COR Supervisor Notification letter.
Subchapter	**3042.3**	**Contract Administration Office Functions**
	3042.302	Contract administration functions.
	3042.302-70	Earned value management.
	3042.302-71	Trafficking in persons.
Subchapter	**3042.6**	**Corporate Administrative Contracting Officer**
	3042.602	Assignment and location.
Subchapter	**3042.7**	**Indirect Cost Rates**
	3042.703	General.
	3042.703-1	Policy.
	3042.703-2	Certificate of indirect costs.
	3042.705	Final indirect cost rates.
	3042.705-1	Contracting officer determination procedures.
	3042.705-3	Educational institutions.
	3043.708	Quick-closeout procedures.
	3042.708-70	DHS quick-closeout procedures.
Subchapter	**3042.8**	**Disallowance of Costs**
	4032.803	Disallowing costs after incurrence.
Subchapter	**3042.15**	**Contractor Performance Information**
	3042.1502	Policy.
	3042.1503	Procedures.
	3042.1503-70	Contractor Performance Assessments.

Subchapter 3042.002 Interagency agreements.

(c) Memoranda of Understanding (MOU) and Memoranda of Agreement (MOA) for audit services and contract administration respectively are established between the Department of Homeland Security and the Department of Defense components. (See Appendix U, Contract Audit Services Memorandum of Understanding and Appendix V, Contract Administration Services Memorandum of Agreement with the Defense Contract Management Agency (DCMA)).

Subchapter 3042.1 Contract Audit Services

3042.102 Assignment of contract audit services.

(a) Contracting offices shall follow the procedures under the MOU between DHS and the Defense Contract Audit Agency (DCAA) to order audit services. (See Appendix U, Contract Audit Services Memorandum of Understanding.)

3042.170 Contract audit follow-up.

OCPO shall be responsible for audit follow-up. This follow-up shall occur on a quarterly basis. OCPO shall obtain a listing of all open audits from DCAA. A listing of open audits for which audit reports are older than 90 days shall be provided to the Components. The Components shall provide the status of each audit (e.g., disposition with a copy of the price negotiation memorandum, negotiations in process, etc.) to OCPO within 30 days after the list is provided to the Component. OCPO shall maintain a listing of all open audits older than 90 days and the status of those audits.

Subchapter 3042.2 Contract Administration Services

3042.202 Assignment of contract administration.

(a) Contracting officers shall comply with the procedures in Appendix V, Contract Administration Services Memorandum of Agreement, between DHS and DCMA, when ordering contract administration support services from DCMA.

(c) Delegating additional functions.

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

3042.270 Contracting Officer's Representative (COR).

3042.270-1 Policy.

(a) DHS Acquisition Workforce Policy 064-04-003, "Contracting Officer's

Representative (COR) Certification, Appointment and Responsibilities," provides policy and procedures concerning the selection and training, certification, appointment, and termination of a COR. DHS Acquisition Workforce Policy 064-04-003, or any successor acquisition workforce policies apply to all Components.

(b) Technical organizations (requisitioning/program offices) are responsible for:

(1) Ensuring that the individual recommended to the contracting officer for the COR position possesses training, qualifications and experience commensurate with the duties and responsibilities to be delegated (See HSAM 3032.702-70, regarding submission of procurement requests). Exceptions to COR nomination submittals are procurements valued under the simplified acquisition threshold, unless the contracting officer determines appointment of a COR is appropriate.

(2) Ensuring that the COR's annual performance appraisal includes an evaluation of how well the COR functions are performed.

3042.270-2 COR Appointment Letter.

(a) The DHS COR Appointment Letter Format in Appendix W, shall be used in preparing the DHS COR or Alternate COR appointment letter and for ensuring format/framework consistency throughout the DHS. Supplements to the required COR appointment letters framework elements/content must be established with Component written procedures.

(b) Required key elements for the DHS COR appointment letter are: COR core responsibilities and functions, exclusions, and authority, ethics and training. DHS required elements (see Appendix W, Exhibits 1-3) must be addressed in each COR appointment letter as described below, unless otherwise not applicable or delegated by the contracting officer:

(i) Core COR responsibilities and functions. For DHS, the five core responsibility elements (performing surveillance/inspections/acceptance, monitoring activities including providing input to contractor performance evaluations, making recommendations for invoice and payment, managing Government furnished property, and managing contractor employee access to facilities or systems) must be included in each COR appointment, unless not applicable or delegated by the contracting officer (e.g., contract does not include Government furnished property or security access requirements). The detailed content instructions for each of these five core elements may be expressed, altered or varied through Component's written supplement procedures to the extent the variation is substantially the same in nature. (See Appendix W, Exhibit 1, for described duties.) Components must also include the COR performance duties or requirements for certain contract types and functions, see HSAM, 3016.601(c)(1), Time-and-materials (T&M) and labor-hour contracts and HSAM 3032.7002, Invoice and voucher review and approval. Nothing in the HSAM guidance or Component procedures should limit responsibilities and functions that the contracting officers may assign to the COR unless otherwise limited or prohibited by law or acquisition regulation.

(ii) Non-Delegable Functions and Exclusions. Components may supplement the required exclusionary list with appropriate content as needed for their Component's mission. Components may use the "Exclusion" content as provided in Appendix W, Exhibit 2, to establish the required exclusions for their organization.

(iii) Authorities, Ethics, and Training. Components shall establish written procedures identifying their needs and requirements within the categories of authorities, ethics and training. Components may use the content provided in Appendix W, Exhibit 3, to establish uniformity within their organization but must require submission of the OGE 450, Confidential Financial Disclosure Report.

3042.270-3 Procedures for issuance of COR Appointment Letter.

(a) Component administrative processing for issuance of the COR appointment letter must comply with Acquisition Workforce Policy 064-04-003 which provides guidance for COR appointment letters (also see Appendix W), specifically –
(i) Acknowledgement and receipt of the appointment letter;
(ii) Acceptance of the COR appointment letter;
(iii) Appointment of Alternate COR letter; and
(iv) Termination of COR Appointment.

(b) Components must ensure where an individual is appointed as a COR on more than one contract, separate COR and Alternate COR appointment letters shall be issued for each contract.

(c) Component procedures must address the COR appointment letter's distribution requirements unique to the Component needs.

3042.270-4 Procedures for issuance of COR's Supervisor Notification Letter.

(a) Concurrent with the issuance of the COR appointment letter, the notification letter to the COR's supervisor will be issued, using the format provided in Appendix W.

Subchapter 3042.3 Contract Administration Office Functions

3042.302 Contract administration functions.

3042.302-70 Earned value management.

Responsibility for reviewing Earned Value Management System (EVMS) plans and verifying initial and continuing contractor compliance with Government EVMS criteria and conformity with American National Standards Institute/Electronic Industries Alliance (ANSI/EIA) Standard 748, Industry Guidelines for EVMS, is normally delegated to DCMA when EVMS support is required. Refer to HSAM 3034.204 for guidance relating to identification of contracts that require the application of EVMS. The procedures for

ordering DCMA services are found in Section 4. “Procedural Arrangements,” of the MOA, which is at Appendix V.

3042.302-71 Trafficking in persons.

Monitor contractor compliance with the requirements of FAR 52.222-50, Combating Trafficking in Persons. The contracting officer shall include documentation in the contract file that the contractor has informed all employees and subcontractors of the Government policy on combating trafficking in persons. The contracting officer shall also include documentation in the contract file that all subcontractor employees have been informed of the policy. In the event that the contractor or a subcontractor violates FAR 52.222-50, the contracting officer shall document the file and provide the information to the DHS Inspector General for investigation. If a violation has occurred the contracting officer shall document the file and the remedies imposed in accordance with FAR 52.222-50.

Subchapter 3042.6 Corporate Administrative Contracting Officer (CACO)

3042.602 Assignment and location.

The Head of the Contracting Activity (HCA) or designee no lower than flag officer or Senior Executive Service (SES) level is delegated the authority to assign a CACO.

Subchapter 3042.7 Indirect Cost Rates

3042.703 General.

3042.703-1 Policy.

For forward pricing and billing rates, contracting officers shall utilize the rates in the Forward Pricing Rate Agreement, if one exists. If one does not exist, but there is a Forward Pricing Rate Recommendation, contracting officers should normally use that recommendation as the basis for negotiating the indirect rates. If the contracting officer negotiates rates that differ from those in the Forward Pricing Rate Recommendation, the contract file must include the rationale for negotiating different rates. If there is no Forward Pricing Rate Agreement or Forward Pricing Rate Recommendation, the contracting officer should normally obtain information from DCAA to assist the contracting officer in negotiating the indirect rates. If the contracting officer negotiates rates that differ significantly from the rate information provided by DCAA, the contracting officer must document the rationale for the differences in the contract file. Where DCAA has an audit presence, DHS will use DCAA unless DCAA agrees otherwise.

3042.703-2 Certificate of indirect costs.

(b) *Waiver of certification*. (1) The COCO is delegated this authority.

3042.705 Final indirect cost rates.

3042.705-1 Contracting officer determination procedure.

(a) *Applicability and responsibility*. The contracting officer is responsible for ensuring that the direct and indirect costs paid under cost reimbursement and T&M contracts are allowable.

(b) DHS Procedures: For final indirect rates, DHS relies on the rates established by the cognizant federal agency, if such rates exist. If the rates are audit determined, DHS relies on the indirect cost rates established by DCAA, unless the DHS and DCAA mutually agree that another agency will be the cognizant audit agency.

(1) DCAA performs contract audits on an annual basis (not on a contract by contract basis). Thus, DCAA notifies contracting officers when an annual audit of a contractor's incurred costs is going to be performed that includes their DHS contract. This notification will request DHS acknowledgement that the DHS contract should be included in the annual audit, and a request for reimbursement to DCAA for the DHS applicable share of the audit cost. Unless there are exceptional circumstances, DHS contacting officers shall obtain these annual incurred cost audits. If the contracting officer decides not to obtain the annual audit of the direct or indirect costs, the contracting officer shall document in the contract file as to why the audit was not obtained. In addition, the contracting officer shall notify OCPO, Director, Oversight & Strategic Support Division via PROCUREMENT.Support@dhs.gov of their decision to not obtain the audit. The contract file documentation shall include, as a minimum, a discussion of the reason the audit was not obtained (e.g., small dollar amounts remaining unaudited or unsettled; low dollar value of the contracts; the necessary audit will not be performed for many years and there is an urgency to close the contract).

(2) A copy of the annual audit reports provided by DCAA shall be maintained in the contract file. These reports shall be used to establish the allowable direct and indirect costs under cost reimbursement and T&M contracts, unless there are final rates negotiated by the cognizant federal agency that differ from those shown in the DCAA report. In such cases, the allowable direct and indirect costs shall be determined based on the rates negotiated by the cognizant federal agency.

(3) To mitigate possible overpayments, the contracting officer shall periodically compare the amounts billed under the contract with the allowable costs shown on the summary sheet. If the amounts billed significantly exceed the allowable costs, the contracting officer shall notify the contractor and request a credit adjustment. If the adjustment is not provided promptly, the contracting officer shall issue a demand for payment to recover the overpayments.

3042.705-3 Educational institutions.

(b) If DHS is the Cognizant Federal Agency for an educational institution for the purpose of negotiating indirect cost rates, the use of predetermined final indirect cost rates must be approved by the COCO.

3042-708 Quick-closeout procedure.

3042.708-70 DHS quick-closeout procedures.

The Contracting Officer may:

(a) Require the contractor to submit the following: (1) the contractor's final indirect cost rate proposal reflecting actual cost experience during the covered period(s), together with supporting cost or pricing data, for each of its fiscal years for which quick-closeout is involved, and (2) a final voucher and a summary of all costs by cost element and for each of its fiscal years for the contract(s) in question.

(b) Notify the cognizant audit activity, either verbally or in writing, identify the contract(s), and request: (1) the contractor's indirect cost history covering a sufficient number of fiscal years to see the trend of claimed, audit questioned, and disallowed costs; and (2) any other information that could impact the decision to use quick-closeout procedures. Indirect cost histories should be requested from the contractor only when the cognizant audit activity is unable to provide the information.

(c) Review the contract(s) for indirect cost rate ceilings and any other contract limitations, as well as the rate history information.

(d) If quick-closeout procedures are appropriate based upon the information obtained pursuant to paragraphs (a), (b), and (c), the contracting file shall be documented with the findings and rationale.

(e) Final indirect cost rates should be established using one of the following:

(1) Contractor's claimed actual rates adjusted to reflect an appropriate percentage of unallowable costs in prior year claims: or

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

(f) If an agreement is reached with the contractor, obtain a release of all claims and other applicable closing documents (see HSAR 3004.804-570).

Subchapter 3042.8 Disallowance of Costs

3042.803 Disallowing costs after incurrence.

(b) *Auditor receipt of vouchers.*

(3)(ii) When the contractor files a claim for unreimbursed costs under the Disputes clause of the contract, contracting officers shall process the claim in accordance with Component procedures.

Subchapter 3042.15 Contractor Performance Information

3042.1502 Policy.

The HCA shall ensure that contractor performance evaluations are completed to meet the requirements of FAR Subpart 42.15 and reported into the Department of Defense Contractor Performance Assessment Reporting System (CPARS) or other system as designated by the DHS Chief Procurement Officer.

DHS FAR Class Deviation 11-03, applicable to instruments awarded after August 11, 2011, requires evaluations for all supply contracts and orders that exceed $500,000, and for all service contracts and orders that exceed $1,000,000, except as provided in (d) below. Evaluation thresholds for other types of contracts and orders established by FAR 42.15 paragraphs (e) and (f) remain unchanged. For instruments awarded prior to August 11, 2011, evaluations are required for all contracts, including task and delivery orders, which exceed the simplified acquisition threshold, or other thresholds established by FAR 42.15 except as provided in (d) below. Notwithstanding that, however, Components shall prioritize assessments of contracts and orders that: 1) use high-risk vehicles, such as cost-reimbursement, time-and-materials type, or award fee contracts, 2) are complex in nature, such as large software development and implementation contracts, or 3) involve high dollar values or major acquisitions, regardless of the contract type. Interim evaluations shall be performed on contracts and orders exceeding one year in duration (but see FAR 42.1502 (h)) to assist with improving the contractor's marginal performance and identifying any major deficiencies.

(d) (1) For task order or delivery order contracts and blanket purchase agreements awarded by DHS Offices or Components, contractor performance evaluations may be consolidated for orders that are (A) issued by the same office and (B) performed at the same location (e.g., performed at the same facility).

(2) When a decision is made to consolidate orders, contracting offices shall input the relevant data into the Enterprise Reporting Application (http://ocpo-sp.dhs.gov/sites/era) under the Contractor Performance tab.

3042.1503 Procedures.

(a) Component procedures shall provide that:

(1) Contracts and task/delivery orders that require past performance evaluations shall be registered in the CPARS within 30 days of award of the instrument.

(2) Input for evaluations shall generally be obtained from the technical office, the contracting office, and where appropriate, the end users of the product or service.

(3) Appropriate Government personnel will be identified as (i) "Assessing Official Representatives" (AORs) for the purpose of providing input into contractor performance evaluations, and (ii) "Assessing Officials" (AOs) for the purpose of reviewing, finalizing and signing the evaluations and forwarding them to the contractor for comment. A contract may have multiple AORs, always including the COR and possibly including the program manager and end

users. CORs will not be designated as AOs. Evaluations prepared by the AOR(s) will be forwarded to the AO who will be the contracting officer or other official at a level above the COR.

(4) Government personnel will be identified as CPARS "Focal Points" (FP), who will be responsible for CPARS access authorizations for Government and contractor personnel registering the contract, and the monitoring, distribution and control of evaluations. To ensure continuity of operations, it is recommended that each Component identify a Primary and Alternate FP for each of their contracting activities or sites. FPs can serve as Alternates for more than one contracting activity or site. The Component Focal Point will grant users access to input records via the FAPIIS input module of the Contractor Performance Assessment Reporting System. The FAPIIS input module is located at https://www.cpars.gov.

(5) A CPARS "Senior Command Official" (SCO) will be identified. (SCO is a CPARS term, and is used here even though DHS is not organized by "Commands.") The SCO will be at a level higher than the CPARS FP. SCO functions include assisting the CPARS FP with training, monitoring and policy; evaluating quality and compliance metrics; providing metrics to management. SCOs may not also be FPs.

(b) Component procedures shall provide that disagreements between the contractor and the Assessing Official regarding the evaluations will be resolved by a Reviewing Official, who shall be at a level above the contracting officer.

(f) The Contracting Officer shall be the AO for evaluations prepared per FAR 42.1503(f) related to a defective cost or pricing data determination made in accordance with FAR 15.407. This responsibility is not delegable.

3042.1503-70 Contractor Performance Assessments.

Component procedures shall ensure that:

(a) Assessments clearly and completely describe the contractor's performance in the narrative statement, in sufficient detail to justify the rating;

(b) In order to record critical details, performance issues are documented promptly during contract term, as opposed to waiting until the end of the performance period;

(c) Award fee determinations, when required by the contract, are reflected in the contractor's performance assessment;

(d) Narratives are supported by documentation sufficient to support the assigned rating, and should include:

(i) A level of detail and documentation that provides evidence and establishes a basis for the assigned rating;

(ii) An explanation of how problems were resolved and the extent to which solutions were effective;

(iii) Objective, fact based statements, and examples of the contractor's impact on improving or hindering Government performance;

(iv) If a subcontracting plan is required, an assessment of the contractor's performance against, and efforts to achieve, the goals identified in the small business subcontracting plan.

CHAPTER 3043 CONTRACT MODIFICATIONS

Subchapter	**3043.3**	**Change Orders**
	3043.205	Contract clauses.
Subchapter	**3043.70**	**Undefinitized Contract Actions**
	3043.7000	Definitions.
	3043.7001	Policy.
	3043.7002	Limitations.
	3043.7002-1	Authorization.
	3043.7002-2	Price Ceiling.
	3043.7003	Administration of UCAs.
	3043.7004	UCA monitoring system and report.

Subchapter 3043.2 Change Orders

3043.205 Contract clause.

The 30-day period cited in the clauses referenced at FAR 43.205(a) through (d) may be changed at the discretion of the contracting officer. The contracting file shall be documented with the contracting officer's rationale for this decision.

Subchapter 3043.70 Undefinitized Contract Actions

3043.7000 Definitions.

"Undefinitized contract action" (UCA) means any contract action for which the contract terms, specifications, or price are not established before performance is begun under the action, and includes, but is not limited to:

(1) Change Orders. All modifications/supplemental agreements issued under the "Changes" clause when the price for the change has not been negotiated; and
(2) Letter Contracts (See HSAM 3016.603).

3043.7001 Policy.

Undefinitized actions shall:
(a) Be used only when:

(1) Negotiation of a definitive contract action is not possible in sufficient time to meet the Government's requirements; and
(2) The Government's interest requires that the contractor be given a binding commitment so that contract performance can begin immediately.

(b) Be as complete and definite as feasible under the circumstances.

3043.7002 Limitations

3043.7002-1 Authorization.

(a) The contracting officer shall obtain prior written approval for use of a UCA as follows:

(1) From the Head of the Contracting Activity (HCA) if the estimated cost of the definitive contract action is expected to exceed $1 million.
(2) From the Chief of the Contracting Office (COCO) if the estimated cost of the definitive contract action is not expected to exceed $1 million.

(b) Modifications that add to the scope of a UCA after performance has begun require approvals from the official specified in (a) (1) or (2) above, as appropriate.

(c) Requests for approval discussed in (a) and (b) above shall fully explain (i) the need to begin performance prior to definitization, and (ii) the adverse impact on agency requirements resulting from delays in beginning performance.

3043.7002-2 Price Ceiling.

UCAs shall include a not-to-exceed price.

3043.7003 Administration of UCAs.

Contracting officers shall negotiate the UCA and issue the definitized contractual document within six months after the UCA has been issued to the contractor.

3043.7004 UCA monitoring system and report.

DHS uses the Enterprise Reporting Application (ERA) to record and monitor progress on the management of UCAs. ERA includes summary reports of UCAs that reflect the status of UCAs. The COCO shall (a) ensure that all UCAs, except for UCAs on classified contracts, are entered into the ERA under the UCA tab, (b) regularly monitor the ERA reports, and (c) ensure that progress is made to definitize the UCAs within the six-month period (except see FAR 16.603-2 for additional requirements for letter contracts.) Also, see HSAM 3016.603-2(c) for COCO approval to extend the definitization schedule under letter contracts.

CHAPTER 3044 SUBCONTRACTING POLICIES AND PROCEDURES

Subchapter 3044.3 Contractors' Purchasing Systems Reviews
3044.302 Requirements.

Subchapter 3044.3 Contractors' Purchasing Systems Reviews

3044.302 Requirements.

The Chief of the Contracting Office (COCO) is delegated this authority when the contract administration is retained.

CHAPTER	**3045**	**GOVERNMENT PROPERTY**
SUBCHAPTER	**3045.1**	**General**
	3045.102	Policy.
	3045.103	General.
	3045.105	Contractors' property management system.
Subchapter	**3045.3**	**Authorizing the Use and Rental of Government Property**
	3045.302	Contracts with foreign governments or international organizations.
Subchapter	**3045.6**	**Reporting, Redistribution, and Disposal**
	3045.602	Reutilization of Government property.
	3045.602-3	Screening.

Subchapter 3045.1 General

3045.102 Policy.

(b) When providing Government property to contractors, contracting officers shall document the file that the requirements of FAR 45.102(b) have been met.

3045.103 General.

3045.103-270 General reporting requirements.

Government property reports shall be required in accordance with FAR 52.245-1 Government Property, and Component procedures. Subparagraph (f)(vi), Reports, of the clause at FAR 52.245-1 requires the contractor to have a process to create and provide reports for various specific purposes, and as directed by the contracting officer. Contracting officers shall apply this authority to the extent necessary to ensure that Government property in the possession of contractors is managed in accordance with the clause.

3045.105 Contractors' property management system compliance.

(a) The contract file shall contain written evidence that the contractor's property management system was analyzed for conformance with contract requirements and shall identify the official/agency that performed the analysis. When DHS is the agency responsible for contract administration at the contractor's plant or installation, and the total value of Government property in the possession of the contractor exceeds $10 million, the contractor's property management system shall be analyzed periodically to ensure compliance with the terms of the contract.

Subchapter 3045.3 Authorizing the Use and Rental of Government Property

3045.302 Contracts with foreign governments or international organizations.

Contracting officers shall compute rental costs for the use of Government production and research property with foreign governments or international organizations in accordance with FAR 52.245-9, Use and Charges. See also OMB Circular A-25, User Charges for guidance on the establishment of fees to recover costs.

Subchapter 3045.6 Reporting, Redistribution, and Disposal

3045.602 Reutilization of Government Property.

3045.602-3 Screening.

Screening shall be in accordance with FAR 45.602-3. The contracting officer shall contact the appropriate Component property office for guidance.

(b) Special screening requirements.

(2) Special test equipment with commercial components. The contracting officer shall contact the appropriate Component property office for guidance.

(3) Printing equipment. To ensure compliance with the regulations of the Joint Committee on Printing, Title 44 U.S.C., contracting officers shall report all excess printing equipment to the DHS Chief Administrative Services. This includes all equipment for use in authorized printing plants and auxiliary equipment (i.e., composing machine, process camera folder, collator, cutter, drill, or other production equipment) for use with duplicators or copying equipment.

CHAPTER	**3046**	**QUALITY ASSURANCE**
Subchapter	**3046.3**	**Contract Clauses**
	3046.316	Responsibilities for supplies.
Subchapter	**3046.4**	**Government Contract Quality Assurance**
	3046.401	General.
Subchapter	**3046.6**	**Material Inspection and Receiving Reports.**
	3046.670	Inspection and receiving report.
	3046.671	Acceptance report.
	3046.672	Inspection, Acceptance and Receiving Report.
Subchapter	**3046.7**	**Warranties.**
	3046.702	General.
	3046.703	Criteria for use of warranties.
	3046.704	Authority for use of warranties.
	3046.706	Warranty terms and conditions.
	3046.708	Warranties of data.
Subchapter	**3046.790**	**Use of warranties in major systems acquisitions by the United States Coast Guard (USCG)**
	3046.790-5	Tailoring warranty terms and conditions (USCG).
	3046.790-6	Warranties on Government-furnished property (USCG).

Subchapter 3046.3 Contract Clauses

3046.316 Responsibility for supplies.

When the contracting officer deems it necessary, FAR 52.246-16, Responsibility for Supplies, may be used in solicitations and contracts when the contract amount is not expected to exceed the simplified acquisition threshold.

Subchapter 3046.4 Government Contract Quality Assurance

3046.401 General.

(f) Inspection shall be documented as prescribed in HSAM 3046.6.

Subpart 3046.6 Material Inspection and Receiving Reports

3046.670 Inspection and receiving report.

(a) Unless otherwise prescribed by Component procedures, a receiving report statement shall be signed by the authorized Government representative to evidence Government

inspection and receipt, except for simplified acquisitions using OF 347. The receiving report shall be completed at the place(s) specified in the contract for performance of Government quality assurance.

(b) For simplified acquisitions using OF 347, or an equivalent authorized Component form, the receiving report section shall be completed for inspection and receipt and signed by the authorized Government representative.

3046.671 Acceptance report.

(a) Unless otherwise prescribed by Component procedures, an acceptance report statement shall be signed by the authorized Government representative to evidence Government acceptance, except for simplified acquisitions using OF 347. The acceptance report shall be completed at the place(s) specified in the contract for Government acceptance.

(b) For simplified acquisitions using OF 347, or an equivalent, authorized Component form, the receiving report section shall be completed for acceptance and signed by the authorized Government representative.

3046.672 Inspection, Acceptance and Receiving Report.

All contract and order files shall contain the following information, in a Component authorized form or format, when OF 347, or an equivalent, has not been used:

Date:

Contract number and latest modification number:

Order number and latest modification number:

Report number, e.g. number each report for a given contract or order in series.

Contractor's Name:

Date items received or date recurring payment due:

Location where items were delivered or contractor's performance:

Statements applicable to the respective signature blocks to the effect that the requirements have been inspected, received, and accepted and meet the terms of the contract except as noted below:

List the requirements that were not accepted and/or the deductions made and state the reason why:

Total amount of deductions related to rejected items:

Signature and printed name of authorized Government representative(s):

Title of authorized Government representative(s):

Date(s) signed:

Components are authorized to use DHS 700-21, Material Inspection and Receiving Report, and Continuation Sheet, or a form substantially similar if authorized in accordance with Component procedures.

Subchapter 3046.7 Warranties

3046.702 General.

The following areas shall also be addressed by all Components in relation to the use of warranties in DHS contracts:

(a) Planning is an essential step in obtaining an effective warranty and should begin early enough to address warranty requirements during the development of the item. Therefore, consideration of warranty provisions and their impact shall be included within the comprehensive acquisition planning process required by FAR Part 7, HSAR Part 3007, and HSAM Chapter 3007.

(b) The acquisition cost of a warranty may be included as part of an item's price when cost or pricing data will clearly define cost of the warranty to the Government, or may be set forth as a separate contract line item.

(c) Each Component shall establish a tracking and enforcement system, as appropriate, to identify items covered, to provide information to Government personnel about enforcing the warranty provisions, and to accumulate data relative to warranty costs.

3046.703 Criteria for use of warranties.

Warranties should be obtained only when they are cost beneficial. To determine whether use of a warranty is cost beneficial, an analysis shall be performed to compare the benefits to be derived from the warranty with its acquisition and administration costs. The analysis should examine the procurement's life cycle costs, both with and without a warranty. Where possible, a comparison should be made with the costs of obtaining and enforcing warranties for similar supplies or services. If a warranty is determined to be appropriate, the contract file shall be documented with the reason for inclusion of a warranty and identify the specific parts, subassemblies, systems or contract line item(s) on which a warranty should apply, and shall address why a warranty is appropriate under the criteria set forth in FAR 46.703.

3046.704 Authority for use of warranties.

Contracting officers are authorized to approve the use of warranties.

3046.706 Warranty terms and conditions.

(a) The contracting officer, in developing the warranty terms and conditions, shall consider the following, and, where appropriate and cost beneficial, shall:

(1) Identify the affected line item(s) and the applicable specification(s);

(2) Require that the line item's design and manufacture will conform to: (i) an identified revision of a top-level drawing; and/or (ii) an identified specification or revision thereof;

(3) Require that the system conform to the specified Government performance requirements;

(4) Require that all systems and components delivered under the contract will be free from defects in materials and workmanship;

(5) State that in the event of failure due to nonconformance with specification and/or defects in material and workmanship, the contractor will bear the cost of all work necessary to achieve the specified performance requirements, including repair and/or replacement of all parts;

(6) Require the timely replacement/repair of warranted items and specify lead times for replacement/repair where possible;

(7) Identify the specific paragraphs containing Government performance requirements which must be met;

(8) Ensure that any performance requirements identified as goals or objectives in excess of specification requirements are excluded from the warranty provision;

(9) Define what constitutes the start of the warranty period (e.g., delivery, acceptance, in-service date), the ending of the warranty (e.g., passing a test or demonstration, or operation without failure for a specified time period), and circumstances requiring an extension of warranty duration (e.g., extending the warranty period as a result of mass defect correction during warranty period);

(10) Identify what transportation costs will be paid by the contractor in conjunction with warranty coverage;

(11) Identify any conditions which will not be covered by the warranty, other than the exclusion of combat damage; and

(12) Identify any limitation on the total dollar amount of the contractor's warranty exposure, or agreement to share costs after a certain dollar threshold to avoid unnecessary warranty returns.

(b) Any contract that contains a warranty clause shall contain warranty implementation procedures, including warranty notification content and procedures, and identify the individuals responsible for implementation of warranty provisions. The contract may also permit the contractor's participation in investigation of system failures, providing that the contractor is reimbursed at established rates for fault isolation work, and that the Government receives credit for any payments where equipment failure is covered by warranty provisions.

3046.708 Warranties of data.

Warranties of data shall be used only after consultation with legal counsel.

3046.790 Use of warranties in major systems acquisitions by the United States Coast Guard (USCG)

3046.790-5 Tailoring warranty terms and conditions (USCG).

(a) As the objectives and circumstances vary considerably among major systems acquisition programs, contracting officers shall appropriately tailor the warranty on a case-by-case basis, including remedies, exclusions, limitations and durations, provided the tailoring is consistent with the specific requirements of this subpart and FAR 46.706.

(b) Contracting officers of major systems acquisitions may exclude from the terms of the warranty certain defects for specified supplies (exclusions) and may limit the contractor's liability under the terms of the warranty (limitations), as appropriate, if necessary to derive a cost-effective warranty in light of the technical risk, contractor financial risk, or other program uncertainties.

(c) Contracting officers are encouraged to structure a broader and more comprehensive warranty where such is advantageous. Likewise, the contracting officer may narrow the scope of a warranty when appropriate (e.g., where it would be inequitable to require a warranty of all performance requirements because a contractor had not designed the system).

(d) Contracting officers shall not include in a warranty clause any terms that require the contractor to incur liability for loss, damage, or injury to third parties.

3046.790-6 Warranties on Government-furnished property (USCG).

A contractor for a major systems acquisition shall not be required to provide the warranties specified in HSAR 3046.790-1 on any property furnished to that contractor by the Government except for: (a) defects in installation; and (b) installation or modification

in such a manner that invalidates a warranty provided by the manufacturer of the property.

CHAPTER	**3047**	**TRANSPORTATION**
Subchapter	**3047.1**	**General**
	3047.101	Policies.
Subchapter	**3047.2**	**Contracts for Transportation or for Transportation-Related Services**
	3047.205	Availability of term contracts and basic ordering agreements for transportation or for transportation-related services.
Subchapter	**3047.5**	**Ocean Transportation by U.S. – Flag Vessels**
	3047.506	Procedures.

Subchapter 3047.1 General

3047.101 Policies.

(b) Contracting officers shall contact their Component transportation office for assistance and expertise in transportation management.

Subchapter 3047.2 Contracts For Transportation or for Transportation-Related Services

3047.205 Availability of term contracts and basic ordering agreements for transportation or for transportation-related services.

(a) Contracts or basic ordering agreements awarded by DHS contracting officers for transportation or for transportation-related services greater than the simplified acquisition limit require approval one level above the contracting officer.

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

3047.506 Procedures.

(c) Maritime Administration (MARAD) address is: Director, Office of Cargo Preference, U.S. Department of Transportation, Maritime Administration, West Building, Southeast Federal Center, 1200 New Jersey Avenue, SE, Washington, DC 20590.

(d) If no transportation officer is available, the contracting officer shall submit a copy of the rated “on board” bill of lading, for each shipment, no later than 20 days after the vessel’s loading date for exports and 30 days for imports as stated in 46 CFR 381.3. All non-vessel ocean common carrier bills of lading should be accompanied by the underlying carrier’s ocean bill of lading to MARAD. The bill of lading shall contain the following information:

(1) Name of sponsoring Government agency or department;

(2) Name of vessel;
(3) Vessel flag of registry;
(4) Date of loading;
(5) Port of loading;
(6) Port of final discharge;
(7) Commodity description;
(8) Gross weight in kilos;
(9) Total ocean freight revenue in U.S. dollars.

CHAPTER 3048 VALUE ENGINEERING

Subchapter 3048.001 Definitions

Subchapter 3048.1 Policies and Procedures
3048.102 Policies.
3048.103 Processing value engineering change proposals.
3048.104 Sharing arrangements.
3048.104-3 Sharing collateral savings.

Subchapter 3048.2 Contract clauses.
3048.201 Clauses for supply or service contracts.
3048.202 Clause for construction contracts.

Subchapter 3048.70 Annual Value Engineering Report

3048.001 Definitions.

For purposes of this manual, the definition at FAR 48.001 also includes:
"Value engineering" includes technology refreshment and technology enhancement.

Subchapter 3048.1 Policies and Procedures

3048.102 Policies.

(a) The Head of the Contracting Activity (HCA) is authorized to grant exemptions on a case-by-case basis. The CPO is authorized to exempt contracts on a class basis. Submit requests per HSAR 3001.7000(a). Exemptions shall be retained in the contract file.

(b) The Chief Procurement Officer (CPO) is responsible for managing and monitoring value engineering (VE) efforts at DHS (see OMB Circular A-131).

3048.103 Processing value engineering change proposals.

(a) Component technical personnel are responsible for: conducting a comprehensive review of Value Engineering Change Proposals (VECPs) for technical feasibility, usefulness, and adequacy of the contractor's estimate of cost savings; making a written report; and recommending acceptance or rejection to the contracting officer.

3048.104 Sharing arrangements.

3048.104-3 Sharing collateral savings.

The Chief of the Contracting Officer (COCO) is authorized to make the cost determination at FAR 48.104-2(a).

Subchapter 3048.2 Contract Clauses

3048.201 Clauses for supply or service contracts.

(a) *General.*

(6) The Head of the Contracting Activity (HCA) is authorized to exempt a contract from the requirements of FAR Part 48 under FAR 48.201(a)(6). The CPO is authorized to exempt contract actions on a class basis. Submit requests per HSAR 3001.7000(a). Exemptions will be retained in the contract file.

(e) The COCO is authorized to make the cost determination for an individual contract only at FAR 48.201(e).

3048.202 Clause for construction contracts.

The COCO is authorized to make the cost determination for an individual contract only at FAR 48.202.

3048.70 Annual Value Engineering Report.

Office of Management and Budget (OMB), Circular A-131, Value Engineering, requires that each agency report the Fiscal Year results of using value engineering annually. HCAs are required to submit a report of value engineering results by December 7th each year to the Acquisition Program Management Division (APMD), Office of the Chief Procurement Officer (OCPO), with a copy OCPO, Director, Oversight & Strategic Support Division via PROCUREMENT.Support@DHS.gov. Information for completing the report is available in Circular A-131. HCAs should contact APMD to obtain an Excel file that is suitable for the report. APMD will ensure the consolidated DHS report is forwarded to OMB by December 31. Negative reports are required.

CHAPTER 3049 TERMINATION OF CONTRACTS

Subchapter	**3049.1**	**General Principles**
	3049.101	Authorities and Responsibilities.
	3049.106	Fraud or other criminal conduct.
	3049.111	Review of proposed settlements.
	3049.402-3	Procedures for default, referral to debarring and suspending official.

Subchapter 3049.1 General Principles

3049.101 Authorities and responsibilities.

(a) Notice to OCPO. The contracting officer shall provide a copy of any termination notice for any contract or order exceeding $1 million to the Office of the Chief Procurement Officer (OCPO) five days prior to issuance of the notice to the contractor. The OCPO shall also be provided a copy of any other notification or public announcement associated with the termination five days prior to issuance.

(b) The OCPO notice should be sent to the Director, Oversight & Strategic Support Division via PROCUREMENT.Support@DHS.gov . It must be accompanied by a brief discussion of the contract or order being terminated, the circumstances of the termination and the anticipated impact. The purpose of the notification and accompanying information is to ensure the OCPO is apprised of significant contract terminations
.

3049.106 Fraud or other criminal conduct.

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

3049.111 Review of proposed settlements.

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

3049.402-3 Procedures for default, referral to debarring and suspending official.

If a contract is terminated either for default or for cause, the Contracting Officer shall review the cause for termination and evaluate whether it falls within one of the areas of (FAR) 48 CFR 9.406-2, Causes for debarment. If any of the contractor's actions that contributed to the decision to terminate for default or for cause are of the types of actions described in (FAR) 48 CFR 9.406-2 that could lead to debarment, the Contracting Officer shall refer the matter to the component suspending and debarring official for appropriate action. The referral shall include all of the pertinent facts, a written recommendation, and other information required under HSAM 3009.406-3. Each such evaluation shall be prepared in writing and shall be included in the contract file along with the resulting

referral (if any), regardless of whether or not the Contracting Officer's evaluation finds that the cause for termination requires referral for suspension or debarment. The Contracting Officer shall document the contract file with the reason(s) for referring or not referring the contractor for suspension or debarment. When past performance evaluation information is required by FAR Subpart 42.15 to be reported in the Department of Defense Contractor Performance Assessment Reporting System (CPARS) or other system as designated by the DHS Chief Procurement Officer, the Contracting Officer's evaluation of the termination shall be submitted as part of the past performance evaluation information.

CHAPTER 3050 EXTRAORDINARY CONTRACTUAL ACTIONS

Subchapter	**3050.1**	**Extraordinary Contract Actions**
	3050.102	Delegation of and Limitations on Exercise of Authority.
	3050.102-1	Delegation of authority.
	3050.104	Residual Powers.
	3050.104-1	Standards for use.

Subchapter 3050.1 Extraordinary Contract Actions

3050.102 Delegation of and Limitations on Exercise of Authority

3050.102-1 Delegation of authority.

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

Subchapter 3050.104 Residual Powers

3050.104-1 Standards for use.

Generally, it is DHS policy not to authorize indemnification to contractors or subcontractors against unusually hazardous or nuclear risks, pursuant to Public Law 85-804 (National Defense Contract Authorization Act), as amended, and FAR Subpart 50.1. Contracting officers shall not include in solicitations or contracts the clause at FAR 52.250-1, Indemnification Under Public Law 85-804, unless specifically authorized by the Secretary. Components must direct all requests for indemnification through the Component's Office of the Chief Counsel and forward to the Office of the Chief Procurement Officer for appropriate coordination with the DHS Office of General Counsel before transmittal to the Secretary.

CHAPTER 3051

USE OF GOVERNMENT SOURCES BY CONTRACTORS

(RESERVED)

There is no text implementing or supplementing FAR Part 51.

CHAPTER 3052

SOLICITATION PROVISIONS AND CONTRACT CLAUSES

(RESERVED)

There is no text implementing or supplementing FAR Part 52.

CHAPTER 3053 FORMS

Subchapter	**3053.1**	**General.**
	3053.101	Requirements for use of forms.
	3053.103	Exceptions.
	3053.105	Computer generation.
Subchapter	**3053.2**	**Prescription of Forms**
	3053.203-70	Proprietary information.
	3053.205-71	Source selection information.
	3053.209-70	Determination of prospective contractor Responsibility.
	3053.213-70	Simplified acquisitions.
	3053.215-70	Contracting by negotiations.
	3053.219-70	Small business review.
	3053.219-71	Subcontracting Plan Review Checklist.
	3053.222-70	Summary of underpayments.
	3052.232-70	Contract financing.
	3053.236-70	Construction and architect-engineering contracts.
	3053.246-70	Material inspection and receiving report.

Subchapter 3053.1 General

3053.101 Requirements for use of forms.

Unless the Chief Procurement Officer (CPO) grants an exception or the Component substitutes a form via internal procedures according to HSAM 3053.103(b), the forms prescribed in HSAM Chapter 3053 are required for use by all Components.

3053.103 Exceptions.

(a) Requests for exceptions to forms contained in HSAM Chapter 3053 shall be submitted to the CPO. Each request shall: (1) include the substitute format that will be used in place of the HSAM form; (2) include the Component rationale for the exception; and (3) be submitted by the Head of the Contracting Activity (HCA). The following are not eligible for exceptions:
DHS Form 2140-01, Contract Award Notification;
DHS Form 700-12, Determination of Prospective Contractor Responsibility;
DHS Form 700-22, Small Business Review; and
DHS Form 700-23, Subcontracting Plan Review Checklist.

(b) Components may substitute any of the following HSAM forms if authorized in Component procurement procedures:
DHS Form 700-11, Preconstruction Conference Agenda and Checklist;
DHS Form 700-13, Cover Page Source Selection Information;

DHS Form 700-14, Cover Page Proprietary Information;
DHS Form 700-16, Simplified Acquisition Summary and Continuation Sheet;
DHS Form 700-17, Weighted Guidelines Profit/Fee Objective;
DHS Form 700-18, Contract Facilities Capital and Cost of Money;
DHS Form 700-19, Summary of Underpayments;
DHS Form 700-20, Procurement Requests and Continuation Sheet; and
DHS Form 700-21, Material Inspection and Receiving Report and Continuation Sheet.

3053.105 Computer generation.

(b) Components may computer-generate the forms prescribed in the HSAR and this manual. Computer-generated HSAM forms shall not change the name, content, or sequence of the data elements and shall carry the assigned number (e.g., DHS Form 700-7) and edition date. The HSAM forms are available electronically on DHS Online at https://dhsonline.dhs.gov/portal/jhtml/general/forms.jhtml.

Subchapter 3053.2 Prescription of Forms

3053.203-70 Proprietary information.

DHS Form 700-14, Cover Page Proprietary Information, shall be used as specified in HSAM 3003.104-4(b)(ii).

3053.203-71 Source selection information.

DHS Form 700-13, Cover Page Source Selection Information, shall be used as specified in HSAM 3003.104-4(b)(iii).

3053.205-70 Contract award notification.

DHS Form 2140-01, Contract Award Notification, shall be used as specified in HSAM 3005.303-70(d).

3053.209-70 Responsibility determination.

DHS Form 700-12, Determination of Prospective Contractor Responsibility, shall be used as specified in HSAM 3009.105-2.

3053.213-70 Simplified acquisitions.

DHS Form 700-16, Simplified Acquisition Summary, shall be used as specified in HSAM 3013.101.

3053.215-70 Contracting by negotiation.

The following forms are prescribed for use as specified in HSAM 3015.404-4:

(a) *DHS Form 700-17, Weighted Guidelines Profit/Fee Objective*.
(b) *DHS Form 700-18, Contract Facilities Capital and Cost of Money*.

3053.219-70 Small business review.

DHS Form 700-22, Small Business Review, shall be used as specified in HSAM 3019.202-271.

3053.219-71 Subcontracting Plan Review Checklist.

DHS Form 700-23, Subcontracting Plan Review Checklist, shall be used as specified in HSAM 3019.705-470.

3053.222-70 Summary of underpayments.

DHS Form 700-19, Summary of Underpayments Sheet, shall be used as specified in HSAM 3022.406-8(d)).

3053.232-70 Contract financing.

DHS Form 700-20, Procurement Request, and *Procurement Request Continuation Sheet* shall be used as specified HSAM 3032.702-70.

3053.236-70 Construction and architect-engineer contracts.

DHS Form 700-11, Preconstruction Conference Agenda and Checklist.

3053.246-70 Material inspection and receiving report.

DHS Form 700-21, Material Inspection and Receiving Report, and Material Inspection and Receiving Report - (Continuation Sheet) should be used as specified in HSAM 3046.672.

HEADS OF THE CONTRACTING ACTIVITIES

DHS OPO	Director, Office of Procurement Operations
DHS OSA	Director, Office of Selective Acquisitions
FEMA	Director, Office of Acquisition Management
FLETC	Chief, Procurement Division
TSA	Assistant Administrator for Acquisition
US CBP	Executive Director, Procurement
USCG	Director of Contracting and Procurement (Commandant (CG-91))
US ICE	Director, Office of Acquisition Management
USSS	Chief, Procurement Operations

REPORTING REQUIREMENTS

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

TITLE OF REPORT	REFERENCE	DATE DUE	WHERE
Report of Proposed Federal Construction*	HSAM 3036.213-70; 29 CFR 1.4	Annually	OCPO
Semi-annual Labor Enforcement Report	FAR Part 22; HSAM 3022.406-13; 29 CFR 5.7(b)	Component submission Semi-annually; April 25 and October 25	Department of Labor
Resource Conservation and Recovery Act Report	HSAM 3023.4000	To Be Determined	To Be Determined
Subcontracting Report for Individual Contracts	FAR 19.7; FAR Deviation-DHS 06-03	See the DHS "Small Business Subcontracting Plan (July 2005) (DEVIATION)"	www.esrs.gov
Summary Subcontract Report	FAR 19.7; FAR Deviation-DHS 06-03	See the DHS "Small Business Subcontracting Plan (July 2005) (DEVIATION)"	www.esrs.gov
Undefinitized Contract Action (UCA) Report*	HSAM 3043.7002	Upon request from the OCPO	OCPO
Value Engineering Report*	OMB Circular A-131 HSAM 3048.7000	Annually; December 7	OCPO
Report on Federal Support to Universities, Colleges, and Nonprofit Institutions	Section 3(a)(7) of the National Science Foundation (NSF) Act	Annually; O/A May 15	Upon request from NSF
Procurement Forecast Initial and Update	Public Law 100-656; HSAM 3019.202-70	Initial – Annually; Update – Semiannually or as needed	OSDBU
Report of End Products Manufactured Outside the United States	FAR 25.004 and HSAM 3025.004	Annually, October 31	OCPO
Competition Advocate Report	HSAR 3006.502(a); HSAM 3006.502(b)(2)	December 1 for the preceding year	OCPO

For those reports with an (*), if there was no activity for the period being reported, a negative response for the period shall be submitted to the requiring office.

REVIEW AND APPROVAL MATRIX

REVIEW TYPE AND THRESHOLDS			REVIEW AND APPROVAL LEVELS *OCPO may require review of any DHS contract actions in accordance with HSAM Subchapter 3004.7004.*				
			Contracting Officer	Level above Contracting Officer Approval	Legal Review	Program Office	Other
1	Sealed Bids - Solicitation and Award -	<$500,000	R/A		D	D	
		>$500,000	R	R/A	R	D	
2	Negotiated Procurements - Solicitation, Pre-Negotiation, Negotiation & Award	<$500,000	R/A			D	
		>$500,000	R	R/A		D	
	Solicitation & Award	>$500,000			R		
	Pre-Negotiation or Negotiation Memoranda	Any amount			D		
3	Solicitations, Orders, BPAs – Issued and awarded using a SOW, SOO, or PWS, or requiring licenses	<$500,000	R/A		D	D	
		>$500,000	R	R/A	R*	D	
4	Solicitations & Orders – Issued and awarded IAW FAR Part 16 for ID/IQ contracts, or FAR Part 13 or Subpart 8.4 for orders & BPAs & orders against BOAs	<$500,000	R/A		D	D	
		>$500,000	R	R/A	R*	D	
5	Inter/Intra-Agency Agreements	<$500,000	R/A		D	D	
		>$500,000	R	R/A	R	D	
		All IAs going to or coming from Non-FAR covered agencies	R	R	R	D	CPO - R/A
6	Letter Contracts - IAW HSAM 3016.603	All	R	R	R	D	COCO – R/A
7	Modifications to the above actions - Items 1-6	<$500,000	R/A		D	D	
		>$500,000	R	R/A*	R*	D	
ADDITIONAL REQUIREMENTS FOR LEGAL REVIEW							
8	Private Sector Financing	All					
9	Agreement with Termination or Cancellation Fees	All					
10	Agreement with Indemnification for Contractor	All					

*Legend: **R** = Review. **R/A** = Review/Approval. **R*** = Review required, but see exceptions at HSAM 3004.7003(b). **R/A***= Review and Approval required, but see exceptions at 3004.7002(d). **D** = Discretionary as determined by the Contracting Officer. CPO = Chief Procurement Officer. OCPO= Office of theChief Procurement Officer. COCO=Chief of the Contracting Office.*

CONGRESSIONAL NOTIFICATION REQUIREMENTS (HSAM 3005.303-70)
ACTIONS IN EXCESS OF $1 MILLION

ACTION	COVERED	NOT COVERED
New Contracts	New DHS contracts in excess of $1 million. This includes new indefinite-quantity or requirements type contracts at the maximum ceiling price, letter contracts, and awards to small businesses.	
New Contract Actions through a Servicing Agency (or Servicing Component)	New contract actions being awarded by a Servicing Agency through an assisted acquisition or awarded by another DHS Component. Covered contract actions include new contract awards using FY2008 and later appropriated funds and orders under DHS multiple award contracts using FY2010 or later appropriated funds. DHS Components may choose to complete and submit DHS Form 2140-01 or alternatively, Components may have the Servicing Agency complete the form and make the required submission to the DHS Office of Legislative Affairs electronic mailbox Contracts@dhs.gov.	Execution of an Interagency Agreement with the Servicing Agency. However, resulting contracts issued by the Servicing Agency require Congressional notification IAW coverage indicated.
Contract Modifications	Contract modifications to existing contracts where the modification changes the scope of the contract.	Contract modifications that are determined to be within the scope and under the terms of the existing contract to include those to be issued pursuant to the Changes clause, funding modifications or other administrative occurrences under the terms of an existing contract.
IDIQ Contracts - Orders and Modifications	If the estimated value of an IDIQ contract has been reached, provide notice of subsequent modifications and orders to be placed that are expected to have a face value of more than the contract's threshold. Do not report the same work twice. Orders in excess of $1 million under DHS multiple award contracts using FY2010 or later appropriated funds require Congressional notification.	Task or delivery orders placed under non-DHS IDIQ-type contracts up to the contract threshold. Order placed under DHS contracts using FY2009 & prior funds. Orders placed under DHS single award IDIQ contracts.
BPAs and Orders under BPAs	Orders under DHS Blanket Purchase Agreements (BPAs) awarded under the Commercial Test Program IAW FAR Subpart 13.5. Congressional notification must be provided for each order.	DHS BPAs established under GSA Schedule contracts IAW FAR 8.405-3, and the orders placed under them. (Note: This exclusion includes orders using FY 2010 funds.) DHS BPAs established under the Commercial Test Program IAW FAR Subpart 13.5.
Actions Subject to Availability of Funds (SAF)	Contract actions awarded/issued subject to availability of funds. Notification is tied to award of the contract, or placement of the order, not to subsequent modification(s) that obligate funds. (Except: Orders under DHS multiple award contracts issued awaiting FY10 Appropriations Act funding require notification upon initial funding with FY10 funds.)	
Small Business Set-Asides	For a small business set-aside under FAR 15.503(a)(2), submit the Congressional notification after the DHS announcement to offerors of its intention to make an award. Submit the Congressional notification the first business day following: (1) the closing date for any challenge or (2) after the resolution of any challenge received, whichever is later. Do not execute the award until five (5) full business days after submission.	
Architect-Engineer Service Contracts	For an Architect-Engineer Service contract being conducted IAW FAR Subpart 36.6, notwithstanding any release of DHS' intention to negotiate a contract with an offeror on the short slate (see FAR 36.607), submit the Congressional notification only after the successful conclusion of negotiations.	

CONTRACT AWARD NOTICE REQUIREMENTS

Each requirement applies independently of the others, i.e, each is distinct and may apply to a given procurement.
Does not apply to actions under the Recovery Act, P. L. 111-5.

Notice	FedBizOpps	DHS Congressional Notice – Appropriations Committees	Public Announcement	Requests From Members Of Congress
Threshold	>$25,000	>$1 million	>$3.5 Million	Upon request
Required By	FAR 5.301	HSAM 3005.303	FAR 5.303 HSAM 3005.303	FAR 5.403, HSAM 3005.403
Format	Synopsis	DHS Form 2140-01	Satisfied by FedBizOpps Synopsis, may issue press releases case-by-case	DHS Form 2140-01
From/To	CO to FedBizOpps	• CO or official designated by the Component to OLA • OLA to Congress	• CO to FedBizOpps • Press releases to OPA	• CO to HCA • HCA to OLA& OCPO; FOIA Office & Legal as applicable • OLA to Congress, w/copy to OCPO
Time of Submission	No required timeframe	• 5 full business days before award: CO to OLA • 3 full business days before award: OLA to Congress • Exception: Contracts using FY2009 and subsequent funds that involve "substantial risk to human life, health, or safety." Require notice concurrent with award or immediately thereafter.	Not before 5:00 p.m. Washington, DC time, Date of Award	As requested
Applies To	• New contract awards • Mods for additional supplies or services exceeding $25,000 (beyond the original scope of the contract)	• New contracts (including those awarded by a Servicing Agency or DHS Component) • Mods for additional supplies or services exceeding $1M (beyond the original scope of the contract) • Orders under DHS multiple award contracts using FY2010 and later appropriated funds. • Orders over the estimated value of an Indefinite-quantity contract • Orders under a BPA established under the Commercial Item Test Program • *Includes awards to small businesses*.	• New contract awards • Mods for additional supplies or services exceeding $3.5M (beyond the original scope of the contract) • Orders over the estimated value of an Indefinite-quantity contract • Orders under a BPA established under the Commercial Item Test Program	Detailed information regarding any particular contract
Exclusions	• Disclosure would compromise national security • Awards resulting from acceptance of an unsolicited research proposal • Awards under the Small Business Innovation Development Act • Orders placed under Subpart 16.5 • Awards for perishable subsistence supplies • Awards for utility services, other than telecommunication services, and only one source is available • The contract action— o Is for an amount not greater than the simplified acquisition threshold; o Was made through a means where access to the notice of proposed contract action was provided through the GPE; and o Permitted the public to respond to the solicitation electronically • Awards for the services of an expert to support the Federal Government in any current or anticipated litigation or dispute pursuant to the exception to full and open competition authorized at 6.302-3.	• Mods within the scope and under the terms of the existing contract • Task or delivery orders placed under IDIQs up to the contract threshold using FY2009 and prior funds • Orders under non-DHS IDIQ contracts • Orders placed under DHS single award IDIQ contracts • DHS BPAs, and orders under them, established under GSA Schedule contracts IAW FAR 8.405 • DHS BPAs awarded under the Commercial Item Test Program • Execution of IA with a Servicing Agency.	Same as FedBizOpps and Congressional Notice, plus: • Contracts placed with the SBA under Section 8(a) of the Small Business Act • Contracts with foreign firms when the place of delivery or performance is outside the United States and its outlying areas • Contracts for which synopsis was exempted under 5.202(a)(1).	None

RECOVERY ACT -- PREAWARD AND AWARD NOTICE REQUIREMENT

Each requirement applies independently of the others, i.e., each is distinct and may apply to a given procurement.

Notice	FedBizOpps		DHS Notice to OMB	DHS Congressional Notice – Appropriations Committees	Public Announcement	Requests From Members Of Congress
	Preaward	Award				
Threshold	>$25,000	>$25,000	Any $ value	> $1M required </=$1M discretionary	>$3.5 Million	Upon request
Required By	FAR 5.704	FAR 5.705	HSAM 3005.770 HSAM 3005.771	HSAM 3005.770	FAR 5.303 HSAM 3005.303	FAR 5.403, HSAM 3005.403
Format	• Synopsis – follow instructions at www.fbo.gov • Clear & unambiguous narrative description of products/services • If the solicitation includes either FAR clause 52.225-11 or 52.225-23, the CO must insert the following notice: "One or more of the items under this acquisition is subject to the World Trade Organization Government Procurement Agreement and Free Trade Agreements."	• Synopsis – follow instructions at www.fbo.gov • If value exceeds $500,000, include a clear & unambiguous narrative description of the products or services • At any dollar value, if the action was not both fixed-price and competitive, include in the description the rationale for using other than a fixed-price or competitive approach	• Contract actions: DHS Form 2140-1. Block 8, Treasury Account Symbol: Enter "70" and the 4 character account code with no spaces, e.g., 700118, 700201, etc. • Interagency agreements: Award information, same data as DHS Form 2140-1	• DHS Form 2140-01. Block 8, Treasury Account Symbol: Enter "70" and the 4 character account code with no spaces, e.g., 700118, 700201, etc	• Satisfied by FedBizOpps Synopsis • May issue press releases case-by-case	DHS Form 2140-01
From/To	• CO to FedBizOpps • FedBizOpps to Recovery.gov	• CO to FedBizOpps • FedBizOpps to Recovery.gov	• HCA or designee to RecoveryLeadership @hq.dhs.gov • DHS Recovery Act Leadership Team to OMB	• CO or official designated by the Component to OLA thru contracts@dhs.gov • OLA to Congress	• CO to FedBizOpps • Press releases to OPA	• CO to HCA • HCA to OLA& OCPO; FOIA Office & legal as applicable • OLA to Congress, w/copy to OCPO
Time of Submission	• FAR 5.203 applies except to notices for orders issued for informational purposes only	• No required timeframe. • Promptly after award	• Competitive actions: Upon selection of apparent successful offeror • Other actions: Upon finalization of terms and conditions.	• CO:Upon submission to RecoveryLeadership @hq.dhs.gov • > $1M, OLA to Congress: Upon OMB approval, 3 full business days before award • </= $1M, OLA to Congress: Upon OMB approval	Not before 5:00 p.m. Washington, DC time, Date of Award	As requested
Applies To	• New contract awards • Mods for additional supplies or services exceeding $25,000 • Orders under GWACs, MACs, Schedule contracts, other IDIQ contracts, or BPAs. • Follow FedBizOpps instructions to note notice is for information purposes only	• New contract awards • Mods for additional supplies or services exceeding $25,000 • Orders under GWACs, MACs, Schedule contracts, other IDIQ contracts, or BPAs	• All contract actions and interagency agreements funded in whole or in part using Recovery Act funds. • Includes awards through a servicing agency • *Includes awards to small businesses.*	• All contract actions funded in whole or in part using Recovery Act funds. • Includes awards through a servicing agency • *Includes awards to small businesses.*	• New contract awards • Mods for additional supplies or services exceeding $3.5M (beyond the original scope of the contract) • Orders over the estimated value of an Indefinite-delivery contract • Orders under a BPA established under the Commercial Item Test Program	Detailed information regarding any particular contract
Exclusions	• Disclosure would compromise national security • No other exceptions under FAR 5.202 apply	• Disclosure would compromise national security • Awards resulting from acceptance of an unsolicited research proposal • No other exceptions under FAR 5.301(b) apply.	• Purchase card transactions at or below the micropurchase threshold	• Purchase card transactions at or below the micropurchase threshold • Interagency agreements	Same as FedBizOpps and Congressional Notice, plus: • Contracts placed with SBA under Section 8(a) of the Small Business Act • Contracts with foreign firms when the place of delivery or performance is outside the US and its outlying areas • Contracts for which synopsis was exempted under 5.202(a)(1).	None

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

Office of the Chief Procurement Officer
Version 2.1
June 2011

PREFACE

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

- Do I need a J&A?
- What is the basis for the justification?
- What goes in the J&A?
- Who approves the J&A?
- Do J&As require legal review?
- What public disclosure rules apply?

The requirement for preparing J&As and for posting certain of them to the Government Point of Entry (GPE) is statutory (see Part 5 of this Guide for specific J&A posting guidelines). The 1984 legislation establishing the J&A issuance requirement is known as the Competition in Contracting Act (CICA). CICA was codified in 10 U.S.C. 2304 and 41 U.S.C. 253 and is implemented by the Federal Acquisition Regulation (FAR) Part 6, as supplemented by the Department of Homeland Security Acquisition Regulation (HSAR) and the Homeland Security Acquisition Manual (HSAM). 10 U.S.C. 2304 and its sections apply to the United States Coast Guard (USCG) only and 41 U.S.C. 253 and its sections apply to the remaining DHS Components.

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

PART 1

WHEN IS A JUSTIFICATION & APPROVAL REQUIRED?

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

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

"Full & open competition" is specifically defined in the statute, as explained in the definition in Part 6 of this Guide. The existence of "competition" does not necessarily mean full and open competition was solicited. If only a limited number of sources are able to compete due to competitive barriers that are inherent in the Government's requirement, a J&A may be required. Even when full and open competition does not exist, the CO is required to "solicit offers from as many potential sources as is practicable under the circumstances" (FAR 6.301(d)). In addition, the Government may not automatically reject proposals from sources not identified in the J&A. The Government is obligated to consider any proposal received from a responsible source.

These requirements apply to all new contracts and modifications except:

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

2. Contracts awarded under procedures expressly authorized by statute (other than those addressed under the authority of 10 U.S.C. 2304(c)(5) and 41 U.S.C. 253(c)(5). However, a J&A is required for 8(a) sole source awards exceeding $20 million. If you are excluding a class or classes of sources in order to conduct a small business set-aside, or an 8(a) acquisition, no written justification or determination is required unless the 8(a) sole source award exceeds $20 million. In the case of excluding a class or classes, a brief explanation should be placed in the contract file;

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

4. Orders placed under indefinite-quantity contracts when the contract was awarded under the procedures of FAR Subparts 6.1 or 6.2 and all responsible sources were realistically permitted to compete for the requirements in the contract or when the contract was awarded under FAR Subpart 6.3 and the contract's J&A adequately covered the requirements specified in the order.

Seek legal advice regarding required documentation for Indefinite Delivery/Indefinite Quantity (IDIQ) Contracts, Government Wide Agency Contracts (GWACs), or IDIQ DHS-wide contracts where orders contain requirements for brand name specifications. In addition, justifications for other than full and open competition require legal review for acquisitions exceeding the simplified acquisition threshold.

PART 2

AUTHORITIES FOR USING OTHER THAN FULL AND OPEN COMPETITION

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

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

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

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

When Appropriate:

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

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

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

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

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

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

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

7. An acquisition that uses a brand name description or other purchase description to specify a particular brand name, product, or feature of a product, peculiar to one manufacturer. (Special GPE J&A posting requirements apply when brand name items are acquired. Please see "Key Points for the Justification" and "J&A Posting Requirements" in this section.) However, use of brand name or equal descriptions or other purchase descriptions that permit offerors to propose products other than the specific brand name product do not require J&As (FAR 6.302-1(c)).

Key Points for the Justification:

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

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

The justification must thoroughly describe the unique capabilities or qualifications of the source that form the basis for the justification. In addition, unless exempted by FAR 5.102(a)(5) and 5.202, potential sole source, including brand name descriptions, actions

are required to be published at the Government's business opportunities website called FedBizOpps (FBO) which is the GPE. Within each synopsis, a statement affirming that "all interested sources will be considered" should be included to show the reader that all interested contractors would be afforded an opportunity to demonstrate they can meet the Government's minimum requirements. If more than one company adequately demonstrates the capability to meet requirements (to the satisfaction of the contracting officer) then the proposed sole source must be canceled and a competitive acquisition conducted.

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

When an acquisition contains a brand name or other purchase description which is used to specify a particular brand name, product, or feature of a product peculiar to one manufacturer, it does not provide for full and open competition no matter how many sources are solicited. If the acquisition contains brand name specifications, the contracting offices shall include the justification or documentation required by FAR 6.302-1(c)(redacted as necessary) with the solicitation publication in the FedBizOpps. Solicitations using this authority must be published in the FedBizOpps per FAR 5.102 and any bids or proposals received must be considered. The Office of Management and Budget (OMB) and OMB Office of Federal Procurement Policy (OFPP) have specifically directed agencies to reinforce the need to maintain vendor neutral contract specifications, as conveyed in OFPP's April 11, 2005 memorandum to Chief Acquisition Officers, Chief Information Officers, and Senior Procurement Executives on the topic, "Use of Brand Name Specifications. Since then, OFPP has issued additional memoranda related to brand name acquisitions, i.e., April 17, 2006, "Publication of Brand Name Justifications," and November 28, 2007, "Appropriate Use of Brand Name or Equal Purchase Descriptions." The OFPP memoranda can be found at: http://www.whitehouse.gov/omb/procurement_index_memo/. A related OMB memorandum of July 1, 2004, entitled, "Software Acquisition" (Memorandum M-04-16), reminds agencies about their responsibilities when procuring software to support agency operations. OMB Memorandum M-04-16 can be accessed at: http://www.whitehouse.gov/omb/memoranda.

J&A GPE Posting Requirements:

FAR 6.305 requires that J&As for contracts awarded under the authority at FAR 6.302-1 (except for actions solicited under FAR 6.302-1(c) *Application for brand name description)* shall be posted to the GPE at www.fedbizopps.gov within 14 days after contract award. (See Part 5 for further information.) J&As for actions solicited under FAR 6.302-1(c) shall be posted to the GPE at the time of solicitation in accordance with FAR 5.102(a) (6) and FAR 6.302-1(c).

10 U.S.C. 2304(c)(2) or
41 U.S.C. 253(c)(2)

UNUSUAL AND COMPELLING URGENCY

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

Periods of performance for contracts awarded citing the authority at FAR 6.302-2 are limited by law. One statutory period of performance limitation applies specifically to DHS and its Components. If the contract award facilitates the response to or recovery from a natural disaster, act of terrorism, or other man-made disaster (i.e., a major disaster or emergency declared by the President, an uncontrolled fire or fire complex, or an incident for which the National Operations Center coordinates the activation of appropriate Emergency Support Functions and the Secretary of Homeland Security has designated a Federal Resource Coordinator to manage Federal resource support), the contract period of performance should 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 exceed 150 days unless exceptional circumstances apply and a justification is approved by the Head of the Contracting Activity (HCA) or higher approval authority if required by FAR 6.304 or DHS procedures. (See HSAM 3006.302-270 for more information.)

Another statutory period of performance limitation applies when citing the authority at FAR 6.302-2, if circumstances identified in the paragraph above and in HSAM 3006.302-270(d)(1)(i) through (iii) do not apply. In this case, the total period of performance of a contract using this authority 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 may not exceed one year unless the HCA or higher approval authority if required by FAR 6.304 or DHS procedures, determines in writing in addition to approving the justification in FAR 6.304, that exceptional circumstances apply. (See Figure G-1 on the following page and FAR 6.302-2(d) for more information.)

Figure G-1

Limiting Length of Noncompetitive Contracts in Unusual and Compelling Urgency
DHS Decision Tree

Is the contract requirement in which the *Unusual and compelling urgency* exception at FAR 6.302-2 is being used in response to, or recovery from:

1. 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 → Yes → **HSAM 3006.302-270(d)(1)(i) 150-Day Limit Applies**

↓ No ↓

2. 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 206.390 → Yes → **HSAM 3006.302-270(d)(1)(ii) 150-Day Limit Applies**

↓ No ↓

3. 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. → Yes → **HSAM 3006.302-270(d)(1)(iii) 150-Day Limit Applies**

↓ No ↓

***Period of Performance* regulations at FAR 6.302(d)(1) apply**, i.e., the period of performance may not exceed the time for the agency to enter into another contract for the required goods and services through the use of competitive procedures, and **may not exceed one year** unless the HCA (or higher approval authority if required by FAR 6.304 or DHS procedures) issues a written determination in addition to signing the justification that the necessary period of performance must exceed one year.

When Applicable:

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

Key Points for the Justification:

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

The justification must explain the extent to which competition is limited (one source or multiple sources) and show that competition was obtained to the maximum extent possible given the conditions described in the justification. If the conditions surrounding the acquisition are similar to those cited under exception 1 (i.e., only one responsible source), be sure to detail these competition impediments in the justification to provide additional support for the limitation of competition. Again, market research is critical.
Only by a thorough review of the marketplace including commercial items and nondevelopmental items or services, can our assumptions regarding the specified source's unique capabilities be validated. The justification, or an attachment to the justification, must identify all sources that expressed an interest in the requirement, and provide details regarding the evaluation of capabilities of potential sources.

The justification must also address how the contracting officer has or will determine the prices are or will be fair and reasonable, to include whether certified cost or pricing data will be obtained. In addition, any exceptional circumstances related to period of performance limitations at HSAM 3006.302-270 must be addressed. If the HCA determines that an exceptional circumstance applies to the one year period of performance limitation at FAR 6.302-2(d)(1), a written determination is required in addition to the approval requirement (see FAR 6.302-2(d)(3)).

J&A GPE Posting Requirement:
FAR 6.305 requires that J&As for contracts awarded under the authority at FAR 6.302-2 shall be posted to the GPE at www.fedbizopps.gov within 30 days after contract award. (See Part 5 of this guide for further information.)

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

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

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

When Applicable:

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

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

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

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

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

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

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

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

Key Points for the Justification:

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

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

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

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

J&A GPE Posting Requirement:

FAR 6.305 requires that J&As for contracts awarded under the authority at FAR 6.302-3 shall be posted to the GPE at www.fedbizopps.gov within 14 days after contract award. (See Part 5 of this guide for further information.)

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

INTERNATIONAL AGREEMENT

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

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

When Appropriate:

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

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

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

Key Points for the Justification:

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

J&A GPE Posting Requirement:

FAR 6.305 requires that J&As for contracts awarded under the authority at FAR 6.302-4 shall be posted to the GPE at www.fedbizopps.gov within 14 days after contract award. However, the posting requirement does not apply to USCG since it is not required to issue J&As when exercising this authority. (See Part 5 of this guide for further information.)

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

AUTHORIZED OR REQUIRED BY STATUTE

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

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

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

3. Sole source awards under the 8(a) Program 15 U.S.C. 637 (see FAR Subpart 19.8) **except** if the 8(a) sole source award exceeds $20 million pursuant to FAR 6.302-5(b)(4). The requirement for a J&A is not a ceiling or a "cap" on sole source awards exceeding $20 million, instead it is a requirement to document the rationale for making an award on a sole-source basis rather than competing the award among 8(a) firms. Sole source awards under the 8(a) Program exceeding $20 million, FAR 6.303-2(d) requires that the justification address, at a minimum, the following five data elements:

   - A description of the needs of the agency concerned for the matters covered by the contract.
   - A specification of the statutory provision (i.e., 15 U.S.C. 637(a)) providing the exception from the requirement to use competitive procedures in entering into the contract.
   - A determination that the use of a sole-source contract is in the best interest of the agency concerned.
   - A determination that the anticipated cost of the contract will be fair and reasonable.
   - Such other matters as the head of the agency concerned shall specify.

When Applicable:

The authority of 41 U.S.C. 2304(c)(5) may be used to justify other than full and open competition when the statute authorizes, or requires the procurement to be made from a specified source or sources. A J&A is required for an acquisition that does not satisfy one of the conditions listed in (1) and (2) above; and (3) 8(a) sole source awards exceeding $20 million.

Sole source awards under the HUBZone Act of 1997 (15 U.S.C. 657a) or the Veterans Benefits Act of 2003 (U.S.C. 657f) while authorized by law, must have a J&A per FAR 6.302-5(c)(2)(ii).

Rather than J&As, contracting officers shall issue written determinations when making acquisitions from Federal Prison Industries (UNICOR) -18 U.S.C. 4124 (see FAR Subpart 8.6), and for acquisitions made under the Robert T. Stafford Disaster Relief and Emergency Assistance Act- 42 U.S.C. 5150 (see FAR Subpart 26.2).

NOTE:

FAR 6.302-5(c)(1) **prohibits** the authority at 6.302-5 from being used to justify award of a new contract to a specified non-Federal Government entity unless the associated provision of law *specifically*:

> (i) Identifies the entity involved;
>
> (ii) Refers to 10 U.S.C. 2304(j) for armed services acquisitions (*this applies to the U.S. Coast Guard only*) or section 303(h) of the Federal Property and Administrative Services Act of 1949 for civilian agency acquisitions (all other DHS Components); and
>
> (iii) States that award to that entity shall be made in contravention of the merit-based selection procedures in 10 U.S.C. 2304(j) or section 303(h) of the Federal Property and Administrative Services Act, as appropriate.

For example, in the case of a congressional earmark or other congressionally directed project, unless the appropriation act or other statute meets each of the content requirements or "tests" identified in (i) through (iii) above, the CICA *Authorized or Required by Statute* exception in 10 U.S.C. 2304 and 41 U.S.C. 253(c)(5) shall *not* be used to justify solicitation and award of a new contract under other than full and open competition. The CICA exception, *Authorized or Required by Statute*, may only be applied when all three of the statutory language requirements are met. If this is not the case, the contracting requirement shall be met through full and open competition.

This limitation only applies to new contracts. It does not apply when work provided for in the contract is a continuation of the work performed by the specified entity under a preceding contract; or to any contract requiring the National Academy of Sciences to investigate, examine, or experiment on any subject of science or art of significance to the agency and to report on those matters to the Congress or any agency of the Federal Government.

J&A GPE Posting Requirement:

FAR 6.305 requires that J&As for contracts awarded under the authority at FAR 6.302-5 shall be posted to the GPE at www.fedbizopps.gov within 14 days after contract award.

(See Part 5 of this guide for further information.) The J&A must remain posted for 30 days pursuant to FAR 6.305((d)(3).

Approval of J&As for sole source awards under the 8(a) program exceeding $20 million shall meet the requirements at FAR 6.304(a).

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

NATIONAL SECURITY

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

When Applicable:

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

Key Points for the Justification:

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

The justification must also:

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

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

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

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

J&A GPE Posting Requirement:

Subject to FOIA and other statutory protections regarding information, which, if disclosed, may compromise national security, FAR 6.305 requires that J&As for contracts awarded under the authority at FAR 6.302-6 shall be posted to the GPE at www.fedbizopps.gov within 14 days after contract award. (See Part 5 of this guide for further information.)

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

PUBLIC INTEREST

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

When Applicable:

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

Key Points for the Justification:

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

J&A GPE Posting Requirement:

FAR 6.305 requires that J&As for contracts awarded under the authority at FAR 6.302-7 shall be posted to the GPE at www.fedbizopps.gov within 14 days after contract award. (See Part 5 of this guide for further information.)

PART 3

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

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

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

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

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

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

3. Description of Supplies/Services. Describe the supplies or services to be acquired. Provide the estimated total value (including options, if any). Example: The requirement is to provide upgrades and support for XYZ software at a total cost of $5,520,000. The re-capitalization system software requires upgrades to allow integration of information from BCIS and CBP system with DHS' system. This upgrade will allow DHS to consolidate all the information automatically. The manufacturer is the only one that provides this upgrade and the required support for a smooth transition. (If "Unusual and Compelling Urgency" were cited and the proposed contract action facilitates the response to or recovery from a natural disaster, act of terrorism or other man-made disaster, the period of performance is limited to 150 days unless exceptional circumstances apply. See HSAM 3006.302-270;

Period	Unit Price	Total

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

4. Identification of Statutory Authority Permitting Other Than Full and Open Competition. Cite the authority under one of the “seven exceptions” listed under FAR 6.302. Example: The statutory authority permitting other than full and open competition is 10 U.S.C. 2304(c)(1)(for USCG) or 41 U.S.C.253(c)(1) (for other Components) implemented by the Federal Acquisition Regulation (FAR) Subpart 6.302-1 entitled “Only One Responsible Source and No Other Supplies or Services Will Satisfy Agency Requirements”. If "Unusual and Compelling Urgency" is cited, indicate whether or not the requirement facilitates the response to or recovery from a natural disaster, act of terrorism, or other man-made disaster. In addition, if "Unusual and Compelling Urgency" is cited, indicate which of the two associated period of performance limitations applies (i.e., the one year limitation at HSAM 3006.302-270(d)(1) or the 150-day limitation at FAR 6.302-2(d));

5. Demonstration That the Nature of the Acquisition Require Use of the Authority Cited. This paragraph is one of the most important parts of the J&A and should spell out why you have to restrict competition on this acquisition. If using only one responsible source as your authority, explain in detail the specific requirements (not what the equipment or process is capable of doing), why only one contractor is capable of fulfilling those requirements, and where other proposed contractors fail to meet those requirements. If using “Unusual and Compelling Urgency” as your authority, explain in detail why the urgency was not the result of poor planning. You must paint the full picture of this emergency situation and why it was not the user or contracting office’s inability to plan that turned a normal acquisition into an urgent one. Identify what unique qualifications the proposed contractor has for fulfilling the contract requirements. Example: This requirement is a modification to existing software that was designed by XYZ contractor. The existing software is proprietary and only XYZ may make the modifications. If "Unusual and Compelling Urgency" is cited and the requirement facilitates the response to or recovery from a natural disaster, act of terrorism, or other man-made disaster, explain any exceptional circumstances requiring a period of performance beyond 150 days. See HSAM 3006.302-270(d)(1), including requirement for HCA approval of the J&A;

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

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

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

9. Any Other Facts Supporting the Use of Other Than Full and Open Competition. You must explain why technical data packages, specifications, SOW, or purchase descriptions are not suitable for full and open competition. Discuss why your requirement cannot be modified to enhance competition. If you are contending only one source can provide your need, you must provide information why and describe the extent to which the Government will be harmed if not acquired from that vendor. For a proposed contract subject to the restrictions of FAR 6.302-2(d) or HSAM 3006.302-270(d) and where FAR 6.302-2 is cited as the authority, describe the exceptional circumstances allowing for an award for a period of performance in excess of the one-year limitation (applicable to all federal agencies) or the DHS-specific statutory 150-day limitation. Example: Your requirement is for modification of a software package designed by XYZ Corporation. If XYZ does not do the modification, the new contractor will have to re-write two-thirds of the existing software to make the modification. In this case, you must provide an estimate of the cost to the Government that would be duplicated and how it was derived. If using exception FAR 6.302-2, data, estimated cost, or other rationale as to the extent and nature of the harm is not all safety concerns only those that maybe life threatening;

10. A Listing of the Sources, if Any That Expressed, in Writing, an Interest in the Acquisition. Example: A synopsis was issued in the FedBizOpps on 12/3/2008 requesting that parties express their interest in writing to the Contracting Officer. Only XYZ Corporation responded;

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

is as follows: "The USCG is replacing motors on all boats that are clockwise to counter clockwise rotation. Only one source can provide clockwise rotation motors. Once replaced, market research shows that a minimum of 20 manufacturers will be able to compete for this requirement. Any subsequent requirements will be acquired with counter clockwise rotation." If urgent and compelling circumstances are being relied upon, is the agency working on a fully competitive procurement to satisfy longer term needs that will be conducted at the earliest opportunity? If using "Unusual and Compelling Urgency" as your authority for acquisitions to facilitate the response to or recovery from a natural disaster, act of terrorism or other man-made disaster in excess of 150 days, the on-going and planned efforts to ensure maximum competition as soon as practicable must be addressed. (See HSAM 3006.302-270(d));

(Remainder of this page left blank intentionally)

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

_____ _____
Contracting Officer* Date

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

_____ _____
Technical Representative Date

APPROVAL:

_____ _____
Contracting Officer: Not exceeding $650K** Date
And any determination and justification for a contract awarded under FAR 6.302-7, Public Interest, regardless of dollar amount.

_____ _____
Competition Advocate**: Date
$650K to not exceeding $12.5 mil
And any determination and justification for a contract awarded under FAR 6.302-7, Public Interest, regardless of dollar amount.

_____ _____
HCA: *** Date
$12.5 mil to not exceeding $62.5 mil
HCA USCG: $12.5 mil to not exceeding $85.5 mil (HCA approval in addition to that of the Component Competition Advocate is not necessary if the Component Competition Advocate meets either of the criteria at FAR 6.304(a)(3)(i) or (ii), *except for* any determination and justification for a contract awarded under FAR 6.302-7, Public Interest, regardless of dollar amount, and exceptional circumstances applying to actions above the simplified acquisition threshold that cite FAR 6.302-2 as the authority.

_____ _____

CPO (Non-USCG actions): over $62.5 mil Date
CPO (USCG action): over $85.5 mil
And any determination and justification for a contract awarded under FAR 6.302-7, Public Interest, regardless of dollar amount

NUMBERED NOTES:

(1) Acquisitions conducted under simplified acquisition procedures are exempt from FAR Part 6. Therefore, this format is not required for acquisitions under the simplified acquisition threshold pursuant to FAR 13.106-1(b).

(2) For sole source acquisitions of commercial items (including brand names) in excess of the simplified acquisition threshold pursuant to FAR 13.106-1(b)(2) and 13.5: Sole source justifications must be prepared using the format at 6.302-2, modified to reflect an acquisition under the authority of the test program for **commercial items** (section 4202 of the clinger-Cohen Act of 1996) or the authority of the Services Acquisition Reform Act of 2003 (41 U.S.C. 428a). The justification must be made publically available (excluding brand name within 14 days after contract award or in the case of unusual and compelling urgency, within 30 days after award). Approval of this justification is in accordance with FAR 6.304(a)(3) or 6.304(a)(4).

(3) Brand name specifications, the contracting officer shall include with the solicitation the justification or documentation required by FAR 6.302-1(c), 13.106-1(b), or 13.501, redacted as necessary (see FAR 6.305).

(4) Orders placed under Federal Supply Schedules **(**including orders under BPA's**)** are exempt from FAR Part 6; however, limited source justifications must be prepared when restricting consideration to fewer than the number of schedule holders required by FAR 8.405-1, 8.405-2 or 8.405-3 or for an item peculiar to one manufacturer pursuant to FAR 8.405-6. The circumstance, format, approval, and posting requirements are specified at FAR 8.405-6.

(5) For a proposed contract with a dollar value above the simplified acquisition threshold that cites FAR 6.302-2, "Unusual and Compelling Urgency" as its authority with a period of performance that exceeds the limitations identified in FAR 6.302-2(d) or HSAM 3006.302-270(d), approval by the HCA is necessary unless a higher authority is required. This authority is not delegable. If exceptional circumstances apply to the one year period of performance limitation at FAR 6.302-2(d)(1), the HCA must issue a written determination regarding the exceptional circumstances *in addition* to approving the J&A (see FAR 6.302-2(d)(3)).

(6) For actions of $12,500,000 but not exceeding $62,500,000 ($85,500,000 for the USCG), approval by the HCA is required in addition to that of the Competition Advocate *unless* the Component Competition Advocate meets either of the criteria at FAR 6.304(a)(3)(i) or (ii).

PART 4

APPROVAL OF J&As

For actions not exceeding $650,000*, the contracting officer's certification required by FAR 6.303-2(a)(12) will serve as approval unless a higher approving level is established by the Component.

For actions exceeding $650,000* but not exceeding $12,500,000*, the Contracting Activity Competition Advocate is the final approving official. If the Contracting Activity does not have a Competition Advocate appointed by the Component, the Department's Senior Competition Advocate will be the final approving official.

For actions of $12,500,000 but not exceeding $62,500,000 ($85,500,000 for the USCG), approval by the HCA will be required in addition to that of the Competition Advocate unless the Component Competition Advocate meets either of the criteria at FAR 6.304(a)(3)(i) or (ii) (i.e., if a member of the armed forces, is a general or flag officer; or, if a civilian, is serving in a position in a grade above GS-15 under the General Schedule (or in a comparable or higher position under another schedule.) However, see NOTES section below.

For actions exceeding $62,500,000, ($85,500,000 for the USCG), the Department's CPO is the final approving official.

NOTES:

Each review must be prepared by lower level approval(s), e.g., for actions over $62.5 million, all approvals (contracting officer, Component Competition Advocate and HCA) are also required. If any approval required is not received, the acquisition shall not proceed, except for acquisitions between $650,000 and $12.5 million where the Contracting Activity's Competition Advocate is not available and the Departmental Competition Advocate agrees to sign the approval (see FAR 6.304(a)(2)).

Except for actions citing the authority at FAR 6.302-7 (for which class determinations and justifications are prohibited), class justifications shall be approved by the same approval authority as for individual justifications (see HSAM 3006.304(c)).

Contracting officer, Component Competition Advocate, HCA and CPO review and approval are required for any determination and justification for a contract awarded under FAR 6.302-7, Public Interest, regardless of dollar amount.

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

All justifications and approvals for other than full and open competition submitted to the OCPO for approval (see FAR 6.304(a) and this part) shall be accompanied by the approved acquisition plan. Any previous J&A for other than full and open competition shall also be submitted.

Legal Sufficiency must be obtained on all J&As exceeding the simplified acquisition threshold.

PART 5

PUBLIC DISCLOSURE OF JUSTIFICATION AND APPROVAL DOCUMENTS

Section 844 of the National Defense Authorization Act for Fiscal Year 2008 amended subsection (c) of 10 U.S.C. 2304 and 41 U.S.C. 253 regarding procurements made under other than full and open competition. The amendment, as implemented in FAR 6.305, requires that for any contract awarded on or after February 17, 2009 that is based upon issuance of a J&A document (for noncompetitive procurement) required under FAR 6.303-1 contracting officers must:

A. Within 14 Days of contract award for all J&As except those in support of FAR 6.302-1(c) *Application for brand name descriptions*, and the exemption to full and open competition at FAR 6.302-2, *Unusual and compelling urgency*: *

(1) Carefully review the J&A document, and, in consultation with appropriate representatives from Office of General Counsel, Privacy Office, Security Office, and Freedom of Information Act Officers, remove any proprietary data and/or information that may compromise national security from the copy of the J&A document that will be posted to *fedbizopps.gov*.

(2) Following screening, convert the J&A to a pdf file, as appropriate, and upload or link the file to a J&A Notice that must be prepared in the GPE at www.fedbizopps.gov in the Opportunities section.

* Applies to justifications exercising exemptions to full and open competition at FAR:
6.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements (except for actions solicited under FAR 6302-1(c), *Application for brand name descriptions)*;
6.302-3 Industrial mobilization; engineering, developmental, or research capability; or expert services;
6.302-4 International agreement (except for U.S. Coast Guard);
6.302-5 Authorized or required by statute (see exceptions on page G-14 of this guide);
6.302-6 National security; or
6.302-7 Public interest
And to sole source justifications (including brand name) required by FAR 13.501(a)(1), Test Program for Certain Commercial Items.

NOTE: FAR 5.102(a)(6) and 6.302-1(c) require that J&As for brand name requirements be posted to the GPE at the time of solicitation, rather than after award.

B. Within 30 Days of contract award (Applies only to justifications exercising the exemption to full and open competition at FAR 6.302-2 *Unusual and compelling urgency*):

(1) Carefully review the J&A document, and, in consultation with appropriate representatives from Office of General Counsel, Privacy Office, Security Office,

and Freedom of Information Act Office, remove any proprietary data and/or information that may compromise national security from the copy of the justification document that will be posted to *fedbizopps.gov*.

(2) Following screening, convert the J&A to a pdf file, as appropriate, and upload or link the file to a J&A Notice that must be prepared in the GPE at www.fedbizopps.gov in the Opportunities section.

A DHS-wide link providing public access to the J&As posted to www.fedbizopps.gov is accessible at the DHS Open for Business – Opportunities website (see "Public Disclosure" section) at: http://www.dhs.gov/xopnbiz/opportunities/ .

PART 6

ACRONYMS & DEFINITIONS

ACRONYMS

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

DEFINITIONS

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

Competition Advocate: An individual designated by the Component to serve as an advocate for competition for the procuring activity in accordance with Section 20 of the Office of Federal Procurement Policy Act. The Competition Advocate promotes "full and open competition" and challenges barriers to such competition, and fulfills the duties and responsibilities set forth in FAR Subpart 6.5. A listing with point of contact information for the Department Competition Advocate and Procuring Activity Competition Advocates is maintained by the CPO on DHS Open for Business, and is accessible at: http://www.dhs.gov/xopnbiz/regulations/gc_1204658767888.shtm.

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

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

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

Governmentwide Point of Entry (GPE): The single point where Government business opportunities greater than $25,000, including synopses of proposed contract actions, solicitations, and associated information can be accessed electronically by the public. The GPE is located at www.fedbizopps.gov.

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

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

Market Research: Approach used to collect and analyze information about capabilities within the market to satisfy agency needs.

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

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

Synopsis: A notice published in the FedBizOpps for the purposes of identifying the Government's requirements as potential business opportunities (preaward) (e.g. Sources Sought, Presolicitation Notice) or for those requirements, which have been awarded (postaward) (e.g. Post Award Synopses). The primary purposes of the notice are to improve small business access to acquisition information and enhance competition by identifying contracting and subcontracting opportunities. Preaward synopses are typically required for open market purchases that will exceed $25K. When the acquisition includes a brand name description, the contracting officer shall include the justification or documentation with the solicitation when published in at www.fedbizopps.gov (See FAR 5.102(a)(6)). For post-award synopses and notices, reference FAR Subpart 5.3 and HSAM Subpart 3005.

DHS Acquisition Planning Guide

Office of the Chief Procurement Officer
Version 6.1
June 30, 2011

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Purpose

Careful planning is the first step to successful achievement of the Department of Homeland Security's (DHS) mission. Acquisitions are an important means of meeting mission requirements. The purpose of this guide is to provide program managers (PMs) and other acquisition personnel a way to organize and plan acquisitions to meet their portion of the DHS mission.

Policy

In accordance with FAR 7.102, all DHS acquisitions shall be planned. Unless an exception applies (see HSAM 3007.103(d)(3)), all DHS acquisitions or, combinations of acquisitions supporting a program that meet the threshold requirements in HSAM 3007.103(d)(2) and DHS Directive Number 102-01, Acquisition Management Directive, require a formal written and approved acquisition plan (AP) before initiating any contract actions. Acquisition Plans may be a stand-alone or consolidated document (see HSAM 3007.103).

Acquisitions include, but are not limited to, contracts, orders against the GSA Federal Supply Schedule or other contract vehicles and basic ordering agreements, inter- and intra-agency agreements that result in a transfer of funds that will ultimately be applied to a contractual action whether or not they are executed by means of a memorandum of understanding or memorandum of agreement.

This guide implements the Federal Acquisition Regulation (FAR) Subpart 7.1, FAR Section 34.004, and Homeland Security Acquisition Manual (HSAM) Subchapter 3007.1 and applies to the development and documentation of APs for supplies and services for non-major acquisitions and major systems acquisitions.

Part I – Overview of the Acquisition Planning Process for Major System and Non-Major System Acquisitions

1.1 What is Acquisition Planning?

Acquisition planning is the process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan for fulfilling an agency need in a timely and effective manner, and at reasonable cost. Written acquisition plans are developed to document the results of acquisition planning.

Acquisition planning is required for all acquisitions in order to promote and provide for:

1. The acquisition of commercial items to the maximum extent practicable;

2. Full and open competition or, when full and open competition is not required or possible, to obtain competition to the maximum extent practicable;

3. The appropriate selection of contract type; and

4. A plan of action that addresses all technical, business, management, and other significant considerations as described in FAR Part 7 and as supplemented herein.

A. Major System Acquisition Plans

FAR 34.004 requires acquisition planning for major system acquisitions. HSAM 3007.103(d)(iv) provides guidance on the criteria and thresholds for the preparation of APs for major systems. At DHS, the threshold for major system acquisitions is measured in terms of life-cycle cost for supplies, or in terms of annual expenditure for enterprise services (see definitions in Part III). For guidance on the review and approval process for major system acquisition, see HSAM 3007.103(h).

Major systems acquisition requires the development of a vendor engagement strategy. For more information on this see Part II, B2, Competition and Vendor Engagement Strategy

B. Non-Major System Acquisition Plans

Acquisition planning documents for other than major system programs may be standalone or consolidated APs. Acquisition plan thresholds for non-major acquisitions are based on total contract or order value, including options. Acquisition planners are encouraged to develop a vendor engagement strategy for Non-Major systems acquisitions. For more information on this see Part II, B2, Competition and Vendor Engagement Strategy.

HSAM 3007.103(d)(2)(i) – (iii) and (v) – (viii) provides guidance on the criteria and thresholds for the preparation of APs for non-major systems. HSAM 3007.103(h) provides guidance on the review and approval process.

C. Describing the Acquisition Process

Acquisition plans document a process for meeting a portion of the DHS mission through one or more acquisitions. The AP for major system acquisitions shall provide the background necessary to understand the program and how each acquisition will support that program. Acquisition plans for non-major system acquisitions describe the need for an acquisition(s) and the key considerations involved.

Acquisition plans are the means to discuss the acquisition process and document the decisions made prior to processing each contractual action. Acquisition plans also serve as mechanisms to review, approve and document acquisition decisions and create a road map for the implementation of acquisition decisions. Once approved, the plans provide strategic direction and approval for the execution of contractual actions.

1.2 When is an acquisition plan required?

FAR 7.102(a) and HSAM 3007.102 requires planning for all acquisitions. Acquisition planning should start as soon as a need is identified, preferably well in advance of the fiscal year in which contract award or order placement is necessary. When determining how early to initiate acquisition planning, planners should develop procurement administrative lead times that consider the complexity, scope, contracting method, need for vendor engagement, the need to conduct the workforce assessment, and to plan for the appropriate transition time that may be needed to award the contract.

HSAM 3007.103(d) provides guidance on the criteria and thresholds for the preparation of acquisition plans for major system acquisitions and non-major system acquisitions.

For acquisition(s) less than $10 million, entry of information in the Acquisition Planning Forecasting System (APFS) Database (ref. **Error! Hyperlink reference not valid.**) satisfies the written acquisition plan requirement. A copy of the AAP and its reference number obtained through the APFS Database must be included in the contract file as evidence of acquisition planning.

Heads of the DHS Contracting Activities (HCAs) may provide supplementary thresholds and requirements for written acquisition plans and/or APFS reporting for acquisitions with estimated dollar values of less than $10 million. Pursuant to HSAM 3007.172(a)(5), classified or sensitive information shall not be entered in the APFS Database.

1.3 Who prepares acquisition plans?

In accordance with FAR 7.101 and HSAM 3007.103-70, the acquisition planner is responsible for developing and executing an acquisition plan. In general, within DHS, the primary acquisition planner is the program manager (PM) or his or her representative.

In accordance with FAR 7.102(b) and HSAM 3007.102(b)(1), a PM will coordinate with members of an Integrated Project (or Product) Team (IPT) comprised of all personnel responsible for significant aspects of the plan.

Although planning for certain standalone and/or consolidated non-major acquisitions may not necessitate the formation of an IPT, FAR 7.102 nevertheless requires that acquisition planning integrate the efforts of all personnel responsible for significant aspects of an acquisition. In defining the requirements and planning the acquisition, requisitioners should consult with appropriate representatives from contracting, legal, fiscal, small business, environmental, logistics, privacy, security, and other functional SMEs, as needed.

Contracting officer participation as an IPT member or member of an acquisition planning team is essential, because among his/her acquisition planning duties, the contracting officer is responsible for:

(1) Designating a COR as early in the acquisition planning process as possible;

(2) Documenting in the acquisition plan the rationale and analysis for the selection of other than a firm fixed price (i.e., cost-reimbursement, time & material, or incentive) contract type; and,

(4) Assessing the adequacy of Government resources that are necessary to properly plan for, award, and administer other than a firm fixed price contract.

In accordance with HSAM 3007.102, acquisition planning is also required for interagency agreements. For IAs resulting in Assisted Acquisition, the requesting agency PM/requisitioner may delegate preparation of an AP to the servicing agency PM, but the requesting agency PM/requisitioner remains responsible for providing support and assistance as needed, and must approve the resulting AP.

Acquisition plans are not required for IAs issued under the Economy Act or other, more specific statutes that do not result in an Assisted Acquisition. Instead, the DHS PM/requisitioner is required to prepare an Analysis of Alternatives, as described in DHS Instruction 125-02-001, Instruction Guide on Interagency Agreements. The Analysis of Alternatives should describe in detail why an IA is the appropriate vehicle to fulfill a DHS requirement.

1.4 Can Contractors create, edit or review acquisition plans?

Contractors are prohibited from making any acquisition planning decisions.

Services in support of acquisition planning (both for major system and non-major system acquisitions) are not generally considered to be inherently governmental functions (FAR 7.503(d)). However, in order to avoid any potential conflicts of interest, or the

appearance thereof as related to the award and administration of future contracts resulting from any acquisition planning activity for which a contractor provides support, appropriate Organizational Conflict of Interest (OCI) provisions must be included in the contract under which the contractor's acquisition planning support services have been obtained, and nondisclosure agreements must be executed to cover acquisition planning-related information. If there is any question concerning a potential, actual or the appearance of an OCI, the contracting officer must contact the Office of General Counsel or Component legal office before undertaking any acquisition planning involving a contractor's participation. For further guidance regarding organizational and consultant conflicts of interest, see FAR Subpart 9.5; HSAR Subpart 3009.5; and HSAM Subpart 3009.5.

1.5 Can the acquisition plan be tailored or waived?

A. **Tailoring -** FAR 7.103 provides flexibility in establishing criteria for APs. The contents of an AP vary depending on the nature, scope, complexity, circumstances, cost, program level, and phase of the acquisition program life-cycle. APs consider all of the topics listed in Part II of this guide, but the contents of each topic will vary and may be tailored. Acquisition plans for major system acquisitions should reference the applicable program documents and summarize them, where appropriate. Plans for major system acquisitions summarize program approvals and do not substitute for ADE, Acquisition Review Board (ARB) or other programmatic decisions.

B. **Waivers -** The HCA may request a waiver from the requirement for CPO approval of an AP. Waiver requests shall be submitted by the HCA through the Director, Procurement Oversight and Support at: procurement.support@dhs.gov. Waiver requests shall contain sufficient detail to clearly demonstrate the basis for the request. Because APs for major system acquisitions provide key support for Acquisition Decision Authority (ADA) decisions, AP waivers for major system acquisitions must also be granted by the ADA.

   Waivers do not constitute authority for any deviation, special condition or clause which might be needed for an acquisition. Neither an approved AP, nor a waiver of an AP may substitute for any Determination and Findings (D&F), Justification for Other than Full and Open Competition (J&A), or deviation from FAR or HSAR requirements.

1.6 Is there a required numbering system for the acquisition plan?

Yes. See Part II, Section C, Identification of acquisition plan.

1.7 Who signs and approves the acquisition plan?

A. Review and approval

HSAM 3007.103(h) provides guidance on the review and approval process, including signature authority.

B. HCA AP responsibilities

HCA responsibilities include comprehensive coordination of requirements with appropriate Departmental offices and functions, including obtaining assurances that acquisitions:

1. For information technology meet the requirements of HSAM 3007.103-70(e)(1), addressing the protection of privacy in accordance with the Privacy Act (5 U.S.C. 552a) and FAR Part 24 and 39.105; and in accordance with FAR 39.101, include the appropriate information technology security policies and requirements, including the use of common security configurations available from the National Institute of Standards and Technology's Internet site at: http://checklists.nist.gov/

2. In which contract requirements are bundled, are coordinated with Component and, as appropriate, DHS small business representatives, and the SBA, and meet the review and approval requirements of HSAM 3007.107 and FAR 7.104(d)(1) and (2);

3. Acquisitions in support of disaster or emergency relief activities inside the United States and outlying areas include consultation of the Disaster Response Registry at www.ccr.gov, which provides a list of contractors willing to perform debris removal, distribution of supplies, reconstruction, and/or other disaster or emergency relief activities consistent with the requirements at HSAM 3007.103-70(d)(3).

4. Include the use of a project labor agreement consistent with FAR 22.5 when appropriate.

5. For other than firm-fixed-price contracts, plans are approved at least one level above the contracting officer.

C. Approval and release of Notice requirements

Incorporate scheduling necessary for compliance with contract notification requirements identified in HSAM 3005.303-70, Announcement of contract awards and the policy in HSAM 3007.102(b)(3)(B); and, for asset acquisitions in excess of $10 million, obtaining prior approval of the DHS Chief Administrative Officer (CAO) through the Component CAO.

1.8 Where and when is an acquisition plan submitted?

Components shall submit acquisition plans for CPO approval to the Director, Oversight & Strategic Support Division at: procurement.support@dhs.gov. All acquisition plans must be signed by the Component HCA as "*Recommended for CPO Approval*." For complete details and timeframes, see HSAM 3007.103(h)(1)(ii). No solicitations may be issued without CPO approval unless a waiver has been granted.

1.9 When are acquisition plans revised?

The PM or program/requiring office and the contracting officer will review the AP at least annually. Acquisition plans for major system acquisitions shall also be approved by the DHS Chief Procurement Officer at each Acquisition Decision Event (ADE) milestone after ADE 1. As appropriate, the AP will be revised following each review to reflect the occurrence or need for a major program change, or other *significant change* to the approved plan. Generally, a change is significant if there is an alteration in acquisition strategy, including the contract type or method of procurement; a change in scope; and/or a change in the dollar value of the item procured (However, see definition for significant change in Part III of this guide.) AP revisions are subject to the same review and signature process as the original document. Revisions may be made with changed pages or by complete revision of the AP. The AP will receive a revision number. See Part II, Section C, Identification of Acquisition Plan, for tracking revisions.

1.10 How and when should OCPO be involved during the development of APs?

Components are encouraged to engage OCPO early in the AP development process so that departmental concerns are considered during the formative stage of AP development and to allow the department to gain familiarity with the acquisition. In those cases where an IPT has been established, an optimal time to begin a dialogue with OCPO is towards the end of IPT discussion on the overall acquisition approach when enough knowledge is gathered to make informed decisions regarding the strategy, approach, and business considerations to guide the development of the AP.

1.11 When are Abbreviated or Streamlined acquisition plans required?

In accordance with HSAM 3007.103(d)(2)(ii), with the exception of the Office of Selective Acquisitions (OSA), Abbreviated acquisition plans are developed for requirements valued at less than $10 million containing sensitive information. The Abbreviated plan should address the following data requirements in the DHS Acquisition Planning Guide, Appendix H, pages H-14 through H-31: A1, A2, A3, A5, A6, A7, B3, B2, B4, B5, B9, B10, B13, B15, B17, B19, applicable questions in B20, and B21. All Abbreviated acquisition plans must include B18.

Streamlined acquisition plans are authorized for contracts issued under DHS EAGLE, FirstSource, or PACTS programs consistent with HSAM 3007.103(d)((2)(vii)

The streamline acquisition plan template for these contracts may be accessed through the Office of Procurement Operations (OPO) website: http://dhsconnect.dhs.gov/org/comp/mgmt/cpo/opo/Pages/default.aspx.

1.12 **Do I need a Balanced Workforce Strategy/Assessment?**

Yes, for existing contracts, the requiring activity must develop a Balanced Workforce Strategy (BWS) and conduct the analysis using the BWS tool for service contracts pursuant to HSAM 3007.505. Requiring activities should review the Guidance issued by the Office of the Chief Human Capital Officer (OCHO) on Balanced Workforce prior to using the BWS tool. For new service contracts, the workforce assessment must be conducted pursuant to HSAM 3007.504 until new work is processed using the BWS tool. Use of the BWS process is in addition to the written determination required by FAR 7.503(e). For more information and guidance on BWS, log onto the Balanced Workforce Connect site at: http://dhsconnect.dhs.gov/org/comp/mgmt/dhshr/mgr/Pages/BWF.aspx

Part II – Preparation and Contents of Acquisition Plans

A. FAR 7.105 Content Requirements

As required by FAR 7.105, each numbered subsection in Part II must be addressed in APs, except as noted for Streamlined or Abbreviated plans. The contents of each subsection may be tailored to the requirement or program. If a particular element is "not applicable," annotate that specific section and provide a brief explanation, where appropriate. For example, the documentation requirements in Table 1 below specify required sections of this Part II that are applicable to various major system acquisition milestones/phases in accordance with DHS Directive Number 102-01, Acquisition Management Directive.

Table 1. Minimum Major System Acquisition Plan Documentation Requirements by Acquisition Decision Event (ADE)

	For Acquisition Decision Event (ADE) 2A	**For Acquisition Decision Event (ADE) 2B**		**For Acquisition Decision Event (ADE) 3**
	Approve the Acquisition(s) Major System Acquisition: *Capital Assets and Services*	Approve the Acquisition Types		Approve Production, Deployment and Support Capital Assets Only
		Capital Assets	*Services*	
Level of Detail:	**Detailed**	**Specific Detail**		**N/A**
Major System Acquisition Plan Content by Phase with Corresponding AP Guide Section in Part II	A1 - A 4 A 6 - A 8 B 1- B10 B 13 B 14 B 15	A 5 B 3 - B 5 B 7 B 11 - 12 B 15 - B 21		

NOTE: In accordance with DHS procedures, ADE 1, Validation of Need, is in the form of a briefing, and does not meet the criterion that an AP must be in writing. Therefore ADE 1 is not included above Table.

B. Tailoring

The contents required for acquisition plans for major system acquisitions vary with the particular ADE. For example, ADE 2 documentation requirements reflect a phase in a project/program where more detailed and specific information, and more accurate estimates become available as the project/program progresses from the previous phase, thereby producing a more complete plan, where decisions can be made on the actual acquisition vehicle(s) proposed for use in support of the program/project.

Each successive acquisition plan submission must highlight the specific changes, if any, from the previously approved submission. For example, an AP submission for ADE 2B would highlight any changes to the plan based on additional information or events that have occurred since the submission and approval of the AP for ADE 2A originally submitted for CPO approval. In cases where there are no significant changes from one ADE to the next, HCAs shall provide a memorandum to the CPO indicating that there has been no change. (See Section A. Acquisition Background and Objectives for further information.)

C. Identification of Acquisition Plan

Provide the program or acquisition title or name, and the AP number.

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

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

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

Indicate if the document is a new plan or an update. If it is an update, provide the reason for the update and summarize the new information. Revisions to plans may be tracked using a table such as the sample tracking Table 2.

Table 2. Revision Tracking Template - Samples

(a). Non-Major System Acquisition

Document Version	Date Completed	Reason for Revision
Original	xx/xx/20XX	Not applicable
Revision 1	xx/xx/20XX	Updated the logistics section of the AP
Revision 2	xx/xx/20XX	Made corrections to the acquisition considerations section of the AP

(b). Major System Acquisition

Document Version	Date Completed	Reason for Revision
Acquisition Plan for ADE 2A	xx/xx/20XX	Not applicable
ADE 2B	xx/xx/20XX	New project life-cycle phase/event – Progression from ADE 2A to ADE 2B

D. Executive Summary

1. Contents of Executive Summary

Provide an executive summary of the program and/or acquisition(s) contained in the AP, as appropriate. This should include:

a. Description of the overall acquisition strategy (see Section A1);

b. Description of the acquisition(s) and how it/they relate to a specific project or program. Identify if the AP covers a major system;

c. Location of the work to be performed;

d. Proposed contract type(s);

e. Overall period of performance; and

f. Total estimated value.

2. Coordination

Include written assurance that the acquisition plan has been properly coordinated with pertinent functional offices/stakeholders prior to submission to the CPO for approval.

Check the following investment categories:

a. This program ( ) is ( ) is not an IT program covered under OMB Circular A-130, "Management of Federal Information Resources". If so, discuss how the program has met the A-130 requirements;

b. This program ( ) is ( ) is not an acquisition of services.

c. This program ( ) supports ( ) does not support the procurement of services that are incidental to a purchase for supplies, equipment, and/or information technology hardware;

d. This program ( ) is ( ) is not required to have an Exhibit 300. If applicable, indicate that it has been reviewed. If not applicable, provide an explanation as to why it is not applicable.

Define the acquisition scope, business objectives, situational assessment, and include a discussion of potential acquisition alternatives. Also, provide the overall acquisition approach to obtain the defined capabilities in a manner that is in the best interest of the Government. Define an overarching program strategy across procurement, operational (sustainment and support), acquisition, and resource functions. Describe the appropriate types of acquisition alternatives and assess the benefits, disadvantages, and risks of each with an overall recommendation for the program and its projects.

Section A. Acquisition Background and Objectives

A1. Statement of Need

Provide a brief description of the item which is being procured under the contract(s). A picture, drawing, diagram, or other graphic representation may be included when necessary for adequate description. Summarize the need for this acquisition in terms of the capability gap that this acquisition(s) will fill. The capability gap is the difference between the requiring activity's overall mission, and the portion of that mission it is achieving without the acquisitions covered by this AP. If the program has an approved Mission Needs Statement (MNS), reference it and summarize the gap here. Also, summarize the technical and contractual history of the program and acquisition(s). Discuss feasible acquisition alternatives (reference the Analysis of Alternatives, if applicable), the impact of prior acquisitions on those alternatives, and any related in-house efforts associated with the acquisition(s).

A2. Applicable Conditions

State all significant conditions or constraints affecting the acquisition, such as:

1. Requirements for compatibility with existing or future systems or programs; and

2. Any known cost, schedule, and capability or performance constraints.

A3. Cost

State established cost goals for the acquisition and the rationale supporting them, and discuss related cost concepts to be employed, including, as appropriate the following items:

1. *Life-Cycle Costs.* Discuss how life-cycle cost will be considered (ref. DHS Directive Number 102-01) and the cost model used to develop life-cycle cost estimates. Life-cycle costs includes all costs associated with the research, development, procurement, operation, logistical support and disposal of an individual system, or capability, to include its supporting infrastructure that plans, manages, and executes the system or capability over its full life. These costs also include cost of requirements for common support items incurred because of the system or capability.

   NOTE: This is not applicable to acquisition of services, see DHS Directive Number 102-01, Acquisition Management Directive.

2. *Design-to-Cost.* Describe the design-to-cost objective(s) and underlying assumptions, including the rationale for quantity, learning-curve, and economic adjustment factors. Describe how objectives are to be applied, tracked, and enforced. Indicate specific, related solicitation and contractual requirements to be imposed. Design-to-cost activities are those which are undertaken to meet the cost objectives through explicit design activities. The Cost as an Independent Variable (CAIV) depends on design-to-cost activities to meet the objectives by instilling cost-consciousness into the designers, by stimulating them to challenge requirements, and illuminating their cost progress. CAIV has refocused design-to-cost to consider cost objectives for the total life-cycle of the program, including logistics support and to view cost as an independent variable with an understanding it may be necessary to trade-off performance to stay within cost objectives and constraints.

   NOTE: Not applicable to acquisition of services or information technology (IT) systems.

3. *Application of should-cost.* Describe the application of should-cost analysis to the acquisition also see FAR 15.407-4. The objective of should-cost reviews is to promote both short and long-range improvements in the contractor's economy and efficiency in order to reduce the cost of performance on Government contracts. These reviews evaluate the economy and efficiency of the contractor's existing workforce, methods, materials, facilities, operating systems, and management. The should-cost reviews are accomplished by a multi-functional team of Government contracting, contract administration, pricing, audit, and engineering representatives.

   NOTE: Not applicable to acquisition of services or IT systems.

A4. Capability or Performance

Summarize the required capabilities or performance characteristics of the supplies or the performance standards of the services being acquired and state how they are related to the need. For each acquisition covered under the AP, describe how such supplies or services will satisfy the need and the required capabilities provided to the Component.

A5. Delivery or Period of Performance Requirements

If information is available, include an Integrated Program Schedule (IPS) showing linkages between contract period of performance and delivery of program capability. Otherwise, state the period of performance for each acquisition, and discuss why that period of performance was chosen.
For any period of performance longer than 5 years, summarize the market research that supports the extended period of performance. For acquisition of services, indicate whether the acquisition will be for a term of performance or a completion date.

Provide reasons for any urgency, if it results in a requirement for concurrent development and production, or if it constitutes justification for not providing for full and open competition. Describe any mandated deadlines or any system integration issues that could affect performance schedules.

A6. Trade-Offs

Discuss the expected consequences of tradeoffs among the various **cost, capability or performance, and schedule goals**. As appropriate, reference the results of the Analysis of Alternatives which is the focus for major trade-offs, or the Alternatives Analysis which applies to simpler acquisition situations (see DHS Directive Number 102-01(V)(2)(ii)(b) and DHS Instruction 125-02-001(IV)).

Cost/performance/schedule tradeoffs should be shaping the requirements and proposed design approaches on a cost-effectiveness basis. Cost-effectiveness assumptions and goals will be modified by affordability considerations as the tradeoffs start to focus on the cost-effective alternatives that are practical from a budget point-of-view. CAIV should be utilized to make life-cycle affordability decisions. Cost reductions shall be accomplished through the life-cycle.

> *NOTE: Do not discuss aspects of the source selection trade-off process, as described in FAR 15.101, in this section.*

A7. Risks

Discuss program risks, including **technical, cost, and schedule risks**, and describe what efforts are planned or underway to reduce risk and the consequences of failure to achieve goals. If concurrent development and production is planned, discuss its effects on cost and schedule risks. Program risks may include cost, schedule, performance, political and

organizational. If there is a risk management plan, cite the plan number and date, and include a brief summary, instead of completing the sample risk Table 3 below.

Table 3. Risk Assessment - Sample

Risk Event	Risk Category	Risk Probability	Impact	Risk Management	Responsible Official
Identify the risk	E.g., Cost, Schedule, Performance, Political or Organizational	High, Medium or Low	What would happen, and how severe would the impact be if the risk event occurred	Describe the mitigation strategy	Name and title of the person who is responsible for managing the risk

If multiple acquisitions are planned, identify the risks to each acquisition and complete the table above for each acquisition.

A8. Acquisition Streamlining

Describe any planned acquisition streamlining initiatives that will result in a more efficient and effective use of resources during the acquisition process. List each item that may be used in each acquisition to streamline the acquisition process, for example:

- Encourage industry participation by hosting Industry Days, using draft solicitations, presolicitation conferences and other means of stimulating interaction with industry;
- Select and tailor only the necessary and cost-effective requirements, such as
  - Using performance-based services acquisition, when applicable;
  - Acquiring Commercial-Off-the-Shelf (COTS) products, when applicable;

Section B. Plan of Action

For each contract action, the plan should address the following:

B1. Sources

Using the sample Tables 4 and 5 below, indicate the completed actions to date and the prospective sources of supplies or services that can meet the need.

Table 4: Contract Actions Completed to Date Sample

Acquisition Considerations	Major Contract Action #1	Major Contract Action #2	Major Contract Action #3
Action identifier (e.g., contract number, grant number)			

Type of vehicle (e.g., contract, grant, interagency agreement, memorandum of agreement, memorandum of understanding, other transaction)			
Contract type (e.g., Time and Materials, Fixed-Price, etc.)			
Contractor			
Description of supply/service			
Date of award			
Period of performance (start and end date)			
Total value (provide data on basic value and option value(s))			
Quantity of supplies (for other than service contracts)			
Performance based? (Y/N)			
Competitively awarded? (Y/N)			
Awarded to a small business concern? (FAR Part 19) (Y/N)			
Was the award to a small business the result of a small business set-aside? (FAR Part 19) (Y/N)			

Table 5: Planned Contract Actions Sample

Acquisition Considerations	Major Contract Action #1	Major Contract Action #2	Major Contract Action #3
Anticipated type of vehicle (e.g., contract, grant, interagency agreement, other transaction)			
Anticipated contract type			
Description of supply/service to be provided			
Anticipated date of award			
Anticipated period of performance			
Estimated total value of contract/order/other vehicle ($M)			
Estimated quantity of supplies			
Quantity			
Performance based? (Y/N)			
Competitively awarded? (Y/N)			
Planned Set-Aside (FAR Part 19)			

In completing and supplementing the tables, consider required sources of supplies or services (see FAR Part 8), and sources identifiable through Government-wide databases.

This section should also address planned set-aside(s) and document consideration of small business, veteran-owned business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns (see FAR Part 19), and the impact of any bundling that might affect their participation in the acquisition. When the proposed plan involves bundling, identify

the incumbent contractors and contracts affected by the bundling. Address the extent and results of the market research and indicate the impact of the market research findings on the various elements of the plan (see FAR Part 10 and HSAM Chapter 3010 Appendix I, *DHS Market Research Guide*).

B2. Competition and Vendor Engagement Strategy

Describe how competition will be sought, promoted, and sustained throughout the course of the acquisition. If exclusion of source(s) is proposed, identify the applicable statutory authority permitting exclusion (see FAR 6.202 and 6.203). If full and open competition is not contemplated, cite the authority in FAR 6.302, discuss the basis for the application of that authority, identify the source(s) and discuss why full and open competition cannot be obtained, and whether the requirement has been coordinated with the PACA or DHS Competition Advocate, as appropriate.

When effective subcontract competition is both feasible and desirable, describe how such subcontract competition will be sought, promoted, and sustained throughout the course of the acquisition. Identify any known barriers to increasing subcontract competition and address how to overcome them.

Planners of major system acquisitions as defined in HSAM 3007.103(d)(2)(iv) shall develop and include as part of their acquisition planning process and acquisition plans, a vendor engagement strategy that:

- includes at least one industry day, a pre-solicitation or pre-proposal conference, or the issuance of a Request for Information (RFI); and
- allows for a reasonable amount of one-on-one engagement; and
- allows time for discussions, as needed and in accordance with FAR Part 15, during the proposal evaluation process; <u>or</u>
- provide a written justification in this section of their acquisition plan as to why those steps are unnecessary.

Planners of acquisitions for **other** than major system programs equal to or greater than $10 million are encouraged to develop and include as part of their acquisition planning process and acquisition plans, a vendor engagement strategy that:

- includes at least one industry day, a pre-solicitation or pre-proposal conference, or the issuance of a Request for Information (RFI); and
- allows for a reasonable amount of one-on-one engagement; and
- allows time for discussions, as needed and in accordance with FAR Part 15, during the proposal evaluation process.

B3. Source-Selection Procedures

Discuss the source-selection procedures for the acquisition(s), including the timing for submission and evaluation of proposals, and the relationship of evaluation factors to the attainment of the acquisition objectives (See FAR Subpart 15.3).

In addition, provide the following information:

1. The contractual vehicle ( ) will include ( ) will not include Earned Value Management (EVM) as a contract administration tool;

2. The solicitation ( ) will include ( ) will not include a pre-award Integrated Baseline Review (IBR). If a pre-award IBR will be included, discuss how the IBR will be considered in the source selection decision, and whether offerors will be directly compensated for the costs of participating in a pre-award IBR.

B4. Contract Type Selection

1. Discuss the rationale for the selection of other than a firm, fixed price contract type. Include details such as why the contract type selected must be used to meet the agency/program need that is subject of the acquisition.

2. Explain why, at least, a portion of the contract cannot be awarded as a fixed price contract (i.e., hybrid contract). For example, is it possible to establish fixed price contract line items (CLINs) for some of the work to be performed; while other work to be performed can be accomplished under cost or T&M CLINs. (FAR 16.104(e)).

3. If the contract type is a level-of-effort, price rededetermination, or fee type arrangement, provide specific details as to why this type of contract is needed. (FAR 16.103(d)(1)(v).

4. Include a discussion of actions planned to minimize the use of other than a fixed price contracts on future acquisitions for the same requirement (i.e., whether or not the contract can be structured to facilitate a future award or a portion of a future award can be awarded as a fixed price contract).

5. If a T&M type contract is selected, the AP shall discuss in this section why it is not possible to estimate accurately the extent or duration of the work or to anticipate costs with any degree of confidence at the time of awarding the contract. (See FAR 16.601(c)).

6. Discuss the techniques, process, and/or procedures that will be used to manage the additional risks associated with the selection of other than a firm fixed price contract type (e.g., when a cost-reimbursement contract is selected, the Government incurs additional cost risks, and the Government has the additional burden of analyzing and monitoring all elements of the contractor's costs). For such instances, discuss:

   (A) how the Government identified the additional risks (e.g., pre-award survey, or past performance data);

   (B) the nature of the additional risks (e.g., inadequate contractor's accounting system, weakness in the contractor's internal control, non-

compliance with Cost Accounting Standards, or lack of or inadequate Earned Value Management System (EVMS));

(C) how the Government will manage and mitigate the risks; and

(D) Discuss the Government resources needed to properly plan for, award, and administer contracts with additional risks to the Government.

(4) If an incentive contract type is used, describe the type of incentive, the rationale for the selection of the incentive, and plans for managing the incentive contract (i.e., award fee plan). Discuss relevant agency data collected on award fees and incentive fees paid to contractors and include performance measures to evaluate such data to determine the effectiveness of award and incentive fees as a tool for improving contractor performance and achieving desired program outcomes. (See FAR 16.401(f)). Describe performance incentives, if applicable.

B5. Acquisition Considerations

A. For each contract contemplated, discuss and provide rationale, where applicable for:

1. Use of multiyear contracting, options, or other special contracting methods;
2. Any special clauses, special solicitation provisions, or FAR deviations required;
3. Whether sealed bidding or negotiation will be used and why;
4. Whether equipment will be leased or purchased and why;
5. Whether lessons learned from previous acquisitions impact any aspect of the current acquisition and if knowledge gained from the prior acquisitions has been used to further refine the requirement or the acquisition strategy consistent with FAR 7.103(r). If prior acquisitions have not been reviewed, provide the rationale for not reviewing historical information to obtain lessons learned; and
6. Any other contracting considerations.

NOTE: Discussion/documentation under this section does not satisfy requirements for individual Justifications and Approvals, Determinations and Findings, or other approvals, waivers, or exemptions required under the FAR.

B. Provide the following information:

1. This ( ) is ( ) is not a performance-based acquisition. For acquisitions of services, FAR 7.105 requires planners to provide the rationale for not structuring the action as performance-based.

2. This effort ( ) will ( ) will not include Personally Identifiable Information (PII). If applicable, discuss how/whether the PII data will be handled by a contractor and if losses occur, what provisions are to be included in the contract to manage the liability (see FAR 24 and FAR 39.105).

3. This contract vehicle ( ) will contain ( ) will not contain options in accordance with FAR 17.2.

4. This ( ) will be ( ) will not be a multiple award Indefinite Quantity or Indefinite Delivery contract in accordance with FAR Part 16. For any single award task or delivery order contract exceeding $100 million, ensure that a determination is processed in accordance with HSAM 3016.504.

5. This contract vehicle ( ) will require ( ) will not require submittal of certified cost or pricing data. If certified cost or pricing data will not be required, explain the applicable exemption from submittal of such data. (See FAR Subpart 15.4, Contract Pricing)

6. This contract vehicle ( ) will require ( ) will not require cost analysis and/or cost realism to determine a fair and reasonable price (see FAR 15.404). If neither cost analysis or cost realism will be used, explain why. For pricing support, requests may be submitted to OSS at procurementsupport@dhs.gov.

C. For each order contemplated, discuss:

1. For IT acquisitions, how the capital planning and investment control requirements of 40 U.S.C. 11312 and OMB Circular A-130 will be met (see FAR 7.103(t) and Part 39); and

2. Why this action benefits the Government (e.g., when an agency can accomplish its mission more efficiently and effectively; ordering through an indefinite delivery contract facilitates access to small business concerns.)

B6. Budgeting and Funding

A. Budget Estimates

Include budget estimates, explain how they were derived, and discuss the schedule for obtaining adequate funds at the time they are required. (See FAR Subpart 32.7.) Reference the Life-Cycle Cost Estimate (LCCE) results (see DHS Directive Number 102-01, Acquisition). Discuss the value of the acquisition in relationship to the life-cycle cost of the program, where available. Indicate whether the contract(s) awarded will be multiyear contracts in accordance with FAR Subpart 17.1. Also, indicate whether the contract(s) will be incrementally funded in accordance with FAR Subpart 32.7.

B. Funds Source

List the source(s) of funds for each acquisition, the amount required, as stated in the Independent Government Cost Estimate (IGCE) and the amount budgeted. In the *Under or Overage* row, provide the difference between the amount required and the amount budgeted for the effort. If there is an overage or underage, explain why and how the

program will correct the situation. (Refer to the sample budgeting and funding Table 6 below.)

C. Antecedent Liabilities

Discuss the availability of funding to cover antecedent liabilities reasonably anticipated for within scope changes that will be made to the original firm, fixed price contract. Under the antecedent liability principle, any within scope increase in cost is chargeable to the appropriation initially used to obligate the work being modified. Antecedent liabilities are most likely to occur during the performance of certain types of service contracts such as construction, software development, as well as certain production contracts. This does not apply if the appropriation is no year funds. Including a reservation of funds and monitoring the funds to ensure that they do not expire if no modifications are made is an example of how to plan for an antecedent liability, see Table 6.

NOTE: Planners may find information that can be used in this section in the appropriate OMB Exhibit 300, where available.

Table 6. Budgeting and Funding – Sample

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

Total Funding							
Amount Required							
Amount Budgeted							
(Under or Overage)							
Total Reserved for Funding Availability Antecedent Liability							

B7. Product or Service Descriptions

Explain the choice of product or service description types to be used in the acquisition(s), including performance-based acquisition descriptions, commercial items, Commercially Available-Off-the-Shelf (COTS) items.

B8. Priorities, Allocations, and Allotments

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

B9. Contractor versus Government Performance

Address whether any of the acquisitions covered under the AP are covered by OMB Circular No. A-76, or state that this paragraph is not applicable. (See FAR Subpart 7.3.)

B10. Inherently Governmental Functions

Discuss consideration of inherently governmental functions, as detailed in FAR Subpart 7.5 and HSAM 3007.5 Inherently Governmental Functions, and as appropriate, state affirmatively that no inherently governmental functions are or will be performed under the subject contract(s).

In addition, address if a Balanced Workforce Strategy (BWS) or workforce assessment has been developed or discuss the plans to address the BWS before the issuance of the solicitation. Using the BWS analysis, address the appropriate mix of Federal employees and contractor employees needed to support the Department's mission and discuss: What level of skills, experience, and expertise is needed to perform critical functions and functions that are closely associated with inherently governmental functions? Address the management controls and oversight activities that may be needed to reduce the risk of contractor performance of work that is considered closely associated with inherently governmental or critical functions to ensure that the government maintains internal capability to exercise effective control over its mission. If work is not reserved for Federal performance, and may be performed by either Federal employees or contractors,

the acquisition plan must address whether a cost analysis was documented commensurate with the size and complexity of the function to be performed as well as its importance to the Department's mission. (reference: HSAM 3007.505).

B11. Management Information Requirements

Discuss, as appropriate, what management system, e.g., Earned Value Management (EVM), Service Level Agreements (SLA), etc., will be used by the Government to monitor the contractor's effort, to include collection of performance, cost, and schedule data. Components are encouraged to use DCAA to perform EVM services.

B12. Make or Buy

Discuss any consideration given to the contractor's make-or-buy programs. (See FAR 15.407-2.) "Make or buy programs" means that part of the contractor's written plan for a contract identifying those major items to be produced or work efforts to be performed in the prime contractor's facilities, and those to be subcontracted.

B13. Test and Evaluation

To the extent applicable, describe the test program of the contractor and the Government. For a major system acquisition, describe the test program for each major phase. Provide the Test and Evaluation Management Plan (TEMP) number and approval date, as appropriate.

NOTE: Test and evaluation considerations may not apply to requirements such as those for the acquisition of services, information technology systems, or Commercial-Off-The-Shelf (COTS) type items.

B14. Logistics Considerations

A. Assumptions

Describe the assumptions determining contractor or agency support, both initially and over the life of the acquisition, including consideration of contractor or agency maintenance and servicing and distribution of commercial items.

B. Reliability, Maintainability, and Quality assurance, etc.

Discuss the reliability, maintainability, and quality assurance requirements, including any planned use of warranties.

C. Contractor Data

Discuss the requirements for contractor data (including repurchase data) and data rights, their estimated cost, and the use to be made of the data, if applicable.

D. Standardization

Discuss any standardization concepts, including the necessity to designate, in accordance with agency procedures, technical equipment as “standard” so that future purchases of the equipment can be made from the same manufacturing source.

B15. Government-Furnished Property (GFP)

Indicate any Government property to be furnished to contractors, and discuss any associated considerations, e.g., providing the rationale to furnish the property is in the Government’s best interest, the overall benefit to the Government significantly outweighs the increased cost of administration, including ultimate property disposal, furnishing the property does not substantially increase the risk to the Government, and why the Government requirements cannot otherwise be met. (Refer to the sample GFP Table 7.)

Table 7. Government-Furnished Property (GFP) – Sample

Description of Government Property - Include the level of detail required at FAR 45.201(a)	Date/Event Indicate when the GFP will be furnished	Date/Event Indicate when the GFP will be returned	If GFP is procured under separate contracts, state the contract number or solicitation number

B16. Government-Furnished Information

Discuss any Government information, such as manuals, drawings, and test data, to be furnished to prospective offerors and contractors. List the information that will be furnished, with both the date it will be provided and date to be returned (if required). If the information will not be returned, indicate "not returned" in that block. (Refer to the sample GFI Table 8 below.)

Table 8. Government-Furnished Information (GFI) - Sample

Description of Government – Furnished Information	Date/ Event Indicate when the GFI will be furnished	Date/Event Indicate when the GFI returned

B17. Environmental and Energy Conservation Objectives

A. Overview Environmental Policy

The fundamental environmental policy of the Department of Homeland Security is to protect our natural resources, prevent pollution, reduce waste and strive to exceed the environmental performance goals, objectives and targets established for Federal agencies.

B. Environmental Objectives

Discuss all applicable environmental and energy conservation objectives associated with the acquisition, the applicability of an environmental assessment or environmental impact statement, the proposed resolution of environmental issues, and any environmentally-related requirements to be included in solicitations and contracts, e.g., whether the acquisition will result in the need to dispose of any hazardous material or the need for material safety data sheets (MSDS). If applicable, describe how any hazardous material will be required to be disposed. (See DHS Directive 025-01, *Sustainable Practices for Environmental, Energy, and Transportation Management, and other Environmental Management Directives*, accessible through: http://dhsconnect.dhs.gov/policies/Instructions/Directive%20025-01%20Sustainable%20Practices%20for%20Environmental,%20Energy%20and%20Transportation%20Management%20(Revision%2000).pdf)

C. FAR Part 23 Considerations

Review the requirements of FAR Part 23, Environmental, Energy, and Water Sufficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace. Describe how the contract will consider the purchase and use of green products and services to the maximum extent practicable, to include biobased products, recycled content products, water-efficient, energy-efficient, Energy Star®, products with the lowest watt stand-by power, environmentally preferable products, alternative fuels, hybrid and alternative fuel vehicles, non-ozone depleting substances, renewable energy; and Environmental Protection Agency (EPA), the Department of Energy (DOE), and the United States Department of Agriculture (USDA) designated items. See Attachment 2 to this DHS Acquisition Planning Guide for specific environmental and energy conservation-related FAR references.

B18. Security Considerations

A. Classified Information

Does the acquisition involve access to classified information? For acquisitions dealing with classified matters, discuss how adequate security will be established, maintained, and monitored.

B. Sensitive Information

Will sensitive, operational, or critical infrastructure information be disclosed in the acquisition? If so, describe the type of operational or infrastructure information and/or identify the type of sensitive (non-classified) information, e.g., PCII, SSI, etc., requiring protection.

C. Contractor Clearance and Access

1. Describe whether all, some, or none of the contractor's employees will be required to pass a background investigation, possess a secret level clearance, or possess a top-secret level clearance**.** List the clauses that will be included in the resulting contractual instrument addressing personnel, data or physical security, as appropriate. For information technology acquisitions, discuss how agency information security requirements will be met.

2. For acquisitions requiring routine or long-term contractor physical access to a Federally-controlled facility and/or access to a Federally-controlled information system (i.e. logical access), discuss how agency requirements for personal identity verification (PIV) of contractors will be met. Address the type, frequency, and duration of such access. If it is determined that routine or long-term physical or logical access is not required, the AP must document this decision. If PIV cards are to be issued, document who will be responsible for providing the contractor the Security paperwork and who will ensure the return of the PIV card.

D. Non U.S. Suppliers.

1. Will non-U.S. suppliers be permitted to compete for the acquisition? If not, under what authority are they being excluded? (See FAR Part 25.)

2. If a non-U.S. supplier performs the contract, how will the program protect sensitive information and facilities from non-U.S. supplier access?

E. Place of Performance

Is all work required to be performed within the United States or its territories?

B19. Contract Administration

A. Contract Administration

1. Describe how the contract will be administered. For example: What surveillance method(s) will be used? Is a quality assurance surveillance plan (QASP) a requirement of the contract? Who will prepare the QASP?

2. In contracts for services, include how inspection and acceptance corresponding to the work statement's performance criteria will be enforced. Briefly describe how the Government will ensure that it is receiving, accepting, and paying for products or services provided by a contractor.

3. For Information Technology Systems, address the need for an Independent Verification and Validation (IV&V) contractor.

4. If this is a cost-type or T&M contract, discuss whether DCAA will be utilized to process vouchers, and if not, the rationale for not using DCAA to perform this function.

5. If a post award IBR will be conducted, identify who will be responsible for ensuring that the contractor's EVM system is compliant and describe plans to conduct the post award IBR, including milestones.

6. If EVM is not required, discuss what methods will be used to measure and monitor cost, schedule and performance during the contract term. (See FAR Subpart 34.2 Earned Value Management System.)

B. Contracting Officer's Representative

1. Indicate whether a COR, certified in accordance with OMB Memorandum, *The Federal Acquisition Certification for Contracting Officer Technical Representatives* (November 26, 2007), has been nominated and designated for the acquisition;

2. Address the appropriateness of his or her skills and experience for the types of contract(s) to which the COR will be assigned, discuss how the COR will maintain oversight of the technical aspects of the contract, and describe how the COR will manage the additional risks associated with cost-type contracts, as appropriate.

B20. Other Considerations and Additional Requirements:

A. *Transition Planning*
This contract vehicle ( ) will ( ) will not contain a line item for "transition-in" and or a line item for "transition-out". If applicable, define work to be performed during the transition. Discuss the period of performance for each line item and the tasks that will be included, as well as explain pricing and timing of the transition.

B. *Section 505*

This contract vehicle ( ) will ( ) will not purchase printing and writing paper. If applicable, summarize any printing/copying requirements and how they will comply with the standards specified in section 505 of Executive Order 13101 of September 14, 1998,

Greening the Government through Waste Prevention, Recycling, and Federal Acquisition (see FAR 11.303).

C. *Section 508*

This contract vehicle ( ) will ( ) will not purchase electronic and information technology. If applicable, address whether the Electronic and Information Technology Accessibility Standards (see 36 CFR Part 1194) are applicable and explain how these standards are included in requirement planning, as appropriate (see FAR Subpart 39.2).

D. *Standardization*

This contract vehicle ( ) will ( ) will not be procured as part of the Federal Standardization Manual FSPM-0001 (see FAR 11.102). If applicable, ensure that the system will be procured to industry standards or whether the system is compatible with industry standards.

E. *Strategic Sourcing*

1. Pursuant to HSAM 3007.271, if this acquisition is a new strategic sourcing effort address:
   (a) Has the business case been prepared (see Attachment 5)?
   (b) Has CPO approval been obtained?
   (c) Has an Executive Agent Designation been made? See HSAM 3007-271-1(b)
   (d) Upon award, update the AP to indicate if the post award notification was issued, where applicable?

2. This effort ( ) is ( ) is not covered by an existing strategically sourced solution. To determine if a strategically sourced solution exists, refer to the following website:
http://dhsconnect.dhs.gov/org/comp/mgmt/cpo/oss/Pages/StrategicSourcing.aspx.

3. If this requirement is covered by an existing strategically sourced solution and that solution is not being used, then provide the rationale.

4. This effort ( ) is ( ) is not covered by an existing strategically sourced Federal Strategic Sourcing Initiatives (FSSI). If so, provide the name, contract number, and a brief description of the FSSI initiative.

F. *Department-Wide Contracts*

This contract vehicle ( ) will ( ) will not be procured under a Department-wide contract. (See HSAM 3007.271-1). If there is a Department-wide vehicle, but a decision has been made that the Department-wide contract is not suitable for use for this particular acquisition, explain why.

G. *Open Systems*

The requirements under contract ( ) will ( ) will not be procured using an open system solution. If the acquisition involves software, discuss steps being taken to avoid proprietary standards.

H. *Occupational Safety and Health Considerations*

The contract vehicle ( ) will ( ) will not be procured in accordance with the Occupational Safety and Health Act. Describe the strategy to ensure that occupational safety or health is being managed under the resulting contractual action. If there are no occupational safety, or health considerations, discuss why this paragraph is not applicable.

I. *Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (SAFETY Act*). (Note: Before making a SAFETY Act determination, refer to Attachment 3 to this guide and/or check with the DHS Office of SAFETY Act Implementation).

> The contract vehicle ( ) will ( ) will not procure technology that affirmatively or presumptively satisfies the technical criteria necessary to be deemed a qualified anti-terrorism technology (see FAR 50.200). If applicable, discuss how the Government will solicit, procure, and protect such technology.

J. *Foreign Sales Implications*

DHS textile restrictions ( ) apply ( ) do not apply to the subject acquisition(s) pursuant to HSAR 3025.7002. If DHS textile restrictions apply, discuss the particular restrictions, and identify the portion of the acquisition(s) to which they apply. (See HSAR 3025.70 for American Recovery and Reinvestment Act Restrictions (AARA) on foreign acquisitions.)

K. *Construction Projects*

For construction projects valued at $25 million or more, consideration has been given to the potential benefits that may be afforded the Government by requiring the use of a Project Labor Agreement (PLA) and the determination has been made to ( ) require ( ) not require a PLA. In making this determination the following factors were taken into consideration: (Discuss all factors considered in making the determination to require/not require the use of a PLA as well as the rationale for the final decision.) (See FAR 22.501.)

L. *Disaster or Emergency Relief Activities*

The resulting contract(s) ( ) involve(s) ( ) does/do not involve(s) disaster or emergency relief activities.

M. Resilience Engineering

The resulting contract(s) ( ) are ( ) are not in support of resilience goals and objectives described in the *Quadrennial Homeland Security Review Report: A Strategic Framework*

for a Secure Homeland (February 2010), as related to business processes, infrastructure, cybersecurity, and disaster planning and recovery. If so, do the contract(s)' resilience engineering requirements adequately and clearly reflect the project's strategic objectives, appropriate risk acceptance levels, identify critical success factors, constraints, and any applicable test/acceptance standards? (See Attachment 4)

B21. Milestones for the Acquisition Cycle

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

Table 9: Acquisition Cycle – Sample

Event	Date Completed or Due	Person Responsible
Program Initiated		Program Manager
IPT Formed		Program Manager
Market Research Completed		
Program Approvals Obtained		
AP Approved		
PR with Funding Provided to the Contracting Officer		
Solicitation Package Complete		
Solicitation Package Reviewed by OGC		
Solicitation Released		
Proposals/Quotes Received		
Evaluators Trained		
Evaluation Complete		
Source Selection Complete		
Post Selection Documentation Complete		
Notification of Unsuccessful Offerors		
DHS-Unique Congressional Notification of Award in Accordance with HSAM 3005.303-70 (5-Day Advance Notice/Actions > $1M)		
Notification of Award		

B22. Identification of Participants in Acquisition Plan Preparation

List the individuals who participated in preparing the AP. Provide the name, title, organization, telephone number and email for each individual. At a minimum, include participation from at least the program manager, contracting officer, budget officer, small business liaison officer, commodity council representative, and security representative. Approval and signature lines should be placed at the end of the AP document, as appropriate.

Table 10: AP Preparation Participants

Name	Title	Organization	Telephone Number	Email
	Program Manager			
	Contracting Officer			
	Budget Officer			
	Small Business Liaison			
	Competition Advocate			
	Commodity Council			
	Security Representative			

Part III – Definitions and Acronym List

A. Definitions

Abbreviated Acquisition Plans means a plan containing sensitive information that cannot be placed in the Acquisition Planning Forecasting System database (APFS) and must be prepared for acquisitions with an estimated value of less than $10 million, including options and/or optional quantities. The Abbreviated plan must include the data elements described in HSAM 3007.103(d)(2)(ii).

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

Acquisition Planning Forecasting System (APFS) is a database that stores plans of all anticipated procurements, including interagency agreements, blanket purchase agreements and task orders over the simplified acquisition threshold for the forthcoming fiscal year <u>except</u> those that contain classified or sensitive information. This does not include interagency agreements where a DHS Component is acting as the servicing activity. The APFS will also be used to compile and publish the annual "Forecast of Contract Opportunities" which is issued by the Office of Small and Disadvantaged Business Utilization (OSDBU). See HSAM 3007.172.

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

Acquisition Decision Authority means the individual designated in accordance with criteria established by the Department Chief Acquisition Officer to approve entry of an acquisition program into the next phase of the acquisition process. Formerly known as **Milestone Decision Authority** (MDA).

Acquisition Decision Event (ADE) means a predetermined point within the acquisition phases at which the investment will undergo a review prior to commencement of the next phase. Formerly known as **Key Decision Point** (KDP).

Acquisition Plan (AP) is a written document used to fulfill the acquisition planning requirements of FAR Parts 7 and 34 This includes all acquisitions, including contracts, task orders or delivery orders under Indefinite Delivery/Indefinite Quantity contracts, Federal Supply Schedule contracts, Government Wide Agency Contracts , and interagency agreements.

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

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

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

Antecedent Liability means an increase in contract cost chargeable to the appropriation initially used to obligate the original contract funds due to a within scope change enforceable under the original provisions of a firm fixed price contract.

Asset means capital asset as defined by OMB Circular A-11, Part 7, Planning, Budgeting, and Acquisition of Capital Assets. Capital assets are land, (including parklands), structures, equipment (including motor and aircraft fleets), and intellectual property (including software) which are used by the Federal Government and have an estimated useful life of two years or more.

Assisted Acquisition means an interagency acquisition for which a Requesting Agency, at its discretion, has determined that it is in the best interest of the government to seek the acquisition services of a Servicing Agency in the procurement of supplies or services from the private sector and where the Servicing Agency awards a contract or order on behalf of the Requesting Agency.

Balanced Workforce Strategy (BWS) or BWS assessment or analysis is a systematic approach for determining the appropriate mix of federal employees and contractors to perform DHS work functions under service contracts. A BWS assessment is conducted by the Chief Human Capital Office (CHCO), in conjunction with program managers. The analysis uses a specifically designed tool to analyze current DHS service contracts. The results of the analysis, along with discussions with program managers will be applied to acquisition and workforce planning.

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

- The diversity, size, or specialized nature of the elements of the performance specified;
- The aggregate dollar value of the anticipated award;
- The geographical dispersion of the contract performance sites; or
- Any combination of the above factors. (FAR 2.101)

Chief Acquisition Executive (CAE) is the senior acquisition official within a Component responsible for the implementation, management, and oversight of his or her Component's acquisition processes, and coordinating those processes with the contracting and procurement processes of the HCA.

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

Commercial Item means:

(1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and—

(i) Has been sold, leased, or licensed to the general public; or,

(ii) Has been offered for sale, lease, or license to the general public;

(2) Any item that evolved from an item described in paragraph (1) of this definition through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;

(3) Any item that would satisfy a criterion expressed in paragraphs (1) or (2) of this definition, but for –

(i) Modifications of a type customarily available in the commercial marketplace; or

(ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements.

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

(4) Any combination of items meeting the requirements of paragraphs (1), (2), (3), or (5) of this definition that are of a type customarily combined and sold in combination to the general public;

(5) Installation services, maintenance services, repair services, training services, and other services if—

(i) Such services are procured for support of an item referred to in paragraph (1), (2), (3), or (4) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and

(ii) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed or specific outcomes to be achieved and under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed or a specific outcome to be achieved. For purposes of these services—

(i) *"Catalog price"* means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and

(ii) *"Market prices"* means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the Offerors.

(7) Any item, combination of items, or service referred to in paragraphs (1) through (6) of this definition, notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or

(8) A non-developmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments. (FAR 2.101)

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

Consolidated Acquisition Plan means a written AP that includes more than one contract action, with similar requirements. The plan adequately describes the acquisition approach or strategy, budgeting, business, technical, and other significant considerations for each procurement action consistent with FAR Part 7. For example, a Component may have several different individual contract actions for identical or similar services/supplies. Combining them into a single AP would conserve resources by eliminating redundant AP development and AP review/approval/updated processes. The approval threshold for a consolidated AP is determined by the combined value of the separate procurement actions. Consolidated APs are for procurements that are not part of a major system acquisition as defined in DHS Directive Number 102-01, Acquisition.

Contracting Officer's Representative (COR) means an individual designated and authorized in writing by the contracting officer to perform specific technical or administrative functions of the contract. CORs shall be certified in accordance with the Office of Management and Budget Memorandum entitled *The Federal Acquisition Certification for Contracting Officer Technical Representatives* dated November 26, 2007.

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

Critical Functions means a function that is necessary to the agency being able to effectively perform and maintain control of its mission and operations. Typically, critical functions are recurring and long-term in duration.

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

Integrated Project/Product Team (IPT) means a cross disciplinary team composed of representatives from all appropriate functional disciplines working together to build successful and balanced programs, identify and resolve issues, and make sound and timely decisions based on timely input from the entire team, when appropriate (For further information on IPTs, see Section I.2.1, Integrated Project Team, OMB Circular A-11, Supplement to Part 7 – Capital Programming Guide, accessible at: http://www.whitehouse.gov/omb/circulars_default/.)

Life-cycle Cost means the total cost to the Government of acquiring, operating, supporting, and (if applicable) disposing of the items being acquired, inclusive of options and optional quantities. (FAR 7.101)

Major System means that combination of elements that will function together to produce the capabilities required to fulfill a mission need. The elements may include hardware, equipment, software, or any combination thereof, but exclude construction or other improvements to real property.

Major System Acquisition means a major system meeting the following criteria:

(1) for supplies, its total life cycle cost is estimated to be equal to or exceed $300 million (including options and optional quantities); or

(2) for an enterprise service acquisition as defined in DHS Directive Number 102.01, its annual expenditure level exceeds $100 million (includes optional quantities); or

(3) if the Deputy Secretary has designated a program/project as a major system.

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

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

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

Plan means an acquisition plan.

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

Program (also referred to for purposes of this guide as Acquisition Program) means a directed, funded mission that provides a new, improved, or continuing system or service in response to an approved need. Acquisition programs are divided into levels established to facilitate decentralized decision-making, execution, and compliance with statutory requirements.

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

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

Project Labor Agreement (PLA) means a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. 158(f).

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

Requesting Agency means a Federal agency that has a requirement and desires to obtain goods or services from a servicing agency.

Resilience is the ability to adapt to changing conditions and prepare for, withstand, and rapidly recover from disruption.

Resilience Engineering is a process by which an organization or program designs, develops, implements, and manages the protection and sustainability of business-critical services, related business processes, and associated assets such as people, information, technology, and facilities.

Sensitive Information 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. 522a (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. (See HSAR 3004.470-2, MD 11042.1)

Servicing agency means a Federal agency that is willing and able to provide goods or services to a requesting agency.

Should-Cost Review evaluates the economy and efficiency of the contractor's existing workforce, methods, materials, equipment, real property, operating systems, and management. The objective of a should-cost review is to promote both short- and long-range improvements in the contractor's economy and efficiency in order to reduce the cost of performance of Government contracts. (See FAR 15.407-4)

Significant Change means that one of the following events occurs after the approval of an acquisition plan:

(1) There is a significant change in the acquisition strategy. A significant change occurs if the strategy for one or more major contracts includes:
   a. A change from a fixed price contract to a cost type contract;
   b. A change from a fixed price contract to a T&M type contract;
   c. A change from a cost type contract to a T&M/Labor Hour contract;
   d. A change from a competitive contract to a noncompetitive contract (other than a change to a small business set-aside).

(2) There is a significant revision to the nature or scope of the work to be performed; or

(3) There is a significant increase in the total dollar value of the acquisition plan. A significant increase in the total dollar value is defined as follows:

Value of Most Recently Approved Plan	**Dollar Increase of Revised Plan**
Less Than or Equal to $500 Million	$100 Million or greater
Between $500 Million and $3 Billion	20% of the value of the most recently approved plan
$3 Billion or Greater	$300 Million or greater

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

B. Acronym List

ADA	Acquisition Decision Authority
ADE	Acquisition Decision Event
ARB	Acquisition Review Board
AP	Acquisition Plan
APL	Acquisition Policy and Legislation Branch

APFS	Acquisition Planning Forecast System
BPA	Blanket Purchase Agreement
BWS	Balanced Workforce Strategy
CAE	Chief Acquisition Executive
CAO	Chief Acquisition Officer
CASO	Chief Asset Supply Officer
CCR	Contractor Central Registration
CFO	Chief Financial Officer
CHCO	Chief Human Capital Officer
CIO	Chief Information Officer
COR	Contracting Officer's Representative
CPAF	Cost Plus Award Fee
CPFF	Cost Plus Fixed Fee
CPO	Chief Procurement Officer
DHS	Department of Homeland Security
EAB	Enterprise Architecture Board
EIA	Electronic Industrial Standards
EVM	Earned Value Management
FAR	Federal Acquisition Regulation
FFP	Firm Fixed Price
FSS	Federal Supply Schedule
FTE	Full Time Equivalent Person
GAO	Government Accountability Office
GFI	Government-Furnished Information
GFP	Government-Furnished Property
GSA	General Services Administration
GWAC	Government Wide Acquisition Contract
HCA	Head of the Contracting Activity
HSAM	Department of Homeland Security Acquisition Manual
HSAR	Department of Homeland Security Acquisition Regulations
IA	Inter/Intra-Agency Agreement
IBR	Integrated Baseline Review
IDIQ	Indefinite Delivery Indefinite Quantity Contract

IGCE	Independent Government Cost Estimate
J&A	Justification for Other Than Full and Open Competition
MAC	Multiple Award Contract
MNS	Mission Need Statement
MRC	Management Review Council
OCPO	Office of the Chief Procurement Officer
OSDBU	Office of Small and Disadvantaged Business Utilization
PACA	Procuring Activity Competition Advocate
PALT	Procurement Acquisition Lead Time
PBA	Performance-Based Acquisition
PM	Program Manager
PWS	Performance Work Statement
SBA	Small Business Administration
SOO	Statement of Objectives
SOW	Statement of Work
TEMP	Test and Evaluation Management Plan
T&M	Time and Materials Contract Type
TO	Task Order

Attachment 1

Market Research Basics

Market research involves the collection and analysis of product or service market information from a variety of sources in order to determine the best approach for acquiring goods and services to satisfy the Government's acquisition needs.

Benefits of market research include:

1. Identification of commercial products and services that meet Government requirements;

2. Identification of competition and Small Business Concerns (including all subcategories) that can meet Government requirements and contribute the realization of cost savings/cost avoidance and achievement of DHS competition and small business program goals; and

3. Fostering and promoting acquisition planning and strategic sourcing for DHS procurements.

Market research policy and procedures are described in FAR 10.001, FAR 10.002 and HSAM Chapter 3010. Guidance for collecting and using market research data is available in the *DHS Market Research Guide*, Appendix 1 to HSAM Chapter 3010.

Attachment 2

Environmental and Energy Conservation

The Government's policy to acquire supplies and services that promote energy and water efficiency, advance the use of renewable energy products and foster markets for emerging technologies extends to all acquisitions, including those below the simplified acquisition threshold. The following environmental and energy FAR references include:

1. *FAR Subpart 4.3* preferences for double-sided printing and copying on recycled paper for all contractor documents;

2. *FAR 7.103(n)* specifying printing and writing paper consistent with the minimum content standards and complying with the policy regarding procurement of products containing recovered materials, environmentally preferable and energy-efficient products and services;

3. *FAR 7.105(b)(16)* requires written acquisition plans to discuss all applicable environmental and energy conservation objectives associated with the acquisition and any environmentally-related requirements to be included in solicitations and contracts;

4. *FAR 11.002(d)(2)* requires consideration of the following when developing specifications, commercial item descriptions, statements of work, source-selection factors performance specifications to the maximum practical extent: 1) products and services that utilize renewable energy technologies, energy efficiency, including using products containing energy-efficient standby power devices, and (2) products that contain the use of recovered material, biobased products, and other materials that are environmentally preferable, and/or energy- and water-efficient products.

5. *FAR Subpart 11.3* addresses setting requirements for products containing virgin materials and recovered materials. The FAR allows for the acquisition of used, reconditioned, or remanufactured parts. The FAR also defines special requirements for printing and writing paper;

6. *FAR 12.301(e)(3)* allows a contracting officer to use the provisions and clauses contained in Part 23 regarding the use of recovered material when appropriate for the item being acquired;

7. *FAR 13.201(f)* states that environmental procurement requirements apply at or below the micro-purchase threshold, such as acquisitions made with the purchase card;

8. *FAR Subpart 23.2* specifies the authorities, policy and requirements for acquiring energy and water-efficient products;

9. *FAR 23.4* specifies the authorities, policy and requirements for acquiring products with recovered material or biobased content;

10. *FAR Subpart 23.7* specifies the authorities, policy and requirements for acquiring environmentally preferable products and services;

11. *FAR 23.705* specifically addresses mandatory use of the Electronic Product Environmental Assessment Tool (EPEAT);

12. *FAR 23.8* specifies the policies and procedures for acquiring products with ozone depleting substances;

13. *FAR 42.302(a)(68)* specifies that that contracting officer must monitor the contractor's compliance with environmental requirements specified in the contract, including the use of environmentally preferable products, energy-efficient products, and materials or delivery of end products with specified recovered material content;

14. *FAR 52.204-4* is the text of the clause requiring documents to be printed or copied double-sided on recycled paper;

15. *FAR 52.211-5* is the text of the clause that requires specification of material composition (virgin material, recovered material, etc.);

16. *FAR 52.223-1* is the provision that requires compliance certification by the contractor for biobased products;

17. *FAR 52.223-2* is the text of the clause that requires maximum use of biobased products;

18. *FAR 52.223-4* is the text of the clause that requires certification of the minimum recovered material content required in the solicitation;

19. *FAR 52.223-9* is the text of the clause that requires an estimate of percentage of recovered material content for EPA-designated products for contracts exceeding simplified acquisition threshold and specify use of EPA designated item;

20. *FAR 52.223-10* is the text of the clause that requires contractors to establish a program to promote cost-effective waste reduction in all operations and facilities covered by contract; and

21. *FAR 52.223-11* is the text of the clause that requires contractors to identify and label ozone depleting substances;

22. FAR 52.223-15(b) specifies that the contractor must provide energy-efficient products, with exceptions noted;

23. *FAR 52.223-16* is the text of the clause that requires use of the IEEE 1680 standard (and EPEAT) for the environmental assessment of personal computer products; and

24. FAR 52.223-17 is the text of the clause that requires the contractor to make maximum use of EPA-designated recovered materials in service and construction contracts.

Attachment 3

Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (SAFETY Act)

FAR 50.205-1(a) requires that as part of an acquisition's planning process, requiring activities review requirements to identify potential technologies that prevent, detect, identify, or deter acts of terrorism or limit the harm such acts might cause, and may be appropriate for SAFETY Act protections. SAFETY Act protections are available for a broad variety of technologies, including products, services or software and other forms of intellectual property. Before making a decision about SAFETY Act applicability, consult the DHS Office of SAFETY Act Implementation at *http://www.SAFETY Act.gov*, and consider the following:

a. SAFETY Act protections encourage greater competition, can result in lower prices through risk mitigation and litigation management, and may make technology available to the Government that would not be sold without SAFETY Act protections.

b. Potential offerors should be encouraged to seek SAFETY Act protections for their technologies, even in advance of issuance of solicitations.

c. Use industry outreach, e.g.,
   - *i.* Requests for Information
   - *ii.* Draft Requests for proposal
   - *iii.* Industry conferences

d. Applying for SAFETY Act protections is the choice of the offeror, and cannot be mandated.

e. A wide variety of technologies are eligible for SAFETY Act protections. Examples include, but are not limited to:
   - *i.* Security services
   - *ii.* Screening services
   - *iii.* Sensors and sensor integration
   - *iv.* Decision support software
   - *v.* Crisis management systems
   - *vi.* Cyber security technologies

f. Program offices and requiring activities should –
   - *i.* Identify technical issues early
   - *ii.* Work closely with customers
   - *iii.* Work closely with the DHS Office of SAFETY Act Implementation at *http://www.SAFETY Act.gov*

g. If SAFETY Act applies, discuss how the Government will solicit, procure, and protect such technology.

h. Allow sufficient processing time for SAFETY Act applications, preferably prior to issuing solicitation.

Attachment 4

Resilience

Resilience is the ability to adapt to changing conditions and prepare for, withstand, and rapidly recover from disruption. The *Quadrennial Homeland Security Review Report: A Strategic Framework for a Secure Homeland* (February 2010), accessible at: http://www.dhs.gov/xlibrary/assets/qhsr_report.pdf identifies key mission areas, goals and objectives of homeland security that include preventing terrorism and enhancing security, safeguarding and securing cyberspace, and ensuring resilience to disasters by mitigating hazards, enhancing preparedness, ensuring effective emergency response and rapid recovery. Resilience engineering is a process by which an organization or program designs, develops, implements, and manages the protection and sustainability of business-critical services, related business processes, and associated assets such as people, information, technology, and facilities.

Managing resilience requires a systematic and disciplined approach that flows from the **requirements** that represent the particular needs of an organization or program and form the basis for protecting and sustaining critical assets and services.

Resilience requirements reflect the –

- Strategic objectives;
- Risk acceptance levels;
- Critical success factors; and
- Operational constraints

of an organization or program in pursuit of its mission.

As a means of assuring the appropriateness of resilience requirements to proposed acquisitions when planning acquisitions in support of the Department's resilience goals, planners must ensure that their contract requirements adequately and clearly reflect and address the program's strategic objectives, risk acceptance levels, critical success factors, constraints, and any applicable test/acceptance standards.

[Project Name]

Multi-Component Contract Business Case Template

Version 1.0 ● June 2011

Note: Document version and date are that for the template and should be replaced upon completion to track the document date and current version specific to your project

Department of Homeland Security
[Project Name]

Record of Approvals

Approval of the Business Case indicates an understanding of the purpose and content described in this deliverable. Approval of the Business Case constitutes approval of the business case analysis results and hereby certifies the overall accuracy, viability, and defensibility of the content and estimates. By signing this deliverable, each individual agrees the proposed business solution has been analyzed effectively as described herein.

Director, Strategic Sourcing		
Signature		Date

Director, Oversight and Strategic Support Division		
Signature		Date

Director, Small and Disadvantaged Business Utilization (OSDBU)		
Signature		Date

Head of the Contracting Activity		
Signature		Date

Deputy Chief Procurement Officer		
Signature		Date

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Executive Summary

This should be a high level summary of all the information within the business case. It should tell the story and provide the rationale to the extent that someone could read only this page and understand:

- *What you are proposing (Provide an overview of the strategy).*
- *Why you are proposing it:*
  - *What led to the determination of the strategy (history/market research/etc.).*
  - *How it is an improvement/What benefits will be achieved.*
- *What it will take to put it in place.*
- *Anything else that would be important for an executive to know and be able to speak to.*

Style Guide

All fonts should be Arial

- First level sections: **Arial 14 Bold**
- Second level sections: **Arial 11 Bold**
- Regular text: Arial 10

All section headings should be left justified

Footnotes may be used as needed

Line spacing should be at "Exactly… 15 pt" with 10pt space after

Delete this, and all other instructions, prior to submission

1 Overview

Provide the purpose of the acquisition (the reason for this business case) and the description of how the acquisition supports Presidential, government-wide, and/or agency priorities or initiatives.
Sample text:

> *"In accordance with MD XXXX this business case defines the rationale for selecting an enterprise-wide contract vehicle as the sourcing strategy for _____ for the Department of Homeland Security. DHS expects to achieve significant cost reductions from leveraging its volume as well as process efficiencies"*

2 Scope

2.1 Scope Statement

This section should describe the current situation and what issues are driving an enterprise-wide strategy

- *Definition and scope of the commodity.*
- *Describe the types of goods and services to be acquired.*
- *Provide the anticipated period of performance as well as any option periods.*
- *For proposed information technology acquisitions, discuss how the acquisition will support the federal enterprise architecture (see section 7.1: Sourcing Strategy to address this information. It is advisable that a note is added in your document indicating, "See Section 7.1. Sourcing Strategy for information on how the acquisition does or does not support the federal enterprise architecture")*

2.2 Strategy Overview

This section should define the opportunity, including the recommended strategy and how it will benefit DHS.

- *Strategy.*
- *Management.*
- *Benefits (savings, standardization, and process efficiency).*

Include the factors contributing to the strategic sourcing initiative in Table 1: Contributing Factors for Strategic Sourcing Initiative.

The factors below contributed to the identification of _____ commodity as a strategic sourcing initiative:

Factor	Yes	No
Congressional		X
Mandated		X
Savings Potential	X	
Mission Requirements	X	
Multi-Component Need	X	
Expiring Department-wide Vehicle	X	
Efficiency Review		X
Elimination of Interagency Agreements		X

Table 1: Contributing Factors for Strategic Sourcing Initiative

3 Demand (Future Trend Analysis)

This section should identify the projected spend in the commodity and highlight any potential changes

- *State the anticipated annual amount of spend over the life of the proposed acquisition and the amount of the contract ceiling.*
- *Identify the portion of the expected activity that reflects the anticipated usage of internal versus external customers (expressed as a percentage of total spend under the proposed acquisition).*
- *List the agencies that are expected to account for the majority of obligations under the vehicle, include the five largest customers outside the servicing agency and their expected estimated usage (see Section 4.1: Historical Spend Analysis to assist with addressing this element).*
- *Describe how the expected requirements of potential customers were identified and their involvement in the development of contract requirements.*
- *Describe the mechanism the agency will use to ensure meaningful consideration of its vehicle with the agency after it is established. State if the agency has identified any overlapping agency-specific vehicles that it intends to phase out.*

3.1. Assumptions

This section should include any assumptions made in developing the sourcing strategy

- *Volume level assumptions.*
- *Funding Assumptions.*
- *Other Assumptions.*

4 Potential Duplication

Discuss the potential duplication (see table 2)

POTENTIAL DUPLICATION: COMPLETE THE TABLE BELOW FOR EACH PRIMARY PRODUCT OR SERVICE TO BE OFFERED ON THE VEHICLE:

PRIMARY PRODUCT OR SERVICE		***EXISTING VEHICLES RESEARCHED***	***UNIQUENESS OF PROPOSED VEHICLE***
PSC CODE	***DESCRIPTION***		

Table 2: Potential Duplication of Contract Vehicles

Instructions for completing the table.

Column 1. PSC Code: identify 4-digit code, whenever possible.

Column 2. Description: briefly describe primary product or service to be acquired.

Column 3. Existing vehicles researched: List existing vehicles that agency evaluated for potential suitability. Agencies should consider FSSI or SmartBuy agreements, GWACs, relevant multi-agency contracts or BPAs, of which they are aware, and any relevant agency-specific contracts or BPAs. (Contract numbers should be included)

Column 4. Uniqueness: Explain how the proposed vehicle differs from the identified existing vehicles (e.g., in terms of expected pricing, terms and conditions). If an agency-specific vehicle is proposed, note any other reasons for creating the vehicle, such as agency-unique requirements, compliance with agency standards, or simplified contract management (in lieu of having to manage contractors on multiple interagency vehicles, each of which addresses only part of the agency's requirement).

4.1 Historical Background

Describe the current state, indicating:

- *How the commodity is purchased today.*
- *Identify issues with the current state.*

4.2 Historical Spend Analysis

This section should provide an overview of the data and conclusions drawn from the analysis of the historical spend of the commodity. (May be combined with Section 4.2: Historical Contract Analysis to avoid duplication of data; however, all elements must be addressed)

- *FPDS-NG spend totals and trends*
- *Levels of component spend (how many are using it, who are the primary users)*
- *P-card spend totals and trends*
- *Include a chart with totals, if possible*

4.3 Historical Contract Analysis

This section should discuss the data and findings from the historical contract analysis

- *Number of current/historical contract*
- *Number of vendors*
- *Periods of performance for current contracts*
- *Use of non-DHS contracts*

4.4 Alternative of Analysis

Using Table 3, define the various alternatives considered and the costs/benefits associated with:

- *Enterprise-wide DHS Contract.*
- *Use of a GWAC/FSSI/SmartBuy.*
- *Component-level Contracts.*

Advantages	Disadvantages
Acquisition Alternative 1 - Enterprise-wide DHS Contract:	
•	•
Acquisition Alternative 2 – Use of a GWAC/FSSI/SmartBuy	
•	•
Acquisition Alternative 3 – Component-level contracts (or other options evaluated)	
•	•

Table 3: Alternative of Analysis

5. Value

Discuss the benefits expected as a result of the proposed acquisition. Address price, administrative and efficiency improvements as well as intangible benefits. Discuss the impact the proposed acquisition will have on the government's ability to leverage its purchasing power at both the agency-wide and government-wide levels.

5.1 *Benefits to the Government*

Using Table 4: Benefits to the Government, provide further detail on the benefits, including savings, provided in the Analysis of Alternatives. Discuss the benefits expected as a result of the proposed acquisition. Address price, administrative and efficiency improvements as well as intangible benefits. Discuss the impact the proposed acquisition will have on the government's ability to leverage its purchasing power at both the agency-wide and government-wide levels.

Annual Savings by Component FY07 – FY11 YTD

	FY07 Savings	FY08 Savings	FY09 Savings	FY10 Savings	FY11 Savings YTD	Total Savings (FY07 - FY11)
CBP	$21,180,299	$31,150,990	$32,434,420	$92,851,521	$ 2,169,663	$ 179,786,891
CIS	$8,561,143	$11,387,814	$11,603,939	($9,435,138)	$ 6,465,210	$ 28,582,968
DHS HQ	$8,961,830	$7,982,445	$11,315,592	$20,222,107	$ 170,107	$ 48,652,083
FEMA	$6,094,070	$5,864,128	$6,307,863	$5,139,310	$ 82,024	$ 23,487,395
FLETC	$2,529,434	$2,578,000	$1,411,240	($162,842)	$ 564,443	$ 6,920,276
ICE	$5,347,171	$15,336,423	$7,656,715	$24,372,238	$ 750,279	$ 53,462,826
TSA	$5,347,518	$7,006,069	$12,070,760	$20,470,444	$ 6,609,902	$ 51,504,693
USCG	$5,538,856	$10,940,608	$10,399,885	$8,338,083	$ 200,200	$ 35,417,632
USSS	$1,824,520	$2,997,534	$2,654,235	($1,125,487)	$ 12,322,285	$ 18,673,086
Total	**$65,384,842**	**$95,244,012**	**$95,854,648**	**$160,670,236**	**$ 29,334,114**	**$ 446,487,852**

Table 4: Benefits to the Government

5.2 Implementation Costs

Describe how the cost of awarding and managing the proposed contract vehicle compares to the amount of fees likely to be incurred if the agency used an existing interagency vehicle or sought out acquisition assistance.

Using Table 5: Implementation Costs provide an overview of the costs associated with the strategy. It should provide the detail that was highlighted in the Analysis of Alternatives. Describe how the cost of awarding and managing the proposed contract vehicle compares to the amount of fees likely to be incurred if the agency used an existing interagency vehicle or sought out acquisition assistance.

[PROJECT NAME] Implementation Costs (Projected)			
Federal Employee Labor	**Labor Hours**	**Rate**	**Total**
Hours at GS-14	1,234.00	$ 91.48	$ .00
Hours at GS-15	1,234.00	$ 107.60	$ .00
Other Associated Costs			
Contractor Support			$ 0.00
Cost of Pre-proposal Conference			$ 12345.00
Projected Cost of Lease space for source selection			$ 12345.00
[PROJECT NAME] Total Estimated Cost			**$ .00**

Table 5: Implementation Costs

5.3 Sourcing Strategy

Describe how the acquisition strategy and the resulting procurement will promote maximum opportunities for small businesses at both the prime and subcontracting levels.
Include the recommended sourcing strategy and how that was developed.

- *What is the recommendation?*
- *How the spend/contract/market analysis shaped the strategy*
- *What are the expected results*
- *For proposed information technology acquisitions, discuss how the acquisition will support the federal enterprise architecture.*
- *Describe how the acquisition strategy and the resulting procurement will promote maximum opportunities for small businesses at both the prime and subcontracting levels.*
- *Describe the mechanisms the agency will use to ensure meaningful consideration of its vehicle within the agency after it is established.*

Describe how this initiative will assist DHS achieve 100% compliance with Sustainable Acquisitions pursuant to Executive Order 13514 Federal Leadership in Environmental, Energy, and Economic Performance.

5.4 Market Analysis

This section should discuss the process and findings from the market analysis conducted. It should define how market analysis helped shape the strategy.

- *Current trends in the industry*
- *Typical procurement process*
- *Opportunities for efficiencies*
- *Insights from vendors*
- *Number of small businesses available/capable*

6 Management

This section is not required for agency-specific vehicles and multi-agency vehicles where interagency usage I not expected to exceed 25% of total usage. If there is the potential for agency specific vehicles or MACs to exceed 25%, then these questions should be completed; otherwise, provide a detailed explanation indicating why it is not applicable.

- *Discuss the capability of the contracting office (with support from program offices) to award and administer the proposed contract vehicle, including any relevant specialized experience. For example, if awarding a contract for IT services, does the contracting officer and program manager have specialized experience?*
- *Identify the number of FTEs supporting the award and administration of the contract.*

- *Identify all direct and indirect costs to the servicing agency for awarding and administering the proposed contract vehicle.*
- *Identify the fund (e.g., working capital fund), if any, that the agency intends to use to fund its work and receive payment from customer agencies.*
- *If fees will be assessed, identify the following:*
  - *List the amount of proposed fee(s) and briefly describe the methodology used for setting and adjusting fees when necessary. For example, state whether fees differ based on the amount and type of support required.*
  - *Indicate if all costs to the agency for awarding and administering the proposed contract vehicle been included in the fee(s). If not, identify any costs not covered.*
- *If the servicing agency plans to request any funding to support operation of the contract vehicle, identify the estimated amount of the request and the purpose to be addressed by the funding.*
- *Summarize the agency's plan for communicating with industry in developing requirements and acquisition strategies.*[2]
- *Discuss the steps the agency intends to take to ensure that over the life of the vehicle (a) vendor prices remain competitive, (b) regular customer feedback is obtained, and (c) the government maintains a qualified pool of vendors to meet customer needs.*
- *Discuss how the agency intends to help ensure customer adherence to the following practices (where applicable, include links to agency reference materials or training materials developed for customers):*
  - *Use of performance-based statements of work and, whenever practicable fixed-price task orders.*
  - *Application of the fair opportunity process, as contemplated in FAR 16.505.*
  - *Policies to maximize small business participation.*
  - *Consideration of contractor past performance in the evaluation of proposals.*
  - *Assessment of contractor performance on awarded tasks.*
  - *Use of interagency agreements in accordance with OFPP's guidance on interagency acquisitions, published in June 2008, which can be found at http://www.whitehouse.gov/omb/assets/procurement/iac_revised.pdf.*
  - *For vehicles offering IT, use of guidance issued in response to the 25-Point Implementation Plan for IT Management.*

7 Coordination & Approval

7.1 Stakeholders and Team Members

Coordination. Using Table 6: Team Members, include the names, organizations and roles of all team members involved in the initiative. Briefly describe the extent to which the proposed acquisition has been

[2] To ensure plans are robust and effective, agencies should refer to OFPP's "*Myth-Busting": Addressing Misconceptions to Improve Communication with Industry during the Acquisition Process*, available at http://www.gc.energy.gov/documents/MythBusting_WhiteHouseGuidance.pdf.

discussed with key stakeholders, including members of the FSSI Working Group, program managers of existing GWACs or multi-agency contracts (as appropriate), officials from GSA or the Small Business Administration, and agency offices with responsibility for small business programs. Indicate if any key stakeholder concerns or comments remain unresolved and discuss plans to resolve them.

Business Case Team Members		
Name	**Organization**	**Role**
		Program Manager
		COR
		Contracting Officer
		Contracting Officer (Alternate)
		Program Analyst

Table 6: Team Members

7.2 Approvals

Approval Business cases supporting multi-agency contracts and agency-wide contracts shall be approved by the agency's SPE, or an equivalent official with the concurrence of the Director of the agency's Small and Disadvantaged Business Utilization (OSDBU). Business cases for GWACs shall be approved by the agency's CAO, Chief Information Officer, and the OSDBU Director. Final business cases should include a signature page with the name(s) and title(s) of approving official(s) as well as the date(s) approved.

All required approval authorities should be added to the Record of Approval, Page i of this document. A note should be provided in this section to indicate its location.

8 Executive Agent

This should be a brief statement explaining who the executive agent will be, why it is appropriate, and what analysis has been done to assure appropriate resources to manage this initiative using the following:

- *Describe the division of responsibilities between the Executive Agent and the customer agencies (i.e., what functions will be performed by the Executive Agent versus the customer agencies).*
- *This section should address how the Executive Agent will ensure a clear understanding of the roles and responsibilities for activities such as the issuance of task orders, determination of need, resolve questions about task order scope, review of statements of work for task/delivery orders, procedures for providing for fair opportunities, the assessment of contractor performance, quality assurance surveillance, resolution of contractor performance issues, and ensuring compliance with the Federal Funding Accountability and Transparency Act (FFATA).*
- *If an Executive Agent is not applicable, then a brief statement should be provided in this section.*

8.1 Contract Oversight Responsibilities

Describe the oversight organizational component and their responsibilities for the contract vehicle indicating:

- *Why the anticipated Executive Agent was recommended.*
- *Any organizational expertise, capabilities, or management structure that led to the recommendation of this component as the Executive Agent.*
- *Identify the oversight responsibilities for the: (1) Executive Agent; (2) Component Ordering Office; and (3) OCPO).*
- *Identify the number of FTEs required to develop and administer the contract or how existing resources will be leveraged.*

If this section is not applicable, provide a brief explanation indicating why it does not apply.

9 Risk Assessment

Using Table 7(a) and (b): Risk Assessment, detail the risks associated with the recommended strategy, the level of the risk, who is responsible for mitigating it, and the mitigation strategy

Description	Risk	Responsibility	Consequence Description (Threat/Vulnerability)	Mitigation Strategy
Potential loss in savings if [Project Name] is not in place by the expiration of XYZ	M	P, PO	Loss of savings, potential for components to develop individual solutions	Keep components apprised of schedule and plans and attempt to meet the milestone schedule
Changes in technology	M	P	New technology required rather than the initial technology in the solicitation	

Table 7(a): Risk Assessment

RISK LEGEND:

RISK DEFINITIONS		RESPONSIBILITY	
■ HIGH	Major impacts in technical, cost and/or schedule	☐ **P**	Procurement
■ MEDIUM		☐ **B**	Budget
■ LOW	Minimum to no impact Acceptable impacts with workaround and/or no change in approach	☐ **PO**	Program Office
		☐ **S**	Security
		☐ **L**	Legal

Table 7(b): Risk Assessment Legend

9.1 Reporting Strategy

Identify what measures will be used to evaluate ordering activities and include an overview of what reporting requirements the executive agent, vendors, etc., will have and how the benefits will be monitored.

10 FAR Authority

This should be a brief statement indicating the FAR authority for the procurement.

10.1 Contracting Best Practices

Identify the specific steps taken to further policies and encourage use of performance-based contracting.

11 Milestones

Using Table 8: Milestones, include key milestones and anticipated dates

MILESTONE	DATE
Market Research Completed	
Acquisition Plan Approved	
Solicitation Package Complete	
Solicitation Package Reviewed by OGC and AMSD	
Solicitation Released	
Proposals Received	
Technical Evaluations	
Discussions, (if needed)	
Post Selection Documentation Reviewed by OGC and AMSD	
Small Business Validations	

Congressional Notifications	

Table 8: Milestones

12 Conclusion

Use this section to summarize any information, points of consideration, decisions, etc.

Chief Procurement Officer
U.S. Department of Homeland Security
Washington, DC 20528

Date:

[Name of Component Head of Contracting Activity (HCA)]
[Title]
[DHS Component Name]
[Address]
[City], [State] [Zip]

Dear [Mr./Ms.]:

This letter is in response to your agency's request to serve as an executive agent for the *[Name of the Contract]* contract. *[Contract Name]* is a *[contract value, contract period, i.e., 5-year]*, contract for *[type of commodity and/or service, i.e, IT support services]* that was awarded by the Department of Homeland Security (DHS) on *[date of award]*.

The DHS Chief Procurement Officer designated *[Component Name]* as the executive agent of *[Contract Name]* on *[mm/dd/yyyy]*. This designation is subject to the authorities and limitations of existing law and DHS regulation, and authorizes the Head of the Contracting Activity to:

- *[List the specific responsibilities, i.e., oversee the issuance of task orders, determination of need, resolve questions about task order scope, review of statements of work for task/delivery orders, procedures for providing for fair opportunities, the assessment of contractor performance, quality assurance surveillance, resolution of contractor performance issues, and ensuring compliance with the Federal Funding Accountability and Transparency Act (FFATA).]*

The designation for each *[Identify Contract Type, i.e., IDIQ, BPA, etc.]* shall remain in effect until the end of the contract period for that/those *[Identify Contract Type, i.e., IDIQ, BPA, etc.]*, including any options, unless the designation is otherwise modified by the Office of the Chief Procurement Officer (OCPO). This/These *[Identify Contract Type, i.e., IDIQ, BPA, etc.]* for *[type of commodity and/or service, i.e, IT support services]* are subject to quarterly reporting requirements. The OCPO will review the quarterly reports to ensure that contracts are producing effective results and work with the Strategic Sourcing Program Office, if any improvements are needed.

The OCPO looks forward to working with you as the Executive Agent to ensure that the *[Identify Contract Type, i.e., IDIQ, BPA, etc.]*are providing cost-effective, quality results for our taxpayers.

Sincerely,

Chief Procurement Officer

TEMPLATE

Terms of Designation

This designation, effective through December [2013 or 2015], is made pursuant to section 5112(e) of the Information Technology Management Reform Act ("Clinger-Cohen Act"), 40 U.S.C. 1412(e), which authorizes the Director of OMB to designate one or more heads of executive agencies as executive agents for government-wide acquisition contracts (GWACs) for information technology (IT).

Scope

As an executive agent, the Department of _____ is authorized to award and administer task and delivery orders on behalf of federal agencies under the future _____ government-wide acquisition contract (GWAC) for [list products/services to be offered]. The scope of this designation is limited to the acquisitions of IT as defined in section 5002 of the Clinger-Cohen Act. The contracts shall continue to be made available to agencies on a non-mandatory basis.

Principles

The designation is granted with the understanding that the Department of _____ will adhere to and promote the general policies and principles described in Enclosure A in discharging its obligations and responsibilities as an executive agent. These policies and principles are designed to ensure continued attention to "acquisition basics" – including sound acquisition planning prior to execution of contracts and orders placed thereunder, consistent and effective use of competition and contract incentives, and well managed contract and financial administration. They are also intended to promote a clear understand of roles and responsibilities between servicing and customer agencies.

Contract Activity Reporting

This designation is granted with the further understanding that the Department of _____ will provide to OMB, on a semi-annual basis, the information described in Enclosure B and an annual report as described in Enclosure C. Accordingly, by December 15, 2011, the Department of _____ should submit a report for activities occurring on its GWACs during FY 2011 in accordance with the reporting requirements OMB reserves the right to modify data reporting requirements as may be required to inform our understanding of activities conduced pursuant to this designation. Future OMB executive agent designations will be informed by the quality of the Department of _____ program performance under this designation.

Quality Assurance and Risk management

OMB seeks to improve interagency contracting practices, including the management of inter-agency contracts. We will look to our executive agencies to serve as role models. Accordingly, we request that you develop a quality assurance plan (QAP) that describes how your management infrastructure facilitates cost-effective and responsible contracting under your management initiatives, but should specifically address the following issues so that executive agents (and other inter-agency contract managers) may share and easily compare their respective practices.

1. Training of executive agency staff. The plan should describe the training provided to contracting, project, and any other officials of the executive agent that work with customers in developing, placing, and administering orders. The plan should address how training is provided (e.g., coursework, mentoring) and how implementation is tracked.

2. Customer training. The plan should describe the training offered to help customers: (i) decide if use of a GWAC makes sense and (ii) take maximum advantage of the GWAC as an acquisition tool (both for effective and efficient buying). The plan should delineate between mandatory and

optional training and prerequisite skills that customers must demonstrate before being allowed to obligate funds under the GWAC.

3. Order development and placement. The QAP should address the specific management controls (e.g., peer review, legal review, customer agency program review) that are used to ensure orders are properly placed in accordance with applicable laws, regulations, and policies. For example, the plan should address how to the agency ensures: (i) orders are within the scope of the GWAC, (ii) competition requirements are followed, (iii) any customer-unique requirements are met, (iv) required justifications are completed, and (v) funding is applied in accordance with appropriation limitations. The plan should identify how each of these issues is addressed for both direct ordering and assisted ordering, including any established review thresholds.

4. Order implementation. The plan should address how contactor performance is administered. The plan should clearly delineate both the agency's role and the customer's role in contract administration, especially for services over $100,000 and tasks issued on a time and materials basis For example, the plan should address if the agency requires the customer to assigned contacting officer's representative (COR) to monitor the contractor's performance, and if so: (i) who designates the COR, (ii) who outlines the COR's duties, and (iii) who ensures the COR has the relevant expertise and training.

5. Management review. The agency should periodically review the effectiveness of the QAP. The plan should explain how effectiveness will be measured and the mechanisms the agency will employ if weaknesses are identified. The plan should also identify the steps the agency has taken, or will take, to establish a performance rating system that provides incentives to contracting officials to exercise due diligence.

Please submit a draft QAP to the Office of Federal Procurement Policy (OFPP) by _____. The agency should be prepared to discuss its plan with agencies with large multi-agency contracts (MACs) and to make adjustments based on feedback from OMB. The final plan will become part of this and any future executive agent redesignation.

We intend for the final QAP to serve as a model that may be adopted and tailored by other agencies that manage large MACs or a significant amount of interagency acquisitions.

Best Value Acquisitions

OMB seeks to ensure that GWACs are shaped to provide the best value to their federal customers. If THE DEPARTMENT OF _____ proposed to award any new GWACs with a ceiling amount of $25 million or higher, or to re-compete an existing GWAC, under a program covered by this designation, THE DEPARTMENT OF _____ shall submit a business case to OMB at least 60 days prior to the planned issuance of the solicitation for any such GWAC.

OMB will use the Department of _____ business case to help in determining whether the proposed vehicles would provide a valuable alternative for a significant number of federal customers or whether the federal marketplace would be better served through consolidation. OMB will consider, in part, the agency's unique expertise in providing value to customers, the burden to contractors of entering into and maintaining multiple contracts with some degree of overlap versus the benefit to customers of choosing from alternative vehicles, the extent to which the proposed GWAC furthers opportunities for strategic sourcing, and the potential effectiveness of the vehicle in helping agencies achieve socio-economic acquisition goals.

Enclosure A

Multi-Agency Contract Principles

Judicious management of multiagency and enterprise-wide contracting vehicles requires adherence to the following principles.

A. Structuring Multiagency Contracts and Enterprise-wide Contracting Vehicles
   a. We agree to assess the potential magnitude of interagency orders to ensure that we have or will have adequate resources to properly administer the combined resultant workload. We further agree to consider, if necessary, placing limits on the size of individual orders, as well as initial limits on the amount f interagency usage, subject to periodic adjustment based on our demonstrated ability to adequately manage the contract in light of the volume of orders received.
   b. We agree to provide electronic access to sufficient information to minimize the burden of using these contracts.
   c. We agree that the functions we perform will be limited to those that are inherently governmental. If fees are established to recover the costs of performing these functions, they shall be at the level necessary to cover actual costs for managing and administering the multiagency contract or GWAC. We agree that fees should be established so that the projected total revenue generated by the use of these contracts do not exceed projected actual costs. We further agree that fees should be adjusted so that total revenues do not exceed actual costs.
   d. We commit to use, to the maximum extent practicable, small businesses (including small disadvantaged and women-owned businesses) at the prime or subcontract levels.
   e. We agree to define ordering processes that are easy to understand and to emphasize streamlined procedures and electronic processes. We further agree to explain our approach for ensuring that all contractors are given a fair opportunity to be considered for individual orders.

B. Accepting Tasks
   a. We agree to remind the requesting agency of its obligation to determine the economy and efficiency of using those contracts to meet its needs. We further agree to remind the requesting agency that it must follow the requirements set forth in OMB Circular A-76 when applicable.
   b. We agree to remind the requesting agency of its obligation to perform quality reviews of work statements to ensure that tasks are within the scope of the multiagency contract or enterprise-wide vehicle, and that they reflect specific requirements.
   c. We agree to remind the requesting agencies of their obligation to ensure that tasks satisfy their internal requirements, such as architectural standards for information technology. We will further remind requesting agencies that their use of multiagency or enterprise-wide contracts does not relieve them of their responsibility to comply with applicable laws, regulations, and polices governing federal procurement.
   d. We agree to encourage the requesting agency to use performance-based statements of work to the maximum extent practicable. We further agree, for services that would be in the highest demand, to develop performance-based service contract (PBSC) templates that could be used by the requesting agency to develop PBSC task orders.
   e. We agree that multi-agency or enterprise-wide contracts should not be used for the sole purpose of obligating expiring funds at the end of a fiscal year. The requesting agency should have a bonafide need in the fiscal year to which funds are being obligated and follow all other appropriation law requirements.

Enclosure A

C. Processing Orders
   a. We agree to ensure that contractors are given fair opportunity to be considered and that the exceptions to fair opportunity recognized in FAR 16.505 are used appropriately.
   b. We agree to incorporate a best value approach and use past performance in determining contractors for individual tasks.
   c. We will strive to minimize contractor costs associated with preparing proposals for orders. Where appropriate, we will consider limiting the size of written proposals, or encouraging the use of oral proposals. We further agree that proposal detail should be tailored to the minimum level necessary for adequate evaluation and selection for award.

D. Administering Orders
   a. We agree to record information regarding contractor performance on orders and make it available to source selection officials to facilitate maximum practical consideration for past performance in awarding subsequent tasks.

E. Re-competing Establishing New Multi-agency Contracts
   a. We agree to recomplete or establish our own multiagency contract only after we determine that such a vehicle is in the best interest of the government and the most cost effective means of satisfying our requirements. In making this decision, we will consider (1) the economies of and efficiencies to be gained by establishing our own multiagency contract, in light of the existence and feasibility of having our needs met through another agency, or multiagency contracts and (2) if the requirements are generally within our mission or competency to award.

Enclosure B

Contract Activity Report

I. Data Submission.

The Department of _____ shall report the following information to the Administrator of the Office of Federal Procurement Policy (OFPP) on the [procurement program] government-wide acquisition contracts (GWACs), in accordance with the schedule set forth in section II, below:

(1) for each customer agency, the cumulative number and total dollar value of task or delivery orders awarded (whether by Department of _____ or by the customer agency through delegation), sorted by function contact area and type of contract (e.g., firm-fixed-price, time-and-material, labor-hour, cost-reimbursement, fixed or award fee, etc.);

(2) total number and dollar value of task and delivery order awards:
- (i) subject to fair opportunity; and
- (ii) not subject to fair opportunity (see Federal Acquisition Regulations (FAR) 16.505(b)(2), identifying the applicable exception;

(3) revenue and cost information for managing and administering each GWAC as follows:
- (i) projected and actual total revenue generated for each GWAC;
- (ii) projected and actual direct and indirect costs for each GWAC;
- (iii) actual full-time equivalents (FTEs) used to manage and administer each GWAC; and
- (iv) ftrategy for re-calculating fees to correct any differences between revenue and cots;

(4) the assessment of customer satisfaction with contracts covered by the designation (using performance measures and benchmarks);

(5) the total number and cumulative value of task orders issued which do not comply with FAR Part 37.6, performance-based contracting;

(6) total number and dollar value of task and delivery order awards to:

- (i) small businesses;
- (ii) small disadvantaged businesses;
- (iii) women-owned small businesses
- (iv) HUBZone small businesses;
- (v) veteran-owned small businesses;
- (vi) service-disabled veteran owned small businesses.

(7) Management or operational weaknesses (including customer misapplications) identified by the program, agency Inspector General (IG), or Government Accountability Office (GAO), and remedial steps that have been taken or are planned.

Enclosure B

II. Schedule.

Department of _____ shall report the above-identified information to OMB in accordance with the following schedule:

Activity Between	Submission Due No Later Than
Date of Contract Award – March 31, 2011	May 31, 2011
April 1, 2011 – September 30, 2011	December 15, 2011
October 1, 2011 – March 31, 2012	May 31, 2012
April 1, 2012 – September 30, 2012	December 15, 2012
October 1, 2012 – March 31, 2013	May 31, 2013
April 1, 2013 – September 30, 2013	December 15, 2013
October 1, 2013 – March 31, 2014	May 31, 2014
April 1, 2014 – September 30, 2014	December 15, 2014
October 1, 2014 – March 31, 2015	May 31, 2015

DHS Market Research Guide

Office of the Chief Procurement Officer

October 2009

Version 1.1

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PREFACE

Comprehensive market research enhances transparency and competition in acquisition. Market research results comprise a key component of strategic planning; acquisition planning; determining appropriate contract vehicle/type; justifying and approving transactions acquired under other than full and open competition; determining price reasonableness; rights in data and other essential acquisition-related decision making. Federal Acquisition Regulation (FAR) Subpart 10.001 requires agencies to use the results of market research to determine:

A. If sources capable of satisfying agency requirements exist;

B. If commercial or non-developmental items suitable to meet the agency's needs are available; could be modified to meet agency requirements; or could meet agency requirements if the requirements were modified to a reasonable extent;

C. The extent to which commercial items or non-developmental items could be incorporated at the component level;

D. The practices of firms engaged in producing, distributing, and supporting commercial items, such as a type of contract, terms for warranties, buyer financing, maintenance and packaging, and marking;

E. The availability of products that maximize the use of recovered materials and opportunities for the promotion of energy conservation and efficiency;

F. If bundling is necessary and justified; and

G. Availability of electronic and information technology that meets all or part of the applicable accessibility standards issued by the Architectural and Transportation Barriers Compliance Board.

This guide implements the policies and procedures for conducting market research prescribed in Federal Acquisition Regulation Part 10, and provides additional department-wide guidance to assist Acquisition Teams in determining the most suitable approach to acquiring, distributing, and supporting supplies and services to support the Department's mission. The guide applies to all DHS Offices and Components.

AUTHORITIES

A. Federal Acquisition Regulation (FAR) (48 CFR):
- Subpart 2.1 (Definitions)
- Part 3 (Improper Business Practices and Personal Conflicts of Interest)
- Part 6 (Competition Requirements)
- Part 7 (Acquisition Planning)
- Part 8 (Required Sources of Supplies and Services)
- Subpart 9.5 (Organizational and Consultant Conflicts of Interest)
- Part 10 (Market Research)
- Part 11 (Describing Agency Needs)

AUTHORITIES (Continued)

- Part 12 (Acquisition of Commercial Items)
- Subpart 15.201 (Exchanges with Industry Before Receipt of Proposals)
- Section 17.207 (Exercise of Options)
- Subpart 19.5 (Set-Asides for Small Business)
- Part 23 (Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace)
- Part 25 (Subpart 25.1 and 25.2 – Buy American Act and Subpart 25.4 Trade Agreements) and
- Subpart 50.2 Support Anti-Terrorism by Fostering Effective Technologies Act of 2002 (SAFETY Act)

B. Federal Acquisition Streamlining Act of 1994 (FASA)
C. Management Directive 0480.1, Ethics/Standards of Conduct, dated March 1, 2003
D. Chief Procurement Officer memorandum, Subject: Communications with the Private Sector, dated August 14, 2006
E. Homeland Security Acquisition Regulation (HSAR), Part 3023, Environment, Energy and Water Efficiency, Renewable Energy Technology, Occupational Safety, and Drug Free Workplace
F. Homeland Security Acquisition Manual (HSAM), Chapter 3023, Environment, Energy and Water Efficiency, Renewable Energy Technology, Occupational Safety, and Drug Free Workplace, and
G. Support Anti-Terrorism by Fostering Effective Technologies Act of 2002 (SAFETY Act).

SOURCES

Sources for this guide include: The Defense Logistics Agency, Market Research Handbook (SD-5), January 1, 2008; the Department of Homeland Security Office of Procurement Operations' Procurement Operating Procedure (POP) 203, "Conducting Market Research," (July 23, 2008) and POP 106, "Contacts with Industry," (July 8, 2008); Attachment A – HSAM Chapter 3007, DHS Acquisition Planning Guide.

PART 1

KEY TERMS AND RESPONSIBILITIES

A. KEY TERMS

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

Acquisition Team: Procurement and program office personnel, working in a team environment, with responsibility for various aspects of the procurement process. An Acquisition Team may be composed of some or all members of an Integrated Project or Product Team.

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

Bundling or Bundled Contract: Is the consolidating of two or more requirements for supplies or services, previously provided or performed under separate smaller contracts, orders, into a solicitation for a single contract or order that is likely to be unsuitable for award to a small business due to:

- The diversity, size, or specialized nature of the elements of the performance specified;
- The aggregate dollar value of the anticipated award;
- The geographical dispersion of the contract performance sites; or
- Any combination of the above factors. (FAR 2.101)

Catalog Price: Price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public.

Commercial Item:

(1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and—

(i) Has been sold, leased, or licensed to the general public; or,

(ii) Has been offered for sale, lease, or license to the general public;

(2) Any item that evolved from an item described in paragraph (1) of this definition through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;

(3) Any item that would satisfy a criterion expressed in paragraphs (1) or (2) of this definition, but for –

(i) Modifications of a type customarily available in the commercial marketplace; or

(ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements.

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

(4) Any combination of items meeting the requirements of paragraphs (1), (2), (3), or (5) of this definition that are of a type customarily combined and sold in combination to the general public;

(5) Installation services, maintenance services, repair services, training services, and other services if—

(i) Such services are procured for support of an item referred to in paragraph (1), (2), (3), or (4) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and

(ii) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed or specific outcomes to be achieved and under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed or a specific outcome to be achieved. For purposes of these services—

(i) *"Catalog price"* means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and

(ii) *"Market prices"* means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the Offerors.

(7) Any item, combination of items, or service referred to in paragraphs (1) through (6) of this definition, notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or

(8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments. (FAR 2.101)

Contracting Officer (CO): An individual who has been authorized specifically, and in writing, to enter into, administer, and/or terminate contracts and make related determinations and findings. Contracting Officers are responsible for ensuring performance of all necessary actions for effective contracting and safeguarding the interest of the United States in its contractual relationships.

Development: The systematic use of scientific and technical knowledge in the design, development, testing or evaluation of a potential new product or service (or of an improvement in an existing product or service) to meet specific performance requirements or objectives. It includes the functions of design engineering, prototyping, and engineering testing. In the context of Independent Research and Development, FAR 31.205-18 provides that development excludes (1) subcontracted technical effort that is for the sole purpose of developing an additional source for an existing product; and (2) development effort for manufacturing or production of materials, systems, processes, methods, equipment, tools, and techniques not intended for sale.

Disaster Response Registry: A voluntary registry of contractors who are willing to perform debris removal, distribution of supplies, reconstruction, and other disaster or emergency relief activities established in accordance with 6 U.S.C. 796, Registry of Disaster Response

Contractors. The registry contains information on contractors who are willing to perform disaster or emergency relief activities within the United States and its outlying areas.

Environmentally Preferable: Products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service. (FAR 2.101)

Ethics Officer: Advisor within the DHS Office of the Legal Advisor for Ethics, who provides ethics counseling to DHS employees on the Federal standards of ethical conduct, political activities (Hatch Act), outside employment and activities, and post employment matters. Deputy Ethics Officials are assigned to each DHS Component.

Historically Underutilized Business Zone (HUBZone): A historically underutilized business zone that is an area located within one or more (1) qualified census tracts, (2) qualified non-metropolitan counties, (3) lands within the external boundaries of an Indian reservation. (FAR 2.101)

Historically Underutilized Business Zone (HUBZone) Small Business Concern: An SBA-certified firm that is headquartered in an economically distressed area located in a qualified census tract, non-metropolitan county, or Indian reservation. To meet the requirements for HUBZone participation, a qualified firm must be: small under the size standard corresponding to its primary industry classification; be at least 51% unconditionally and directly owned and controlled by persons who are United States citizens; have its principal office located in a HUBZone; have at least 35% of its employees residing in a HUBZone; and certify that it will attempt to maintain this residence percentage during the performance of any HUBZone contract it receives.

Integrated Project or Product Team (IPT): Cross disciplinary team composed of representatives from all appropriate functional disciplines working together to build successful and balanced programs, identify and resolve issues, and make sound and timely decisions based on timely input from the entire team, when appropriate. An Acquisition Team may be a subset of an IPT.

Market Prices: Current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.

Market Research: Collection and analysis of product or service market information to determine the best approach for acquiring goods and services to satisfy the Government's acquisition needs. Within the context of market research, acquisitions begin with development of a description of the Government's needs stated in terms sufficient to allow conduct of market research. Market research is then conducted, among other things, to: (1) identify commercial products and services that meet Government requirements; (2) locate and identify Small Business Concerns (including all subcategories) that can meet Government requirements

and contribute to DHS achieving its goals; and (3) foster and promote acquisition planning, strategic sourcing, competition, and transparency for all procurements.

Market Research Report: A formal report prepared by the Acquisition Team and approved by the Contracting Officer that details market research findings, the applicability of the findings to meeting the current requirement, and serves as the basis for the acquisition strategy and procurement request package(s).

Non-developmental Item: Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government. It also includes any of these items that require only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency.

Offeror: A vendor or contractor who responds to a solicitation that, if accepted, would bind the contractor to perform the resultant contract.

Organizational Conflict of Interest (OCI): When a person is unable or potentially unable to render impartial assistance or advice to the Government because of other activities or relationships with other persons, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

Program Office: An organization within DHS or its Components that is responsible for managing successful acquisitions to meet essential mission needs; nominating individuals as Contracting Officer's Representatives (CORs) to the Contracting Officer; ensuring training and certification requirements are met and maintained; and building a solid relationship with the Contracting Officer in order to communicate COR concerns and issues.

Recovered Materials: Waste materials and by-products recovered or diverted from solid waste; however, the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

Request for Information (RFI): A request for information used when the Government does not presently intend to award a contract, but needs to obtain price, delivery, and other market information, or capabilities for planning purposes. Responses to these notices are not offers and cannot be accepted by the Government to form a binding contract.

Service-Disabled Veteran-Owned Small Business (SDVOSB): A small business concern not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and the management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

Simplified Acquisition Threshold: $100,000. However, for acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack, the term means: (1) $250,000 for any contract to be awarded and performed, or purchase to be made, inside the United States; and (2) $1 million for any contract to be awarded and performed, or purchase to be made, outside the United States. (See FAR Part 2)

Small Business Set-Aside: An acquisition exclusively or partially reserved for the participation of small business concerns pursuant to the Small Business Act. A set-aside restricts the competition to small business concerns that qualify under the applicable standards. A total set-aside restricts the entire procurement. The four small business categories that can be set-aside are as follows: 8(a), HUBZone, Service Disabled Veteran-Owned Small Business (SDVOSB), and Small Business.

Small Disadvantaged Business Concern (SDBC): A small business concern, certified by the Small Business Administration (SBA) that is at least 51 percent unconditionally owned and controlled by (1) one or more individuals who are both socially and economically disadvantaged individuals, an Indian tribe, an Alaska Native Corporation, a Native Hawaiian Organization, or a Community Development Concern, and meets the other requirements of 13 C.F.R. § 124.1002. The S B Acertifies SDBs to make them eligible for special benefits and assistance. Once certified, the firm is indicated as an SDB in the Central Contractor Registration (CCR).

Sources Sought: A synopsized notice to businesses to collect and analyze information about interest and capabilities within the market to satisfy agency needs.

Strategic Sourcing: A collaborative and structured process of critically analyzing an organization's spending and using this information to make business decisions about acquiring and managing commodities and services more effectively and efficiently. This process helps agencies optimize performance, minimize price, increase achievement of socio-economic acquisition goals, evaluate total life cycle management costs, improve vendor access to business opportunities, and otherwise increase the value of each dollar spent.

B. RESPONSIBILITIES

1. **Acquisition Team** shall assist the program office in conducting and documenting the market research necessary to develop the acquisition strategy and pre-award acquisition documentation. An Acquisition Team may be composed of some or all members of an Integrated Project or Product Team.

2. **Contracting Officer** shall:

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

(b) Provide advice and support to the Program Office and its Acquisition Team during the conduct and documentation of market research (including market research involving

meetings with industry and vendors) to ensure that potential sources of information are explored to the fullest extent practicable.

(c) Determine if the product or service identified to satisfy the Government's requirement meets the FAR definition of a Commercial Item.

(d) Approve the Market Research Report and ensure that appropriate market research documentation is included in the official contract file.

(e) In case of disaster or emergency, when requirements include debris removal, distribution of supplies, reconstruction, and/or other disaster or emergency relief activities, the Contracting Officer or the Acquisition Team's Contract Specialist will consult the Disaster Response Registry at www.ccr.gov as part of market research. A list of prospective vendors voluntarily participating in the Disaster Response Registry can be retrieved by using the CCR Search tool at: https://www.bpn.gov/CCRSearch/Search.aspx. Vendors are identified by selecting the criteria for "Disaster Response Contractors" and additional filters, such as "state" or "zip code.".

3. **DHS Ethics Official/Deputy Ethics Official (Legal Advisor for Ethics in the Office of the General Counsel / Designated DHS/Component Ethics Official)** shall:

(a) Assist DHS and Component employees in implementing and administering the agency's ethics program.

(b) Provide ethics advice to DHS and Component employees; specifically as they apply to acquisition matters.

4. **Legal counsel (Office of General Counsel)** shall provide legal oversight and guidance to DHS and Component employees.

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

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

(b) Conducting and coordinating thorough market research utilizing as many techniques as identified in FAR 10.002(b)(2) and this guide, as possible.

(c) Seeking advice from the Contracting Officer, Small Business Specialist, and, as appropriate, the DHS Strategic Sourcing Program Office to ensure that potential sources of information are explored to the fullest extent practicable, including existing contract vehicles, small businesses, and new entrants to Federal contracting.

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

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

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

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

(h) Writing the Market Research Report.

(i) Providing copies of all market research documentation as part of the requisition package.

6. **Procurement Personnel/Contract Specialists** shall assist Program Office staff in documenting their requirements and serve as part of the Program Office's Acquisition Team in conducting market research.

7. **Small Business Specialists** shall participate in the acquisition planning processes to help Program Offices identify requirements for small businesses. Participation includes the review of each proposed acquisition exceeding the simplified acquisition threshold for potential inclusion into the socioeconomic program, assisting in identifying alternative strategies that would reduce or minimize acquisition strategies involving substantial bundling, and the coordination of the Procurement Forecast of expected contract opportunities (Advance Acquisition Plans). All Components shall assign an AAP Coordinator and a Small Business (SB) Coordinator. Contract requirements that are bundled must be coordinated with Component and, as appropriate, DHS Office of Small and Disadvantaged Business and the Small Business Administration, to meet the requirements of HSAM 3007.107 and FAR 7.104(d)(1) and (2).

8. **Strategic Sourcing Program Office** (SSPO) provides DHS stakeholders economic and performance benefits through collaboration, application of sound analysis, and enterprise planning for acquisition initiatives. Within the DHS governance framework, the SSPO collaborates with stakeholders to develop, deploy, and maintain strategic sourcing strategies that enhance mission performance and optimize commodity management. The SSPO is available to provide support to Acquisition Teams on all department-wide or multi-component contracting initiatives.

PART 2
MARKET RESEARCH POLICY AND PROCEDURES

A. POLICY

1. General.

(a) Market Research: Why?

Timely, comprehensive market research data are critical to making good business decisions throughout the acquisition lifecycle. Market research data are needed to determine the best approach to acquiring, distributing, and supporting agency requirements, and are used in strategic planning, acquisition planning, solicitation development, and contract award and administration.

As a major output, market research provides key information related to available commercial items and services, thereby supporting the Federal Acquisition Streamlining Act of 1994 (FASA) requirement for Federal agencies, to the maximum extent practicable:

- Buy commercial items, commercial services, and non-developmental items to meet agency needs.
- State specifications in terms that enable and encourage vendors to supply commercial and non-developmental items.

Primary guidelines for collecting and using market research data are included in the following parts of the FAR:

- FAR Part 5 (Publicizing Contract Actions) provides information on the issuance of special notices such as Requests for Information, availability of draft solicitations or specifications, etc., that may be disseminated through the Governmentwide Point of Entry (GPE).
- FAR Part 6 (Competition Requirements) highlights the importance of documenting market research efforts/results in justifying open market actions awarded under other than full and open competition.
- FAR 7 (Acquisition Planning) highlights the role of market research in determining the acquisition strategy and developing the Acquisition Plan.
- FAR Part 10 (Market Research) provides the rationale and basic procedures for conducting market research.
- FAR Part 11 (Describing Agency Needs) provides guidance on specifying need using market research and stating requirements in terms of functions to be performed, performance required, or essential physical characteristics.
- FAR Part 12 (Acquisition of Commercial Items) provides guidance on determining whether the Government's requirements can be met by “commercial items,” i.e., products or services customarily available in the commercial marketplace or customarily available in the commercial marketplace with modifications.

(b) Market Research: When?

Ideally, market research should start as soon as requirements are forecast, as part of acquisition planning and the development of the Advance Acquisition Plan (if the acquisition is greater than $100,000).

Prior to initiating market research, the Acquisition Team should seek the Contracting Officer's advice because the Contracting Officer ultimately determines the required extent of market research and the level of documentation required for an acquisition based on factors such as urgency, estimated dollar value, complexity, and past performance (see FAR 10.002(b)(1)). In addition, the Contracting Officer's advice can help the Acquisition Team in setting information gathering parameters that balance information gathering needs and compliance with FAR 10.001(b) which discourages agencies from requesting more than the minimum information necessary from potential sources when conducting market research.

Should the requirement be a department-wide or multiple Component initiative, Acquisition Team consultation with the DHS Strategic Sourcing Program Office early in the planning process is highly encouraged.

(c) Market Research: By Whom?

Market research should use the expertise of all members of an Acquisition Team. Good market research requires the team to understand the technical alternatives that are available, the differences among terms and conditions, the practical aspects of standard commercial practices, and the value each alternative offers the Government. The Contracting Officer provides advice and assistance, and for more complex procurements may lead specific market research initiatives that can only be overseen by a Contracting Officer such as Government-industry conferences and issuing "sources sought" synopses, Requests for Information, and presolicitation notices. Even with these Contracting Officer-led segments, the Acquisition Team remains the *major contributor* to market research activities which, as documented, form a key component of a complete procurement request package prepared and submitted by the Program Office.

2. Market Research Requirements.

The FAR requires agencies to conduct market research before:

A. Developing new requirements documents for an acquisition;

B. Soliciting offers for acquisitions:
   (1) In excess of the simplified acquisition threshold as defined in FAR Subpart 2.101; or
   (2) Less than the simplified acquisition threshold when adequate information is not available and the circumstances justify its cost (FAR Part 10.001); or
   (3) That could lead to a bundled contract (15 U.S.C. 644(e)(2)(A)).

The FAR requires an analysis of market research data when implementing specific acquisition strategies (e.g., justifying other than full and open competition (FAR 6.303-2(a)(8); limiting sources in a Federal Supply Schedule acquisition (FAR 8.405-6(a)(2); and determining

reasonable maximum quantities on indefinite delivery, indefinite quantity contracts (FAR 16.504(a)(1)).

The FAR also requires analysis of market research data in the following circumstances:

C. When the Contracting Officer is required to set aside any acquisition greater than $100,000 for Small Business participation, market research must show that there is a reasonable expectation that (1) offers will be obtained from at least two responsible Small Business concerns offering the products of different small business concerns and (2) award will be made at fair market prices (FAR Subpart 19.502-2(b)).

D. When the Contracting Officer is exercising a contract option, market research must demonstrate that: the option is the most advantageous method of fulfilling the requirement, considering price and other factors; that the Government continues to receive the best price available; and that market stability has been considered. (See FAR 17.207(c)).

E. When the Contracting Officer is required to acquire "environmentally preferable" products and services (including energy- and water-efficient products and services or products that use renewable energy technology), market research data must include products listed in the Energy Star Program, Federal Energy Management Program (FEMP), Electronic Product Environmental Assessment Tool (EPEAT), or other Federal environmentally preferable programs (FAR Part 23; also see HSAR Part 3023 and HSAM Chapter 3023). Attachment A provides information on Federal environmentally preferable programs.

F. When the Contracting Officer is acquiring products or services listed on the FAR priority list for the use of Government supply sources, market research data must reflect consideration of the eight sources of supply (FAR 8.002(a)). (Table 1 on the next page provides a summary of these sources of products and services in order of preference. Attachment A provides the websites associated with the recommended sources.)

The FAR also requires the acquisition of the following products or services from or through specified sources (FAR 8.003). The Acquisition Team should discuss the requirement for these products and services with the Contracting Officer before beginning market research:

- Public utility services (see FAR Subparts 41.1 and 41.2)
- Printing and related supplies (see FAR Subpart 8.8)
- Leased motor vehicles (see FAR Subpart 8.11)
- Helium (see FAR Subpart 8.5)

Table 1 PRIORITY SOURCES OF PRODUCTS AND SERVICES (FAR 8.002)	
Supplies	**Services**
1. Agency inventories	1. Procurement List maintained by the Committee for purchase from People who are Blind or Severely Disabled (AbilityOne)*
2. Excess from other agencies	2. Mandatory Federal Supply Schedules
3. Federal Prison Industries	3. Optional Use Federal Supply Schedules
4. Procurement List maintained by the Committee for Purchase from People who are Blind or Severely Disabled (AbilityOne)*	4. Federal Prison Industries or Commercial sources (including educational and nonprofit institutions)
5. Wholesale supply sources (such as GSA, DLA, Dept. of Veterans Affairs)	
6. Mandatory Federal Supply Schedules	
7. Optional Use Federal Supply Schedules	
8. Commercial Sources (including educational and nonprofit institutions)	

* Formerly the Javits-Wagener-O'Day (JWOD) Program

G. Further, the FAR, as well as good business practices, requires the conduct of *on-going* market research of the industries that provide products and services that support agency programs. The Acquisition Team should use market research information to:

(1) Refine a requirement to maximize the benefit of competitive market forces;
(2) Review a requirement if it is determined that a commercial item may not satisfy the agency's needs to determine if modifying the requirement may meet mission need as well as allow a commercial item to be acquired; and perform trade-off analysis to determine if the modification is in the best interest of the Government;
(3) Establish the most suitable approach to acquiring, distributing, and supporting products and services from the best available source (including new entrants into Federal contracting);
(4) Ensure compliance with Government policies, such as socio-economic contracting goals, the Supporting Anti-Terrorism by Fostering Technologies Act of 2002 (SAFETY Act), environmental goals and requirements;
(5) Support price reasonableness determinations; and
(6) Avoid potential problems associated with contingences and minimize the risk of doing business for the Government and the contractor.

H. The Contracting Officer may also require that documented evidence of market research be submitted with acquisition packages whenever Reverse Auction tools, such as FedBid, are used for commercial item procurements.

REMINDER: Prior to initiating market research, the Acquisition Team should seek the Contracting Officer's advice because the Contracting Officer ultimately determines the required extent of market research and the level of documentation required for an acquisition based on factors such as urgency, estimated dollar value, complexity, and past performance (see FAR 10.002(b)(1)).

3. Documenting Market Research Efforts and Results.

Market research efforts and results must be clearly documented and included in the contract file because they form the bases for multiple acquisition decisionmaking documents. (For example, market research findings and results may be used in acquisition documents such as the acquisition plan, acquisition strategy, requirements analysis, analysis of alternatives, justification and approval documents, and even the solicitation.) A Market Research Report should be appropriate to the size and complexity of an acquisition. (See Section B.5, Documenting Requirement-Specific Market Research, and Attachment C of this guide for additional information.)

4. Standards of Conduct.

Throughout the market research process, DHS procurement and Program Office personnel are in contact and discussions with DHS vendors and potential vendors. DHS employees must conduct themselves with impartiality and avoid any conflict of interest. FAR Section 3.104 (Procurement Integrity) provides the restrictions on disclosure of information during the acquisition process (especially critical before the award of a contract).

FAR Part 9.502 specifically notes that "an organizational conflict of interest may result when factors create an actual or potential conflict of interest on an instant contract." Contracting Officers must avoid or mitigate potential significant conflicts of interest to prevent unfair competitive advantage or the existence of conflicting roles that might impair a vendor's **objectivity. There are three categories of Organizational Conflict of Interest (OCI) cases:**

A. *"Unequal access to information"* arises when a company has access to nonpublic information that is relevant/useful in preparing an offer (typically through performance of a contract but also through intentional or inadvertent unauthorized access in the course of otherwise authorized interactions with the procuring or program office) that gives it an unfair advantage in the competition for a later contract.

B. *"Biased ground rules"* refers to situations where a vendor sets the ground rules for a future competition (for example, by writing the specifications that competitors for a contract must meet).

C. *"Impaired objectivity"* occurs when a vendor is asked to perform tasks under a

contract that require objectivity, but another role the vendor plays casts doubt on the vendor's ability to be truly objective. For example, a vendor on a contract performing analysis and assistance in formulating policies that may affect products manufactured by that vendor **or its competitors.** The Contracting Officer and Program Office staff must consider the vendors' perspective when holding vendor discussions during their market research activities. Please note, if the discussions are not structured or conducted properly, the vendor could very well be precluded from participating in a DHS procurement because the discussions will have created a conflict of interest or the appearance of a conflict of interest that cannot be mitigated. Attachments B and B.1 provide summaries of fundamentals for meeting with vendors and industry representatives. In addition, the DHS Legal Advisor for Ethics, the Ethics Office in the Office of the General Counsel, and Component Ethics Program Points of Contacts are available to provide guidance on ethics (for Component POCs and other information, see the DHS Ethics webpage accessible from the *DHSOnline* portal at: **https://dhsonline.dhs.gov/portal/jhtml/community.jhtml**

B. PROCEDURES

1. Market Research Plan.

(a) General.
To ensure market research is adequate and appropriate to a requirement, a basic market research plan is essential. The Acquisition Team should seek the advice of the Contracting Officer in developing its market research plan. Although, the plan will vary at the Contracting Officer's discretion based on criteria such as the projected dollar amount, complexity, developmental versus recurring requirement, urgency, it should document the overall research techniques the Acquisition Team will employ, information sources to be used, responsibilities of the team members, decision points in the process, and the timeframe for each task.

(b) Helpful questions in framing market research plan.
The following questions may be helpful in planning market research activities:

(1) What information is needed to make the decision to buy from the commercial market?
(2) What are the performance characteristics of the products and services that are valued by the DHS users and how important is each characteristic (include consideration of supportability, reliability, cost, schedule, and performance)?
(3) If an item needs follow-on support, such as spare parts and repair, what are the characteristics of the follow-on support system? Think total life cycle!
(4) Is testing required and is third-party testing used?
(5) What business practices are standard?
(6) What are the capabilities of the commercial market and how to determine:
  (i) Availability of products to meet the requirement as is;
  (ii) Ability of suppliers to modify their products to meet the requirement;
  (iii) Flexibility of users to modify their requirements to allow the purchase of commercial items, commercial services, or non-developmental items.

(7) Which members of the Acquisition Team will have responsibility for making decisions regarding cost versus performance, capability of commercial items versus satisfaction of the Government's requirement, and other tradeoff decisions, and when?

(c) Market research plan: Suggested content.

The market research plan should provide:

(1) Brief statement of need or requirement analysis;
(2) Background information (overview of the characteristics of the marketplace from on-going market research efforts);
(3) Resources to be reviewed, such as magazine, journals, and Internet websites (as well as search criteria to be used in Internet research);
(4) Persons to survey or interview:
  (i) Current and future users (on potential changes to the requirements)
  (ii) DHS staff associated with current contracts for similar requirements
  (iii) DHS Components with similar requirements
  (iv) Federal agencies (or possibly state and local governments) with the same or similar requirement
  (v) Customers of identified vendors including vendors' past performance on their contracts
  (vi) Industry experts;
(5) Incentives and factors to increase competition;
(6) Potential sources for the item; and
(7) Description of market research techniques.

2. On-Going Market Research and Requirement-Specific Market Research.

Market research has two interrelated phases:

- On-going market research to understand the market (often called market surveillance); and
- Requirement-specific market research.

On-going market research includes all the activities that the Acquisition Team performs continuously to keep themselves abreast of technology and product developments in their areas of expertise. On-going market research *does not* involve gathering market information to fill a *specific* need.

Requirements-specific market research, which involves more in-depth yet narrowly focused research, is conducted to meet a *specific* need for a product or service to support a *specific* acquisition strategy within a *specific* timeframe.

As indicated in Part 2, Section A.2 of this guide, the FAR requires *both* types of market research.

3. Conducting On-Going Market Research.

On-going market research provides the background information and knowledge needed to develop a general understanding of the products and services available in the market and their characteristics and capabilities. On-going market research also identifies industry leaders, associations, and sources of market data. Regularly reading professional journals for a specific market and maintaining active membership in professional associations are good ways to develop an understanding of an industry. Personal contacts in industry and Federal agencies are another valuable source of information. Also, a variety of companies prepare commercially developed market surveys that provide information on a specific technology or commodity. Attachment A provides a listing of some of the many resources available for use in conducting market research.

4. Conducting Requirement-Specific Market Research.

When a program need is identified, more specific and focused market research is conducted. The market research involves collecting and analyzing information in three areas: technical performance, pricing, and terms and conditions customarily used in the market. The extent of the research that is needed will vary depending on factors such as urgency of need, the estimated dollar value of the acquisition, its complexity, and whether recent and relevant research on similar requirements exists. The Acquisition Team should focus on collecting data to answer the following key questions:

(a) **Whether the Government's requirements can be met by items of a type**:

- Customarily available in the commercial marketplace;
- Customarily available in the commercial marketplace with modifications; or
- Used exclusively for governmental purposes.

(b) The **customary business practices** regarding:

- Modifying or tailoring items to meet customer needs, and the associated costs;
- Use of warranties, buyer financing, discounts, and other terms and conditions; and
- Requirements of any laws and regulations unique to the item being acquired, e.g., SAFETY Act applicability.

(c) The **availability of items that contain recovered materials and items that are energy efficient.**

(d) The **distribution and support capabilities of potential suppliers**, including alternative arrangements and cost estimates.

(e) The **size and status of potential sources** (including small business status and if use of the source is required by FAR Part 8).

The Acquisition Team may use the following sources (as applicable) to gather market research

data:

- **Acquisition History –** The Acquisition Team may use the acquisition history of contracts for the same or similar items to aid in determining the type of market information needed for a particular acquisition. When reviewing acquisition history, the Acquisition Team and Contracting Officer should consider how well the product or service met the Government's needs, the price paid, and the number and quality of proposals that resulted from the solicitation.

- **Existing Vehicles** – To ensure market research effectiveness and efficiency, the Acquisition Team should invest the time necessary to identify whether existing vehicles, e.g., agency indefinite-delivery, indefinite-quantity contracts, Government-wide acquisition contracts (GWACs), or multiple-agency contracts, can meet program requirements. A good source of information on existing vehicles is the Interagency Contract Directory (ICD), a searchable database of GWACs, multi-agency and single agency contracting vehicles, and Federal Supply Schedule contracts which can be used by contracting officers and program managers. The ICD is accessible at: https://www.contractdirectory.gov/contractdirectory/. Additionally, the Acquisition Team should contact the DHS Strategic Sourcing Program Office early in the market research process, and access the DHS Enterprise-wide Contract Vehicle Portal at: https://dhsonline.dhs.gov/portal/jhtml/community.jhtml?index=48&community=MGMT&id=2012980039

  Some questions the Acquisition Team should ask in pursuing possible sources through existing vehicles include:

- Are there any substitutes or alternatives available for the requirement?
  - Where else is this requirement being procured across the Government?
  - Are there any known best practices for this requirement?
  - Is DHS a major stakeholder in this market?
  - What is DHS's buying power?

- **Recent Market Research –** The Acquisition Team may use the results of recent market research conducted for similar or identical requirements. When considering recent market research the Acquisition Team and Contracting Officer should take into account the pace at which technology and market conditions change. Such changes may undermine the effectiveness of research on current requirements.

- **Knowledgeable Individuals –** Before the development of a solicitation, the Acquisition Team may contact knowledgeable individuals in Government and industry to discuss the market capability. Typical questions to ask of *industry representatives* include:
  - What type of products do you offer that may satisfy this requirement?
  - Have the products been changed? If so, how often?
  - What types of discounts do you offer your customers?
  - What are your warranty terms, if any?
  - Are there additional charges for special packing or packaging?

- Is a commercial catalog available? Is it available on-line?
- What is your average ordering lead-time?
- Is the product listed on a GSA Schedule? If so, what is the Schedule number?

Typical questions to ask contacts *within the Government*:

- What product(s) do you currently use to meet your requirements?
- Who are your suppliers/vendors?
- What quantities do you generally purchase?
- What is the cost?
- What is the normal delivery time?
- Was performance satisfactory? If not, why?
- Is the product commercial? If not, explain.
- What type of discounts, if any, does vendor offer?
- Does the vendor provide a warranty? If a warranted item, what are the terms?

- **Government and Commercial Databases –** The Acquisition Team may review Government and commercial databases to examine market availability and determine specific industry information. Attachment A provides a listing of Federal and commercial databases available to DHS staff. For example, consultation of the Disaster Response Registry by the Contracting Officer or the Acquisition Team's Contract Specialist at www.ccr.gov is required during the market research phase during disasters or emergencies when contracting for debris removal, distribution of supplies, reconstruction, and/or other disaster or emergency relief activities.

- **Tradeshows and Industry Conferences** – Such events often offer demonstrations of new products, services, and technological advances, as well as provide opportunities to meet industry leaders and vendors and learn valuable market information**.**

- **Professional/Trade Journals** – These publications assist the Acquisition Team by providing both product descriptions and product evaluations. Attachment A provides a list of some online sources.

- **Source Lists –** The Acquisition Team may request source lists from other Government agencies, trade associations, or other sources to augment their market research.

- **Catalogs and Product Literature –** The Acquisition Team may review all available product catalogs, product literature, and capability statements widely available on the Internet and in hard copy from potential vendors. This review will enable the Acquisition Team to compare and determine the capability of commercial manufacturers, distributors, and dealers that may meet the needs of the Government.

- **DHS Small Business Office-Sponsored Vendor Outreach Sessions –** The DHS Office of Small and Disadvantaged Business Utilization regularly conducts vendor outreach sessions with small business owners and Small Business Specialists from

various DHS Components procurement offices. These sessions provide the small business community an opportunity to discuss their capabilities and learn of potential procurement opportunities. Information about these sessions is on the DHS public website at: http://www.dhs.gov/xopnbiz/smallbusiness/editorial_0524.shtm.

- **DHS Small Business Specialist –** Component Small Business Specialists and the DHS Office of Small and Disadvantaged Business Utilization may provide the Acquisition Team with information on meeting DHS small business requirements. Small Business Specialists provide advice to small business owners on procurement opportunities and how to do business with a Component.

- **DHS Office of SAFETY Act Implementation** – FAR 50.205-1(a) requires that as part of the acquisition planning process, programs review requirement to identify potential technologies that prevent, detect, identify, or deter acts of terrorism or limit the harm such acts might cause, and may be appropriate for SAFETY Act protections. SAFETY Act protections are available for a broad variety of technologies, including products, services or software and other forms of intellectual property. Before making a decision about SAFETY Act applicability, consult the DHS Office of SAFETY Act Implementation at http://www.safetyact.gov .

- **Federal Contracting Databases –** The Acquisition Team's Contract Specialist must check potential vendors' information in the following databases:

  - Central Contractor Registration (CCR). All vendors that do business with the Federal Government are required to register in CCR. (Website: www.ccr.gov).

  - Department of Labor provides Service Contract Act (SCA) and Davis-Bacon Act (DBA) wage determinations information. (Website: www.wdol.gov)

  - Two sources for past performance information:

    - Past Performance Information Retrieval System (PPIRS) provides Governmentwide past performance information on Federal vendors. (Website: www.ppirs.gov)
    - Contractor Performance Assessment Reporting Tool (CPARS), a Department of Defense system also provides past performance information on vendors. (Website: http://www.cpars.csd.disa.mil/cparsmain.htm)

  - Excluded Parties List System (EPLS) identifies vendors barred from doing business with the Federal Government. (Website: www.epls.gov)

The Acquisition Team may, ***under the direct oversight of the Contracting Officer***, take advantage of the following market research techniques. Contracting Officers routinely publish notices in www.FedBizOpps.gov (Federal Government Procurement website) announcing these events or requests:

- **Industry Conference** chaired by the Contracting Officer and hosted by the Acquisition Team or Program Office to provide industry representatives information about the agency or a specific requirement that the agency is thinking of acquiring (e.g., the DHS Chief Procurement Officer-sponsored annual DHS Industry Day). These conferences could be for a targeted market such as small businesses or to highlight a specific Program Office requirement.

- **Request for Information (RFI)** published at www.FedBizOpps.gov requesting industry comments to support an acquisition. Agency may provide a questionnaire or draft documents such as a draft Statement of Work or a draft Concept of Operations document for review and comment.

- **RFI published in an Industry or Association Publication** requesting industry comment to provide the Government with insight into market conditions and/or scientific advances regarding a particular acquisition.

- **Sources Sought Notice** published in www.FedBizOpps.gov requesting vendors to identify themselves if they are interested in providing a particular product or service. Vendors responding to the notice usually describe their capabilities, similar projects they have conducted as a prime or subcontractor, central contractor registry information, GSA schedule information, current federal contract work and current socio-economic status of the company as it relates to the North American Industrial Classification System.

- **Presolicitation Conference** to request industry to comment on all or portion of a solicitation (e.g., statement of work, evaluation factors, etc.). Vendors are invited to provide comment in any area including pricing considerations and alternative evaluation criteria. These conferences are often held for complex acquisitions where the Acquisition Team wants industry input before the solicitation is finalized.

- **PreProposal Conference/Activities.**

  - **Prebid/Preproposal Conference** to meet vendors that are interested in submitting a bid/proposal on a solicitation and to provide the Government a venue for answering questions on the requirement. These conferences may be held for a complex requirement with wide-spread industry interest. Because these conferences are time and labor-intensive for both Federal staff and vendors, the Contracting Officer determines the need for scheduling prebid/proposal conferences. (See FAR 14.207 and 15.201)

  - **Site Visits** to Government facilities are often reserved for complex requirements where offerors need to see a facility or unique operational capability to determine if they have the capability to perform the work as the Government envisions.

- **One-on-One Vendor Discussions**. The Contracting Officer may lead one-on-one meetings with knowledgeable individuals in Government and industry. These discussions are prior to the development of a solicitation. FAR 15.201 provides the Contracting Officer guidance in conducting these meetings. The Contracting Officer must avoid giving a vendor an unfair competitive advantage. All information must be given equally and mutually to all interested parties to avoid the appearance of any improprieties. Because these meetings are resource-intensive for both Federal staff and vendors, the Contracting Officer must determine the need. Attachments B and B.1 provide guidelines for conduct of these discussions.

5. Documenting Requirement-Specific Market Research.

Market Research Reports should be appropriate to the size and complexity of an acquisition and provide, at a minimum, the following information:

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

Attachment C provides a sample Market Research Report template that can be tailored to specific market research needs.

6. Market Research for Developmental Items (R&D or New Technology Development).

FAR Part 12, Acquisition of Commercial Items, implements the Government's preference for acquisition of commercial and/or non-developmental items as required by the Federal Acquisition Streamlining Act of 1994. Market research is required to determine if a commercial or non-developmental item exists to meet a Government requirement. However, in the areas of basic research and development or new technology development such as a prototype, there are often no non-commercial or non-developmental items available.

Although the market research processes for developmental items and commercial and non-developmental items are similar, the following outlines an overall strategy for conducting market research for developmental items:

(b) **Identify the Government' requirement** in terms of functions to be performed, performance requirements, or essential characteristics;
(c) **Identify companies, non-profits, universities, and other entities** capable of performing the research and development or developing the technology.

(i) Market research for developmental items involves obtaining market, pricing, and other information relevant to the requirement. Although finding this information may, in some cases, appear to be more challenging than for a commercial or non-developmental item, the same basic market research techniques and references used for a commercial or non-developmental item may be used in locating information for developmental items.

For example, the Acquisition Team may choose to survey the market directly through issuance of an RFI or Sources Sought synopsis. This requires the involvement of the Contracting Officer, so it is important to involve him/her early in the acquisition process.

Surveying the market is of particular importance if the developmental item is considered sufficiently unique to constitute a sole source. A summary of the market research conducted is required as part of any sole source justification and must include a discussion of efforts made to locate additional sources. Positive responses to RFIs or Sources Sought synopses must be evaluated to determine whether a product or service offered meets the requirement.

(ii) Completing the Market Research Report. Although most of the Market Research Report content will be the same for developmental items as for commercial or non-developmental items, where appropriate, the report should be tailored for developmental items. For example, all references to “commercial” or “commercial item” would not be applicable to a developmental item. If a section of the Market Research Report is not applicable, it should be so identified and supported by a brief explanation.

NOTE: Because market research documentation is incorporated as part of a contract file, the contract file record retention requirements at FAR 4.805 apply to market research documentation.

ATTACHMENT A

RESOURCES FOR MARKET RESEARCH

(Information available to DHS employees to gather market research data)

Websites Available to Research FAR Priorities for Use of Government Supply Sources (FAR 8.002)

Information on:

- Excess agency property can be obtained through Component Personal Property Officials.
- Excess property from other agencies can be obtained through Component Personal Property Officials, and from GSA's How to Acquire Excess Personal Property website at: http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA_OVERVIEW&contentId=20310
- Federal Prison Industries supplies and services: www.unicor.gov
- Procurement List of services and supplies maintained by the Committee for Purchase from People who are Blind or Severely Disabled (AbilityOne): http://www.AbilityOne.gov
- Wholesale supply sources through:
  - GSA: www.gsaadvantage.gov
  - Defense Logistics Agency: http://www.dla.mil/customers.aspx
  - Department of Veterans Affairs (medical, surgical, and pharmaceutical products available under Federal Supply Schedule): http://www1.va.gov/oamm/oa/nac/fsss/index.cfm
- Mandatory Federal Supply Schedules: www.gsa.gov
- Optional Use Federal Supply Schedules (GSA Advantage): www.gsa.gov (when using GSA Advantage, use of appropriate Federal Supply Schedule Special Item Number (SIN) is essential)

Websites Available to Research Environmentally Preferable Products and Services

Information on:

- Products and services identified by the Environmentally Preferable Purchasing (EPP) Program (including products with recycled or recovered content). Additionally, information on Federal green buying requirements and cost and benefits of purchasing choices can be obtained through the U.S. Environmental Protection Agency website at: www.epa.gov/epp
- Electronic Product Environmental Assessment Tool (EPEAT) is a system to help purchasers in the public and private sectors evaluate, compare and select desktop computers, notebooks and monitors based on their environmental attributes. Access EPEAT at: www.epa.gov/epp/pubs/products/epeat
- Biobased materials (including manufacturing and product information and laboratory results of bio content) can be obtained through the U.S. Department of Agriculture by accessing: http://www.biopreferred.gov/
- Energy-efficient products can be accessed at the U.S. Environmental Protection Agency and U.S. Department of Energy ENERGY STAR® Program website at: http://www.energystar.gov/products and through the U.S. Department of Energy's Federal Energy Management Program website at: http://www1.eere.energy.gov/femp/procurement/eep_requirements.html

- Water-efficient products can be obtained through the U.S. Environmental Protection Agency at: www.epa.gov/watersense
- Sustainable design and operations can be accessed through the U.S. Department of Energy at: http://www1.eere.energy.gov/femp/sustainable/index.html
- Alternative fuels and other petroleum reduction options such as advanced vehicles, fuel blends, idle reduction, and fuel economy. Also, transportation-related data and trends related to alternative fuels and vehicles can be obtained through the U.S. Department of Energy at: www.eere.energy.gov/afdc

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Resources Available from the DHS Library

Through its wide variety of resources, the DHS Library can be an outstanding source of support for conducting market research. Resources include access to:

- Federal Library Portals (see the "Federal Library Portals" listing on the DHS Library's Main Page.)

- Commercial and Federal Databases (simultaneous central search capability and access) (To view a listing of databases, click on "Central Search" in the DHS Library Main Page's "Databases Available Department-wide" section.) Includes access to ASTM Journals, Business & Industry, Business Source Premier, Consumers Index, ProQuest Telecommunications, Regional Business News.

- Fee-for-service access to a variety of commercial data bases (requires passwords available through the DHS Library). (To view a listing of resources, click on "E-Resource Collections" on the DHS Library's Main Page.) Includes access to: ASTM International – ASTM Standards, Dun and Bradstreet, InfoTRAC OneFile, HIS (standards).

Visit the DHS Library at:
https://dhsonline.dhs.gov/portal/jhtml/community.jhtml?index=164&community=MGMT&id=2040680007

Additional Online Government Databases Available to Contracting Officers, Contract Specialists, and Others

- ACQUISITION CENTRAL (http://www.acquisition.gov/) is a major website for the Federal acquisition community and the Government's business partners. Hosted by the Integrated Acquisition Initiative (IAE), ACQUISITION CENTRAL provides access to shared systems and tools for conducting business. In addition to those identified in Part 2, Section B.4 "Federal Contracting Databases" of this guide, acquisition systems accessible through ACQUISITION CENTRAL include:
    - Federal Business Opportunities (FedBizOpps) – the Governmentwide Point-of-Entry where commercial vendors and Government buyers are invited to post, search, monitor, and retrieve opportunities solicited by the Federal contracting community (also accessible at https://www.fbo.gov/index?cck=1&au=&ck=) .
    - VETBIZ.gov –The Department of Veterans Affairs Center for Veterans Enterprise Web Portal which includes vendor information pages (also accessible at: http://www.vetbiz.gov/index1.htm).

- Bureau of Labor Statistics Consumer Price Index page provides information, updated monthly, regarding consumer price trends (www.bls.gov/cpi).
- Bureau of Labor Statistics Producer Price Index page provides information regarding trends in selling prices received by domestic producers for their output (www.bls.gov/ppi).
- Business.gov's Business Data and Statistics site provides a portal with links to a variety of business and economic statistics collected by numerous U.S. Government agencies: http://www.business.gov/expand/business-data/
- U.S. Small Business Administration: www.sba.gov
- SAFETYAct information is available at: http://www.safetyact.gov
- Defense Logistics Information Service's (DLIS) Federal Logistics Data (FED LOG) Information Center at: http://www.dlis.dla.mil/fedlog/default.asp can be used by engineering, technical research, provisioning, procurement/contracting, supply, cataloging, maintenance, distribution, storage, transportation, quality assurance, and disposal personnel to retrieve management, part/reference number, supplier, Commercial and Government Entity (CAGE), freight, Interchangeability and Substitutability (I & S) and characteristics information recorded against National Stock Numbers (NSNs). FED LOG also provides service unique data for additional search capabilities.
- Disaster Response Registry at www.ccr.gov shall be accessed as part of market research performed during disasters or emergencies when contracting for debris removal, distribution of supplies, reconstruction, and/or other disaster or emergency relief activities. A list of prospective vendors voluntarily participating in the Disaster Response Registry can be retrieved by using the CCR Search tool at: https://www.bpn.gov/CCRSearch/Search.aspx.

Commercial Online Databases

- ThomasNet (formerly Thomas Registry) provides a variety of information on manufacturers, distributors and service providers: http://www.thomasnet.com/
- Online Phone Directories: www.yellowpages.com and www.yellowbook.com

(See also "Resources Available from the DHS Library")

Online Trade Journals

- American Metal Market provides information on the metals industry, including pricing. Accessible at: www.amm.com
- Platt's Price Report information on oil pricing and trends may be helpful for developing and supporting contract transportation cost estimates: www.platts.com
- Random Lengths provides information on the woods products industry: www.randomlengths.com

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Other Market Research Guidance

Although URLs are provided, for best results, use an Internet search engine (such as Google or Yahoo) and search on the following document titles to find the current Internet link.

Document Title:

- Defense Logistics Agency, Market Research: Gathering Information About Commercial Products and Services Handbook (SD-5), January 1, 2008, accessible at: http://www.dsp.dla.mil/app_uil/displaypage.aspx?action=content&accounttype=displayhtml&contentid=81
- Defense Acquisition University, Continuous Learning Module CLC004, Market Research (accessible at: https://learn.dau.mil/html/clc/Clc.jsp)
- National Aeronautics and Space Administration, Market research Guide, May 15, 1998 (accessible at: http://www.hq.nasa.gov/office/procurement/market.html)
- Office of the Secretary of Defense for Acquisition, Technology and Logistics (Acquisition Initiatives), Commercial Item Handbook, November 2001 (accessible at: http://www.acq.osd.mil/dpap/Docs/cihandbook.pdf)
- Rutgers University Libraries's Market Research website (accessible at: http://www.libraries.rutgers.edu/rul/rr_gateway/research_guides/busi/markres.shtml)
- Army Contracting Agency, Market Research Guide, May 2004 (accessible at: http://www.aca.army.mil/docs/Community/aca_mktrsch_gd.doc)
- Air Force Logistics Management Agency, Market Research/Analysis Guide, August 1997 (accessible at: http://www.acqnet.gov/comp/seven_steps/library/AFmarket-research.pdf)

ATTACHMENT B

RULES FOR MEETING WITH INDUSTRY REPRESENTATIVES

(What DHS Program Managers and other DHS staff members need to know before they meet with vendors and industry representatives)

DHS Program Managers and other staff are encouraged to talk with industry representatives of both large and small businesses so that DHS procurements reflect an understanding the commercial marketplace and the business environment of the vendors that support DHS programs. This exchange of information, however, must take place within a framework that treats all vendors (and potential vendors) fairly and impartially. Your Contracting Officer is your best resource in preparing you for a vendor meeting; always inform your Contracting Officer before meeting with a vendor. The following guidelines will help a DHS Program Manager and other DHS staff members to develop a framework and set of sound business practices when meeting with vendors.

THE RULE: **After the agency needs are established and the requirements to satisfy those needs are developed, no exchange with industry and potential vendors shall occur without the permission and without the presence of the Contracting Officer.** A procurement begins at the point when the agency needs are established and the description of the requirements to satisfy agency need is developed. In meetings with vendors or industry representatives, do not disclose "procurement sensitive" or "source selection sensitive" information; do not disclose the proposal evaluation process or the specifics of an on-going procurement; and do not discuss litigation or pending litigation. ***No information shall be released after agency needs are established and the requirements to satisfy those needs are developed, except by the Contracting Officer.***

1 **AVOID UNAUTHORIZED COMMITMENTS** (i.e., an agreement that is not binding because the Government representative making the agreement lacks the proper authority to enter into that agreement on behalf of the Government). In the case of contracts, only a Contracting Officer can commit the Government. **Good Practice:** End each vendor meeting with the statement: "Nothing discussed in this meeting authorizes you to work, start work, or bill for work. Any understanding on your part to the contrary is a mistake."

2 **TREAT ALL VENDORS AND POTENTIAL VENDORS FAIRLY AND IMPARTIALLY.**

3 **CONDUCT BUSINESS WITH INTEGRITY, FAIRNESS, AND OPENNESS.** Not only must the acquisition process have integrity, but the actions of each DHS employee must reflect integrity, fairness, and openness. Avoid Organizational Conflicts of Interest or even the appearance of a conflict.

4 **UNDERSTAND YOUR ETHICS RESPONSIBILITIES**. Consult your Contracting Officer or your Ethics Officer in the Office of General Counsel if you have questions or concerns related to ethical conduct or procurement integrity. Guidelines are available on the DHS Ethics Office webpage on DHSOnline.

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RULES FOR MEETING WITH INDUSTRY REPRESENTATIVES (Continued)

5 BEFORE ACCEPTING A MEETING, NOTIFY YOUR CONTRACTING OFFICER. Your Contracting Officer may provide you with information about the vendor, their current contracts with DHS, or if they are active in proposing to a specific procurement. After agency needs are established and requirements to satisfy those needs are developed, **no** exchange with industry and potential vendors shall occur without the permission and without the presence of the Contracting Officer. (See "The Rule" above.)

6 CONTROL THE MEETING AND ITS AGENDA. Always prepare and follow a meeting agenda. Before the meeting, identify specific information that you want the vendor to address. You may limit the number of attendees and specify the mix of the vendor's business development and technical staff to attend.

7 EMPHASIZE THAT THE PRIMARY PURPOSE OF THE MEETING IS FOR THE GOVERNMENT TO LEARN ABOUT THE INDUSTRY AND MARKETPLACE. Ask questions and get an understanding of the advantages and issues associated with a particular approach or business practice. Ask the vendor clarifying questions, but avoid expressing opinions or preferences. The meeting should not be the basis for further action, and should not unintentionally solicit a proposal.

8 ALWAYS MAKE THE INFORMATION YOU PROVIDE THE SAME TO ALL VENDORS. Provide a standard information package to all vendors that provides up-to-date and accurate information about the mission and requirements. **Good Practice**: Provide vendors with information that could properly be published on the DHS public website. You should not provide *other-than-public information* without prior written approval of your Contracting Officer and General Counsel.

9 ENSURE IMPARTIALITY. **Do not** render to, or accept preferential treatment from any private party (e.g., VIP visitor treatment for vendors such as Government vehicle rides from the airport, officially hosted free dining. Excellent guidance is available to DHS employees on the DHS OGC Ethics website regarding interaction with vendors: https://dhsonline.dhs.gov/portal/jhtml/community.jhtml?community=OGC&index=5&id=2001580003 (See in particular: *Ethics & Procurement* and *Encyclopedia of Ethics Failure*.) Also, avoid private discussions about a vendor's business and its relationship with DHS, except under the circumstances described in Attachment B.1, Guidelines for One-On-One Discussions.

10 DOCUMENT THE RESULTS OF THE MEETING. Documenting the results and findings of the meeting is a critical part of your market research effort. Be sure to record the date; place; and meeting participants, including their company affiliation and contact telephone numbers/emails. Mark this document "Confidential Business Information" and limit its distribution if it contains proprietary data.

ATTACHMENT B.1

GUIDELINES FOR ONE-ON-ONE DISCUSSIONS

(Guidelines for Contracting Officers when Conducting One-on-One Vendor Discussions These guidelines only apply to vendor discussions conducted by a Contracting Officer and Acquisition Team before the Agency finalizes the requirement definition phase of a specific procurement and before the acquisition strategy is defined.)

WHO: Knowledgeable individuals in Government and industry led by the Contracting Officer and organized by the Acquisition Team.

WHEN: During the requirements definition phase of an acquisition; before the release of a solicitation. After the release of the solicitation, the Contracting Officer must be the single focal point of any exchange with potential offerors.

WHY: "*The purpose of exchanging information is to improve the understanding of the Government requirements and industry capabilities, thereby allowing potential offerors to judge whether or how they can satisfy the Government's requirements*" (FAR Part 15.201(b)). These sessions help develop acquisition strategies and solicitations that will ultimately provide the best opportunity for the program to meet its performance objectives. Federal participants gain an understanding of the current state of the marketplace, including commercial/Government best practices, industry capabilities, innovative delivery approaches, commercial market service levels, performance strategies and measures, and associated risks, and costs. These sessions may provide an opportunity for the Acquisition Team to explore new concepts of operations, methodologies, and business practices to meet the current need.

LIMITATIONS: Contracting Officer may discuss general information about the agency mission needs and future requirements. The Contracting Officer must avoid giving a vendor an unfair competitive advantage. All information must be given equally (and as nearly as possible, at the same time) to all interested parties to avoid the appearance of any improprieties. Ensure that no source selection or proprietary data is disclosed, including any potential vendor's confidential business strategy.

GUIDELINES FOR ONE-ON-ONE MEETINGS WITH VENDORS

FAR 15.201 provides the Contracting Officer guidance in conducting these meetings.

- Develop a brief overview of the size, scope, and complexity of the program (such as a Concept of Operations or a general Statement of Need/Description of the Problem).

- Identify industry leaders. Analyze the industry and determine which vendors (and appropriate point of contact within the company) you need to contact for your market research needs. Document your rationale. There is no requirement to include every interested vendor in one-on-one meetings. At a minimum, a "representative" vendor from each of the various market segments providing the services.

- Develop a standard agenda and control the meeting by focusing on the agenda. Limit the meeting to a specific timeframe.

-MORE-

GUIDELINES FOR ONE-ON-ONE DISCUSSIONS
(Continued)

- Contact the vendor and explain what you are doing, give a brief overview of the size, scope, and complexity of the program, and indicate you will follow up with a letter.

- Send a letter requesting a meeting:
  - Provide a brief synopsis of the problem you are trying to solve.
  - Advise that the purpose of the meeting is to conduct market research needed to develop an acquisition strategy for a mission requirement.
  - Indicate that the vendor's standing in the marketplace is the reason it was selected to participate in the sessions.
  - In keeping with operational focus of the market research, request that the participants primarily be technical managers and operational staff from both their Government and commercial divisions.
  - Encourage the vendor to illustrate its discussions with samples and examples of best practices that they use on other Federal contracts or that they believe are pertinent to the requirement.

- Assign one Federal participant the role of meeting moderator to act as the meeting facilitator.

- Develop a script and set of questions for the Federal staff to use during the meeting. A script ensures that the sessions are conducted in a fair and consistent way. This practice ensures that all vendors hear the same message and that the meeting moderator conveys all the necessary information.

- Emphasize that the sessions are not in any way "evaluative" in nature, and they do not constitute a pre-proposal conference.

- Encourage communication between the Government participants and the vendor. Ask questions about the information presented. Explore the advantages and disadvantages of the approaches presented.

- Document each meeting immediately after it is held.

- Analyze the results of the meetings; identify lessons learned, trends, and performance measurement approaches. Prepare a Market Research Report that captures the analysis and conclusions. Consider transcribing the sessions to capture the information, but analyze and summarize the information into the report.

- Determine how the acquisition strategy should be affected based on the market research.

Additional Resource
Seven Steps to Performance-Based Acquisition
http://www.acqnet.gov/comp/seven_steps/index.html

ATTACHMENT C

MARKET RESEARCH REPORT TEMPLATE

A Market Research Report documents market research in a manner appropriate to the size, complexity, and urgency of an acquisition. In consultation with the Contracting Officer, the following template can be tailored to a requirement's market research needs. Use only those sections applicable to your requirement. If a section is not applicable, it should be so identified and supported by a brief explanation.

I. Authority

Market research is required in accordance with:
- FAR 7.102, Acquisition Planning Policy.
- FAR 10.001, Market Research Policy

II. Background Information

Describe the background of the procurement and circumstances/events leading up to the requirement. Include:
- Program Office
- Other stakeholders
- Program Office Point of Contact
- Type of acquisition (service or supply)
- Expected dollar value of requirement
- Acquisition Team members, if applicable:

Name	Title	Office	Telephone	E-mail Address

- Time frame in which the market research was conducted

III. Initial Requirements (as identified by the Program Office)

- Describe the Government's requirement in terms of:
  - Functions to be performed
  - Performance required and/or
  - Essential physical characteristics
- Discuss any cost effectiveness issues associated with the requirements:
  - Any potential cost drivers? (e.g., additional costs from some other activity that may influence the cost of the requirement)
  - Any cost/performance tradeoffs? (e.g., an analysis of the value added relating to costs and performance levels)
- Describe schedule requirements, e.g., performance periods and/or delivery due dates
- Identify DHS Acquisition Plan including AAP number, when plan was published to the public, if part of the DHS Forecast of Small Business Opportunities.

IV. Participants in Market Research

Describe the involvement of the individual Acquisition Team members and any other participants in the market research effort. (The titles listed in the table below are examples.)

Name	Title	Office	Telephone	E-Mail Address	Role in Market Research
	Program Official				
	Contracting Officer				
	Contract Specialist				
	Small Business Specialist				
	Strategic Sourcing Specialist				

V. Market Research Techniques and Sources

Describe techniques and sources used during market research. The following table may help structure and summarize the techniques used in the market research effort.

Check if part of research	Sources Used in Market Research	Details of Research/Comments
	Research Sources	
	DHS Advance Acquisition Plan reviewed	
	Acquisition history reviewed	
	Other recent market research reviewed	
	Interviewed knowledgeable individuals in industry	
	Interviewed knowledgeable individuals in Government	
	Government databases reviewed	
	Commercial databases reviewed	
	Participated/Attended Tradeshows and Industry Conferences	
	Professional Journals reviewed	
	Source Lists of DHS and Other Government agencies reviewed	
	Catalog and Product Literature reviewed	
	Participated in DHS Small Business Vendor Outreach Sessions	
	Reviewed requirements with Small Business Specialist	
	Reviewed existing DHS-wide and Multi-Component Contract Vehicles with DHS Strategic Sourcing Program Office and/or on DHS Enterprise-wide Contract Vehicle Portal	
	Other:	
	Other	

Check if part of research	Sources Used in Market Research	Details of Research/Comments
	Priority Sources Reviewed	
	Supplies: Agency inventories	
	Supplies: Excess from other agencies	
	Supplies: Federal Prison Industries at www.unicor.gov	
	Supplies: Procurement List maintained by the Committee for Purchase from People who are Blind or Severely Disabled (AbilityOne) (formerly Javits-Wagner-O'Day (JWOD) Program at: http://www.AbilityOne.gov	
	Supplies: Wholesale supply sources (e.g., GSA)	
	Supplies: Mandatory Federal Supply Schedules accessible through: www.gsa.gov	
	Supplies: Optional Use Federal Supply Schedules (access GSA Advantage) at www.gsa.gov	
	Supplies: Commercial sources (includes educational and non-profit institutions)	
	Services: Procurement List maintained by the Committee for Purchase from People who are Blind or Severely Disabled (AbilityOne) (formerly Javits-Wagner-O'Day (JWOD) Program at: http://www.AbilityOne.gov	
	Services: Mandatory Federal Supply Schedules	
	Services: Optional Use Federal Supply Schedules	
	Services: Federal Prison Industries	
	Mandatory sources reviewed (per FAR Part 8) if applicable for: ➢ Public utility services ➢ Printing and related supplies ➢ Leased motor vehicles ➢ Helium	
	Services: Commercial sources (includes educational and non-profit institutions)	
	Services: Disaster Response Registry at www.ccr.gov	
	Other:	
	References/Sources Checked	
	Existing intra-/inter-agency contract vehicles, e.g. Interagency Contract Directory at: https://www.contractdirectory.gov/contractdirectory/ and DHS's Enterprise-wide Contract Vehicle Portal at: https://dhsonline.dhs.gov/portal/jhtml/community.jhtml?index=48&community=MGMT&id=2012980039	
	Central Contractor Registration (CCR) at: www.ccr.gov	
	Department of Labor Service Contract Act (SCA) and Davis-Bacon Act (DBA) wage determination information at: www.wdol.gov	
	Past Performance Information Retrieval System (PPIRS) at: www.ppirs.gov or Contractor Performance Assessment Reporting System (CPARS) at http://www.cpars.csd.disa.mil/cparsmain.htm	
	Excluded Parties List System (EPLS) at www.epls.gov	
	Other:	
	Contracting Officer-led Activities	
	Industry Conferences	
	Sources Sought Notices: Requests for Information (RFI)	
	Sources Sought Notices: RFI published in and Industry or Association Publication	
	Sources Sought Notices: FedBizOpps at www.fedbizopps.gov	
	Presolicitation Conferences	
	Preproposal Conference	
	Site Visits	
	One-on-one Vendor Discussions	
	Other:	
	Other:	

VI. Identify Product/Services and Sources Able to Meet the Requirement

- Identify or describe:
  - Product/Service, include any brand name product information
  - Product/Service characteristics and/or capabilities
  - Company information (e.g., name, POCs, address, telephone number, e-mail address, website)
  - Company characteristics, past performance, and business category.

Business Category	Name of Potential Source(s)/Other POC Information
Large business	
Small business	
Small/disadvantaged business	
Section 8(a) business	
Woman-owned business	
HUBZone Small Business	
Veteran Owned Small Business	
Service Disabled Veteran Owned Small Business	

- If sole source, describe efforts to locate additional sources

VII. Description of the Commercial Marketplace

- Describe marketplace
- Assess Government's leverage in marketplace, e.g., describe the Government's negotiation strengths and/or weaknesses in the market
- Describe nature of other market participants, e.g., other governments (foreign, state/local), commercial firms, etc., and discuss how other buyers for the same product or service may affect your purchase
- Identify availability of commercial or non-developmental items that satisfy requirements (value or shortcomings of each) and sub-components

VIII. Prevalent Business Practices

- Identify standard/customary terms and conditions and industry business practices (include information on payment, freight delivery, acceptance, and warranties)
- Describe generally accepted business practices that differ from standard Government practices
- Discuss if contract financing is applicable. If so, ensure compliance with FAR 32.202-3, Conducting Market Research About Financing Terms
- Discuss any laws and regulations unique to the requirement

IX. Pricing and Market Issues

- Identify price sources (e.g., market price, catalog, GSA, etc.), price ranges, and price variations.
- Describe market trends for product or service, e.g., technical, business, and pricing.
- Describe how the application of cost or pricing market information collected from market research will be used in the development of the Independent Government Cost Estimate for the requirement.

X. Other Considerations

- Identify other considerations gathered from market research, e.g., opportunities to "unbundle" requirements to enable more contracts or subcontracts to small, small disadvantaged and other socio-economic procurement categories
- Discuss qualify factors, including such issues as past performance, references, product testing or evaluation, customer satisfaction, warranties, and quality problems
- Describe consideration of environmentally preferable products and services (EPPS). Include discussion of energy efficiency standards of market products, if applicable.
- Describe SAFETY Act applicability?
- Discuss Buy American Act applicability.
- Discuss Trade Agreements Act applicability.

XI. Market Analysis Summary

- Summarize the market research techniques and resources used in the market research.
  - Identify:
    - Products/Services available
    - If Commercial/Non-Developmental/Developmental Product/Service
    - Sources (companies, etc.)
    - Types of Businesses (large, small, etc.)
    - Pricing
  - Summarize:
    - Market conditions (commercial marketplace)
    - Customary commercial practices
    - Other considerations
- Provide market research conclusions and recommendations
- Document the decision and rationale to satisfy the agency's need with a commercial item/service, if market research so warrants
- Document the decision and rationale if the agency's need *cannot* be satisfied with a commercial item/service
- Provide supporting documents, as appropriate

The following table provides a checklist for Market Analysis Summary information.

Yes	No	Market Analysis Summary
		Are there products/services and sources capable of satisfying the Government's requirements?
		Are commercial items available to meet requirements?
		Are commercial items available that could be modified to meet requirements?
		Are commercial items available that could meet requirements if the requirements are modified to a reasonable extent?
		Are available items used exclusively for Governmental purposes?
		If commercial items are not available, are non-developmental items available to meet requirements?
		If commercial items are not available, are non-developmental items available that could be modified to meet requirements?
		If commercial items are not available, are non-developmental items available that could be modified to meet requirements if the requirements are modified to a reasonable extent?
		Could commercial items or non-developmental items be incorporated at the component level?
		Provided: Customary industry terms and conditions including warranties, buyer financing, discounts.
		Provided: Requirements of any laws and regulations unique to the item being acquired.
		Provided: Extent of competitive environment.
		Provided: Environmental considerations and concerns.
		Provided: SAFETY Act consideration/applicability.
		Provided: Distribution and support capabilities of potential vendors, including alternative arrangements

		and cost estimates.
		Provided: Size and status of potential sources (including small business status and if use of source is required by FAR Part 8).
		Provided: Identify available commercial items and describe the respective merits and shortcomings of each.
		Provided: Description of any market conditions that may be time sensitive or changes in supply or demand, technology, laws, and supplier costs, etc.
		Provided: Identification of potential sources. Description of capabilities of individual vendors, pricing information; delivery schedules, and standard terms and conditions, such as incentives and warranties.
		Provided: Any market surveys developed by industry or other Federal agencies.
		Provided: Pricing issues, price ranges, and price variations.
		Provided: Description of industry/market trends – technical/pricing/business, etc.
		Provided: Buy American Act Consideration.
		Provided: Trade Agreements Act Consideration.
		Provided: Other: Specify.
		Provided: Other: Specify.

STRUCTURED APPROACH FOR PROFIT OR FEE OBJECTIVE

INTRODUCTORY REMARKS.

DHS Form 700-17, Weighted Guidelines Profit/Fee Objective, has been automated and contracting officers can access this automated version of the form to calculate profit/fee objectives. The DHS Form 700-17 is accessible from DHSConnect at: http://dhsconnect.dhs.gov/forms/Documents/DHS_Form_700-17.pdf.

When using the DHS Form 700-17, Weighted Guidelines Profit/Fee Objective, the contracting officer must categorize the acquisition as a manufacturing, research and development (R&D) or a services effort. To determine to which category a particular acquisition belongs, the contracting officer must rely on the nature of the work to be performed. When acquisitions involving R&D and services require a significant amount of facilities for efficient contract performance (as determined by the contracting officer), the manufacturing weighted guidelines method may be appropriate. Similarly, certain contracts for the manufacture of small quantities of high technology supplies and equipment may not require a significant amount of facilities. In these cases, an R&D classification may be appropriate.

In determining profit or fee, the tax posture of the business entity is certainly recognized. A fair and reasonable management fee to a non-profit organization with a tax-exempt status is considerably lower than a profit/fee to a commercial enterprise with a taxable status.

Non-Profit Organizations.

The following applies to non-profit organizations:

1. As used in this subchapter, non-profit organizations are defined as those business entities organized and operated exclusively for charitable, scientific, or educational purposes; of which no part of the net earnings accrue to the benefit of any private shareholder or individual; of which no substantial part of the activities include carrying on propaganda, or otherwise, on behalf of any candidate for public office; and which are exempt from Federal income taxation under Section 501 of the Internal Revenue Code.

2. When the Weighted Guidelines Method for arriving at a profit/fee position is used for non-profit organizations, the contracting officer must make the following adjustments:

a. The weight ranges for "Cost risk" (Item 14 on the DHS Form 700-17) must be replaced with -1 to 0.

b. The Total Profit/Fee Objective (Item 20 on the DHS Form 700-17) must be reduced by up to 1% for manufacturing type efforts and up to 3% for R&D or Services type efforts.

***Commercial Organizations*.**

For the purposes of this subchapter, DHS utilizes the description from FAR 31.103 to describe commercial organizations.

I. CONTRACTOR EFFORT.
This factor takes into account what resources are necessary and what the contractor must do to meet the contract performance requirements. Evaluation of this factor and the assignment of weights on the DHS Form 700-17 requires analyzing the cost content of the proposed contract in the following areas:

A. Material acquisition (e.g., subcontracted items, purchased parts, and other material).

1. Consider the managerial and technical efforts necessary for the prime contractor to administer subcontracts and select subcontractors, including efforts to break out subcontracts from sole sources through the introduction of competition.

2. Consider whether the contractor's purchasing program makes a substantial contribution to the performance of a contract through the use of subcontracting programs involving many sources; new complex components, systems, or subsystems; and close surveillance by the prime contractor.

B. *Direct labor (e.g., engineering, service, manufacturing, and other labor)*.

1. Analysis of the various items of cost must include evaluation of the comparative quality and level of the engineering talents, manufacturing and service skills, and experience to be employed. In evaluating labor for the purpose of assigning profit weights, consideration must be given to the amount of notable scientific talent, unusual or scarce engineering talent needed, in contrast to journeyman engineering effort or supporting personnel. Higher weights are normally assigned to engineering, professional, or highly technical skill levels and lower weights to semiprofessional or other skill levels.

2. The variety of engineering, manufacturing and other types of labor skills required and the contractor's manpower resources for meeting these requirements must be considered.

3. For purposes of computing the prenegotiation profit/fee objective, exclude any amount from the pre-negotiation cost objective measurement base for the purchase cost of contractor-acquired property if i, ii, and iii below apply:

i. The property is categorized as equipment, as defined in FAR 45.101,

ii. The purchase cost the equipment is to be charged directly to the contract, and

iii. The equipment will be retained by the contractor as government property for use by the contractor in performing government contract(s).

C. ***Overhead and general management (general and administrative (G&A)***

When analyzing overhead and G&A, consider the makeup of these expenses and how much they contribute to contract performance. If the contractor proposes a single indirect cost rate, the contracting officer must breakout the composite rate or contact the auditor to determine what is in the overhead and G&A expense pools. This information will assist in determining the appropriate weights for overhead and G&A on the DHS Form 700-17.

D. ***Other costs.***

Include all other direct costs associated with contractor performance under this item. This includes airfare, lodging, computer support, etc. The assignment of a weight on the DHS Form 700-17 for this factor must be based on the nature of these costs and how much they contribute to contract performance.

II. CONTRACTOR RISK.

The degree of cost risk assumed by the contractor should influence the amount of profit/fee anticipated. Consider the following when determining a weight for cost risk:

A. Contract type.

The degree of cost risk is related to the selection of contract type. For example, if a portion of the risk has been shifted to the Government through cost-reimbursement, or other risk reducing measures, the weight assigned to this factor should be less than acquisitions where the contractor assumes most or all of the risk. This is particularly evident when using time-and-material and labor-hour contracts priced on a time and material basis. These contract types must be considered to be cost-plus-fixed-fee contracts for the purpose of establishing a profit weight in the evaluation of the contractor's assumption of cost risk.

B. ***Subcontracting program.***

The contractor's subcontracting program may have a significant impact on the contractor's acceptance of risk under a particular contract type. Analysis is necessary to determine if real cost risk has been transferred to a subcontractor. If this is the case, the contract cost risk weight assigned may be below the range that would normally be assigned.

C. ***Definitization.***

For procurement actions that involve definitization of a letter contract, unpriced change orders, etc., where partial performance has occurred, evaluate the effect on total contract cost risk. If it is determined that the total amount of cost risk has been effectively reduced

as a result of the partial performance, a lower weight may be appropriate. In addition, evaluate the type of work performed (e.g., complexity) and the type of work remaining to ensure an equitable weight assignment.

III. FACILITIES INVESTMENT.

DHS Form 700-18, Contract Facilities Capital and Cost of Money or a form substantially similar if authorized according to Component procedures, is used to determine the capital employed and cost of money amounts to be entered on the DHS Form 700-17, Weighted Guidelines.

A. *Utilization.*

To evaluate how facilities contribute to the profit objective requires knowledge of the level of facilities utilization needed for contract performance, the source and financing of the required facilities, and the overall cost effectiveness of the facilities offered. Contractors furnishing their own facilities that significantly contribute (as determined by the contracting officer) to lower total contract costs generally receive additional profit/fee. Conversely, contractors that rely on the Government to provide or finance needed facilities normally receive a correspondingly lower profit/fee. The following factors should also be considered:

1. The productivity improvements resulting from the facilities capital investment including the economic value of the facilities capital (e.g., physical age, undepreciated value, idleness, and expected contribution to future Government needs).
2. The degree to which the capital investment has direct, identifiable, and exceptional benefits to the Government, such as: new investments in state-of-the-art technology which reduce acquisition cost or yield other tangible benefits such as improved product quality or accelerated deliveries, or investment in new equipment for R&D applications.

B. *New Investment.*

To assist in evaluating *new* investment, the contracting officer should request the contractor to submit reasonable evidence that the new facilities investment will result in benefits to the Government.

IV. SPECIAL FACTORS.

A. *Productivity.*

The purpose of this factor is to recognize a prospective contractor's investment in modern cost-reducing facilities and other improvements in efficiency. This factor is applied when the acquisition is a follow-on manufacturing effort, actual cost data are available to establish a baseline, and changes in item configuration are not large enough to invalidate price comparability. The dollar amount inserted under the measurement base on the DHS

Form 700-17 is based on the estimated cost reduction that can be attributed to productivity gains.

B. *Independent development.*

The purpose of this factor is to recognize independent research and development on the part of the prospective contractor pertaining to the end item being procured. To determine the appropriate weight to assign this factor on the DHS Form700-17, it is important to evaluate whether the development cost was recovered directly or indirectly from Government sources. This factor is applied when the item is important to the advancement of the DHS mission and the prospective contractor demonstrates initiative in determining the need and application of the developed item.

C. Other.

1. *Socioeconomic programs*. This factor covers a number of special circumstances or particular acquisitions. It relates to the prospective contractor's participation in Federal socioeconomic programs. In addition to providing a reward for an unusual initiative in supporting Government socioeconomic programs, failure or unwillingness on the part of the prospective contractor to support these programs should be viewed as evidence of poor performance for the purpose of establishing this profit/fee objective factor.

2. *Performance*. The purpose of this factor is to evaluate the prospective contractor's past and present performance in such areas as: product quality, meeting specifications and contract schedules (including the administrative aspects of performance), efficiency in cost control (including the need for and reasonableness of costs incurred) especially under cost reimbursement contracts, accuracy and reliability of previous cost estimates, timely processing of changes, standards of good workmanship, history for reasonable and cooperative behavior and commitment to customer satisfaction, and the prospective contractor's business-like concern for the interest of the customer.

HSAM Section 3015.606-70 – Agency procedures.

DHS PROCESS STEPS FOR RECEIVING, REVIEWING, EVALUATING, AND TIMELY DISPOSAL OF UNSOLICITED PROPOSALS (Note: This flowchart must be used in conjunction with FAR 15.6 and HSAR 3015.6)	Phase 1	Phase 2	Phase 3	Phase 4	Phase 5
	Receipt	Initial Review	Evaluation	Decision	Action
AGENCY PROCEDURES	>Each HCA shall designate a contracting office Point of Contact (POC) who must receive and track all Unsolicited Proposals. Typically, the POC is a Contracting Officer. >Unsolicited Proposals must be protected as they often contain sensitive information and/or trade secrets.	>The POC must complete initial review; however, POC may obtain assistance from identified cross-functional team members. >If POC determines that submission is not an Unsolicited Proposal, Phase 2 is final phase of process.	>POC and appropriate cross-functional team members must complete Comprehensive Evaluation.	>Based on evaluation results, which typically include input from the Program Office, POC and team members make a recommendation to the responsible Contracting Officer. >When the recommendation is to proceed with contract negotiations, Phase 5 is needed.	>Contracting Officer, with other members of the DHS negotiation team, conducts contract negotiations as needed. >Contracting Officer ensures compliance with all applicable procurement laws and regulations.
OUTCOMES/GOALS	**Establish Milestones & Identify Team**	**Complete Initial Review within 7 calendar days**	**Complete Comprehensive Evaluation within 60 calendar days**	**Process (Accept) or Reject Unsolicitated Proposal**	**Negotiate & Award Contract**
TASK (TYPICAL)	>POC establishes milestones and identifies appropriate team members. >If Unsolicited Proposal is received by other DHS official, it must be immediately forwarded to designated POC.	>Within 3 calendar days after initial review completion, POC must advise Offeror of-- rejection with reasons, or, acceptance with general timeframe for completing Phase 3 Evaluation.	>If additional information is needed from the Offeror, only the POC may contact the Offeror and make the request.	>Within 60 calendar days, POC must advise Offeror of-- rejection with reasons, or, tentative acceptance with timeline for contract negotiations. If rejected, Phase 4 is final phase of process.	>Responsible Program Office must ensure funds are committed and provide approved requisition to Contracting Officer.
FAR & HSAR Citations	FAR 15.604 & 15.606, HSAR 3015.606 & 3015.606-1	FAR 15.605 & 15.606, HSAR 3015.606-1	FAR 15.4, 15.606-2 & 15.607, HSAR 3015.606-2	FAR 15.606-2 & 15.607, HSAR 3015.606-2	FAR 15.402, 15.606-2 & 15.607, & HSAR 3015.606-2

Determination for *(Insert Component Name)* to Award A Task or Delivery Order Contract for *(brief description)* to a Single Source

This determination is made pursuant to FAR 16.504(c)(1)(ii)(D)*(1)* and specifically relies upon *[Provide those FAR citation or citations that apply to this request (e.g., 16.504(c)(1)(ii)(D)(1)(i),(ii), (iii) and/or (iv)).]*

The total value of all actions covered by this determination is estimated to be $_____.

Describe the action being approved. Provide enough details, facts or reasoning essential to support the determination. The determination document must address all of the below listed points related to the applicable exception(s).

16.504(c)(1)(ii)(D)(1)(i), *So integrally related only a single source can reasonably perform the work. If the determination is based on this exception, you must:*

- *Explain why only a single source can reasonably perform the work;*
- *Explain the consequences if more than one source is considered for each expected order under the contract and why that is unacceptable;*
- *If firm-fixed prices will not be established under the basic contract, explain why not and why the prices must be established in each individual order (T&M or Labor Hour orders are not FFP). Identify any portions of the contract that will be fixed priced; and*
- *Explain how each order under the contract will be priced; i.e., what type of orders will be issued (FFP, L/H, T&M, etc.) and how the prices of the orders will be determined to be fair and reasonable.*

16.504(c)(1)(ii)(D)(1)(ii), *Firm fixed prices established in the basic contract, not in each order. If the determination is based on this exception, you must:*

- *Explain why the prices are considered to be firm fixed price (T&M or Labor Hour orders are not FFP);*
- *State that fixed prices will be established in the basic contract and explain how (fixed rates per hour, day, job, etc.);*
- *State that the contract will provide for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. (See FAR 16.202-1)*
- *Explain if there will or will not be any line items that will be priced under individual orders and explain why you believe the determination can be approved despite not qualifying under the plain reading of this statutory exception; and*
- *Explain why it is more advantageous to price items in the basic contract rather than competing each order.*

16.504(c)(1)(ii)(D)(1)(iii), *Only one source is qualified and capable of performing at a reasonable price. If the determination is based on this exception, you must:*

- *Explain why only one source is capable of performing at a reasonable price;*
- *Explain the consequences if more than one source is considered for each expected order under the contract;*
- *If firm-fixed prices will not be established under the basic contract, explain why not and why the prices must be established in each individual order (T&M or Labor Hour orders are not FFP). Also, identify any portions of the contract that will be fixed priced; and*
- *Explain how each order under the contract will be priced; i.e., what types of orders will be issued (FFP, L/H, T&M, etc.) and how the prices of the orders will be determined to be fair and reasonable.*

16.504(c)(1)(ii)(D)(1)(iv), *Necessary in the public interest due to exceptional circumstances. If the determination is based on this exception, you must:*

- *Explain what the exceptional circumstances are and why it is in the public's interest to make a single award;*
- *Explain why there is no acceptable alternative to deal with the exceptional circumstance;*
- *If firm-fixed prices will not be established under the basic contract, explain why not and why the prices must be established in each individual order (T&M or Labor Hour orders are not FFP). Also, identify any portions of the contract that will be fixed priced; and*
- *Explain how each order under the contract will be priced; i.e., what types of orders will be issued (FFP, L/H, T&M, etc.) and how the prices of the orders will be determined to be fair and reasonable.*

Additionally, *regardless of which exception is cited, explain why making a single award is in the best interest of the Government and how making multiple awards would impact the organization. If it is argued that the organization would incur significant costs and/or create unnecessary delays by making multiple awards, fully explain why this is so and whether earlier or better advance procurement planning could be used in the future to mitigate such delays and costs.*

I hereby determine that this procurement meets the requirements at FAR 16.504(c)(1)(ii)(D) in that it meets the condition(s) of *[Insert one or more of the four FAR citations at* 16.504(c)(1)(ii)(D)(1)(i) – (iv*) that apply to this request. If more than one citation is applicable, include each.]*, and, if necessary, will be made the subject of the Congressional notice required by 16.504(c)(1)(ii)(D)(2).

Recommended for Chief Procurement Officer Approval

_____ _____

(Name) Date
Head of Contracting Activity

By my making this determination in accordance with FAR 16.504(c)(1)(ii)(D), *(Insert Component Name)* is authorized under 41 U.S.C. 253h(d)(3) to acquire *(Insert number or description of the procurement)* via a single award task or delivery order contract.

_____ _____

(Name) Date
Chief Procurement Officer

Determination for *(Insert Component Name)* to Make a Single Award Blanket Purchase Agreement (BPA) for *(brief description)*

This determination is made pursuant to FAR 8.405-3(a)(3) and specifically relies upon *[Provide those FAR citation or citations that apply to this request (e.g., 8.405-3(a)(3)(ii)(A), (B), (C) and/or (D)).]*

The total value of all actions covered by this determination is estimated to be $_____.

Describe the action being approved. Provide enough details, facts or reasoning essential to support the determination. The determination document must address all of the below listed points related to the applicable exception(s).

8.405-3(a)(3)(ii)(A), So integrally related only a single source can reasonably perform the work. If the determination is based on this exception, you must:

- *Explain why only a single source can reasonably perform the work;*
- *Explain the consequences if more than one source is considered for each expected order under the BPA and why that is unacceptable;*
- *If firm-fixed prices will not be established under the basic BPA, explain why not and why the prices must be established in each individual order (T&M or Labor Hour orders are not FFP). Identify any portions of the BPA that will be fixed priced; and*
- *Explain how each order under the BPA will be priced; i.e., what type of orders will be issued (FFP, L/H, T&M, etc.) and how the prices of the orders will be determined to be fair and reasonable.*

8.405-3(a)(3)(ii)(B), Firm fixed prices established in the basic BPA, not in each order. If the determination is based on this exception, you must:

- *Explain why the prices are considered to be firm fixed price (T&M or Labor Hour orders are not FFP);*
- *State that fixed prices will be established in the basic BPA and explain how;*
- *State that the BPA will provide for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract.*
- *Explain if there will or will not be any line items that will be priced under individual orders and explain why you believe the determination can be approved despite not qualifying under the plain reading of this statutory exception; and*
- *Explain why it is more advantageous to price items in the basic BPA rather than competing each order.*

8.405-3(a)(3)(ii)(C), Only one source is qualified and capable of performing at a reasonable price. If the determination is based on this exception, you must:

- *Explain why only one source is capable of performing at a reasonable price;*
- *Explain the consequences if more than one source is considered for each expected order under the BPA;*
- *If firm-fixed prices will not be established under the basic BPA, explain why not and why the prices must be established in each individual order (T&M or Labor Hour orders are not FFP). Also, identify any portions of the BPA that will be fixed priced; and*
- *Explain how each order under the BPA will be priced; i.e., what types of orders will be issued (FFP, L/H, T&M, etc.) and how the prices of the orders will be determined to be fair and reasonable.*

8.405-3(a)(3)(ii)(D), Necessary in the public interest due to exceptional circumstances. If the determination is based on this exception, you must:

- *Explain what the exceptional circumstances are and why it is in the public's interest to make a single award;*
- *Explain why there is no acceptable alternative to deal with the exceptional circumstance;*
- *If firm-fixed prices will not be established under the basic BPA, explain why not and why the prices must be established in each individual order (T&M or Labor Hour orders are not FFP). Also, identify any portions of the BPA that will be fixed priced; and*
- *Explain how each order under the BPA will be priced; i.e., what types of orders will be issued (FFP, L/H, T&M, etc.) and how the prices of the orders will be determined to be fair and reasonable.*

Additionally, *regardless of which exception is cited, explain why making a single award is in the best interest of the Government and how making multiple awards would impact the organization. If it is argued that the organization would incur significant costs and/or create unnecessary delays by making multiple awards, fully explain why this is so and whether earlier or better advance procurement planning could be used in the future to mitigate such delays and costs.*

I hereby determine that this procurement meets the requirements at FAR *8.405-3(a)(3)(ii)*, in that it meets the condition(s) of *[Insert one or more of the four FAR citations at 8.405-3(a)(3)(ii)(A),B), (C) and/or (D)that apply to this request. If more than one citation is applicable, include each.]*.

Recommended for Chief Procurement Officer Approval

_____ _____

(Name) Date

Head of Contracting Activity

By my making this determination in accordance with FAR 8.405-3(a)(ii) *(Insert Component Name)* is authorized to acquire *(Insert number or description of the procurement)* via a single award BPA.

_____ _____

(Name) Date
Chief Procurement Officer

DETERMINATION AND FINDINGS

Authority to use a *(specify Time and Materials, or Labor Hour)* contract

FINDINGS

1. The *(specify Component and contracting office within the Component)* of the Department of Homeland Security proposes to contract for *(describe the supplies and/or services being procured and identify program/project, if applicable).*

2. The estimated amount of the contract is $_____.

3. *(Explain why no other type of contract is suitable for procuring the supplies or services of the kind or quantity required without using the proposed type of contract.)*

DETERMINATION

On the basis of the above findings, I hereby determine that no other type of contract other than a *(specify a Time and Materials or Labor Hour contract)* is suitable for this procurement.

_____ _____

Date Signature of Approving Official

DETERMINATION AND FINDINGS

Authority to
{indicate what is being waived, exempted, granted, etc.}

FINDINGS

1. *{Identify the contracting office, Component, and agency (i.e., DHS), what is being acquired, and the intended use of the product or service.}*

2. *{Include, as applicable or appropriate, the information required by (FAR 1.704.)*

DETERMINATION

As {insert the title of the approving official that shall sign this document}, I hereby determine that {state the determination made (e.g., the contract is essential to the national security, one or more of the terms of a clause is waived, overtime is essential to meet delivery or performance schedules, etc.).}

Date: {Signature of the official making the determination and the date of the determination}

SEMI-ANNUAL LABOR COMPLIANCE REPORT

The following semi-annual report (Davis-Bacon and Related Acts and Contract Work Hours and Safety Standards Act) by *{insert Component's name}* is submitted as required by 29 CFR, Part 5.7(b), and All Agency Memorandum #189, dated February 5, 1998.

1. Period covered:

2. Number of prime contracts awarded:

3. Total dollar amount of prime contracts awarded:

4. Number of contractors against whom complaints were received:

5. Number of investigations completed:

6. Number of contractors found in violation:

7. Amount of back wages found due:
    a. Davis-Bacon Act: (prevailing wage violations)

    b. Contract Work Hours and Safety Standards Act (CWHSSA): (overtime violations)

8. Amount of back wages paid:
    a. Davis-Bacon Act:

    b. CWHSSA:

9. Total number of employees paid wage restitution under the Davis-Bacon and related Acts and/or CWHSSA:

10. Amount of liquidated damages assessed under CWHSSA:
    Federal Agency:
    Responsible Official:
    Title:
    Address and Phone No:
    E-mail Address (if available):

DHS INSTRUCTIONS FOR COMPLETING THE SEMIANNUAL LABOR COMPLIANCE REPORT

1. Enter the beginning and ending dates of the period covered by the semiannual report.

2. Enter the number of prime contracts which are subject to the Davis-Bacon Act (or any of the related statutes listed in 29 CFR Part 5), awarded by the Component and/or (where applicable) its operating and management contractors. Include federally assisted contracts subject to these Acts.

3. To the extent available, enter the total dollar amount of the contracts.

4. Enter the total number of contractors (including subcontractors) against whom complaints were received by your Component.

5. Enter the total number of investigations completed by your Component.

6. Enter the number of contractors (including subcontractors) found in violation as a result of the investigations reported in item 5 above. Do not count a contractor or subcontractor more than once in a single investigation because of a violation of more than one Act, or because more than one contract is included in the investigation.

7. Enter the total amount of back wages due employees of the contractors/subcontractors reported in item 6 above, showing under (a) the amount found due because of violations of the Davis-Bacon and Related Acts; and (b) the amount of back wages found due because of violations of the Contract Work Hours and Safety Standards Act.

8. Enter the amount of back wages paid showing under (a) the back wages paid due to violations of the Davis-Bacon and Related Acts; and (b) the back wages paid due to violations of the Contract Work Hours and Safety Standards Act.

9. Enter the number of employees paid wage restitution (i.e., back wages) under the Davis-Bacon and related Acts and/or the Contract Work Hours and Safety Standards Act. This figure is the unduplicated count; that is, an employee paid wage restitution as a result of an investigation shall be counted only once, regardless of the fact that the employee may have been paid wage restitution under the Davis-Bacon and Related Acts and also paid wage restitution under the Contract Work Hours and Safety Standards Act.

10. Enter the total amount of liquidated damages assessed as a result of violations of the Contract Work Hours and Safety Standards Act, including any such amounts assessed by your Component as a result of investigations made by DOL.

Department of Labor
Office of Federal Contract Compliance Program
{Insert the address of the appropriate OFCCP regional office}

This letter, or portions thereof, contains PROPRIETARY OR SOURCE SELECTION INFORMATION related to the conduct of a Federal agency procurement, the disclosure of which is restricted by Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423). The unauthorized disclosure of such information may subject both the discloser and recipient of the information to contractual, civil and/or criminal penalties as provided by law.

An Equal Employment Opportunity preaward clearance is requested on *{insert the name, address, and telephone number of the prospective contractor}*

{Insert all other applicable information required by FAR 22 .805(a)(5). The amount of the proposed contract(s) and subcontract(s), if any, shall not be disclosed. In lieu thereof, insert "$10 million or more" as the estimated amount of the prime contract and first-tier subcontract(s).}

It is requested that verbal clearance and a written confirmation be provided as soon as possible to *{insert the name, title, and telephone number of the point of contact in the contracting office}*.

{Insert name, title, and signature of authorized contracting person}

Note: The first paragraph of the above letter is primarily for full and open competition acquisitions. The paragraph may be deleted or modified when requesting a preaward clearance for other than full and open competition acquisitions. Written pre-award clearances ARE NOT required if the contractor is listed on the Pre-Award Contractor Registry located at http://www.dol-esa.gov/preaward/ .

DEPARTMENT OF HOMELAND SECURITY
AFFIRMATIVE PROCUREMENT PLAN (APP)

I. General.

A. Introduction.

Green Procurement is defined as the purchase of environmentally preferable products and services in accordance with federally mandated green purchasing preference programs. It is the Department of Homeland Security (DHS) policy to strive towards achieving 100 percent compliance with mandatory Federal green procurement requirements in all acquisition transactions.

The DHS Affirmative Procurement Program (APP) is an umbrella program that includes the following preference programs: Recovered Materials, Energy and Water Efficient Products, Alternative Fuels and Fuel Efficiency, Sustainable Buildings, Biobased Products, Non-Ozone Depleting Substances and Environmentally Preferred products. The intent of the program is to stimulate a market for new products within the procurement preference programs, conserve energy, preserve natural resources and reduce greenhouse gases, waste and the purchase and use of toxic materials.

This APP implements the policy and guidance in Executive Order (EO) 13423 *Strengthening Federal Environmental, Energy, and Transportation Management (signed January 26, 2007).* The Federal Government has made significant progress in improving environmental and energy performance through a series of EOs, Memoranda of Understanding, and other guidance. Executive Order 13423 builds on existing Federal programs and success by integrating and updating prior practices and requirements into a cohesive, strategic approach to further ensure enhanced performance and compliance with statutory and other legal requirements. *Instructions For Implementing EO 13423, "Strengthening Federal Environmental, Energy, and Transportation Management"*, issued March 29, 2007, provides additional implementation guidance for this EO.

Green purchasing is an important environmental stewardship, required by EO 13423 and in many cases provides products, which outperform their conventional counterparts. Green purchasing can provide many benefits to help the DHS mission become more effective. Informed purchasing decisions can significantly influence the environmental performance of the Department. Thus, the type of materials purchased can impact disposal costs, air emissions, water and energy use. Wise planning can help manage these impacts.

Since green purchasing requirements apply to all purchases of products and services, it is very important that DHS plans to maximize the benefits of the APP through its compliance to meet EO 13423 requirements.

B. Purpose.

EO13423, *Strengthening Federal Environmental, Energy and Transportation Management* and its Implementing Instructions direct Federal agencies to implement sustainable practices for energy efficiency, renewable energy, water consumption, acquisition of green products, pollution prevention, waste prevention and recycling, diversion of solid waste, sustainable buildings, fleet management, and electronics stewardship. This DHS APP policy is issued to fulfill the requirements of EO 13423, EO 13423 Implementing Instructions, DHS Directive 025-01 Sustainable Practices for Environmental, Energy and Transportation Management and other regulatory requirements concerning the acquisition, use, and disposition of green products and services.

The purpose of the DHS APP is to give preference to acquisition of the following types of products over like products lacking the preferable attribute. The items in the list are not in any order of preference, although recycled content products on EPA's list take preference over biobased products on United States Department of Agriculture's (USDA) list as established by Farm Security and Rural Investment Act (FSRIA) and implemented at FAR 23.405(c):

(1) Alternative fuel vehicles and alternative fuels required by the Energy Policy Act of 2005 at http://www.eere.energy.gov/femp/about/fleet_requirements.html.

(2) Biobased products designated by the U.S. Department of Agriculture in the BioPreferred program. Biobased products are those designated by the USDA pursuant to FSRIA, 7 USC 8102. USDA maintains a home page with the list of designated items at: http://www.biopreferred.gov/DesignationItems.aspx.

(3) Energy from renewable sources required by the Energy Policy Act of 2005 at http://www.eere.energy.gov/.

(4) Energy Star® products identified by DOE and EPA at http://energystar.gov, as well as FEMP-designated energy-efficient products at http://www1.eere.energy.gov/femp/program/equip_procurement.html.

(5) Environmentally preferable products and services, including Electronic Product Environmental Assessment Tool (EPEAT) registered electronic products. A website has been established to identify environmentally preferable electronic equipment at: http://www.epeat.net. At this time, EPEAT-registered products are limited to computer desktops, laptops, and monitors however standards for printers, scanners and plotters may be released in FY 2009. EPA's website explaining this initiative at: http://www.epa.gov/opptintr/epp/.

(6) Non-ozone depleting substances, as identified in EPA's Significant New Alternatives Program at http://www.epa.gov/ozone/snap/index.html .

(7) Products with low or no toxic or hazardous constituents, consistent with section VIII. A of the implementing instructions for EO 13423. Each agency is tasked by the Implementing Instructions to develop goals and a list of toxic chemicals, hazardous

substances and other pollutants by January 24, 2008. Information on this is available at http://www.epa.gov/ecotox. Specific DHS information is available in the Sustainable Practices Guidance Manual. [DHS Reading Room]
(8) Recycled content products designated in EPA's Comprehensive Procurement Guidelines (CPG) at http://www.epa.gov/cpg/.

(9) Water-efficient products, including those meeting EPA's Water-Sense standards http://www.epa.gov/watersense/. EPA has already introduced some water efficient technology advancements but has others in process. More information is available at their website.

C. Authority. The following documents establish the requirements for the DHS APP:

(1) Federal Laws:

Resource Conservation and Recovery Act (RCRA), Section 6002 http://www.epa.gov/rcraonline.

Section 9002 of the Farm Security and Rural Investment Act of 2002 (The Farm Bill) http://www.ofee.gov/whats/archive/bbfarm.asp.

Energy Policy Act of 2005 http://www.epa.gov/oust/fedlaws/publ_109-058.pdf.

Public Law 110-140, "Energy Independence and Security Act of 2007" (EISA)

(2) Executive Orders:

Executive Order 13423, *Strengthening Federal Environmental, Energy, and Transportation Management* http://ofee.gov/eo/EO_13423.pdf.

Instructions for Implementing Executive Order 13423 http://www.ofee.gov/eo/eo13423_instructions.pdf.

EO 13221, *Energy-Efficient Standby Power Devices*, 31 July 2001

(3) DHS Directives and Manuals:

Management Directive 5110 *Environmental Compliance* (6/7/2004);

Directive 025-01 Sustainable Practices for Environmental, Energy and Transportation Management (9/29/2008); and

Homeland Security Acquisition Manual (HSAM)(version December 2006).

(4) Other:

EPA Comprehensive Procurement Guidelines (CPG) http://www.ea.gov/cpg.

Office of Federal Procurement Policy (OFPP), Policy Letter 92-4, http://www.acqnet.gov/Library/OFPP/PolicyLetters/Letters/PL92-4.html.

D. Applicability. The requirement to purchase green products and services and biobased products applies to all acquisition and contracting mechanisms used by the Department of Homeland Security and Components including contracts for services, purchases made with Government purchase cards, and purchases below the micro-purchase threshold.

E. Policy.

DHS developed this comprehensive APP which shall be implemented by all Departmental program offices, components, operation offices, sites, facilities, and applicable contractors. All DHS elements must take steps to carry out this APP for all purchases, including services provided by vendors, in which an EPA-designated item is required and the item will be purchased domestically (i.e., within the United States or its possessions).

It is the policy of the Federal Government to develop and implement green purchasing policies and affirmative procurement programs in order to conserve resources, be good stewards of the environment, and reduce our negative impact on the environment. DHS policy is 100 percent compliant with all mandatory APP elements in all acquisition transactions. DHS shall purchase green products and services to the maximum extent practicable, to purchase biobased products to the maximum extent practicable, and to include green purchasing requirements in all contracts for services to the maximum extent practicable. Green products and services include recycled content products; water-efficient, energy-efficient, Energy Star® and those products with the lowest watt stand-by power; environmentally preferable products; alternative fuels; hybrid and alternative fuel vehicles; non-ozone depleting substances; renewable energy; and Environmental Protection Agency (EPA) designated items containing recovered materials. Biobased products include USDA designated biobased products. Component acquisition policies and programs shall promote, and where appropriate, mandate the purchase and use of green products and services and biobased products.

When formulating requirements, DHS requiring and contracting offices are to employ acquisition strategies that maximize the utilization of environmentally preferable products and services (EPA guidance for utilizing environmentally preferable products and services is found at http://www.ofee.gov/); maximize the utilization of energy-efficient products; eliminate or reduce the generation of hazardous waste and the need for special handling, storage, treatment, and disposal; promote use of nonhazardous and recovered materials; realize life-cycle cost savings; promote cost-effective waste reduction when creating plans, drawings, etc., authorizing material substitutions, extensions of shelf-life, and process improvements; and consider the use of biobased products. Organizational Elements must establish programs that support the DHS APP.

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

II. Green Purchasing Requirements.

A. Recovered Materials:

(1) EPA has written regulations to implement the Resource Conservation and Recovery Act (RCRA) and EO 13423. The "Comprehensive Procurement Guideline," (CPG), is a list of products that can be made with recovered materials, are technologically and economically feasible to produce, and will conserve raw materials and reduce the solid waste stream. The CPG list is the result of scientific analysis followed by a formal EPA rulemaking process, which is a recurring activity.

(2) The first CPG list was issued in 1995, and the list continues to grow as EPA issues subsequent CPGs. EPA also issues guidance for buying recovered material products in their "Recovered Materials Advisory Notices" (RMANs). The RMANs mandatory recovered material content ranges for CPG products based on current information about commercially available products. RMAN levels are updated by EPA as marketplace conditions change. The EPA recommended minimum content standards are set forth in the Recovered Materials Advisory Notice (RMAN) published in the Federal Register and updates are found on the EPA RMAN list. A list of the EPA designated items and EPA's RMAN guideline for the minimum recovered material content standards is available from the EPA website.

(3) The products that are covered by the CPG include but are not limited to paper and paper products, non-paper office products, vehicular fleet maintenance products, construction products, landscaping products, traffic control products, park and recreation products, and other miscellaneous products. Recovered material product requirements apply to all CPG item acquisitions made with Federal dollars, no matter what purchasing mechanism is used or how they are paid for. Purchase card buys, all types of contracts, and in-house projects that include CPG items must all comply with EPA requirements. Recovered material products are available from many Government and commercial sources.

(4) EPA's procurement guidelines only apply to an agency whose total annual purchases (for each designated item) equals $10,000 or more, or when the procuring agency purchased $10,000 or more of the item (or of a functionally equivalent item) during the preceding year. This $10,000 threshold includes micro-purchases. Thus, because the procurement requirements identified in EPA's guidelines apply to DHS as a whole, all Component program offices, operations offices, sites, and applicable contractors shall be responsible for implementing the procurement requirement outlined in both this document and EPA's guidelines. Agencies and supply centers are required to report purchases made from non-Governmental (commercial) sources. Annual survey forms will be furnished to Component procurement offices by DHS, Office of the Chief

Procurement Officer. Accordingly, when submitting agency annual reports under RCRA, Component's shall report all purchases of items covered in this document and the percentage of recovered material required to be reported by FAR clause 52.223-9 to DHS, Office of the Chief Procurement Officer. Individual Component statistics will be combined into one DHS response to the Office of the Federal Environmental Executive and the Office of Federal Procurement Policy.

(5) Components shall supplement the Departmental APP with appropriate policy and procedures outlining specific guidelines for implementing the Departmental APP in their activities. The scope and magnitude of the policy and procedures shall be commensurate with the procurement activity associated with green products and services and biobased products.

(6) It is DHS policy to procure 100 percent of EPA-designated products with recovered material, unless the item cannot be acquired competitively within a reasonable time frame; meet appropriate performance standards; or procured at a reasonable price. This policy includes the purchase of items at or below the micro purchase level. However, *tracking micro purchases of EPA-designated items is not required* as an exemption (as specified at (FAR 23.405) from establishing an APP will not be requested by DHS.

(7) Components shall supplement the Departmental APP with appropriate policy and procedures outlining specific guidelines for implementing the Departmental APP in their activities. The scope and magnitude of the policy and procedures shall be commensurate with the procurement activity associated with green products and services and biobased products.

(8) Special requirements apply when procuring certain items. These are:

> DHS requires 100 percent of purchases of printing and writing paper to meet or exceed one of the following minimum content standards: For high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white woven envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock, the minimum content standard must be no less than 30 percent post consumer materials;
>
> Virgin material or supplies composed of or manufactured using virgin material cannot be required unless compelled by law or regulation or unless virgin material is vital for safety or meeting performance requirements of the contract.

B. Energy Efficient Products:

(1) Energy and water conserving product purchases are mandatory elements of the DHS APP. EO 13423 states that each agency shall improve energy efficiency through the reduction of energy intensity. The goal is to reduce energy demand by 3 percent annually

through the end of fiscal year 2015, or 30 percent by the end of FY 2015, relative to a FY 2003 baseline year.

(2) Required Actions:

Purchases of off-the-shelf energy-consuming products or contracts for services or construction will include provisions of energy-consuming products. DHS and Components shall specify products that are ENERGY STAR® or Federal Energy Management Program (FEMP) labeled/approved products or justify, in writing to the DHS Office of Occupational Safety and Environmental Programs, that no ENERGY STAR® or FEMP designated product is reasonably available that meets the function requirements or that the non ENERGY STAR® or FEMP designated product(s) are more cost-effective over the life of the product taking energy cost savings into account.

Contract officers shall ensure that the FAR clause at 52.223–15, Energy Efficiency in Energy-Consuming Products is inserted in solicitations and contracts when energy-consuming products will be delivered, acquired by the contractor for use in performing services at a federally controlled facility, furnished by the contractor for use by the Government or specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.

(3) Locating products and services:

Energy Star® products identified by DOE and EPA at http://energystar.gov, as well as FEMP-designated energy-efficient products at http://www1.eere.energy.gov/femp/program/equip_procurement.html.

Energy-saving products can be found in Federal supply sources including the GSA Environmental Products and Services Guide, GSA Advantage! (look for the Energy Star symbol and the EE symbol) and the DoD EMALL. Energy saving products are also available from commercial sources. To choose energy efficient products, look for the Energy Star first. If an Energy Star product is not available cost effectively, choose the most efficient product possible from FEMP's Energy-Efficient Products list. Both programs use the same criteria, with Energy Star rated products attaining the highest level of performance. To identify products that meet the Federal low standby power requirements, consult FEMP's online database of electronic products.

C. Energy-savings performance contracts:

(1) Energy-savings performance contracts are mandatory elements of the DHS APP. Energy Savings Performance Contracts (ESPC), Utility Energy Savings Contracts (UESC), and green power purchases are managed by the AFCESA Mechanical/Electrical Engineering Division.

(2) Required Actions. DHS and Components may enter into ESPC under 42U.S.C. 8287, as amended, subject to the requirements of 10 CFR Part 436. The procedures for notification to the DHS, Office of Occupational Safety and Environmental Programs are established at HSAM 3023.205(c).

D. Energy efficiency in energy-consuming products:

(1) EO 13423 states that each agency shall improve energy efficiency through the reduction of energy intensity. The goal is to reduce energy demand by 3 percent annually through the end of fiscal year 2015, or 30 percent by the end of FY 2015, relative to a FY 2003 baseline year.

(2) DHS and Components will reduce energy use and purchase energy-efficient products. The FEMP and the Energy Star program guide these efforts. EnergyStar® products meet FEMP standards for low standby power. DHS and Components are required to buy products that comply with Federal energy efficiency requirements, and to design and operate buildings to minimize energy and water consumption in accordance with EO 13423.

(3) When acquiring energy-consuming products, DHS and Components shall acquire products that meet the requirements of EO 13221 and EO 13423 and its implementing instructions for low standby power devices.

(4) Required Actions:

> Purchases of off-the-shelf energy-consuming products or contracts for services or construction will include provisions of energy-consuming products. DHS and Components shall specify products that are Energy Star® or FEMP labeled/approved products or justify, in writing to the Office of Occupational Safety and Environmental Programs, that no Energy Star® or FEMP designated product is reasonably available that meets the function requirements or that the non Energy Star® or FEMP designated product(s) are more cost-effective over the life of the product taking energy cost savings into account.
>
> Contract officers shall ensure that the FAR clause at 52.223–15, Energy Efficiency in Energy-Consuming Products is inserted in solicitations and contracts when energy-consuming products will be delivered, acquired by the contractor for use in performing services at a federally controlled facility, furnished by the contractor for use by the Government or specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.

(5) Energy Star® products identified by DOE and EPA at http://energystar.gov, as well as FEMP-designated energy-efficient products at http://www1.eere.energy.gov/femp/program/equip_procurement.html.

E. Electronic Product Environmental Assessment Tool (EPEAT):

(1) As required by EO 13423, DHS and Components must ensure that at least 95 percent electronic product purchases are EPEAT-registered electronic products, unless there is no EPEAT standard for such products and strive to purchase EPEAT products rated silver unless there is no standard for such products.

(2) DHS and Components are exempt from EPEAT purchase requirements if the dollar value of exceptions granted will not exceed 5 percent of the total dollar value of electronic products acquired by the purchaser, for which EPEAT-registered products are available, no EPEAT-registered product meets agency requirements or the EPEAT-registered product will not be cost effective over the life of the product.

(3) EPEAT is a system in which manufacturers declare their products' conformance to a comprehensive set of environmental criteria in 8 environmental performance categories. The operation of EPEAT and the environmental criteria are contained in a public standard IEEE 1680. For more information about IEEE 1680 and the environmental criteria go to http://www.ieee.org/portal/site or http://www.epeat.net/. EPEAT is a required specification for Federal purchasers and is increasingly used by state and local government purchasers and private sector IT managers to 'green' their electronics purchasing.

(4) Required Actions:

> Procurement Offices shall incorporate FAR clauses for environmental and energy considerations, including the EPEAT Waste Reduction Program, in all solicitations and contracts for contractor operation of Government-owned or leased facilities and all solicitations and contracts for support services at Contractor operated Government-owned facilities.
>
> Unless an exception has been approved in accordance with FAR 23.705(c), insert the FAR clause at 52.223–16, IEEE Assessment of Personal Computer Products, in all solicitations and contracts for personal computer products, services that require furnishing of personal computer products for use by the Government or Contractor operation of Government-owned facilities.
>
> Procurement offices will strive to purchase or lease products that are rated at the EPEAT Silver level or higher.
>
> Contracts for leased IT equipment shall incorporate adequate language that at the end of the lease period, the equipment is reused, donated, sold, or recycled using environmentally sound management practices.

(5) Purchasers are encouraged to use the following contract language to ensure the products they buy meet the EPEAT standard:

All desktops, laptops, and computer monitors provided under this contract are required to have achieved Bronze registration or higher under the Electronic Products Environmental Assessment Tool (EPEAT) and should strive for Silver registration. EPEAT is a procurement tool designed to help large volume purchasers evaluate, compare, and select desktop computers, laptops, and monitors based upon their environmental attributes as specified in the consensus-based IEEE Standard for the Environmental Assessment of Personal Computer Products (1680). The registration criteria and a list of all registered equipment are provided at http://www.epeat.net.

(6) A website has been established to identify environmentally preferable electronic equipment at: http://www.epeat.net. Presently product criteria for EPEAT is limited to computer desktops, laptops, and monitors, but will be expanded as criteria standards are expected for other electronic devices. Environmentally preferable products and services, however, are much broader than just electronic products. EPA's website explaining this initiative at: http://www.epa.gov/opptintr/epp/.

F. Water Efficient Products:

(1) In accordance with EO 13423, beginning in FY 2008, all Agencies shall reduce water consumption by 2 percent annually through the end of FY 2015 or 16 percent by the end of FY 2015. Water conservation requirements apply to all building construction and renovation projects.

(2) In order to reach this goal, DHS and Components will purchase water efficient products. The EPA WaterSense label program guides this effort. WaterSense is a voluntary Environmental Protection Agency public-private partnership that identifies and promotes high-performance products and programs that help preserve the nation's water supply.

(3) Where applicable, DHS and its Components shall purchase WaterSense labeled products and choose irrigation contractors who are certified through a WaterSense labeled program. Products currently included in the WaterSense label program include high efficiency toilets, showerheads, bathroom sink faucets, landscaping irrigation services and weather or sensor based irrigation technologies.

(4) Water-efficient products, including those meeting EPA's Water-Sense standards http://www.epa.gov/watersense/. EPA has already introduced some water efficient technology advancements but has others in process, and routinely provides updated information at the EPA WaterSense website.

G. Alternative Fuels and Fuel Efficiency:

(1) The Energy Policy Act (EPACT), Public Law 102-486, addresses all aspects of energy supply and demand, including energy efficiency, alternative fuels and renewable energy. Title III of EPACT states that of the total number of vehicles acquired by a

Federal fleet after 1999, 75% shall be Alternate Fuel Vehicles (AFVs). It also requires Federal agencies to arrange for refueling of AFVs at commercial fueling facilities that offer alternative fuels for sale. Accordingly, DHS and Components must acquire AFVs (with the exception of military tactical, law enforcement, and emergency vehicles), alternative fuels for those vehicles, and fuel-efficient petroleum-powered passenger cars and light trucks. Other requirements in EO 13423 include:

Reducing the fleet consumption of petroleum products by 2 percent annually through the end of FY 2015.

Increase non-petroleum based fuel consumption by 10 percent annually.

Use Plug-In Hybrid (PIH) vehicles when PIH vehicles are commercially available at a reasonably comparable, on the basis of life-cycle cost, to non-PIH vehicles.

(2) The following web site will assist in finding additional information about AFVs, alternative fuels, and fuel efficient vehicles:

The GSA Vehicle Leasing Program offers AFVs as part of their service [GSA Guidance].

DOE's Clean Cities Program web site has an Alternative Fueling Stations Locator [Alt Fuel Locator].

Defense Energy Support Center (DESC) supplies Federal agencies with alternative fuels, including biodiesel (B20) and ethanol (E85). DESC's Logistics Tutorial explains the acquisition process.

The Fuel Economy Guide and other tools for finding fuel-efficient, environmentally preferable vehicles are available on the EPA/Department of Energy (DOE) Fuel Economy web site. Users can find and compare cars by gas mileage, greenhouse gas emissions, air pollution ratings, and safety information. The site also provides information regarding gas mileage tips, gas prices, advanced technology, and the importance of fuel economy.

H. Biobased or BioPreferred Products:

(1) The Biobased Products Preference Program is sponsored by the USDA. It is modeled after the EPA Recovered Material Program. FAR 52.223-1, Biobased Product Certification, is a solicitation provision containing a certification for offerors to certify that they will furnish products meeting the USDA biobased content specifications for the products being delivered. FAR 52.223-2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts, is a clause to be used in service and construction contracts which may involve the use of biobased products, e.g., use of a biobased roof coating in a construction or service contract. The biobased program does

not require a second certification following delivery as does the EPA recovered materials program (see FAR 52-223-9).

(2) The USDA has selected and prioritized items for designation as "preferred" biobased products. The USDA, other Government agencies, private industry groups, and independent manufacturers have evaluated these items against program criteria established collaboratively. Please go to http://www.biopreferred.gov/DesignationItemList.aspx for a list of designated biobased preferred products.

(3) Biobased items include office products; printing products; transportation fleet maintenance products; construction products; and janitorial and landscaping products.

(4) There will be some overlap between the CPG list for recycled-content purchasing and the USDA list for biobased item purchasing. Procurements that are subject to the CPG do not have to satisfy the biobased product requirements, if the two sets of requirements are inconsistent. However, this does not mean that CPG requirements must automatically be followed in place of biobased purchasing. Purchasers should look at the benefits and costs of both types of products, and select the one that provides the best value overall.

(5) DHS and Components must give preference to the purchase the BioPreferred items on USDA's Biobased products list (http://www.biobased.oce.usda.gov/fb4p/Designation Items List.aspx).

(6) Biobased products can be found by visiting the following web sites:

The Department of Energy Biomass Program develops technology for conversion of biomass (plant-derived material) into fuels, chemicals, materials and power in order to reduce dependence on foreign oil. Biomass uses include ethanol, biodiesel, biomass power and industrial process energy. (**http://www.1.eere.energy.gov/biomass/**)

The United Soybean Board web site offers a Products Guide that lists consumer and industrial products. (http://www.unitedsoybean.org/)

National Corn Growers Association web site has a database of information on availability of corn-based products for industrial and consumer use. (http://www.ncga.com)

The GSA Environmental Products and Services Guide include a biobased product category. (GSA Guidelines)

I. Environmentally Preferable Products (EPP):

(1) Purchase environmentally preferable products and services. Environmentally preferable means products or services that have a lesser or reduced effect on human

health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service. DHS will endeavor to purchase any products and services that are more environmentally friendly than what we routinely purchase, but are not already covered by one of the mandatory programs described above.

(2) The following web sites will help consumers find environmentally preferable products:

> Database of Environmental Information for Products and Services: EPA offers an extensive, searchable database of product-specific information (e.g., environmental standards and guidelines or contract language) developed by Government programs, both domestic and international, as well as third parties.
>
> GSA Advantage! (Look for the tree symbol)
>
> GSA Environmental Products Overview
>
> DLA Environmental Catalogs
>
> OIKOS Green Building Source
>
> Guide to Resource Efficient Building Elements

III. Affirmative Procurement Preference Program.

A. When formulating requirements, DHS requiring and contracting offices are to employ acquisition strategies that maximize the utilization of environmentally preferable products and services (EPA guidance for utilizing environmentally preferable products and services is found at http://www.ofee.gov/); maximize the utilization of energy-efficient products; eliminate or reduce the generation of hazardous waste and the need for special handling, storage, treatment, and disposal; promote use of nonhazardous and recovered materials; realize life-cycle cost savings; promote cost-effective waste reduction when creating plans, drawings, etc., authorizing material substitutions, extensions of shelf-life, and process improvements; and consider the use of biobased products. Components must establish programs that support the DHS APP.

B. EPA Designated Items. EPA designates certain items which must meet the standard for recovered material content. An official list of these is found at 40 CFR 247.10-247.17. A list of these items is also located on the EPA website.

C. Future EPA Designated Items. This APP will be modified, as necessary; to incorporate future EPA designated items and minimum content standards.

D. APP Materials Determination Form. In making the determinations required by FAR Part 23 and delegated in HSAM 3023, DHS program offices shall use the format or substantially the same format as shown in Attachment 1. This form must be signed by the cognizant requirement's or program official, forwarded to the contracting office with the procurement request and maintained in the contract file. In developing plans, drawings, work statements, specifications, or other product descriptions, program offices shall consider the following factors: elimination of virgin material requirements, use of recovered materials, reuse of products, life-cycle cost, recyclability, use of environmentally preferable products, waste prevention (including toxicity reduction or elimination), and ultimate disposal, as appropriate. These factors should be used in acquisition planning for all procurements and in the evaluation and award of contracts (i.e., the bidder most able to cost-effectively satisfy the recovered material content specifications as well as the performance/design specifications outlined in the solicitation document).

E. Request for Waiver. To request a waiver from the purchase of EPA designated item containing other than recovered materials, an electronic product other than an EPEAT-registered product, and biobased preferred products when such products are available, requirements or program offices and contracting officers shall use the format or substantially the same format as shown in Attachment 2. The contracting officer is designated as the approval official for these exemptions. This approval document must be coordinated through the appropriate DHS Component's Environmental Program Office for technical review. The approved document shall be maintained in the contract file.

F. Federal Sources of Recycled and Environmental Products. Thousands of recycled and environmental products are available to procuring agencies through established Federal supply sources, and new items are continuously being added. Federal sources of EPA-designated items and other recycled and environmental products include the General Services Administration
(GSA) Federal Supply Service (FSS), Government Printing Office (GPO) and the Defense
General Supply Center (DGSC). GSA FSS publishes various documents to assist in identifying and requisitioning recycled and environmental products. These documents are available on the GSA website and are available through Centralized Mailing List Service (CMLS), P.O. Box 6477, Fort Worth, TX 76115, and phone number: (817) 334-5215, fax number (817) 334-5227.

G. Other Recycled and Environmentally Preferable Products. EPA's guidelines may not reflect those procured products or services most often used by DHS. Procurement originators are encouraged to request, procure, and use other products containing recovered materials in addition to those specified in this APP. At the discretion of the

Component, items other than EPA designated items for which recovered material content must be specified may be adopted.

H. Life-Cycle Cost Analysis. OFPP Policy Letter 92-4 required Federal agencies to use life-cycle cost analysis, wherever feasible and appropriate, to assist in selecting products and services. At this time, life-cycle cost information for EPA designated items is not available. Until such information is developed for Federal agency's use, Components shall rely on minimum content standards of preference standards in EPA's guidelines (RMAN).

IV. Recovered Materials Promotion Program.

A. DHS preference for recovered materials shall be incorporated into all applicable solicitations. This shall be accomplished by including explicit recovered material preference standards for EPA-designated items in appropriate solicitations for bids, statements of work, and during contract negotiations.

B. Each DHS procuring office shall promote the DHS APP within its operation. The promotional program shall include at least the following:

(1) Procuring offices shall include in their FedBizOpps announcements a statement of the recycling and recovery requirements of the solicitation, if applicable;

(2) Contracting officers should seek from the marketplace and annotate their sources/bidders lists with information on vendors offering recovered products and services;

(3) Contracting officers should encourage each contractor under a value engineering program to look for savings opportunities which could be proposed; and

(4) Contracting officers shall promote the fact that they are seeking to buy recovered materials at pre-bid and pre-proposal conferences, where applicable.

V. Procedures for Vendor Estimation and Certification.

A. Estimation. DHS's minimum content standards for EPA designated items shall be specified in the statement of work. Vendors responding to solicitations for EPA designated items must meet the minimum content standards; therefore a separate estimate from the vendor regarding the percentage of recovered materials in the product is not required unless the product exceed the minimum content standards specified.

B. Certification. Vendors/offerors are responsible for: (1) providing written certification to the contracting officer that their products meet minimum content standards, (2) maintaining copies of certification documents, and (3) producing copies of the written certification upon request.
(See (FAR 23.406 for solicitation provisions and contract clauses.)

C. Verification. Heads of the Contracting Activity shall periodically review vendor certification documents as part of their review and monitoring processes. Such review shall enable DHS's Environmental Executive to verify DHS's compliance with Executive Order 13423.

D. Exclusions. Federal supply sources such as GSA, GPO, and DGSC have established their own estimation, certification, and verification procedures for EPA-designated items. Therefore, there is no requirement to conduct independent estimation, certification, and verification procedures.

VI. Annual Review and Reporting.

A. Federal agencies are required, on an annual basis, to review the effectiveness of its affirmative procurement program and provide reports to the Federal Environmental Executive and to OFPP.

B. OFPP has devised a standard format for use in reporting affirmative procurement program effectiveness. The report shall be transmitted to the Office of the Chief Procurement Officer for consolidation into a Departmental response, which has historically been due in December of each year. However, since the reporting format and due date of the report has changed over the years,
The Office of the Chief Procurement Officer will provide each Component an updated reporting format, if necessary, and the response date in writing in sufficient time for the Components to respond in a timely manner.

VII. Waste Prevention.

Executive Order 13423 requires Federal agencies to implement waste prevention techniques, such as electronic transfer and double-sided copying, so that annual expenditures for recycled printing and writing paper do not exceed current annual budgets for paper products as measured by average annual expenditures. To this end, it is DHS policy that a contractor submitting paper documents relating to an acquisition, should, if possible, submit those documents printed/copies double-sided on recycled paper (see (FAR 4.303 and 52.204-4).

DEFINITIONS

The following definitions are intended for use in this APP only.

Affirmative Procurement Program (APP) - a program assuring Guideline items composed of recovered materials will be purchased to the maximum extent practicable, consistent with Federal law and procurement regulations. [RCRA, Section 6002]

Biobased Product - a commercial or industrial product (other than food or feed) that utilizes biological products or renewable domestic agricultural (plant, animal, and marine) or forestry materials. [USDA Guidelines]

Case-by-Case Procurement - open competition for contract awards among products made of virgin and recovered materials with preference being given to the latter (vice identifying minimum content standards required). [RCRA, Section 6002]

Certification - provided by offerors/bidders/vendors, it is written documentation certifying the percentage of recovered materials contained in products or to be used in the performance of the contract is at least the amount required by applicable specifications or other contractual requirements. Certification on multi-component or multi-material products should verify the percentage of post consumer waste and recycled material contained in the major constituents of the product. [EPA Guidelines]

Cost-Effective Procurement Preference Program - a procurement program favoring more environmentally-sound or energy-efficient products and services than other competing products and services, where price and other factors are equal. [OFPP Policy Letter 92-4]

Designated Item - an available EPA guideline item or category of items, made with recovered material, advancing the purpose of RCRA when purchased. [RCRA, Section 6002]

Energy-efficient product – a product in the upper 25 percent of efficiency for all similar products or, if there are applicable Federal appliance or equipment efficiency standards, a product that is at least 10 percent more efficient than the minimum Federal standard

Environmentally Preferable - "Environmentally preferable" means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service. [EPA Guidelines]

Environmentally-Sound - a product or service less damaging to the environment when used, maintained, and disposed of in comparison to a competing product or service. [OFPP Policy Letter 92-4]

Estimation - quantitative determination made by vendors of the total percentage of recovered material contained in offered products. Estimations should be based on historical or actual percentages of recovered materials in products sold in substantial quantities to the general public or on other factual basis. EPA recommends procuring agencies maintain records of these documents for three years by product type, quantity purchased, and price paid. [EPA Guidelines]

Life Cycle Cost - the amortized annual cost of a product, including capital costs, installation costs, operating costs, maintenance costs, and disposal costs discounted over the lifetime of the product. [EPA Guidelines]

Life Cycle Assessment - the comprehensive examination of a product's environmental and economic aspects and potential impacts throughout its lifetime, including raw material extraction, transportation, manufacturing, use, and disposal. [EPA Guidelines]
Minimum Content Standard - the minimum recovered material content specifications set to assure the recovered material content required is the maximum available without jeopardizing the intended item use or violating the limitations of the minimum content standards set forth by EPA's guidelines. [RCRA, Section 6002]

Performance Specification - a specification stating the desired product operation or function but not specifying its construction materials. [EPA Guidelines]

Pollution Prevention - "source reduction" as defined in the Pollution Prevention Act of 1990 (42 U.S.C. 13102), and other practices that reduce or eliminate the creation of pollutants through: (a) increased efficiency in the use of raw materials, energy, water, or other resources; or (b) protection of natural resources by conservation.

Post Consumer Material - a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. "Postconsumer material" is a part of the broader category of "recovered material." [EPA Guidelines]

Post consumer Waste - a material or product, discarded for disposal after passing through the hands of a final user, having served its intended purpose. Post consumer waste is part of the broader category "recycled material." [OFPP Policy Letter 92-4 and 49 CFR 247.101(e)]

Practicable - capable of performing in accordance with applicable specifications, available at a reasonable price and within a reasonable period of time, and while a satisfactory level of competition with other products is being maintained. [EPA Guidelines]

Preference - when two products or services are equal in performance characteristics and price, the Government, in making purchasing decisions, will favor the more environmentally-sound or energy-efficient product. [OFPP Policy Letter 92-4]

Preference Standard - the highest practicable minimum content standards for products. When minimum content is impractical to calculate, preference is for the presence of a recovered material or an environmentally-preferable trait (i.e., retread tires).

Procurement Guidelines - regulations issued by EPA pursuant to section 6002 of RCRA: (1) identifying items produced (or can be produced) with recovered materials and where procurement of such items will advance the objectives of RCRA; and (2)

providing recommended practices for the procurement of such items. [RCRA, Section 6002]

Procuring Agency - any Federal or State agency, or agency of a state's political subdivision using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract. [EPA Guidelines]

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

Recyclability - the ability of a product or material to be recovered from, or otherwise diverted from, the solid waste stream for the purpose of recycling. [EPA Guidelines]

Recycled Material - a material utilized in place of raw or virgin material in product manufacturing consisting of materials derived from post consumer waste, industrial scrap, material derived from agricultural wastes, and other items, all of which can be used in new product manufacture. [EPA Guidelines and OFPP Policy Letter 92-4]

Recycling - the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of new products other than fuel for producing heat or power by combustion. [EPA Guidelines]

Solid Waste - garbage, refuse, sludge, and other discarded solid materials, including those from industrial, commercial, and agricultural operations, and from community activities. This *excludes* solids or dissolved materials in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents, dissolved materials in irrigation return flow, etc. [EPA Guidelines]

Specification - a clear and accurate description of the technical requirements for materials, products, or services including the minimum requirement for materials' quality and construction and any equipment necessary for an acceptable product. In general, specifications are in the form of written descriptions, drawings, prints, commercial designations, industry standards, and other descriptive references. [EPA Guidelines]

Unreasonable Price - when recycled product cost is greater compared to virgin material cost.

(Unreasonable price is not a factor when minimum content standards are specified in the statement of work/procurement request, because price estimates will only be obtained from vendors who can supply products meeting recovered material content requirements.)

Verification - procedures used by procuring agencies to confirm both vendor estimates and certifications of the percentages of recovered material contained in the products supplies to them or to be used in the performance of a contract. [EPA Guidelines]

Waste Prevention - any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials. [EPA Guidelines]

Waste Reduction - preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products. [EPA Guidelines]

Attachment 1

AFFIRMATIVE PROCUREMENT PROGRAM MATERIALS DETERMINATION FORM

Instructions: This form is to be completed by the procurement originator where the items or deliverables subject to DHS's Affirmative Procurement Program (APP) are being procured from vendors. This form is not required for items requisitioned from established Federal supply sources.

1. The procurement originator (requirements or program official) lists the designated item(s) which apply to the procurement request, signs and dates the bottom of the form, and provides to the contracting office with the procurement request.

2. The completed form becomes part of the official contracting office contract file.

Procurement Request No:

The Statement of Work/Specifications covering this procurement request is subject to the DHS APP, HSAM Chapter 3023, Appendix A. The items being procured are:

_____

_____

_____

_____

I hereby certify that the Statement of Work/Specifications for the requisition of materials/services listed above complies with applicable DHS preference standards.

_____ _____

Procurement Originator's Signature Date

Attachment 2

REQUEST FOR WAIVER
AFFIRMATIVE PROCUREMENT PROGRAM ITEM(S)

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

A. This form is to be completed by the procurement originator (program official) and Contracting officer, as appropriate, when items subject to DHS's APP are not procured.

B. The procurement originator and Contracting Officer checks the appropriate justification(s), provides a written explanation, and signs and dates the form.

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

Procurement Request No: _____

1. To be completed by Procurement (Requirements or Program Office) Originator:

Products meeting DHS's preference standards for the following designated items:
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
were not obtained because:

_____ Items do not meet all reasonable performance specifications.

_____ Items are not available within a reasonable period of time.

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

_____ _____
Procurement Originator's Signature Date

2. To be completed by the Contracting Officer:

Products meeting DHS's preference standards for the following designated items:
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

were not obtained because:

_____ Use of minimum content standards would result in inadequate competition.

_____ Products meeting the preference standards would require paying a price premium.

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

Remanufactured or recycled toner cartridges for use in laser printers, photocopies, facsimile machines, or micrographic printers were not obtained because:

_____ _____
Contracting Officer's Signature Date

DETERMINATION AND FINDINGS

Authority to Make Progress Payments

FINDINGS

1. The *(identify the Component and the contracting office)* of the Department of Homeland Security proposes to contract for *(describe the supplies and/or services being procured and identify the program/project, if applicable).*

2. *(Indicate the type of contract proposed and the estimated amount of the contract.)*

DETERMINATION

On the basis of the above findings, I hereby determine that *(explain why progress payments based on costs cannot be practically used and why it will be feasible to administer progress payments based on a percentage or stage of completion basis).*

(Signature of the Head of the Contracting Activity (HCA))

ACTION: Payment under *(Enter the DHS number assigned to the contractual instrument)*

From: *(Enter the name and title of the individual authorized to sign this portion of the memorandum - e.g., contracting officer, specialist/administrator, etc.)*

To: *(Enter the name of the person to whom the memorandum is being sent - e.g., contracting officer's representative, inspector, etc.)*

The attached invoice/voucher was submitted by the contractor for payment under the subject contract. Please review this document and provide, as appropriate, your recommendation or acceptance by endorsement below.

(Signature of individual authorized to sign)

Attachment *(Enter the invoice or voucher number and the amount)*

_____

FIRST ENDORSEMENT
From: *(Enter the name and title of the individual authorized to sign this portion of the memorandum - e.g., Contracting Officer's representative, inspector, etc.)*

To: *(Enter name of the person to whom the memorandum is being sent - e.g., contracting officer, specialist/administrator, etc.)*

I have reviewed the attachment(s) and the following applies *(check one)*:

(a) Cost-reimbursement contract. I recommend ___ approval ___ disapproval. The costs incurred ___ are ___ are not reasonable or allocable for the reasons indicated on the attachment.

(b) Fixed-price contract. I recommend ___ approval ___ disapproval.
(1) The supplies or services were accepted on _____ OR
(2) The supplies or services ___ are not acceptable for the reasons indicated on the attachment.

(c) Progress Payment. I recommend ___ approval ___ disapproval for the reasons indicated on the attachment.

(Signature of individual authorized to sign)
Attachment

SECOND ENDORSEMENT

From: *(Enter name of the Contracting Officer)*
To: *(Enter name of the Finance Officer)*

The attached Invoice/Voucher No. *(Insert number and amount)* is approved for payment in the amount of *(Insert amount).* After this payment, the balance remaining available for payment under this contract is *(Insert amount).* Please contact me if this balance does not agree with your payment record.

(Signature of Contracting Officer)

Attachment

CHECKLIST FOR PRIVATE SECTOR TEMPORARY PERSONNEL

PART I

(Must be completed by the Requesting Office)

1. The services of private sector temporaries are needed for the following reason *(Note: The Office of Personnel Management regulation authorizes the use of private sector temporaries only in the short-term situations described below. Please check the situation which exists in your office or work unit)*:

a. {____} An employee *(DO NOT insert employee's name)* currently filling the position of *(insert the title, series, and grade of the employee)* _____ is absent from this position for a temporary period (short-term) because of a personal need including emergency, accident, illness, parental or family responsibilities, or mandatory jury service, but not including vacations or other circumstances that are not shown to be compelling in the judgment of the requesting office.

b. {____} I have determined that work must be carried out for a temporary period cannot be delayed because of a critical need. The critical need is:

2. We will need these services starting on _____ and ending on _____. *(Note: If the required services are for other than full-time continuing, also show the total number of days _____ and/or total number of hours _____ the services will be needed.)* Also, this need cannot be met with current employees within the time available, by the date, and for the duration of time the help is needed. *(Note: Length of time for using a private sector temporary must not exceed 120 work days in a 24-month period. If an appropriate need still exists at the end of the 120 work days, the temporary may work up to a maximum of 240 workdays provided it has been determined that using the services of the same individual for the same situation will prevent significant delay.)*

3. A full description of the needed work is as follows or is attached *(Note: Do not use the Government employee's position description since it is too general for the purpose of describing the work to be performed by the temporary)*:

4. The person must have the following knowledge, skills and abilities in order to work:

5. The person may be required to use the following equipment *(List the equipment that will be used, showing the make and model of personal computer, word processor, mail sorter, etc.)*

6. If a specific personal computer program is required, show the name.

7. Describe the work environment by stating the type of setting in which the temporary

will be working (e.g., general office, front office, typing, information desk, mailroom, warehouse, etc.).

8. List any physical endurance, such as a significant amount of walking (e.g., mail clerk), bending and lifting (e.g., warehousing), standing (e.g., clerk-photocopying), etc. that the work will require.

9. List any other special conditions of the work (e.g., security clearance requirements).

10. List administrative information, such as address and location of the workplace including building and room number; the daily working hours and lunchtime; the name, address, room number, and telephone number of the person to whom the temporary should report on the first day of work. For example:

U.S. Department of Homeland Security
(Insert Component's name)
Washington, DC

Temporary Worker Should Report to: _____
in Room:_____

11. I certify that the statements under #1 through #10 are correct to the best of my knowledge, and the temporary or use of these temporary services:

(a) _____ Will not displace a Federal employee;
(b) _____ Is not for the work of managerial or supervisory positions;
(c) _____ Will not be for the work of or to fill an SES employee or position;
(d) _____ Does not circumvent the regular recruitment and hiring procedures under the civil service laws for permanent appointment in the competitive civil service;
(e) _____ Will not circumvent controls on employment levels; and
(f) _____ Will not be used in lieu of appointing a surplus or displaced Federal employee as required by 5 CFR Part 330, Subpart F (Agency Career Transition Assistance Plan for Displaced Employees) and Subpart G (Interagency Career Transition Assistance Plan for Displaced Employees).

_____
(Signature)

_____
(Title of Office Official)

_____
(Date)

CHECKLIST FOR PRIVATE SECTOR TEMPORARY PERSONNEL

PART II

(Must be completed by the Chief, Human Capital Personnel Officer or Component servicing Personnel official)

1. I have reviewed Part I to ensure compliance with regulatory requirements and to ensure that the information is sufficient to contract with the private sector. I certify the following:
(a) That the need ___ can ___ cannot be met through the direct appointment of temporary employees within the time available, by the date, and for the duration of time the work is needed;
(b) That there ___ are (see attachment) ___ are no qualified candidates on the applicant supply file or on the reemployment priority list; and
(c) That there ___ are (see attachment) ___ are no qualified disabled veterans with a compensable service-connected disability of 30 percent or more under 5 U.S.C. 3112, who are immediately available for temporary appointment of the duration required.

_____
(Signature)

_____
(Title of Chief, Human Capital Office or Component's servicing Personnel Official)

_____
(Date)

MEMORANDUM OF UNDERSTANDING
Between
Defense Contract Audit Agency
and
Department of Homeland Security

1. PURPOSE

This memorandum sets forth an understanding of contract audit coverage and related audit services which the Defense Contract Audit Agency (DCAA) will provide to the Department of Homeland Security (DHS) and its organizational elements (OE), hereafter referred to as "the customer". Questions concerning provisions or implementation of this agreement will be coordinated between the Office of the Assistant Director, Operations, for DCAA and the DHS Office of the Chief Procurement Officer (OCPO). Names, phone numbers, and addresses of applicable contact points can be found in Annex I of this agreement.

2. DEFINITIONS

a. The term "abnormal travel" as used in this Memorandum of Understanding (MOU) is defined as travel which is outside the geographical area of responsibility normally serviced by a particular Field Audit Office (FAO).

b. The term "cognizant audit agency" as used in this MOU is defined as the agency with the sole responsibility, authority, or control to perform all Federal contract audits at a specific company or non-profit entity. DCAA cognizance is determined by one of the following:

(1) OMB has assigned responsibility to the Department of Defense (DoD); therefore, DCAA is the cognizant audit agency.

(2) DoD has the predominant financial interest based on contract activity; therefore, DCAA is the cognizant audit agency.

(3) The agency with the predominant financial interest and DCAA have agreed that DCAA will be the cognizant audit agency.

Once DCAA is determined to be the cognizant audit agency, the responsible audit office within DCAA is determined based on the level of audit activity and geography. If the audit activity is significant, DCAA will establish a Resident Audit Office. Otherwise, the responsible audit office is determined based on the geographical location of the contractor.

c. The term "postaward audit" as used in this MOU is defined as an audit that is performed to determine that a contractor has submitted accurate, complete, and current cost or pricing data when negotiating a contract or other pricing action with the Government. These audits are sometimes called "defective pricing" audits.

d. The term "Contracting Official," as used in this MOU, includes contracting officers at all DHS organizational elements, whether the warrant is issued within DHS or is a carryover from the contracting official's legacy agency.

3. INTERAGENCY FUNDING AND BILLING RESPONSIBILITIES

a. Audit services will be provided by DCAA on a reimbursable basis. Reimbursement will be based on billable audit hours at the prevailing interagency billing rate. Abnormal travel and per diem expenses required to accomplish audits are not included in the standard hourly rate and are subject to separate billing. DCAA will obtain customer approval prior to the incurrence of abnormal travel expenses.

b. Funding will be accomplished each fiscal year in separate interagency funding documents to be executed between the Office of Assistant Director, Resources, for DCAA and the DHS organizational elements.

c. When requested by the DHS OCPO and/or a DHS organizational element, DCAA will provide its best estimate of rates and hours for use in out-year projections. These estimates will be updated on a recurring basis whenever a significant change becomes known (such as a billing rate change announced by the Department of Defense).

4. DCAA RESPONSIBILITIES

a. The criteria in the DCAA Contract Audit Manual (DCAAM 7640.1) will be used to determine the following:

(1) The locations where contract audit coverage will be maintained by DCAA.

(2) Audit cognizance.

(3) Compliance with Generally Accepted Government Auditing Standards (GAGAS). DCAA will conform to GAGAS in determining the scope of audit, including the manner and the level of effort necessary to provide complete audit coverage at a contractor location. Under GAGAS the approach to contract auditing is to audit contractor systems and pursue corrective action as necessary to provide a basis for maximum reliance and to minimize the extent of contract testing necessary. Therefore, it must be understood that contract audits include DCAA evaluations of internal controls and examinations of contractor accounting and financial management systems.

b. At contractor locations where DCAA has audit cognizance, DCAA will respond to specific requests from the customer or their designee for contract audit coverage as follows:

(1) Forward Pricing Audits. DCAA will respond to all customer requests for audit of specific price proposals. This includes audits of specific proposal elements or agreed upon procedures (e.g., rate audits only). It is understood that adequate proposal audit coverage

may require the DCAA auditor at the prime contractor location to request assistance from a DCAA office at a subcontractor location. In such cases, the detail supporting the DCAA bill will show each participating DCAA office separately. Requests for audits will normally be limited to those that exceed the current dollar threshold of the applicable procurement regulations. However, in special situations, the customer may request audits of lesser amounts. Available labor and overhead information will also be provided where appropriate.

(2) Audit of Incurred Cost Claims.

(a) DCAA audits incurred cost claims by evaluating contractor systems, and uses statistical sampling techniques in order to address all auditable dollars at a contractor location for an entire Fiscal Year, or years. This approach is the most efficient method of evaluating incurred cost claims at a contractor location. DCAA does not audit incurred cost claims on a contract by contract basis, and will not audit an incurred cost claim for only part of a year. Therefore, requests for audits of selected contracts or portions of a year at a contractor location will not be accommodated. However, DCAA does take specific contract provisions into account in audit planning and performance. Therefore, the customer should make DCAA aware of specific issues to be covered in the audit.

(b) DCAA will audit incurred cost claims at all contractor locations where DCAA is cognizant and auditable dollars have been identified. DCAA bills these types of audits based on the relationship of an agency's cost audited to the total cost audited. DCAA will provide the customer or their designee with an incurred cost audit report at the conclusion of the audit. Estimates for billable hours for incurred cost audits (identified as DCAA self-initiated effort) will be separately identified in a letter to the agency notifying them of the DCAA estimate. It must be understood that once the self-initiated budget is established, it cannot be reduced by the customer to cover unplanned demand effort. If the customer desires an audit of an incurred cost claim at a contractor where DCAA is not cognizant, the customer will issue a request for audit in accordance with paragraph 5a of this agreement. DCAA will process such requests in accordance with paragraph 4c of this agreement. When DCAA agrees to process such requests, the cost of these audits will be charged against the budget for demand audits identified in the DCAA estimate.

(3) Other Incurred Cost Audits.

(a) Other incurred cost audits are defined as audits of incurred cost not related to the contractor's annual incurred cost claim. Such audits would include, but are not limited to, the following types of audits: Final Price Submissions, Provisional Billing Rate Audits, Terminations, Equitable Adjustment Claims, Hardship Claims, Escalation Claims, Progress Payments, Financial Capability Audits, and Other Special Audits necessary to protect the Government's interests. If DCAA believes that one of the above type audits is necessary based on conditions or information coming to its attention, the customer will be notified.

(b) DCAA will respond to all customer requests for other incurred cost audits at locations where DCAA is cognizant.

(4) Cost Reimbursement Voucher Processing. DCAA will process vouchers in accordance with Annex II of this agreement.

(5) Contract Closeout. Subject to the status of applicable incurred cost audits, DCAA will issue a contract audit closing statement upon request. DCAA bills for the direct effort required to reconcile the contractor's final claim to amounts previously audited and prepares a closing statement. If there are years for which the contract has not been audited due to the customer declination to issue audit requests, DCAA may choose to conduct the additional work necessary to perform the closeout effort, or may decline the request.

(6) Postaward Audits. DCAA will perform postaward audits for all contracts identified by the customer in accordance with paragraph 5d of this agreement. In addition, DCAA will provide the DHS OCPO with a recommended list of contracts for postaward audits by July 31 of each year.

(7) Financial Advisory Services. DCAA will provide general advice on accounting, auditing, and financial matters in areas of DCAA responsibility, and facilitate and coordinate audit services with cognizant Field Officers (FAOs).

(8) Other. Includes investigative support, negotiation assistance, and contracts appeals. A complete listing of reimbursable DCAA activities is available upon request.

c. At a contractor location where DCAA is requested to perform an audit, but has never had an audit presence, or has not audited at that contractor location for the past several years, DCAA will try to accommodate the customer's audit request. Such decisions are made on a case-by-case basis when there is sufficient information to show that it would be in the best interest of the Government for DCAA to do the audit.

d. DCAA will provide estimates of billable time and starting and completion dates for the audit upon request. These estimates are only to be used for planning purposes; actual hours and timeframes incurred may differ. DCAA cannot agree to perform an individual audit within a preapproved budget but will make every effort to stay within the budget. DCAA will obtain customer approval prior to incurring expenses in excess of the preapproved budget, and will provide explanations of significant differences between estimated time and actual time billed on an assignment. After receipt of a request from the customer, the assignment will be set up and completed in accordance with established procedures.

e. DCAA field offices will solicit input from the customer or their designee during the budget formulation process for succeeding year audits, to assure that customer concerns are addressed in planning. The budget process normally takes place in August of each year.

f. Headquarters, DCAA, will promptly transmit to the DHS Inspector General reports of suspected contractor fraud or other wrongdoing whether disclosed by outside sources or detected through performance of the contract audit function. If the DHS OIG initiates an

investigation, and audit support is requested by that agency through the Department of Justice, the benefiting Government agencies will be billed their pro rata share of the audit support.

g. DCAA field offices will promptly send a copy of the audit report to whomever is designated in the request. In addition, copies of the following types of audit reports will be provided to the DHS Office of the Chief Procurement Officer, Director, Oversight and Strategic Support electronically via Procurement.Support@dhs.gov:

(1) Contractor Internal Control System Reviews (accounting system reviews, estimating system reviews, compensation reviews, etc.);

(2) Audits of Compliance with Cost Accounting Standards;

(3) Audits of Cost Impact of Cost Accounting Standards (changes in cost accounting practice and/or noncompliances); and

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

(5) All DCAA reports and memorandums that contain questioned costs or cost disallowances.

(6) All DCAA Form 1's and Form 2000's.

h. Upon request by DHS OCPO, DHS Inspector General, or a DHS organizational component, DCAA will make available audit working papers relating to a customer's contract. The requestor will review such work papers at the applicable DCAA office and can make copies of any work papers deemed appropriate. DCAA will retain the original work papers in DCAA files.

i. Third-party requests (e.g., media, FOIA, non-participating agencies, Congress, etc.) received by DCAA for access to resultant audit reports and underlying work papers will be coordinated with the DHS OCPO and the DHS affected organizational component(s).

5. CUSTOMER RESPONSIBILITIES

a. DHS organizational elements will address requests for audits directly to the cognizant DCAA field office. Initial contacts may be made by telephone with a written confirmation to follow. At a minimum, the following items will either be included with the request or addressed in the request:

(1) A copy of the contractor's submission to be audited should be submitted along with the audit request. This submission should be prepared in accordance with Federal Acquisition Regulations (FAR) and/or other applicable agency requirements. DCAA will work with the customer, if requested, to assist in defining an adequate submission.

(2) Billing reference numbers, if required by the customer, will be in the audit request. If no reference numbers are in the request, DCAA will assume they are not required.

(3) Audit report distribution requirements will be in each audit request; otherwise, distribution will be handled in accordance with paragraph 4g.

b. Contracts to be covered by audits shall include an access to records clause and a clause incorporating the cost principles set out in the FAR or other applicable agency guidelines.

c. The customer agrees to pay for incurred cost audit coverage at all locations where DCAA is the cognizant auditor and customer contract costs are part of the total auditable cost.

d. By August 15, prior to the beginning of the fiscal year, the customer will provide the Office of Assistant Director, Operations, DCAA, with a listing of all contract pricing actions for which the customer wants DCAA to perform a postaward audit in the next Fiscal Year. The listing will provide the contract number (and modification number if appropriate), contract value, type of contract, and name and location of the contractor. This listing will constitute specific authority by the customer for DCAA to perform, and bill for, postaward audits.

e. The DHS OCPO is responsible for follow-up on the contracting officer's implementation of DCAA audit recommendations, as required by OMB Circular A-50. As part of the audit-follow up process, for each audit report that is received, the Contracting Officer shall provide the cognizant DCAA office a copy of the price negotiation memorandum promptly after contract award. This memorandum should clearly address resolution of the audit findings. If the contractor for which the audit was provided is not the awardee, the contracting officer shall notify DCAA in writing of this fact. The price negotiation memorandum and/or the notification serves as the basis for DCAA disposition of the audit findings. Within 30 days after the end of each quarter (quarters ending March 31, June 30, September 30, and December 31), DCAA shall provide the DHS OCPO a listing of all open reports of audits conducted at the request of DHS (open reports are those audit reports for which DCAA has not dispositioned the findings).

f. The customer is responsible for review of program results to determine if the goals and objectives of organizations, programs, activities, or functions established by laws or regulations are attained, as required by applicable General Accounting Office (GAO) audit standards.

g. When the customer becomes aware of any internal or external reviews, including reviews by the customer, GAO, investigative agencies, etc., which may impact on the audit services furnished by DCAA, the customer will notify and will coordinate in advance with the local DCAA office affected by the review. If several DCAA offices will be affected by the review, the customer can coordinate in advance with the Office of the Assistant Director, Operations, DCAA. In this regard, to the extent the customer has control, appropriate sections of draft reports which result from such reviews will be provided to permit comment on those matters involving DCAA.

h. The customer will use only DCAA audit services to perform all contract audit functions at locations where DCAA is the cognizant auditor to preclude dual or split audit

cognizance, unless DCAA acknowledges that it cannot provide the assistance required because: it concerns matters beyond the proper role of DCAA, it would result in undue delays or inefficiencies in the accomplishment of customer objectives, or it is not in the best interest of the Government.

6. DURATION

This MOU may be terminated by any party at any time by issuance of a written notice 60 days in advance of the intended termination date.

7. ANNEXES

a. The following Annexes are enclosed and considered an integral part of this agreement:

ANNEX I CUSTOMER CONTACT POINTS FOR MEMORANDUM OF UNDERSTANDING

ANNEX II COST REIMBURSEMENT VOUCHER PROCESSING PROCEDURES

b. Further Annexes to this MOU may be negotiated by the responsible agencies' executives and will be treated as an integral part of this agreement.

DEPARTMENT OF HOMELAND SECURITY

_____[SIGNED]_____ ___4/22/2011___
Richard K. Gunderson Date
Deputy Chief Procurement Officer

DEFENSE CONTRACT AUDIT AGENCY (SERVICE PROVIDER)

_____[SIGNED]_____ _____4/7/11_____
Patricia A. Letzler Date
Deputy Assistant Director, Operations

ANNEX I

CUSTOMER CONTACT POINTS FOR MEMORANDUM OF UNDERSTANDING
Between
Defense Contract Audit Agency
and
Department of Homeland Security

1. PURPOSE

This annex identifies the names, titles, addresses, and phone numbers of the appropriate contact points for DCAA and the DHS OCPO as discussed in the Memorandum of Understanding (MOU). It is recognized that individuals and organizations change periodically. It is intended that this annex be updated as necessary without changing the content of the MOU. Updates to this annex will be coordinated between the Office of the Assistant Director, Operations, for DCAA, and the DHS OCPO.

2. CUSTOMER CONTACT POINTS

The following individual should be contacted for questions concerning provisions or implementation of the MOU:

Richard K. Gunderson
Deputy Chief Procurement Officer
U.S. Department of Homeland Security
Washington, DC 20528
(202) 447-5300

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

3. DCAA CONTACT POINTS

Patricia A. Letzler
Deputy Assistant Director, Operations
Headquarters, DCAA
8725 John J. Kingman Road, Suite 2135
Fort Belvoir, VA 22060-6219
(703) 767-2238

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

Lisa Chrissinger
Program Manager, Workload Analysis Div.
Headquarters, DCAA
8725 John J. Kingman Road, Suite 2135
Fort Belvoir, VA 22060-6219
(703) 767-2257

4. PROCEDURES REGARDING REQUESTS FOR AUDIT SERVICES

a. Annual Financial Agreement. Each DHS organizational element that anticipates utilizing contract audit services from DCAA shall complete an Annual Financial Agreement with DCAA. DCAA will provide the annual financial agreements for each of the organizational elements. The agreement shall define the amount of annual effort for a fiscal year period between each organizational element and DCAA. The original annual financial agreements should be returned to DCAA prior to September 30.

b. Funding Documents. Each organizational element shall submit an approved funding document prior to the start of the fiscal year audit effort to DCAA. The organizational element shall use funding documents, Inter-agency Agreements and Inter-Agency Agreement Orders to request audit services.

c. Audit Requests. The DHS organizational element shall send the official audit request to the cognizant DCAA branch offices. Audit request acknowledgement letters shall be sent to the organizational element identifying requested audit services.

d. Audit Reports. Completed DCAA audit reports will be sent to the requesting organizational element. In addition, copies of the types of audit reports listed in paragraph 4g of the MOU will be provided to the OCPO Director of Acquisition Oversight:

5. PROBLEM RESOLUTION PROCEDURES REGARDING AUDIT SERVICES.

In the event the customer is not satisfied with the content of a DCAA audit report, generally, the quickest method of resolving this is for the customer to discuss their concerns with the Field Audit Office (FAO) Manager of the DCAA office providing the service. If the parties do not receive satisfactory resolution to their concerns at this level, the parties should contact the Regional Audit Manager responsible for the applicable field office. If a satisfactory resolution is still not received, or if the parties want to discuss a problem with someone at DCAA Headquarters, they should contract the Workload Analysis Division (OWD), Operations, DCAA Headquarters, to voice their concerns. This division will identify the appropriate individuals required to achieve resolution and advise senior level agency management of significant agency problems.

DEPARTMENT OF HOMELAND SECURITY

_____[SIGNED]_____ _____4/22/2011_____
Richard K. Gunderson Date
Deputy Chief Procurement Officer

DEFENSE CONTRACT AUDIT AGENCY (SERVICE PROVIDER)

_____[SIGNED]_____ _____4/7/2011_____
Patricia A. Letzler Date
Deputy Assistant Director, Operations

ANNEX II

COST REIMBURSEMENT VOUCHER PROCESSING PROCEDURES
Between
Defense Contract Audit Agency
and
Department of Homeland Security

1. PURPOSE

This annex sets forth the procedures by which the Defense Contract Audit Agency (DCAA) will provide cost reimbursement voucher processing to the Department of Homeland Security.

2. REQUIREMENTS

DCAA must perform and bill for incurred cost audits at the contractor location in accordance with paragraph 4b(2) of the MOU in order to be involved in processing vouchers.

3. PROCEDURES

All DHS cost reimbursement and T&M/LH contracts will require the contractor to submit a copy of the voucher to DCAA at the same time as the original is sent to the COR/contracting officer, who will certify and process them for payment. DCAA will review contractor's interim vouchers in accordance with agency procedures. DCAA will review all vouchers in excess of $1 million and review all first vouchers submitted under the contract or delivery order. For contractors not on direct billing, DCAA will also sample the remaining vouchers using the FAO-established sampling techniques consistent with the methodology used for DoD voucher review sampling (CAM 6-1008). Since DHS has no contracts subject to direct billing, if the contractor has direct billing for DoD and/or any other Government contracts, auditors shall ensure the interim vouchers related to DHS contracts are included in the universe for selection when performing its annual review of paid vouchers. In addition, for any particular voucher, a contracting officer can request a review of that specific voucher if the contracting officer has concerns.

Auditors will notify the contracting officer immediately of any issues identified during the voucher review. If the auditor identifies a concern (e.g., inaccuracies, questionable or unsupportable costs) with the DHS voucher selected for review, the auditor should notify the contracting officer in writing and include any suspended or disapproved costs with a recommendation that the amount questioned be deducted from the next available voucher. No notification to the contracting officer is necessary if the auditor's review disclosed no exceptions.

DEPARTMENT OF HOMELAND SECURITY

_____[SIGNED]_____ ___4/22/2011_____
Richard K. Gunderson Date
Deputy Chief Procurement Officer

DEFENSE CONTRACT AUDIT AGENCY (SERVICE PROVIDER)

_____[SIGNED]_____ ____4/7/11_____
Patricia A. Letzler Date
Deputy Assistant Director, Operations

MEMORANDUM OF AGREEMENT (MOA) BETWEEN THE DEFENSE CONTRACT MANAGEMENT AGENCY (DCMA) AND THE DEPARTMENT OF HOMELAND SECURITY (DHS) FOR REIMBURSEMENT FOR CONTRACT ADMINISTRATION SERVICES (CAS) PROVIDED IN SUPPORT OF DHS CONTRACTS

Agreement Number: DCMA-DHS-03-0001
As revised by Amendment 02[3] and Amendment 03
[Consolidated Version][4]

1. PURPOSE

This Memorandum of Agreement (MOA) sets forth policies and procedures by which the Defense Contract Management Agency (DCMA) shall be reimbursed for Contract Management Services (CMS) in support of the Department of Homeland Security (DHS) contracts.

2. AUTHORITY

This agreement is executed according to the Economy Act, 31 U.S.C. 1535 and 1536, as implemented by the Federal Acquisition Regulation (FAR) Subpart 17.5, FAR Part 42, and the Department of Defense Instruction (DoDI) 4000.19, Interservice and Intragovernmental Support.

3. SCOPE *[As revised by Amendment 02]*

This overarching MOA establishes a communication and support network between the listed parties for DCMA to provide CAS for the DHS. By mutual agreement, DCMA will provide delegated contract administration services according to FAR Part 42, Subpart 42.302, Contract Administration Functions, FAR Part 34, Subpart 34.2, Earned Value Management System, and Appendix 3 to this MOA, Earned Value Management Contract Administration Services, on existing and future contracts, Other Transactions, or grants falling under the purview of the DHS. The support provided by DCMA will be further delineated under separate Letters of Delegation (LODs) or Inter Agency Agreements (IAAs) between the DHS Components and DCMA. The points of contact for DHS Components and for DCMA are identified in Appendix 1.

4. PROCEDURAL ARRANGEMENTS *[As revised by Amendment 02]*

(a) A LOD signed by the DHS Component contracting officer shall be used to specifically request contract administration services, as defined under FAR Subpart 42.2,

[3] Amendment 01 was rescinded by Amendment 02
[4] This is a roll up of the basic MOA and amendments. Pdf images of the signed basic MOA and each amendment can be accessed at http://dhsconnect.dhs.gov/org/comp/mgmt/cpo/paw/Pages/AcquisitionPolicyLegislation(APL).aspx

or as described on Appendix 3 to this MOA, from a particular DCMA CMO for administration.

(b) The separate LODs between individual DHS Components and DCMA establishing CAS shall include orders in the form typically used by the particular DHS Component for interdepartmental funding transfers, i.e., Military Interdepartmental Purchase Request, IAAs, etc. These orders shall comply with FAR 17.504, Ordering Procedures, and will be signed by a DHS Component contracting officer.

(c) DHS Components shall execute, in writing, the determination required by FAR Subpart 17.5, as supplemented by the DHS Component. This determination shall remain part of the requesting Component's contract file.

(d) Each order shall provide a specific term of performance, the maximum number of hours to be expended during that term, and a maximum funding limitation applicable to that term. Each order shall reference the DCMA/DHS Component LOD number and also identify the DHS Component accounting data for resulting billings. As required by FAR 17.504, a funds citation shall be placed on each order. The funds cited shall equal the maximum funding limitation cited on the order. Each order shall contain the requesting Component's finance office and the POC for that office, including the mailing address where reimbursement billings should be sent for payment.

(e) Orders issued under this agreement shall be forwarded directly to the appropriate DCMA CMO in accordance with the Federal Directory of Contract Administration Services (CAS) Components with a copy to the DCMA Headquarters POC as listed in Appendix 1. The web address for the Federal Directory of CAS Components is **http://home.dcma.mil/CASBOOK/casbook.htm**. If multiple CMOs are covered under one LOD, orders pertaining to that LOD shall be submitted to DCMA Headquarters for disposition. The DCMA CMO will notify the originating Component that the order has been accepted.

(f) DHS Components shall advise DCMA, in a timely manner, of anticipated changes in support requirements. DCMA shall advise DHS Components, in a timely manner, of changes in DCMA capability or resources which may have a significant impact on the support to be provided to DHS Components. If a proposed LOD requires a substantial increase in Full Time Equivalents or Permanent Change of Station costs, the DHS Component shall coordinate with DCMA Headquarters prior to issuing the LOD.

(g) DCMA will promptly advise the DHS program office of any audit, survey or investigation by the Government Accountability Office or a departmental or agency inspector general, that will include in its scope a DHS contract or program for which DCMA is performing CAS.

(h) When contract audit services are required in conjunction with contract administration services ordered under this MOA, the audit services will be obtained in accordance with the Memorandum of Understanding among the Defense Contract Audit

Agency, the Department of Homeland Security, and the DHS Office of Inspector General.

5. **BASIS FOR REIMBURSEMENT**

DCMA will perform CMS for DHS Components on a reimbursement basis at the prevailing DCMA CMS hourly rate in effect at the time the work is performed. The basic rate will be applied to the actual direct hours worked. For FY07, the rate is $98.40 per hour. This MOA is subject to annual modification, as necessary, to provide for reimbursement of costs.

Direct hours worked shall include any combination of regular hours, credit hours, compensatory time worked, and overtime. Overtime hours will be charged at the same rate as regular direct hours.

The DCMA reimbursable rate includes overhead costs which provide recoupment for supervisory, clerical, normal training, leave, and routine travel. Routine travel is defined as travel which is inside the geographical area of responsibility normally serviced by a particular DCMA CMO. All other travel costs will be billed to the DHS Component. Time spent in training courses attended at the request of the DHS Component is billable, provided that the trainee is in a paid duty status. Time spent traveling to a contractor facility solely in support of a DHS Component delegation or to a training course specifically requested by a DHS Component is considered direct support and is billable, provided that the DCMA employee is in a paid duty status.

6. **BILLING DESCRIPTION**

The Defense Finance and Accounting Services (DFAS) is the accounting entity for the Department of Defense (DoD). The DFAS Columbus Center, which provides accounting services to DCMA, shall request and receive payment for services performed by DCMA from the DHS Component finance office listed on each order. Invoices shall contain at least the following information:

a. DHS Component for which services were furnished;
b. DHS Component order identification number;
c. period of performance covered by the bill;
d. hours expended by function (e.g., contract management, property administration, quality assurance, financial services, etc.);
e. prime contract number and contractor's name; and
f. total hours expended, reimbursable rate, and dollars billed.

Reimbursement requests will be submitted to each DHS Component finance office on a monthly basis. The reimbursement requests will include a summary of hours and dollars charged and any additional charges for actual costs related to non-routine travel. DFAS Columbus will identify all CMS costs to each DHS Component finance office by using the Standard Form (SF) 1080 (Voucher for Transfers Between Appropriations) and/or

Intragovernmental Payment and Collection (IPAC) with as many as two line items identified in the supporting documentation:

(1) cost of DCMA CMS (hours x current rate); and

(2) cost of DCMA Non-Routine Travel (actual costs).

Billing procedures are detailed in Appendix 2.

7. MODIFICATIONS, INTERPRETATIONS AND TERMINATION

Changes and/or modifications to this agreement may be made at any time upon mutual written consent of the undersigned. Modifications shall cite the agreement number indicated at the beginning of this document and shall set forth the exact nature of the change and/or modification.

No verbal statement by any person, and no written statement by anyone other than the undersigned, or an authorized representative as designated in writing, shall be interpreted as modifying or otherwise affecting the terms of this agreement.

This agreement may be updated in writing by mutual agreement of both parties.

Either party may terminate this agreement with 180 days advance written notice. If terminated by DHS with less than 180 days notice, DCMA may bill DHS Components for reimbursement of unavoidable termination expenses incurred during the 180-day period following notification.

8. POINTS OF CONTACT

Points of contact for both parties are listed under Appendix 1.

9. EFFECTIVE DATE

This MOA is effective upon signature.

APPROVAL/DATE:

For pdf images of the original signed MOA and each signed amendment, go to OCPO / Acquisition Policy and Legislation at:
http://dhsconnect.dhs.gov/org/comp/mgmt/cpo/paw/Pages/AcquisitionPolicyLegislation(APL).aspx

Appendices
1. DHS Component and DCMA Points of Contact
2. Billing Procedures
3. Earned Value Management

APPENDIX 1 *[As revised by Amendment 03]*

DHS COMPONENTS & DCMA POINTS OF CONTACT

(Pages V-5 through V-7 have been removed, but are available at the below link)

See the link: HSAM Appendix V: DCMA and DHS MOA - Points of Contact and Billing Procedures

APPENDIX 2 *[As revised by Amendment 03]*

BILLING PROCEDURES

(Pages V-8 through V-11 have been removed, but are available at the below link)

See the link: HSAM Appendix V: DCMA and DHS MOA - Points of Contact and Billing Procedures

APPENDIX 3 *[Added by Amendment 02]*

EARNED VALUE MANAGEMENT (EVM) CONTRACT MANAGEMENT SERVICES

I. Background

The Office of Management and Budget (OMB) OMB Circular A-11 requires the use of an Earned Value Management Systems (EVMS) that meet the American National Standards Institute (ANSI)/Electronics Industries Alliance (EIA) Standard – 748 - A for both Government and contractors (referred to as the EVMS ANSI Standard). Further, the Department of Homeland Security (DHS) requires, through the *Homeland Security Acquisition Manual* (HSAM) and the *DHS Earned Value Management Guidance*, that major investment programs, major systems, and their associated contracts use Earned Value Management (EVM) as a tool for effective monitoring and program management. DHS recognizes that the Department of Defense (DOD) has designated the Defense Contract Management Agency (DCMA) as the Executive Agency for EVM, and that DCMA has the knowledge and expertise to support DHS with EVM services.

II. Purpose

The purpose of this Appendix is to provide a Statement of Work (SOW) for obtaining DCMA EVM services related to: 1) initial EVMS compliance reviews and acceptance determinations, 2) surveillance reviews of ongoing compliance with the EVMS ANSI Standard, 3) review for cause evaluations, and 4) subject matter expertise. These services will help to ensure that contractors' EVMS provide accurate information to enable Program Managers, Contracting Officers, Component leadership, and DHS Headquarters to manage their investment programs effectively.

III. General Procedures for Reviews

General procedures for EVM verification reviews to ensure initial and ongoing compliance with the EVMS ANSI Standard include:

1. Assess for initial acceptance the contractor's EVMS compliance with the EVMS ANSI Standard, in accordance with the *DHS Earned Value Management Guidance* and the *DOD Earned Value Management Implementation Guide* (DOD EVMIG); and make the acceptance determination of whether the contractor has an EVMS ANSI compliant system or not.
2. Conduct ongoing surveillance to evaluate changes to a contractor's accepted EVMS to ensure adherence with the EVMS ANSI Standard. Test system application through interviews with Control Account Manager (CAM), Program Manager, and project controls personnel and perform data traces on DHS contracts and subcontracts.
3. Identify corrective actions when the contractor's system either does not meet contractual requirements, the application of the system is inconsistent with the EVMS ANSI Standard; or the system is not providing realistic performance data. Issue a Corrective Action Request (CAR) in these instances, to include a severity level rating of 1 through 4, summarized below:
    a. CAR Level 1:

i. Written request that occurs when a contractual non-compliance requires no special management attention to correct. The CAR may be directed to working level personnel, and documented and resolved at that level.

ii. Corrective actions need to be reported by the contractor to the Program Manager, and tracked with estimated closure dates.

b. CAR Level 2:

i. Written request that occurs for corrective action for contractual non-compliances that are systemic in nature and could adversely affect cost, schedule, or performance if not corrected. Level 2 CAR should be directed to the contractor's management level responsible for the process, with a copy to the Program Manager and the Component Contracting Officer.

ii. A formal CAR corrective action plan must be submitted from the contractor for concurrence from the Program Manager, with acceptance granted by DCMA to resolve identified deficiencies. DCMA and the Program Manager would work together in overseeing the contractor's adherence to the plan.

c. CAR Level 3:

i. Written request that calls attention to serious contractual non-compliance, and recommends remedies such as reductions of progress payments, cost allowances, cure notices, show cause letters, or business management systems disapprovals.

ii. A formal CAR corrective action plan must be submitted from the contractor for concurrence from the Program Manager, with acceptance granted by DCMA to resolve identified deficiencies. DCMA and the Program Manager would work together in overseeing the contractor's adherence to the plan.

iii. The CAR should be addressed to the contractor's top level management.

iv. Because of the seriousness of the Level 3 CAR, copies will be provided to the DHS Executive Agent for EVM and CPO, along with the Program Manager and the Component Contracting Officer. All parties listed above will be notified before the Level 3 CAR is written.

v. Closure of the Level 3 CAR, and letters notifying the contractor of the closure action should be sent to all those addressed/copied in the original CAR.

d. CAR Level 4:

i. Written request documenting contractual non-compliance and recommends remedies such as suspension of progress payments or product acceptance activities, termination for default, and suspension or debarment, in accordance with applicable Federal Acquisition Regulation (FAR) policies and procedures.

ii. A formal CAR corrective action plan must be submitted from the contractor for concurrence from the Program Manager, with acceptance granted by DCMA to resolve identified deficiencies. DCMA and the

Program Manager would work together in overseeing the contractor's adherence to the plan.

iii. Level 4 should be addressed to the contractor's top level management. In addition the Component Contracting Officer and Contracting Officer's supervisor should sign the CAR.

iv. Because of the seriousness of the Level 4 CAR, copies will be provided to the DHS Executive Agent for EVM and CPO, along with the Program Manager and the Component Contracting Officer. All parties listed above will be notified before the Level 4 CAR is written.

v. Closure of the Level 4 CAR, and letters notifying the contractor of the closure action should be sent to all those addressed/copied in the original CAR.

4. Track and report on the resolution of CARs as part of ongoing surveillance through the corrective action plan developed between the contractor and the Program Manager.
5. Conduct a Review for Cause when appropriate. This would occur when systemic problems with the system are observed that then warrant a full review. A Review for Cause may also be initiated by requests from leadership.
6. Inform the DHS Executive Agent for EVM of the status of work ordered under this MOA.

IV. SCOPE AND APPLICABILITY

This Appendix applies to DHS contracts with an EVMS requirement, including subcontracted efforts, for which the DHS Component Contracting Officer has issued a letter of delegation or inter-agency agreement, in accordance with paragraphs *3. Scope*, and *4. Procedural Arrangements*, of the basic MOA, as amended.

V. ROLES AND RESPONSIBILITIES

DHS Office of the Chief Procurement Officer (DHS CPO). DHS CPO will:

1. Serve as the point of contact for any MOA-level issues.
2. Review and act upon, in conjunction with the Program Manager, Component Contracting Officer, and DHS Executive Agent for EVM, CARs level 3 and 4 as described in item 4 of Section III: General Procedures for Reviews.

DHS Executive Agent for EVM. DHS Executive Agent for EVM will:

1. Provide DHS EVMS regulations, policy, and guidance, as appropriate.
2. Provide consultation and assistance on EVMS issues as necessary.
3. Resolve technical issues that may arise between DCMA and DHS Investment Program Managers.
4. Review and act upon, in conjunction with the Program Manager, Component Contracting Officer, and as appropriate the DHS CPO, compliance acceptance reports, ongoing surveillance reports and recommendations, and CARs level 3 and 4 as described in item 4 of section III: General Procedures for Reviews.

DHS Component Contracting Officer. DHS Component Contracting Officer will:

1. Issue Letters of Delegation (LOD) and Inter-Agency Agreements (IAA) to order EVMS services in accordance with the procedures in paragraph 4., Procedural Arrangements, of the basic MOA,
2. Administer the LODs and IAAs.
3. Review and act upon, in conjunction with the Program Manager, and as appropriate the DHS Executive Agent for EVM and CPO, compliance acceptance reports, ongoing surveillance reports and recommendations, and CARs level 1 – 4 as described in item 4 of section III: General Procedures for Reviews.
4. Provide documentation to the DHS Executive Agent for EVM regarding letters of agreement or other documentation that recognize that contractors have already accepted EVMS by another Cognizant Federal Agency (CFA).
5. Consult with the DHS Executive Agent for EVM prior to issuing any correspondence regarding EVMS system acceptance for those instances where contractors claim their systems have been accepted by another CFA.

DHS Component Investment Program Manager. DHS Component Investment Program Manager will:

1. Ensure that the contracting package submitted to the Contracting Officer includes the EVMS reporting requirements that are required by DHS policy.
2. Provide funding for desired EVM services requested from DCMA.
3. Develop a project plan in conjunction with DCMA to implement the EVMS review(s).
4. Provide background documents needed by DCMA to carry out their surveillance tasking.
5. Provide access to information and locations needed by DCMA to conduct initial compliance and ongoing surveillance reviews.
6. Provide personnel to participate in reviews as part of a Joint Surveillance Team with DCMA.
7. Review and act upon, in conjunction with the Component Contracting Officer, and as appropriate the DHS Executive Agent for EVM and CPO, compliance acceptance reports, ongoing surveillance reports and recommendations, and CARs level 1-4 as described in item 4 of section III: General Procedures for Reviews.

Defense Contract Management Agency (DCMA). The Defense Contract Management Agency will:

General Services

1. Provide a single focal point in matters relating to EVM services described in this SOW.

Initial EVMS Compliance Reviews and Acceptance Determination

1. Conduct the Preliminary Assessment Visit (PAV) to establish expectations and timelines for the initial compliance review.
2. Assess for initial acceptance the contractor's EVMS compliance with the EVMS ANSI Standard, in accordance with the *DHS Earned Value Management Guidance* and the *DOD Earned Value Management Implementation Guide* (DOD EVMIG).

3. Provide the appropriate parties as described in this SOW with documentation supporting its recommendation of acceptance of the contractor's EVMS as being compliant with EVMS ANSI Standard. Documentation supporting the recommendation of acceptance may be a letter, report, or other document, such as a Letter of Agreement signed by both the government and the contractor.
4. Provide adjudication of findings to resolve issues identified and decisions made from the initial compliance review and acceptance determination.

Surveillance Reviews of Ongoing Compliance with the EVMS ANSI Standard

1. Perform ongoing surveillance of contractors EVMS to ensure adherence to the EVMS ANSI Standard.
2. Document how contractor's EVMS processes differ from the EVMS ANSI Standard, and identify the possible impact (positive and negative) to the cost, schedule, and technical performance of the contract through CARs.
3. Evaluate and monitor the contractor's CAR plans to resolve problems.
4. Employ surveillance techniques that minimize disruption to the contractor's workforce and duplication of efforts performed by other government agencies.
5. Provide adjudication of findings to resolve issues identified and decisions made as a result of ongoing surveillance activities.

Review for Cause

1. Conduct a review for cause to determine if a contractor with an accepted EVMS should have the acceptance revoked. This involves a full review of contractor compliance with all 32 guidelines of the EVMS ANSI Standard.
2. Provide DHS with documentation supporting its recommendation for the acceptance determination (i.e., continue acceptance or revoke acceptance).
3. Provide adjudication of findings to resolve issues identified and decisions made concerning the acceptance determination.

Subject Matter Expertise

1. Provide subject matter expertise to advise on issues related to contract administration and EVMS.

VIII. EXPECTED WORK PRODUCTS

1. DCMA will prepare monthly project status reports for the Component Contracting Officer, who will then distribute them to the Program Manager and other appropriate parties. Status reports will summarize the results of activities, including reviews underway and their status, findings, actions taken, and expected dates of resolution. Status reports will also provide summary statistics of the status of contractors' management control systems based on data collected from reviews.

2. DCMA will prepare a written report within 30 working days of completion of a PAV that describes the results of the review, identified discrepancies, and recommendations for system improvement. The report will include the DCMA's assessment of the contractor's readiness for the initial compliance review. The report will be provided to the DHS Executive Agent for EVM and the Component Contracting Officer for distribution to the Program Manager and other appropriate parties for evaluation and discussion with the contractor.
3. DCMA will prepare a written report within 30 working days after completion of an initial compliance review and provide it to the Component Contracting Officer, with copies to the Program Manager and DHS Executive Agent for EVMS.
4. DCMA will prepare a written report on a periodic basis summarizing the status of ongoing surveillance reviews and provide it to the Component Contracting Officer, with copies to the Program Manager and DHS Executive Agent for EVM. The written report shall summarize progress against the contractor's CAR plan to resolve material discrepancies identified during the prior verification reviews.

If CARs are written, DCMA will provide copies to the Component Contracting Officer and Program Manager for CARs Level 1 and 2, and to those parties and the DHS Executive Agent for EVM and CPO for CARs Level 3 and 4, along with accompanying correspondence.

COR Appointment Letter

Agency/Component letterhead

Subj: Appointment as a Contracting Officer's Representative (COR)

From: ***(Insert name of Contracting Officer)***

To: ***(Insert name of prospective COR)***

You are hereby appointed as the Contracting Officer's Representative (COR) under Contract No. *(Insert number)* with the *(Insert the name(s) of the contractor(s))* for *(Describe the supplies, services, or construction being purchased)*. As the COR, your primary duty is to monitor *(Insert the contractor's name)* performance to ensure that all of the technical requirements under the contract are met by the delivery date or within the period of performance, and at the price or within the estimated cost stipulated in the contract. The duties or authorities in this letter are not delegable; therefore, you must advise the Contracting Officer, *(Insert name of Contracting Officer)* or the Contract Administrator/Specialist *(Insert name of Contract Administrator/Specialist)* immediately when you are unable to perform these duties.

Scope of Authority (insert section if authorized by Component procedures).

As COR, you are authorized….

COR Responsibilities and Duties (See Appendix W, Attachment 2 for requirements).

Your duties as applicable to the contract are as follows:

Performing surveillance/inspection and acceptance.

Monitoring activities, cost, providing input to contractor performance evaluations and notifications to the Contracting Officer.

Making recommendations for invoices and payments.

Managing Government Furnished Assets (when required).

Managing Contractor Employee Access (when required).

Non-Delegable Functions and Exclusions (See Appendix W, Attachment 2 for requirements).

As COR you shall not:

FAR and DHS Authorities/Directives, Government Ethics and Training.

The FAR and the Department of Homeland Security requires strict compliance with established standards of conduct and conflict of interest rules. *In addition to the FAR, HSAR and DHS Directives for ethics, training and financial disclosure, Component procedures should address*

and include additional related Contracting Officer's instructions to the COR. See also Exhibit 3, Federal Acquisition Regulation (FAR), DHS Directives and Government Ethics, and Training.

Contract file content and maintenance.

Instruction for contract file content is in accordance with Component and Contracting Officer's instructions.

If you have any questions or problems, please contact the Contract Specialist, [insert name of Contract Specialist], at [insert full telephone number including area code].

Appointment Effective and Termination Dates.

Your appointment as the COR under the above numbered contract is terminated upon receipt of a written notice of termination from the appointing Contracting Officer, the Contracting Officer's successor, or a higher level of authority.

_____	_____	_____
Name of Contracting Officer	Signature of Contracting Officer	Date

Acknowledgement Receipt and Acceptance of Appointment.

Please acknowledge receipt and acceptance of this appointment by signing and returning the attached acknowledgement section to the Contracting Officer or contract administrator/specialist.

I understand and accept my assignment as the COR under Contract No. *(Insert contract number)* as outlined in your letter to me dated (*insert date of Contracting Officer's letter*).

_____	_____	_____
Name and title of Contracting Officer's Representative (COR)	Signature of Contracting Officer's Representative (COR)	Effective Date

Attachments:
OGE 450, Confidential Financial Disclosure Report (if applicable)

Copy to:
Payment Office
Contractor
Other Offices (as appropriate)

Exhibit 1: COR/Alternate COR Core Responsibilities and Functions.
(See HSAM 3042.270-2(b)(i), COR Appointment letter.)

Required functions	Examples for describing COR delegated duties
Performing surveillance/inspections and acceptance.	Perform on-site surveillance in accordance with the surveillance plan. Document surveillance activities and provide a copy of documentation to the contracting officer. Review technical proficiency and compliance against the technical provisions of the contract, and verify the performance of work by the contractor.
	Perform surveillance of the performance under the business agreement and conduct inspections necessary to assure performance and compliance with the terms and conditions of the agreement.
	Assure prompt review of draft reports and approval of final reports to contractor to assist with meeting the specified completion date of the contract, and assuring prompt inspection and acceptance, or rejection of deliverable.
	Notify the Contractor of deficiencies observed during surveillance. Record and report to the contracting officer all incidents of faulty or nonconforming work, delays, or problems which may disrupt or hinder future performance.
Monitoring activities, cost (see HSAM 3016.601, 3032.7000, and 3042.1500), providing input to contractor performance evaluations and notifications to the contracting officer (see examples):	Components HCAs are responsible for contractor performance evaluations procedures and policies (see HSAM 3042.1500) for ensuring that contractor performance evaluations (interim and final) are included in the PPIRS through the Contractor Performance Assessment Reporting System. The CO's identification and requested assistance from the COR for input into the contractor evaluations can be efficiently assigned via the appointment COR letter.
	See HSAM 3016.601 and 3032.7000 for specific requirement in monitoring cost reimbursement contracts & time-and-material and labor hour contracts.
Notification examples:	Any requests for changes from a contractor.
	Potential labor disputes or workforce problems.
	Lack of performance which may jeopardize the cost or required schedule.
	Monitoring financial management controls with respect to the allocation of appropriated dollars under the designated contract.
	Possible changes in Contractor management and/or key personnel.
	Disagreements with the Contractor regarding performance of statement of work/objectives (SOW/SOO) requirements or other potential disputes with the Contractor about technical or other business matters.
	Any possible Contractor deficiencies or questionable practices so that corrections can be made before the problems become significant.
	Procurement fraud, waste, abuse, bribery, conflict of interest, or other improper conduct to the CO and agency office, such as the OIG.
	All problems, potential disagreements or controversy, both oral and in writing, regarding the status of the contract and performance of its requirements.
Making recommendations for invoices and payments.	Report any discrepancies in payment vouchers to the contracting officer. Provide documentation to support the representation.

(See HSAM 3016.601 and 3032.7000.)	Evaluate progress payment requests based on costs incurred and actual work accomplished.
	Certify invoices to the contracting officer for payment, using the ____ electronic invoicing system (if Component systems provide this functionality).
	Reviewing contractor invoices for accuracy of work completed in accordance with contract requirements and certifying acceptance or rejection.
	Review the Contractor's invoices/vouchers for reasonableness and applicability to the contract and recommend to the contracting officer approval, conditional approval, or disapproval for payment. The review must be completed within five days after receipt of the invoice or voucher. If you cannot meet the required review time, advise the contracting officer or contract specialist so that action can be taken to ensure Government compliance with the Prompt Payment Act, thereby avoiding the payment of interest penalties to the Contractor.
	Review the contactors invoices/vouchers to ensure that they accurately reflect the work completed in accordance with the requirements of the contract, and certify acceptance of the delivered items. Submit certified invoices/vouchers to the Dallas Finance Center and copies to the contracting officer in a timely manner.
	See HSAM 3016.601 and 3032.7000 requirements for processing payment for cost reimbursement & time-and-material and labor hour contracts.
Managing Government Furnished Property (used when Government property is specified in the contract).	You are not authorized to provide any Government-owned (or leased) equipment or supplies or use of Government space to the Contractor, other than those specifically identified in the business agreement and authorized by the contracting officer.
	If applicable, ensure Government Furnished Property is made available in a timely manner.
	Request the contracting officer authorize Government furnished property and, when requested by the contracting officer, provide disposition advice on Government-furnished property or contractor-acquired property.
Managing contractor employee access and security through established application process for cards, badges or credentials (when security requirements are specified in the contract).	Serves as a federal sponsor for contractor, by assisting with the agency Security process, to include handling, as appropriate, the Contractor Suitability worksheet for contractor requiring a DHSPIVcard, notification of results of the contractor access submissions, ensuring the return of the DHSPIV card, and communication of contractor and employee's changes in status.

Exhibit 2: Non-Delegable Functions and Exclusions.

(See HSAM 3042.270-2(ii), COR Appointment letter)

Suggested characteristics of contracting officer non-delegable functions. Component procedures may include variations substantially the same as the following:
Contracting officers may not delegate to the COR the following authorities or activities:
To make or give the appearance of being able to make commitments, modifications, or other actions which would commit the Government to a change in price, performance, quality, quantity or the delivery schedule.
To provide guidance to the contractor, either orally or in writing, which might be interpreted as a change in the scope or terms of the contract.
To change or modify any of the terms and conditions, or statement of work of a contract, business agreements, or transaction.
To approve items of cost not specifically authorized or increase dollar limits for the contract or business agreement.
To take any action with respect to termination, except to notify the contracting officer that action maybe necessary and to assist with the process as requested.
To engage in conduct prejudicial to the Government.
To sign contracts or contract modifications.
To solicit proposals.
To direct a contractor (oral or written) to begin work prior to contract award date or notice to proceed, or to stop work.
To participate in negotiations with a contractor outside the presence of a contracting officer.
To render a decision on any dispute or question of fact under the Disputes clause of the contract.
To interfere with the contractor's management by supervising contractor employees or otherwise directing their work efforts.
To specify limitations and include the admonition that the COR may be personally liable for unauthorized commitments.
To make any agreement with the Contractor relating to the expenditure of Government funds.

Exhibit 3:
Federal Acquisition Regulation (FAR), DHS Directives and Government Ethics, and Training
(See HSAM 3042.270-2(b)(iii), COR Appointment letter)

Required	Suggested examples
FAR, Ethics and DHS Directives	Adherence to applicable requirements for ethics (annual training), procurement integrity, no conflict of interest, and proper standards of conduct, including the identification of regulations (e.g., FAR Part 3, Improper Business Practices and Personal Conflicts of Interests), statutes, or agency directives governing these topics (e.g., 5 CFR Part 2635 Standards of Conduct and Management Directive 0480.1, Ethics/ Standards of Conduct (or any successor directive)).
	Submit disclosure reports, such as the OGE 450, Confidential Financial Disclosure Report, via the appropriate confidential report system.
	Use of authority for appointment letter is "Pursuant to the Federal Acquisition Regulation (FAR), the Homeland Security Acquisition Regulation (HSAR), you are appointed the COR or Alternate COR."
Training	Adherence to DHS Annual Skills Currency to maintain COR certification and any special instructions for obtaining training, to include ethics or other relevant training.
Precautionary Measures	Provide in accordance with Component procedures a disclaimer: "*The responsibilities and exclusions set forth in this document are not intended to be all encompassing. As a COR, you are required to consult with the contracting officer when there are questions on your authority. You are not authorized to re-delegate your authority. Violation or misuse of your authority could result in abuse of DHS policy and resources at a minimum or monetary loss to the COR or firm involved, disciplinary actions, and other measures, depending on the extent of the offense.*"

COR Supervisor Notification Letter

Agency/Component letterhead

Subj: Supervisors Notification of Appointment of (Insert name of prospective COR) as Contracting Officer's Representative (COR)

From: *(Insert name of Contracting Officer)*

To: *(Insert name of COR's supervisor)*

This is to advise you that *(Insert name of COR*) is being appointed as COR under Contract No. *(Insert number)* with the *(Insert the name(s) of the contractor(s))* for *(Briefly describe the supplies, services, or construction being purchased).* As the COR, Mr. / Ms. *(Insert name of COR)'s* primary duties include monitoring the contractor's performance to ensure that all of the technical requirements under the contract are met by the delivery date or within the period of performance, and at the price or within the estimated cost stipulated in the contract. Another very important duty is to provide, on a timely basis, input into the contractor performance evaluation for this contract, as specified in Homeland Security Acquisition Manual (HSAM) Subchapter 3042.15. The full delegation to Mr. / Ms. *(Insert name of COR)* is in the COR appointment letter, attached.

DHS leadership considers the role of COR to be vital to the effectiveness of acquisition programs and ultimately, to the ability of DHS to successfully accomplish its mission. Recognizing this, HSAM 3042.270-1 requires that each COR's annual performance appraisal include an evaluation of how well the COR's functions are performed. Please ensure that the COR's annual performance appraisal specifically addresses the five core COR Responsibilities descried in HSAM 3042.270-2(b)(i).

As the COR's supervisor, you are requested to ensure that the COR has adequate resources, including time, to perform the COR's duties. You are also requested to monitor the COR's performance with regard to their responsibilities under Contract (insert contract number) and to ensure that the COR's annual performance appraisal accurately reflects the extent to which the COR met those responsibilities.

Please feel free to contract me if you have any questions regarding this letter.

_____
Contracting Officer

Attachment:
COR Appointment letter to (*Insert name of COR*)

Copy to:
(*Insert name of COR*)

PARTNERSHIP AGREEMENT
Between
The U.S. Small Business Administration
And
The U.S. Department of Homeland Security

Sections 7(j) and 8(a) of the Small Business Act (the Act) (15 U.S.C. §§ 636 (j) and 637(a)) authorize the U. S. Small Business Administration (SBA) to establish a business development program, which is known as the 8(a) Business Development (BD) Program. The 8(a) BD program promotes the development of small business concerns owned and controlled by socially and economically disadvantaged individuals so that such concerns can compete in the mainstream of the American economy. (15 U.S.C. § 631(f)(2)). Small business development is accomplished by providing various forms of management, technical, financial and procurement assistance. Additionally, pursuant to section 8(a) of the Act, SBA is authorized to enter into all types of contracts with other Federal agencies and to subcontract the performance of these contracts to qualified Participants in the 8(a) BD Program.

I. PURPOSE

The purpose of this Partnership Agreement (PA) between SBA and the U.S. Department of Homeland Security is to delegate SBA's contract execution functions to the U.S. Department of Homeland Security per the requirements of 13 C.F.R. § 124.501. The PA sets forth the delegation of authority and establishes the basic procedures for expediting the award of 8(a) contract requirements. This PA replaces all terms and conditions of any previously executed Memorandum of Understanding (MOU) or PA with the U.S. Department of Homeland Security or subordinate agencies on the issue of expediting the award of requirements pursuant to Section 8(a) of the Act.

Failure to sign this PA will require the U.S. Department of Homeland Security to utilize the prescribed processes to contract with the SBA as stated in the Federal Acquisition Regulation (FAR) Subpart 19.8.

II. OBJECTIVES

A. To delineate the responsibilities as they relate to the oversight, monitoring and compliance with procurement laws and regulations governing 8(a) contracts between SBA and the U.S. Department of Homeland Security;
B. To establish the procedures for offer and acceptance between SBA and the U.S. Department of Homeland Security;
C. To establish that SBA will respond to an offering letter within five (5) working days if the contract is valued at more than the simplified acquisition threshold and within two days of receipt if the contract is valued at or below the simplified acquisition thresholds. See 13 C.F.R. § 124.503(a)(3);

D. To emphasize that although SBA delegates the authority to sign contracts on its behalf, it remains the prime contractor on all 8(a) contracts awards, modifications, options and purchase orders, and must receive copies of all contracts and subsequent modifications;
E. To eliminate SBA's review of contracts and purchase orders executed under the authority of this PA; and
F. To establish uniform policies and procedures regarding application of contracts and purchase orders to the 8(a) contracting

III. SCOPE

The PA provides for the award of contracts, modifications, options and purchase orders under the provisions of Section 8(a) of the Act as implemented by the FAR Subpart 19.8 and SBA's 8(a) BD program regulations found at 13 C.F.R. §124, (Subpart A).

The PA encompasses all competitive and non-competitive acquisitions of requirements offered by the U.S. Department of Homeland Security contracting offices and accepted by SBA for the 8(a) BD program.

The PA applies to all SBA offices and all the U.S. Department of Homeland Security contracting offices, as defined in FAR § 2.101 and deemed appropriate by the head of the agency, as defined in FAR § 2.101, for the U.S. Department of Homeland Security.

IV. RESPONSIBILITIES

A. SBA's Responsibilities.

SBA

1. delegates to the U.S. Department of Homeland Security for re-delegation to all warranted the U.S. Department of Homeland Security contracting officers, its authority under section 8(a)(1)(A) of the Act to enter into 8(a) prime contracts, and its authority under section 8(a)(1)(B) of the Act to arrange for the performance of such procurement contracts by eligible 8(a) Participants. In accordance with 13 C.F.R. §124.501(a), SBA delegates its 8(a) contract execution function. SBA remains the prime contractor on all 8(a) contracts and the 8(a) Participant remains the SBA's subcontractor;

2. will implement its responsibilities under this PA through uniform procedures for use by all SBA offices;

3. will provide training for the U.S. Department of Homeland Security contracting officers and small business specialists, on the SBA's 8(a) BD program and various aspects of the PA

4. shall review the U.S. Department of Homeland Security' offering letters, issue acceptance or rejection letters, and make eligibility determinations for award;

(a) Sole Source Procurements.

i. SBA will issue either an acceptance letter or rejection letter within five (5) working days of receipt of an offering letter, unless the District Office requests and the procuring activity agrees to an extension of time.
ii. Absent a notification of rejection within five (5) working days of receipt of the offer, acceptance may be assumed on the sixth (6th) working day unless an extension has been requested and accepted.
iii. Acceptance shall include a size verification and determination with respect to all elements of eligibility (i.e., determinations of adverse impact, North American Industry Classification System (NAICS) code appropriateness and program eligibility). See citations found at 13 C.F.R. §124.504(c);

(b) Competitive Acquisitions.

i. SBA will issue an acceptance letter or rejection letter within five (5) working days of receipt of an offering letter, unless the District Office requests and the procuring activity agree to an extension of time.
ii. Where SBA does not respond with a notification of rejection within five (5) working days of receipt of the offer, the procuring activity may seek SBA's acceptance through the Associate Administrator, Office of Business Development (AA/BD). If the procuring activity does not receive a reply from the AA/BD within five (5) working days of the AA/BD's receipt of the offer, the procuring activity may assume acceptance on the sixth (6th) working day.
iii. Within five (5) working days after a request from the contracting officer, SBA shall issue an eligibility determination for the apparent successful offer, as prescribed by SBA's regulations at 13 C.F.R. §124.507(b).

(c) Acquisitions Valued at or Below the Simplified Acquisition Threshold.

i. No offering or acceptance letter is required for requirements valued at or below the simplified acquisition threshold, in accordance with the delegation of authority.
ii. SBA will review the program eligibility of the 8(a) Participant within two (2) working days after a request from the contracting officer.
iii. Absent a notification that the selected 8(a) Participant is ineligible for the award within two (2) working days, the procuring agency may assume the 8(a) Participant is eligible and proceed with award, as prescribed by SBA's regulations at 13 C.F.R. 124.503(a)(4)(i).
iv. The procuring agency must notify SBA of these 8(a) awards under this authority. See 13 C.F.R. § 124.503(a)(4)(ii).

5. shall review and approve all proposed joint venture agreements involving 8(a) Participants before 8(a) contract award;

6. may provide 8(a) Participants with contract negotiation assistance or direct them to appropriate resources where they can obtain technical assistance in contract negotiations when requested by either the 8(a) Participant or The U.S. Department of Homeland Security contracting officer;

7. shall retain its appeal authority in accordance with FAR § 19.810;

8. shall retain the right to perform on-site agency reviews to ensure contract compliance;

9. may identify a requirement for an 8(a) Participant for a possible award. SBA will submit capability statements to the appropriate procuring activities for the purpose of matching requirements consistent with the 8(a) Participant's capability;

10. shall retain the responsibility for ensuring that 8(a) Participants comply with all applicable provisions relating to continuing eligibility for 8(a) BD Program participation per 13 C.F.R. § 124.112.

11. shall select an appropriate 8(a) Participant when The U.S. Department of Homeland Security submits an open offering letter for a sole source requirement; and

B. **Responsibilities of the U.S. Department of Homeland Security**

The U.S. Department of Homeland Security

1. shall receive and retain SBA's delegation of contract execution and review functions by reporting all 8(a) contract awards, modifications, options and purchase orders to SBA until such time as the agreement expires or is terminated;

2. shall adhere to all provisions of contractual assistance identified in 13 C.F.R..§§ 124.501 through 124.520; as well as the applicable provisions of FAR Subpart 19.8;

3. shall determine which requirements are suitable for offering to the 8(a) BD program in accordance with FAR, Subpart 19.8, and, where appropriate, identify in conjunction with the appropriate SBA servicing office, 8(a) Participants capable of performing these requirements;

4. shall retain responsibility for compliance with the limitations on subcontracting requirement and all applicable provisions of FAR § 52.219-14 and any the U.S. Department of Homeland Security regulations;

5. shall include provisions in all contract awards, modifications, options and purchase orders awarded or issued under the 8(a) BD Program that require Program Participants to comply with the Subcontracting Limitations, and shall conduct and document an assessment at the time of contract award of the Participant's ability to comply with the Subcontracting Limitations.

6. shall provide a copy of any signed contract, as defined in FAR § 2.101, including modifications, options and purchase orders executed under this PA to the SBA servicing district office within 15 working days of the date of award;

7. shall inform contracting officers and other warranted officials and their equivalents who are awarding 8(a) contracts of their responsibilities concerning this agreement;

8. shall ensure that contracting officers and other warranted officials and their equivalents obtain training on their obligations under this PA and the subcontracting limitations of FAR § 52.219-14 and 13 C.F.R. §§ 124.510 and 125.6.

9. shall include monitoring and oversight provisions for all contract awards, modifications, options and purchase orders to ensure that all contracts comply with the performance requirements (Limitations on Subcontracting) of FAR § 52.219-14 and 13 C.F.R. §124.510 and § 125.6;

10. shall request an eligibility determination from SBA's district office responsible for servicing the selected 8(a) Participant when an 8(a) Participant

has been identified on all acquisitions valued at or below the simplified acquisition threshold prior to issuance of the purchase order;

11. shall submit the offering letter for sole source requirements exceeding the simplified acquisition threshold to SBA's district office responsible for servicing the selected 8(a) Participant, when an 8(a) Participant has been identified. See FAR 19.804-2;

12. shall submit an open offering letter for sole source requirements to the SBA district office that services the geographical area where The U.S. Department of Homeland Security' contracting activity is located, when The U.S. Department of Homeland Security has not identified a specific 8(a) Participant for a requirement. See FAR 19.804-2;

13. shall submit the offering letter for competitive 8(a) requirements to the SBA district office that services the geographical area where the U.S. Department of Homeland Security' contracting activity is located. Exceptions: the offering letters for construction work will be sent to the SBA district office located in the geographical area where the work will be performed, or, in the case of construction contracts to be performed overseas, the offering letter shall be submitted to SBA's Headquarters. See FAR 19.804-2;

14. shall request an eligibility determination prior to final award in all 8(a) competitive acquisitions;

15. shall ensure that all contracts awarded pursuant to this PA contain provisions that require:

    (a) SBA's approval of novation agreements submitted by the 8(a) Participant; and

    (b) advance notice to SBA (as the prime contractor) prior to issuance of a final notice terminating the contract in whole or in part;

16. shall ensure that all NAICS codes for all 8(a) contracts are applied in accordance with FAR § 19.102;

17. shall add language to every contract stating that, even though SBA may not be identified in section A of the contract, it is still the prime contractor on the contract;

18. shall provide all proposed 8(a) joint ventures to SBA for approval before 8(a) contract(s) award; and

19. cannot use contracts that have not been offered to and accepted by SBA into the 8(a) BD program as credit toward the U.S. Department of Homeland Security' 8(a) negotiated goals.

20. A Contracting Officer shall notify SBA in writing of their request to release a requirement from the 8(a) BD Program. The written notification should be sent to the cognizant SBA district office serving the geographical area in which the procuring agency is located. The Contracting Officer shall include the reason(s) for the request, the procurement history of the requirement, the incumbent name, the assigned NAICS Code and the Statement of Work. The final decision rests with the AA/BD.

21. shall provide SBA with access to all non-classified information in contract files so that SBA can perform on-site agency reviews to ensure that procuring agencies are complying with the terms and conditions of this agreement.

V. CONTRACT EXECUTION

The U.S. Department of Homeland Security's contracting officer may make direct award of a contract to the 8(a) Participant, but only after the requirement has been offered to and accepted by SBA. Acquisitions valued at or below the simplified acquisition threshold, as defined in FAR § 2.101, and per 13 C.F.R. §124.503(a)(4)(ii), require no offer or acceptance letter; however, (a) a program eligibility determination of the selected 8(a) Participant from SBA is required; and (b) the procuring activity must notify SBA of all 8(a) awards made under this authority, per 13 C.F.R. §124.503(a)(4)(ii). Contract execution shall be on the appropriate form as specified in FAR or by the U.S. Department of Homeland Security regulation. The "Issued by" block shall identify the awarding The U.S. Department of Homeland Security's office. The SBA district office for the 8(a) Participant shall be identified in the award document. The 8(a) Participant's name and address shall be listed as the contractor. The U.S. Department of Homeland Security's contracting activities are responsible for issuing procurement instrument identification numbers. SBA will not issue subcontract numbers.

VI. TERM

This PA will take effect as soon as SBA and the U.S. Department of Homeland Security has signed it. It will remain in effect until September 30, 2012.

VII. AMENDMENT

This PA may be amended, in writing, at any time by mutual agreement of the parties.

VIII. TERMINATION

Either SBA or the U.S. Department of Homeland Security may terminate this PA upon 30 calendar days advance written notice to the other party.

IX. CONDITIONS

A. Contracts that have not been offered to and accepted by SBA into the 8(a) BD program cannot be used for the U.S. Department of Homeland Security' s 8(a) negotiated goals.

B. SBA reserves the right to suspend or rescind the authority of this PA with the U.S. Department of Homeland Security for failure to submit copies to SBA of award and modification documents within 15 working days of award, failure to adequately monitor 8(a) contract compliance requirements, or if The U.S. Department of Homeland Security otherwise fails to follow the terms of this PA.

C. SBA has the right to conduct periodic compliance on-site agency reviews of the files of all contracts awarded pursuant to Section 8(a) authority and this Agreement. The delegated authority may be rescinded when on-site agency review findings indicate a pattern failure to comply with 8(a) program regulations that govern award and administration of such contracts.

X. ADMINISTRATION

For The U.S. Department of Homeland Security:

Richard K. Gunderson
Acting Chief Procurement Officer
7th & D Street, SW
Room 3110
245 Murray Lane, SW, Bldg. 410
Washington, DC 20528
202-447-5300
202-447-5310

For SBA:

Sheila D. Thomas
Director, Office of Program Review
Office of Business Development
409 3rd Street, SW, 8th Floor
Washington, DC 20416
(202) 205-6613
(202) 481-5567 (fax)

XI. ACCEPTANCE

Authorized by and on behalf of their respective agencies, the undersigned parties hereby accept the terms and conditions of this agreement.

For:

The U.S. Department of Homeland Security

_____

Richard K. Gunderson Date
Acting Chief Procurement Officer
Office of the Chief Procurement Officer

For:

SBA

_____	_____
Date	Date
Joseph G. Jordan	Mina A. Wales (A)
Associate Administrator for	Director
Government Contracting and	Office of Strategic Alliances
Business Development	

HSAM Appendix Y

DETERMINATION AND FINDINGS
Authority to Award an Award Fee Contract
FINDINGS

1. The *(identify the Component and the contracting office)* of the Department of Homeland Security proposes to contract for *(describe the supplies and/or services being procured and identify the program/project, if applicable).*

2. *Estimated value of the contract action:* $_____
3. The work to be performed is such that it is neither feasible nor effective to devise predetermined objective incentive targets applicable to cost, schedule, and technical performance because _____*(insert rationale)*_____;
4. The likelihood of meeting acquisition objectives will be enhanced by using a contract that effectively motivates the contractor toward exceptional performance and provides the Government with the flexibility to evaluate both actual performance and the conditions under which it was achieved because _____*(insert rationale)*_____;
5. Any additional administrative effort and cost required to monitor and evaluate performance are justified by the expected benefits as documented by a risk and cost benefit analysis for the reasons addressed in the following/attached cost/benefit analysis. _____*(insert or attach the cost/benefit analysis)*_____.

   [The cost benefit analysis must address at least each of the following:
   - The estimated **additional cost under the contract** for the contractor to participate in the award fee (AF) process, including additional reporting and attendance of meetings.
   - The estimated **additional salary, travel and other costs to the government** of performing the award fee functions;
   - The estimated **additional contract award fee amounts** necessary under the award fee plan to be paid for excellent contractor performance.
   - The **additional value or benefit** desired from the contractor as a result of motivation from the award fee process (such as reduced contract price or added value of contract deliverables [you do not have to dollarize added value of improved deliverables]).
   - An **assessment** showing the desired benefits outweigh the anticipated costs.]

6. The Award Fee Plan is attached.
7. All of the limitations of FAR 16.301-3 will be complied with (applies only if this is a cost type contract):
   (a) A cost-reimbursement contract may be used only when—
   (1) The contractor's accounting system is adequate for determining costs applicable to the contract; and
   (2) Appropriate Government surveillance during performance will provide reasonable assurance that efficient methods and effective cost controls are used.
   (b) The use of cost-reimbursement contracts is prohibited for the acquisition of commercial items.

DETERMINATION

On the basis of the above findings, I hereby determine that the use of an award fee arrangement for this contract action is in the best interests of the government.

(Signature of the Head of the Contracting Activity (HCA))

MEMORANDUM OF AGREEMENT (MOA) BETWEEN THE UNITED STATES DEPARTMENT OF HOMELAND SECURITY (DHS) AND THE NAVAL INVENTORY CONTROL POINT (NAVICP) PRICE FIGHTERS$ FOR REIMBURSEMENT FOR SOURCE SELECTION, ENGINEERING ANALYSIS, AND COST AND PRICING EVALUATION SERVICES PROVIDED IN SUPPORT OF DHS CONTRACTS

1. PURPOSE

This Memorandum of Agreement (MOA) sets forth policies and procedures by which the Price Fighters$ shall be reimbursed for source selection, engineering analysis, and cost and pricing evaluation services in support of the Department of Homeland Security (DHS). This MOA contains terms that will applied in future agreements or orders between the parties, including a general description and schedule of available services and methods for pricing, issuing, and delivering services during its period.

2. AUTHORITY

DHS executes this agreement pursuant to its Management Directive 0450.1, Memoranda of Understanding (MOU) and Memoranda of Agreement (MOA). Price Fighters$ executes this agreement pursuant to Department of Defense Instruction (0001) 4000.19, Interservice and Intragovernmental Support. Agreements or orders incorporating the policies and procedures of this MOA will be issued pursuant to the Economy Act, 31 U.S.C. 1535 and 1536, as implemented by the Federal Acquisition Regulation (FAR) Subpart 17.5, FAR Part 42, and Executive Branch policy.

3. SCOPE

(a) This overarching MOA establishes a communication and support network between the listed parties for Price Fighters$ to provide source selection support, value analysis, technical assistance, engineering analysis, and cost and pricing support services. By mutual agreement, Price Fighters$ will provide source selection, engineering analysis, and cost and pricing evaluation services as described in Appendix 2 to this MOA, on existing and future DHS requirements.

(b) DHS obligates no funds under this MOA, except as incorporated into IMs as described in subsection 4(a) below.

(c) The Points of Contact (POCs) for DHS and for Price Fighters$ are identified in Appendix 1.

4. PROCEDURAL ARRANGEMENTS

(a) The support provided by Price Fighters$$ will be specifically identified in separate Inter Agency Agreements (IAAs) or Military Interdepartmental Purchase Requests (MIPRs) between DHS Components and Price Fighters$ that will incorporate in full text or by reference the terms of this MOA. These IAAs/MIPRs will contain statements of work for specific services to be provided, and any necessary additional terms (consistent with this MOA), which together will form the basis of an agreement between Price Fighters$ and that DHS Component under the Economy Act. Those IAAs/MIPRs, and records created to support them, will contain the documentary evidence and additional terms sufficient for the DHS Component to obligate funds under 31 U.S.C. §§ 1501 and 1535-1536 and fully satisfy the requirements of Federal Acquisition Regulation (FAR) Subpart 17.5, FAR Part 42, and Executive Branch policy.

(b) Additional general procedures and terms may be included in MOAs between Price Fighters$ and individual DHS Components for recurring use in agreements and orders placed by those Components under the Economy Act, FAR Subpart 17.5, DoD I 4000.19, and the DoD Financial Management Regulation.

(c) Unless directed otherwise in accordance with applicable law. Price Fighters$ will promptly advise the DHS of any audit, surveyor investigation by the Government Accountability Office or a departmental or agency inspector general, that will include in its scope a DHS contract or program for which Price Fighters$ is performing services under an IAAIMIPR that relies upon this MOA.

(d) Price Fighters$ shall not allow the use of private sector contractors to conduct evaluations or analyses of any aspect of a proposal submitted to DHS for an acquisition, except in accordance with 41 U.S.C. § 419 (as implemented in FAR 37.203(d) and 37.204), or a successor statute and regulation. Under no circumstance will Price Fighters$ allow any contract support staff it employs to take an action set forth in FAR 7.503(a)(12) (or successor regulation) with respect to a DHS prime contract.

(e) The policy and procedures of this MOA may be used in establishing IAAs/MIPRs between Price Fighters$ and DHS Components for the services described herein, and for the pricing, issuing, and delivering of those services, where the IAAIMIPR relies for its source of authority on a law other than the Economy Act, where to do so would comply with such law.

(f) In support of each IAA or MIPR, the OHS Component will forward to Price Fighters$ a copy of a Determination & Findings (D&F) under FAR 17.503. An authorized Price Fighters$ or NAVICP official shall execute for each MIPR an Acceptance of MIPR 00-448-2. (Where an IAA is used, an authorized Price Fighters$ or NAVICP official shall execute an acceptance equivalent to an Acceptance of MIPR DD-448-2.) When issuing each order the DHS Component shall provide a certification on or attached to the Economy Act order that the funds cited on the order are properly chargeable for the purposes cited in the order.

5. BASIS FOR REIMBURSEMENT

(a) Price Fighters$ will provide source selection support, engineering analysis, and cost and pricing services for the DHS on an actual cost reimbursement basis, which is estimated at the prevailing Price Fighter$ hourly rates for the functional specialties engaged in the project. The applicable rate will be applied to the actual direct hours worked. For FY09, the rate for estimating purposes is $79.25 per hour. This MOA is subject to annual modification, as necessary, to provide for adjustment of the rate for estimating.

(b) Direct hours worked shall include any combination of regular hours, credit hours, compensatory time worked, and overtime. Overtime hours will only be charged with the agreement of the DHS component.

(c) The Price Fighter$ reimbursable rates include overhead costs which provide recoupment for supervisory, clerical, normal training, leave.

(d) Travel will be reimbursed at cost, based on current rates established by applicable Government travel regulations.

6. BILLING DESCRIPTION

(a) The Defense Finance and Accounting Services (DFAS) is the accounting entity for the Department of Defense (DoD). The DFAS Columbus Center, which provides accounting services to Price Fighters$, shall request and receive payment for services performed by Price Fighters$ from the DHS finance office listed on each order. Invoices shall contain at least the information required in Appendix 2.

(b) Unless otherwise agreed to with the DHS component, reimbursement requests will be submitted electronically to each DHS Component finance office on at least a biweekly basis via the Enterprise Resource Planning (ERP) and Intragovernmental Payment and Collection (IPAC) systems after actual expenditures are approved. The reimbursement requests will include a summary of hours and dollars charged and any additional charges for actual costs related to on-site support travel. DFAS Columbus will identify all costs to each DHS Component finance office by using the Standard Form (SF) 1080 (Voucher for Transfers Between Appropriations) *andlor* Intragovernmental Payment and Collection (IPAC) with as many as three line items identified in the supporting documentation:

(1) Cost of Price Fighter$ (hours x current rate);
(2) Cost of Price Fighter$ on-site support travel (actual costs); and
(3) Cost of Price Fighters$ Contractor Support Services (actual costs), if applicable.

7. USE OF CONTRACTOR SUPPORT

In each case where Price Fighter$ plan to utilize contractor support to perform work for DHS, Price Fighter$ shall notify the contracting officer in writing. The notification shall include (a) a description of the contractor support being provided, and (b) a statement that -

(i) contractor support is required due to a lack of sufficient readily available PriceFighters personnel and

(ii) PriceFighters are not aware of other Department of Navy readily available personnel for such support.

The DHS contracting officer will review the Price Fighter$ notification of intention to use contractor support and notify the Price Fighter$, in writing, that the contracting officer (a) approves the use of the contractor support in accordance with FAR 37.203(d), FAR 37.204, and FAR 37.205, or (b) disapproves the use of the contractor support.

When the contracting officer disapproves the use of contractor support, the PriceFighter$ shall notify the contracting officer, in writing, that (a) PriceFighter$ will perform the work without using contractor support, or (b) PriceFighter$ declines to perform the work.

8. SECURITY CLASSIFICATION REQUIREMENTS AND TRADE SECRETS PROTECTION

Information resulting from this agreement may contain competitive, sensitive, proprietary, or other non-public information not intended for disclosure outside of official Government channels. In those cases where Price Fighter$ will use contractor support, DHS non-disclosure agreements (see Appendix 3) will be signed by all contract support personnel and returned to the DHS POC as directed.

In response to any DHS request for Price Fighter$ assistance, the Price Fighter$ shall provide the DHS requestor with a list of the support contractors that may be participating in the Price Fighter$ work. Price Fighter$ is responsible for assuring that an Appendix 3 non-disclosure agreement is signed by each support contractor employee participating.

When Price Fighter$ assistance is requested prior to issuance of the RFP, the DHS requestor is responsible for ensuring that the solicitation includes the name and address of any Price Fighter$ support contractors that may be supporting the evaluation. When the DHS requestor decides to utilize the services of Price Fighter$, after issuance of the RFP but before contract award , the DHS requestor will assure that appropriate notification is provided to all potential offerors through an amendment to the RFP or other suitable method of communication. When assistance is requested after contract award, the DHS requestor will work with the awardee and Price Fighter$ regarding use of support contractors.

9. MODIFICATIONS, INTERPRETATIONS AND TERMINATION

(a) Changes and/or modifications to this agreement may be made at any time upon mutual written consent of the undersigned. Modifications shall cite the agreement number indicated at the beginning of this document and shall set forth the exact nature of the change andlor modification.

(b) No oral statement by any person, and no written statement by anyone other than the undersigned, or an authorized representative as designated in writing, shall be interpreted as modifying or otherwise affecting the terms of this agreement.

(c) Either party may terminate this agreement with 180 days advance written notice. If terminated by DHS with less than 180 days notice, Price Fighters$ may bill DHS the actual costs for reimbursement under specific 1M or MIPR, of unavoidable termination expenses incurred during the 180-day period following notification.

10. POINTS OF CONTACT

General Points of Contact (POCs) for both parties are listed under Appendix 1.

11. EFFECTIVE DATE

This MOA is effective upon Signature by both parties.

APPROVAL/DATE:

/Signed/	March 30, 2010	/Signed/
Department of Homeland Security Richard K. Gunderson Acting Chief Procurement Officer Director,		NAVICP Price Fighter$ Willard B. Jones Price Fighter$ Department

APPENDICES

1 DHS and Price Fighters$ Points of Contact
2 Price Fighters$ services available under this MOA
3 DHS Non-Disclosure Agreement

APPENDIX 1

DHS AND COMPONENT & NAVICP PRICE FIGHTER$ POINTS OF CONTACT

DHS Headquarters, Office of Chief Procurement Officer

Mr. William Randolph
Department of Homeland Security
Office of the Chief Procurement Officer
245 Murray Lane, SW, Building 41
Washington D.C. 20528
(202) 447-5252 Procurement.Support@dhs.gov

DHS Headquarters, Office of Procurement Operations

Ms. Cynthia Brice Department of Homeland Security
Office of Procurement Operations
245 Murray Lane, SW, Building 41
Washington, D.C. 20528
(202) 447-0065 Cynthia.Brice@dhs.gov

Alternate Point of Contact

Mr. Ralph Eagleton Department of Homeland Security
Office of Procurement Operations
245 Murray Lane, SW, Building 41
Washington, D.C. 20528
(202) 447-5805 Ralph .Eagleton@dhs.gov

Coast Guard

Ms, Jeraline Artis
U.S. Coast Guard Headquarters
Acquisition Policy and Oversight (G-APO) Policy and E-Business
2100 2nd Street,
SW Washington, DC 20593
Phone: (202) 475-3718 FAX: (202)372-3949
Jeraline.Artis@uscg.dhs.gov

Secret Service

Communications Center (PRO)
ATTN: Ms. Kelly Curtin
245 Murray Lane, SW
Building T-5
Washington, DC 20223
(202) 406-6809 Kelly.Curtin@usss.dhs.gov

U. S. Customs and Border Protection

Mr. Don Carter
U.S. Customs and Border Protection
Procurement Directorate,
Procurement Programs Division
1300 Pennsylvania Ave NW, Suite 1530
Washington, DC 20229
Phone: (202) 344-3296 Fax: (202) 344-1812
Email: Donald.J.Carter@dhs.gov

Federal Law Enforcement Training Center

Ms. Robin Fowler
Deputy Chief, Procurement Division
FLETC PRO, Building 93
1131 Chapel Crossing Road
Glynco, GA 31524 Phone: (912) 267-2243
Email: Robin.Fowler@dhs.gov

Immigration and Customs Enforcement

Mr. Thomas Sides
Immigration and Customs Enforcement
425 Eye Street, NW, Room 2208
Washington, DC 20536
Phone: (202) 514-4441 Fax: (202) 305-3038
Email: thomas.sides@dhs.gov

Transportation Security Administration (TSA)

Ms. Karen Ann Smith
TSA Headquarters, West Tower, Room W2-208S (TSA-25)
700 South 12th Street
Arlington, VA 22202
Phone: (571) 227-2115 Fax: (571) 227-3219
Email: karen.smith@dhs.gov

Federal Emergency Management Agency

Mr. Gregory Thevenin
Federal Emergency Management Agency
Patriot Plaza Room 203
500 C Street, SW
Washington, DC 20472
Phone: (202) 646-1914, Fax: (202) 646-2928
Email: gregory.thevenin@dhs.gov

Office of Selective Acquisitions (OSA) Division

Mrs. Carol Ulrich
Department of Homeland Security
Room 3127B-05 301
7th Street, SW
Washington, DC 20407
Phone: (202) 447-5763, Fax: (202) 447-5990
Email: carol.ulrich@dhs.gov

NAVICP PRICE FIGHTER$ POINTS OF CONTACT

Price Fighters Code 078

Director, Willard B. Jones
1837 Morris Street
P.O. Box 15129
Norfolk, VA 23511-0129
(PH) 757-443-2468 (FAX) 757-443-5018
Email: willard.jones@navv.mil

Paul S. Andrews
Director, Air Systems Support Division, Code 0781
(PH) 757-443-2005 (FAX) 757-443-5018
Email: paul.andrews@navy.mil

Whalon Herbert
Director, Repairables & Spares Support Division, Code 0782
(PH) 757-443-2012 (FAX) 757-443-5018
Email: whalon.herbert@navy.mil

Jon D. Davenport
Director, Surface Systems Support Division, Code 0783
(PH) 757-443-2455 (FAX) 757-443-5018
Email: jon.davenport@navy.mil

Price Fighter$ Financial

Attn: Sheryl Merciel
NAVICP Price Fighters
1837 Morris Street
P.O. Box 15129
Norfolk, VA 23511-0129
(PH) 757-443-5011 (FAX) 757-443-5018
Email: sheryl.merciel@navy.mil

Attn: Cheryl Brindle
Commander, Naval Inventory Control Point
5450 Carlisle Pike
PO Box 2020
Mechanicsburg, PA 17055-0788
UIC 00104
(PH) 717-605-8101
(FAX) 717-605-3032
Email: cheryl.brindle@naVY.mil

APPENDIX 2

SERVICES PROVIDED BY PRICE FIGHTERS$

Services include the following:

I. Business Case Analyses

-Decision support tool comparing alternatives

-Tailored to DoD, DoN, Military Services or Agency guidance

-Determine the potential savings/loss of PBL support

-Other Business Case Analysis support as agreed by DHS components and Price Fighters$.

II. Cost Proposal Evaluation

-Review the Request for Proposal (RFP)

-Review of contractor's proposal

-Determine the manufacturing processes and time to perform these processes

-Determine the prices for the necessary material

-Evaluate the production run quantities and specifications

-Determine the test and inspection requirements

-Evaluate the adequacy of technical data and determine the cost of tooling for new suppliers

-Calculate the unit price by using the DCM approved or recommended labor and overhead rates

-Provide an unbiased technical report of all findings to the requester

-Provide assistance in determining if the proposal provides fair and reasonable pricing

-Provide assistance in formulating a negotiation position

-Negotiation support

-Pre and Post Business Clearance support

-Other Cost Proposal Evaluation support as agreed by DHS components and Price Fighters$.

III. Engineering Change Proposal Evaluation

-Coordinate production and retrofit Engineering Change Proposals (ECP)

-Conduct in-plant fact-find at the contractor's facilities

-Provide analysis for technical and cost proposals

-Assist in contractor negotiations

-Assist in grouping ECPs into logical and economic incorporation

-Review ECPs for impact to Integrated Logistics Support

-Review ECP for Field Service Installation activity

-Other Engineering Change Proposal Evaluation support as agreed by DHS components and Price Fighters$.

IV. Integrated Logistics Support (ILS)

-Evaluate Contractor's cost proposal

-Evaluate integrated electronic technical manuals (IETMs) support development proposals

-Evaluate support equipment development proposals

-Assist in formulating the Government's negotiation position

-Participate in fact-find meetings at the contractor's facilities

-Test proposal for fair and reasonableness

-Conduct meetings/technical reviews/program meeting with NAVAIR and Contractors

-Evaluate field service technical support proposals

-Evaluate tooling/fixtures proposals -Evaluate packaging and handling

-Evaluate Organizational, Intermediate, and Depot level facilities proposals

-Other Integrated Logistics Support effort as agreed by DHS components and Price Fighters$.

V. Litigation Support

-Contract Claim Analysis

-Discovery Document Reviews

-Critical Path Method Recreations

-Drawing Reviews

-Scheduling / Delay Analysis

-Expert Witness Reports

-Entitlement Analysis

-Quantum Analysis

-Other litigation Support as agreed by DHS components and Price Fighters$.

VI. Price Challenge Hotline

-Provide pricing validation

-Address suspected overpricing

-Address identical/duplicate items in the system

-Address alternate sources -Forward case for Value Analysis

-Assist in determining the requester award amount, if warranted

-Other Price Challenge Hotline effort as agreed by DHS components and Price Fighters$.

VII. Repair Contract Proposal Evaluation

-Review the Request for Proposal (RFP)

-Review of Contractor's proposal

-Determine the manufacturing processes and time to perform these processes

-Determine the prices for the necessary material

-Evaluate the production run quantities and specifications

-Determine the test and inspection requirements

-Calculate the unit price by using the DCM approved or recommended labor and overhead rates

-Develop a repair contract position/recommendation

-Provide an unbiased technical report of all findings to the requester

-Provide negotiation assistance

-Other Repair Contract Proposal Evaluation as agreed by DHS components and Price Fighters$.

VIII. Repair Should Cost Analysis

-Review the part or technical data package

-Determine the manufacturing processes and time to perform these processes

-Determine price of the necessary material

-Evaluate the production run quantities and specifications

-Determine the test and inspection requirements

-Evaluate the adequacy of technical data and determine the cost of tooling for new suppliers

-Calculate the unit price by using the DCM approved or recommended labor and overhead rates

-Other Repair Should Cost Analysis as agreed by DHS components and Price Fighters$.

IX. Should Cost Analysis

-Review the part or technical data package

-Determine the manufacturing processes and time to perform

-Determine price of the necessary material

-Evaluate the production run quantities and specifications

-Determine the test and inspection requirements

-Evaluate the adequacy of technical data and determine the cost of tooling for new suppliers

-Calculate the unit price by using the DCAA approved or recommended labor and overhead rates
-Other Should Cost Analysis as agreed by DHS components and Price Fighters$.

X. Technical Data Package Review

The technical data package review consists of two distinct operations:

--*In Process Review:*

-Inventory and file all documents received

-Examine each piece for legibility of all notes and other instructions

-Check the resolution of each drawing and illustration for clarity and quality

--*Physical Configuration Audit:*

-Verify that each item in each drawing is accurately represented

-Verify test programming and standard alteration instructions for clarity

-Make fact-find visit to manufacturer's facilities

APPENDIX 3

DHS NON-DISCLOSURE AGREEMENT

Department of Homeland Security Non-Disclosure Agreement

DEPARTMENT OF HOMELAND SECURITY

DEBRIEFING GUIDE

OFFICE OF THE CHIEF PROCUREMENT OFFICER
December 2011
Version 2.0

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I. Introduction

This debriefing guide is part of DHS's vender communication strategy. It is important to communicate appropriate information at all stages in the acquisition process and especially valuable to communicate with unsuccessful offerors at the end of the award process. This debriefing guide summarizes the regulations and DHS policy regarding debriefings and explanations of the basis for award to encourage communication with unsuccessful offerors in order to:

- Reduce misunderstandings and protests.
- Improve future proposals.
- Obtain information that improves DHS's acquisition process.
- Strengthen and enhance the government's relationship with industry.

Debriefing is the process that affords offerors to a competitive solicitation with an explanation of the evaluation process, an assessment of their proposal in relation to the evaluation criteria, a general understanding of the basis of the award decision, and the rationale for exclusion from the competition. Debriefings consist of two types, preaward (offerors excluded from the competitive range) and postaward. The Federal Acquisition Regulation (FAR) requires, upon written request from the Offeror, debriefings of unsuccessful offerors in accordance with FAR 15.505, 15.506 and 16.505. Postaward debriefings requested under FAR 15.506 and 16.505 provide unsuccessful offerors with an analysis of the offeror's proposal and the basis for the selection decision. FAR 15.505 allows offerors excluded from the competitive range to request either a preaward debriefing with immediate but limited assessment of the proposal's deficiencies or a postaward debriefing that expands the information to include the basis of the selection decision. Only one debriefing is required – so, if the contracting officer provides a preaward debriefing, there is no need to later provide a postaward debriefing.

The FAR also includes explanations of the basis of the award to communicate with unsuccessful offerors outside of the debriefing process described in FAR Part 15. For example, FAR 8.405-2 requires, upon a written request from the Offeror, an explanation of the award decision for some General Service Administration (GSA) Federal Supply Schedule (FSS) orders where selection was based on factors other than price alone.

A debriefing or explanation of the basis of the award is an important task at the end of the award process for all types of procurements and therefore, the contracting officer should consider communicating the appropriate information to unsuccessful offerors even if a debriefing or explanation of the award is not required. An optional debriefing or explanation of the basis of the award is important because each proposal or quotation requires considerable resources to prepare. The government's explanation of why the offeror was unsuccessful may be the only value the offeror receives for its participation. It is also in the government's interest to inform the offeror of the proposal's shortcomings, so the same mistakes are not repeated in future procurements. These actions reduce the cost of the competitive process and encourage offerors to view the government as a trustworthy customer.

II. Scope

This guide is intended to be used by all DHS contracting officers as a resource for all competitive procurements. Table 1 below lists the contracting processes that include debriefings or explanations of the award:

Table 1 Types of Communication with Offerors

FAR Citation	Contracting Process	Debriefing or Explanation	Notice Requirement	Time Limit to Request Information	Required or Optional
8.405-2	FSS Orders requiring statements of work	Explanation	No requirement to notify bidder of opportunity for an explanation	No time limit to request an explanation	Required if requested on an award that was based on factors other than price alone. Optional in other cases.
8.4	Other FSS Orders and BPAs against the GSA schedule	Explanation	No requirement to notify bidder of opportunity for an explanation	No time limit to request an explanation	Optional
13.106-3(d)	Simplified Acquisitions	Explanation	No requirement to notify bidder of opportunity for an explanation	No time limit to request an explanation	Required- if requested on an award that was based on factors other than price alone. Optional in other cases.
15.5	Source Selection	Debriefing	Required notice to offerors within 3 days of award.	Must be received in writing by contracting officer within 3 days of notification of contract award.	Required- if a timely request is received. Optional if the request is untimely.
16.505	Orders under multiple award IDIQ contract under $5m	Explanation	No requirement to notify bidder of opportunity for an explanation	No time limit to request an explanation.	Optional
16.505	Order under multiple award IDIQ contract equal to or greater than $5m	Debriefing	Required notice to offerors within 3 days of award.	Must be received in writing by contracting officer within 3 days of notification of contract award.	Required- if a timely request is received. Optional in other cases.
35.008	Award of R&D contracts	Debriefing	Should notify offerors within 3 days of award	Should be received in writing by contracting officer within 3 days of notification of contract award.	Optional
36	Construction Contracts that use FAR Part 15 or FAR Part 16 processes for award	Debriefing	Required notice to offerors within 3 days of notification	Must be received in writing by contracting officer within 3 days of notification of contract award.	Required- if a timely request is received where the request is required within a certain number of days. Optional in other cases.

III. Sources

FAR 8.405-2 Ordering procedures for services requiring a statement of work
FAR 13.106-3 Award and documentation
FAR 15.505 Preaward debriefing of offerors
FAR 15.506 Postaward debriefing of offerors
FAR 16.505 Ordering
FAR 35.008 Evaluation for award
Department of Agriculture, USDA, Guidelines: Debriefing Offerors, February 4, 2003
Department of the Army Guidelines for Conducting Debriefings, July 19, 2006
Department of Homeland Security, A practical Guide to Source Selection
Federal Acquisition Institute (FAI) Sample: Debriefing, October 30, 2003
National Aeronautical Space Administration (NASA) Procurement Debriefing Guide, March 9, 2010
Post-Award Debriefing Guide by Robert Knauer

IV. Purpose

A debriefing or explanation of the basis of the award:

- Instills confidence that the offeror was treated fairly.
- Assures the offeror that its proposal was evaluated in accordance with the solicitation and applicable laws and regulations.
- Reduces misunderstandings and protests.
- Gives the offeror an opportunity to provide assessment regarding the selection process.
- Enables a contractor to improve his proposal responses for future acquisitions. (This, in turn, would create a more competitive market ensuring the government would have stronger competitors from which to choose).

A debriefing or explanation of the basis of the award is **not**:

- A page-by-page analysis of the offeror's proposal.
- A comprehensive point-by-point comparison of the unsuccessful offeror’s and the successful offeror’s proposals.
- A debate or defense of the government's award decision.

V. Debriefings and Explanations of the Basis of the Award Comparison

Debriefings and explanations of the basis of the award are appropriate mechanisms to communicate with unsuccessful offerors. The timing and information provided to offerors differs based on the type of procurement. In general, debriefings are associated with FAR Part 15 source selections; while explanations of the basis of the award occur at the end of a simplified acquisition or GSA schedule order placement. A debriefing includes detailed information on the debriefed offeror’s proposal and the selection process. In contrast, an explanation of the basis of the award is short, includes the basis for the selection, and provides the offeror with general areas to improve future proposals. There is no discussion of strengths, weaknesses, deficiencies,

ratings or ranking in an explanation of the basis of the award. Similar to debriefings, explanations of the award cannot disclose information that is prohibited in debriefings under FAR 15.505(f) or FAR 15.506(e). The other consistent requirement in debriefings and explanations of the basis of the award is the solicitation of an assessment of the acquisition process from the offeror. The offeror's suggestions should be evaluated and if appropriate, used to improve the DHS acquisition process. Attachment A to the Guide provides a short list of helpful tips for a debriefing and an explanation of the basis of the award.

VI. Preaward and Postaward Debriefings

Debriefings consist of two types, preaward (offers excluded from the competitive range) and postaward. Separate regulations have been established for governance of each type. There are no separate rules for debriefing best value awards. Evaluation criteria have been spelled out in the solicitation, and offerors have been notified of the place cost/price plays in the overall decision for award. A well-documented decision memorandum will indicate the cost/technical tradeoffs that made in the award decision. Proper preparation for an effective debriefing can often deter a protest by demonstrating that the government conducted a thorough, fair evaluation and made a sound decision according to the established solicitation evaluation methodology.

Preaward Debriefings

Offers excluded from the competition before award may request a debriefing before award in accordance with FAR 15.505. The offeror may request a preaward debriefing by submitting a written request for debriefing to the contracting officer within 3 days after receipt of the notice of exclusion from the competition. (Count the days as calendar days, and include weekends and legal holidays. Do not count the day the offeror received the notice. Start with the next day. For example, the offeror receives the notice of award at 3 p.m. on Tuesday. That means the contracting officer must receive a request for a debriefing by close of business on Friday). It is a "required debriefing" only if the requester submits in writing the request to the contracting officer within three days after receipt of the notice of exclusion from the competitive range or within three days after receipt of the notice of award. Law and regulations require the contracting officer to "make every effort" to provide timely requested preaward debriefings "as soon as practical." Contracting officers are provided latitude in delaying the debriefing if providing the debriefing is not in the government's best interest.

The offer may elect to have the debriefing deferred until after award. If the debriefing is delayed until after award, it shall include all information normally provided in a postaward debriefing. Debriefings delayed until after award extend the time available to file a subsequent protest.

Postaward Debriefings

Any offeror in the competitive range, including the awardee, has a right to a timely postaward debriefing, provided the offeror submits a timely written response. The offeror must request a postaward debriefing within 3 days of notification that award has been made. The request must be made in writing. In accordance with a properly executed request, the government shall provide a debriefing and furnish the basis for the selection decision and contract award. To the

maximum extent practicable, the debriefing should occur within 5 days after receipt of the written request. Offerors that requested a postaward debriefing in lieu of a preaward debriefing, or whose debriefing was delayed for compelling reasons beyond contract award, also should be briefed within this time period.

VII. DHS Policy

Debriefings: When using the FAR Part 15 source selection or the FAR 16 "fair opportunity" process for IDIQ orders over $5 million, the contracting officer must debrief an unsuccessful offeror if the offeror makes a written request for a debriefing. Where a debriefing is not required, the contracting officer should consider providing an optional debriefing if the benefits of an optional debrief outweigh the litigative risks. Specifically, the contracting officer should **consider** an optional debriefing when the unsuccessful offeror fails to request a debriefing in a timely manner due to a lack of understanding of FAR or DHS procedures. In addition, the contracting officer should consider debriefing the successful offeror when any of the unsuccessful offerors are debriefed. Whenever the contracting officer is considering an optional debriefing, the contracting officer should seek legal counsel to understand all of the potential risks before making the decision. If an optional debriefing is provided to one offeror, an optional debriefing must be offered to all other offerors in the procurement.

Explanation of the basis of the award: The FAR requires that upon request, the contracting officer must provide an explanation of the basis of the award to each participant in a simplified acquisition and certain types of GSA FSS orders. Where not required, the FAR permits the contracting officer to provide an explanation of the basis of the award, but does not mandate the communication. The contracting officer, in consultation with legal counsel, should balance the value of the communication with the litigation risk when deciding whether to provide an optional explanation of the award. If an optional explanation will be offered, all participants in the process must be afforded the same opportunity to receive the information.

1. Notice and Time Issues

Debriefing: Usually, debriefings are requested after a notice from the contracting officer reminding the offeror of the right to a debriefing. Attachment B includes sample wording of a contracting officer's notice to the offerors regarding the right to a debriefing. When an offeror is excluded from the competitive range, the contracting officer must include the notice of the right to a debriefing within the exclusion notification. However, a notice of contract award to an unsuccessful offeror is not required to contain a notice of the right to a debriefing. Nevertheless, the contracting officer should remind the offeror of the debriefing opportunity at the time the offeror is notified of the selection.

Scheduling a debriefing may have significant ramifications, if a protest is later filed. Under FAR 33.103(f)(3), an unsuccessful offeror is entitled to an automatic suspension of contract performance **if the protest is filed within five (5) days of the debriefing date offered to the protester (or 10 days after contract award, whichever is later**). Thus, it is important to schedule the debriefing at the earliest possible date. The contracting officer should inform the offeror of the scheduled date by written electronic means to preserve an accurate record in case a timing issue arises. If the contracting officer has selected an oral debriefing but the offeror is unable to attend on the proposed date, the contracting officer should consider a written debriefing

in order to preserve the government's rights. If the contracting officer prefers an oral debriefing, he or she should require the offeror to acknowledge in writing that it was offered an earlier date, but the offeror requested the later date instead. This procedure will protect the government's interests if the offeror subsequently files a protest.

While it is a best practice to provide an optional debriefing, the contracting officer must weigh the value of the communication against the litigative risk, in consultation with legal counsel, before providing a debriefing to an offeror who submitted an untimely request. Such requests do not invoke the statutory provision for automatic suspension of contract performance unless the protest is filed within 10 days of contract award. However, receipt of the debriefing does not preclude an offeror from later filing a protest on an issue raised in the debriefing.

Explanation of the basis of award: It is a best practice for the contracting officer to notify offerors of the right to request an explanation of the basis of award for a simplified acquisition or GSA schedule order, but there is no notice requirement. Attachment B includes sample wording for the contracting officer's notice to the offerors of the right to an explanation of the award included as part of a notification of the award. Like debriefings, explanations of award should be provided as soon as practicable after award to avoid extending the time the procurement is at risk of a protest.

2. Method and Location

The contracting officer selects the means and location for the debriefing or explanation of the award that ensures a professional presentation of the information. For actions below the simplified acquisition threshold, an email explanation of the basis of award or telephone communication may be most appropriate. If using an oral method to provide the explanation of the award, the contracting officer should document the information provided even though a debriefing memorandum is not required. In accordance with FAR 15.506(b), debriefings of successful and unsuccessful offerors may be done orally, in writing, or by any other method acceptable to the contracting officer. There is no specific requirement to hold face-to-face debriefings. A written debriefing may be provided by mail, electronically, or may be read to participants in a conference. The following is a list of the most common debriefing and award explanation methods:

Method of Debriefing	Debriefing or Explanation of the award
Written – mailed/emailed with proof of receipt or read face to face	Debriefing
Oral face-to-face	Debriefing
Written – series of exchanged letters/email attachments with proof of receipt	Debriefing and Explanation of the basis of the award
Video teleconference	Debriefing and Explanation of the basis of the award
Telephone conference	Explanation of the basis of the award
Email exchange	Explanation of the basis of the award

3. Oral Debriefing Unique Requirements

A. Location

If an oral debriefing is contemplated, the contracting officer should secure an appropriately equipped conference room well before the award. If classified material will be discussed, appropriate arrangements must also be made well in advance of the debriefing. The contracting officer may choose a location other than the procurement office for the oral debriefing; even the offeror's facilities may be used. The contracting officer should consider the offeror's cost and the number of participants when selecting an oral debriefing, but the contracting officer is not required to accommodate the offeror's preferences.

B. Government Personnel

The contracting officer chairs the oral debriefing; however, this does not mean that the contracting officer must present all of the information. Usually the government's technical representative and contract specialist present the portions of the debriefing that address their specialized areas of the offeror's proposal.

Oral debriefings require the most coordination of all of the debriefing methods. The contracting officer should select the other government team members who will attend well in advance of the debriefing. Legal counsel may be invited to attend all oral debriefings, and counsel should attend oral debriefings whenever the offeror's counsel attends the debriefing. The selection of additional evaluation team members to participate in the debriefing is based on the complexity of the evaluation and the evaluation team dynamics. The key is to ensure that knowledgeable government personnel are present and that they demonstrate cohesiveness in their evaluation of the offeror's proposal in accordance with the solicitation. However, the contracting officer must weigh the value and availability of each participant. Discord and disconnects during the debriefing may cause the offeror to have little confidence in the award. Keeping in mind team dynamics, the contracting officer should consider the following evaluation team members to participate in an oral debriefing:

- Technical Experts
- Cost Price Analyst
- Contract Specialist
- Program Manager
- Representative from the user community or requirements office.

The identical team is not required to debrief each unsuccessful offeror, but it is preferred.

C. Offeror Personnel

If the contracting officer chooses an oral debriefing, the contracting officer should ask the offeror to identify all individuals by name, company, and role who will attend the debriefing. The prime offeror may invite company employees (including the technical proposal leader, the program manager for the effort, the contract administrator responsible for the proposal) as well as

subcontractors, consultants and attorneys. Normally, there is no limitation on the personnel the offeror may bring to a debriefing. However, if space is constrained, the contracting officer can limit the number of attendees rather than pursue a written or telephone debriefing or delay the debriefing process.

D. Preparation

A successful oral debriefing requires preparation. Lack of preparation is the surest way to lose the offeror's confidence and provoke a potential protest. The extent of preparation necessary varies considerably with the complexity and dollar value of the procurement. Preparation begins by compiling source selection documents and arranging for the facilities. The contracting officer should also decide if a stenographer or note taker is required for the debriefing. If so, appropriate arrangements should be made well in advance of the debriefing. The contracting officer should prepare a detailed agenda and outline of information to be presented, gather all of the debriefing materials, draft an opening and closing statement, and stage one or more dry runs to ensure each government participant is comfortable with the information being presented. As part of the dry run, the contracting officer should assign the roles and responsibilities for each government participant. The team should practice answering sample questions to ensure that all information presented is appropriate for the debriefing. Government personnel should be instructed to make their presentations in a positive manner; argumentative or defensive conduct should be avoided. Inconsistency between the debriefing and the source selection documents can reduce the offeror's confidence that DHS acted appropriately in making the award. Thus, the debriefing team must speak with one voice that supports the award decision.

VIII. Oral and Written Debriefing Format

1. Required information

Contracting officers must provide at least the following information for a preaward and postaward oral or written debriefing:

Preaward Debriefing Minimum Contents:

- Agency's evaluation of significant elements of offeror's proposal.
- Summary of the rationale for exclusion from the competition, and
- Reasonable responses to relevant questions regarding the source selection process.

Postaward Debriefing Minimum Contents:

- Offeror's evaluated significant weaknesses or deficiencies.
- Overall evaluated price/cost and technical ratings of the debriefed offeror and awardee.
- The number of offers received.
- When ranking was developed, the overall ranking of the debriefed offeror.
- A summary of the rationale for award (identifies the significant advantages of the awardee's proposal in general terms without revealing confidential information, and may address cost/technical tradeoffs).

- For acquisition of commercial items, the make and model of item to be delivered, and
- Reasonable responses to relevant questions about whether source selection procedures were followed.

However, within DHS, the contracting officer is encouraged to provide all of the following information in order to maximize the value of the debriefing for the offeror and the government.

2. Introduction and Objective

The debriefing should begin with a brief introduction. The contracting officer should advise the offeror of the objective of the debriefing. Attachment C provides a sample opening statement for an oral debriefing that can be adapted as an introduction in a written debriefing.

3. Ground Rules

The contracting officer should inform the offeror of the ground rules for the debriefing, any time constraints, and if it is an oral debriefing, the debriefing agenda. Some suggested ground rules include:

- State the intent to share information with the debriefed offeror; however, the debriefing is not a forum for a debate.
- State that the government will not divulge information from the winning proposal.
- Establish that the government will not respond to hypothetical questions, and
- Establish the appropriate time and manner for raising questions.

4. Source Selection Process

The contracting officer should remind the offeror that the evaluation was based solely on the proposal with the applicable past performance information gathered in accordance with the solicitation. The contracting officer should briefly explain the evaluation process and, if it is a postaward debriefing, the selection process. In a written debriefing, the contracting officer should not identify the evaluators. However, it is permissible to introduce evaluators present during an oral debriefing. In either case, the contracting officer should convey to the offeror that qualified personnel evaluated the proposals in accordance with the solicitation and the evaluation plan.

5. Evaluation Factors

The contracting officer should restate the information from Section M of the solicitation and provide the evaluation factors, sub factors, and weights or relative importance of the evaluation factors. The contracting officer is also encouraged to share the ratings and definitions used in the evaluation if the definitions differ from a standard American dictionary.

6. Overall Rating and Ranking of the Proposal (POSTAWARD ONLY)

Provide the overall rating for the debriefed offeror's proposal and the winning proposal only. In addition, if the proposals were ranked during source selection, provide the debriefed offeror's rank.

7. Specific Evaluation Results

In addition to the overall rating of the proposal, provide the debriefed offeror's ratings for each factor or rated sub factor. Also provide a short discussion of the strengths, weaknesses, and deficiency found. This is the most important part of the debriefing – be clear, accurate and consistent. Link the strengths and weaknesses to specific evaluation factors from the solicitation. Subcontractors are not entitled to the offeror's past performance information, so they may need to be excused for the past performance portion of an oral debriefing. Remind the offeror of the contract type, discuss the cost or price analysis performed, and provide the amount and reason for any adjustment from the proposed amount.

8. Rationale for Award Decision (POSTAWARD ONLY)

The contracting officer should summarize the rationale for the award decision contained in the Source Selection Decision Memorandum without revealing confidential proprietary information contained in the awardee's proposal.

9. Award Information (POSTAWARD ONLY)

The contracting officer should provide a summary of publicly available information on the award, which is generally the information provided in the award announcement or displayed in the public view of FedBizOpps. If the awardee's proposal includes a commercial item that is an end item under the contract, the make and model of the item number must be disclosed.

10. Prohibited Information in Debriefings

In accordance with FAR 15.505(f), **DO NOT PROVIDE ANY OF THE FOLLOWING during preaward debriefings:**

- The number of offerors.
- The identity of offerors and the identity of offerors in the competitive range.
- The content of other offerors' proposals.
- The ranking of other offerors' proposals.
- The evaluation of other offerors' proposals.
- The other offerors' trade secrets.
- Privileged or confidential manufacturing processes and techniques.
- Commercial and financial information that is privileged or confidential, including cost breakdowns, profits, indirect cost/rates, and similar information; and names of individuals providing referenced information about an offeror's past performance.
- The names of individuals providing reference information about the offeror's past performance.
- Point-by-point comparisons with other offers; and
- Information not releasable under the Freedom of Information Act (FOIA).

In accordance with FAR 15.506(e), **DO NOT PROVIDE ANY OF THE FOLLOWING during postaward debriefings:**

The debriefing shall not include point-by-point comparisons of the debriefed offeror's proposal with those of other offerors and shall not include the strengths, weaknesses, and deficiencies in competing proposals. Moreover, the debriefing shall not reveal any information prohibited from disclosure by FAR 24.202 or exempt from release under the Freedom of Information Act (5 U.S.C. 552) including:

- Trade secrets, innovative concepts, design, etc.
- Privileged or confidential manufacturing processes and techniques.
- Commercial or financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information; and
- The names of individuals providing reference information about an offeror's past performance.

11. Questions

The debriefed offeror is permitted to ask relevant questions pertaining to whether the government followed the source selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities. The contracting officer must provide reasonable responses to those questions. However, caution must be exercised not to inadvertently disclose proprietary information of other offerors or engage in debating hypothetical questions that may undermine the credibility of the selection. Debriefed offerors often display persistent curiosity about the content of their competitor's proposals. Resist these efforts. The FAR strictly limits the information that may be disclosed regarding other offeror's proposals. Normally, responses should stay within the confines of the guidance stated above. If the contracting officer is unprepared to answer an appropriate question at the debriefing or it is a written debriefing, the contracting officer should obtain the answer and promptly furnish it to the offeror. The debriefing is not considered complete until the last allowable question is answered. The debriefing is the forum for answering reasonable questions; offerors should not be allowed to submit questions after the debriefing is completed. Otherwise, the time for the filing of a protest is extended.

12. Assessment

Prior to concluding the debriefing, the contracting officer should solicit the debriefed offeror's comments regarding the solicitation and the procurement process. This is an opportunity for DHS to obtain valuable input regarding the offeror's perspective and use the information to make process improvements.

13. Conclusion

The contracting officer should thank the offeror for participation in the procurement and ensure that the offeror understands that the debriefing is officially concluded unless outstanding questions remain. If follow-up is necessary to answer questions, the contracting officer should ensure that the offeror understands that the debriefing is concluded when the answers are provided.

IX. Oral or Written Explanation of the Basis of Award Format

Attachment F contains a sample oral and written explanation of award format.

1. Introduction

The contracting officer should open thanking the firm for participating in the competition and describe the information that will be provided in the explanation of the basis of award. The contracting officer should make clear that it is not a debriefing and will not provide detailed information on the evaluation of the quote.

2. Required information

Contracting officers must provide at least the following information for an explanation of the award:

- The number of offerors solicited.
- Number of offers received.
- The name and address of each offeror receiving an award.
- The items and quantities, and any stated unit prices of each award. (Only the total contract price need be furnished if the number of items, quantities, and any stated unit prices of each award shall be made publically available, upon request).
- In general terms, the reason(s) the offeror's proposal was not accepted (e.g., a summary of the unsuccessful offeror's evaluated strengths and weaknesses), unless the price information readily reveals the reason.
- How the awardee was selected (i.e., lowest price, best delivery schedule, best technical approach).

Although not required, if quotes are rated during the evaluation, include the unsuccessful offeror's rating.

3. Source Documentation

The explanation of the basis for award should be derived from the following documents:

- The solicitation.
- The offeror's quotation or proposal.
- The selection documents.
- The award announcement or public information on the award.

4. Evaluation and Selection Process

The contracting officer should remind the offeror of the award process and identify in general how the awardee was selected (i.e., lowest price, best delivery schedule, best technical approach). (Note: If the award is based on price alone, an explanation of the basis of the award is not necessary). The contracting officer should also identify why the offeror was not selected (i.e., the price was higher than the awardee's price; the delivery schedule did not meet the government's needs). Ask if the firm has any questions about the selection process and answer reasonable questions. If the questions seek information on details of the evaluation, or areas that cannot be

discussed with the offeror, reiterate the opening remarks on the limits of an explanation of the basis of award.

5. Proposal Assessment

The contracting officer may provide suggestions on how the offeror could improve future quotations or proposals. (Example: Your quote would have been more competitive if you had followed all of the instructions in the request for quote). Your quote did not address (state the area) specifically required in the RFQ).

6. Process Assessment

The contracting officer should ask the offeror for an assessment on the process and solicit suggestions on how DHS could improve the process.

7. Conclusion

The contracting officer should close the explanation of the award by thanking the offeror for participating in the process and encourage the offeror's participation in future competitions.

8. Prohibited Information in Explanations of Award

DO NOT PROVIDE ANY OF THE FOLLOWING during an explanation of an award:

- Discussion of strengths, weaknesses, deficiencies, ratings or rankings of other offers.
- Any other offer submitted for the procurement.
- Any information prohibited from disclosure.

X. Documentation of the Debriefing or Explanation of the Basis of the Award

By statute and regulation, the contracting officer must include an official summary of each debriefing and explanation of the basis of award in the contract file to preserve a complete record of the procurement process. If a written debriefing or explanation of the basis of award is selected, a copy of the document should be included in the contract file. For an oral debriefing, a good debriefing memorandum is essential especially if the procurement is re-opened or re-solicited as a result of a protest. A sample debriefing memorandum is included in Attachment D. The debriefing memorandum must be tailored if it is used for an explanation of the basis of the award. Both a debriefing memorandum and an explanation of the basis of the award memorandum should include at a minimum:

- A list of all attendees.
- A summary of the information disclosed during the debriefing or explanation of the basis of the award. If charts were used at the debriefing, they may be attached to the memorandum as an efficient way of summarizing the disclosed information.
- The substance of all questions and answers discussed at the debriefing. Include answers provided after the debriefing.
- Any relevant information provided subsequent to the debriefing.

Attachment A - Tips for a Debriefing or Explanation of the Basis of Award

The top 10 tips to make a debriefing successful:

1. Keep some evidence of when an offeror receives notice of being excluded from the competitive range or notice of award. A “delivery” and “read” notice from an email works well.

2. Use the source selection documents and evaluation reports to form the basis for creating the oral or written debriefing.

3. For oral debriefings, request that the potential government debriefing team refrain from scheduling leave immediately after the anticipated award.

4. If a timely written request is received for a required debriefing, prepare to provide the debriefing immediately, but no later than 5 days from receipt of request. Carefully review the calendar for reducing the suspension of performance opportunity to coincide with the 10 days from award period. Confirm in writing the date when the government offered to make the debriefing.

5. For oral debriefings, obtain a list of who will be attending on behalf of the offeror and elicit written specific questions they wish to be addressed at the debriefing.

6. If discussions were held, except for those weaknesses identified as a result of changes in the Final Proposal Revision, each weakness discussed during the debriefing should have already been discussed with the offeror.

7. Tie responses to questions to areas evaluated during source selection.

8. Someone not involved in the debriefing should be assigned to take notes during the oral debriefing. These notes, as well as any written debriefing materials, are useful attachments to the debriefing memo which constitutes the official record of the debriefing.

9. For oral debriefings, instruct the debriefing team to be polite, professional, confident, and to avoid arguments, but not to be apologetic.

10. Actively listen to the offeror’s suggestions for improving DHS’s procurement process, take notes, and help incorporate any good ideas the offeror suggests into future procurements.

The top 10 tips to make an explanation of the basis of award successful:

1. Keep some evidence of when an offeror was reminded of the opportunity to obtain an explanation of the award and when the offeror requested the explanation of the award. A "delivery" and "read" notice from an email works well.

2. Use the solicitation and evaluation information for the basis of the explanation.

3. For oral explanations, keep a record of who received the explanation.

4. Keep the explanation short and to the point.

5. Avoid using acronyms, jargon or federal procurement specific terms. Clarify or define any terms that could have a different meaning outside of the federal procurement process.

6. Do not discuss specific strengths or weaknesses in the proposal.

7. If possible, have legal counsel review the explanation before it is provided.

8. For oral explanations, be polite, professional, confident, and avoid arguments. Do not apologize for the award decision.

9. Actively listen to the offeror's suggestions for improving DHS's procurement process, take notes, and help incorporate any good ideas the offeror suggests for future procurements.

10. Thank the offeror for participating and encourage participation in future competitions.

Other Useful Tips for a Debriefing

- Preparation is critical to conducting a thorough and informed debriefing. An ill prepared team will cast doubt on the agency's process and decision which could lead to a protest. Stand by your award decision.

- Handle requests for copies of the contract on a case-by-case basis. Prior to the debriefing, the contract should be reviewed by the contracting officer in concert with the Attorney/Counsel (for the agency), Program Manager and Freedom of Information Act (FOIA) division to determine what is releasable without a FOIA request. If, during this review, the contracting officer discovers an error, the first task is then to determine whether the error materially affects the award decision. This must be accomplished prior to the scheduled debriefing since a material error that is prejudicial to an offeror should result in the agency canceling the debriefing and taking corrective action.

- It is permissible to provide the debriefing material prior to the debriefing; however, in order to avoid an unsuccessful offeror becoming overly defensive, the preferred approach is to provide such material during the debriefing.

- Conduct a "dry run" prior to the actual debriefing. Have participants practice their part of the debriefing. Develop a set of questions that offerors may ask at the debriefing. It is often useful to review questions asked during the discussion phase (if held) of the competition. Also, ask offerors to submit written questions in advance. Consult counsel for guidance as part of your preparations.

- The contracting officer may defer to others for specific portions of the debriefing but will control all exchanges. There are many different approaches that the contracting officer can take in leading the debriefing. One of the common approaches is:

  1) For the contracting officer to present the entire debriefing.
  2) For the contracting officer to start the debriefing and then turn over portions of the presentation to experts in those areas, e.g., Technical Team Leader presents the technical evaluation portion of the presentation.

- Have appropriate government technical personnel in attendance (e.g., Team Leads).

- Have relevant documents for the debriefed offeror readily available to the team (RFP, offeror's proposal, evaluation reports, past performance data, etc.)

- Offerors should be advised at the start that the government believes the presentation will address any questions they may have. The offerors should also be advised that any remaining questions they have at the end of the pertinent sections of the presentation may be asked at that time. Be open to discussion but **don't be drawn into a debate**. Questions may be answered during the debriefing; however, a government caucus may be needed to address some questions at the end of the debriefing. The government may request that the questions be written for the caucus as needed.

- If you cannot adequately answer a question at the debriefing, provide written answers as soon as possible. However, promising additional information at a later date should be avoided because the *period for protest* starts from the time new relevant information is provided.

- Allow sufficient time and take breaks, scheduled or unscheduled, whenever needed. During breaks and following the debriefing, avoid "water cooler" and "off line" chats—remember one individual chairs the debriefing.

- Have a redacted version of the Source Selection Authority (SSA's) decision memorandum and as appropriate, any briefing charts/documentation presented to the SSA, ready for release during or after the debriefing, if appropriate. Because what is relevant is the SSA award decision and whether that decision is well supported and results from a source selection conducted in a thorough, fair and sound manner consistent with the requirements and source selection methodology established in the RFP, avoid disclosing documentation that was not presented to/considered by the SSA. These dissenting viewpoints must, of course, be addressed/resolved as part of the consensus report of the evaluation team, but the mere existence of a dissenting viewpoint may encourage a protest.

- Allow the offeror an opportunity to provide feedback regarding the quality of the solicitation document, e.g., proposal instructions, the appropriateness of discussions, and the source selection process, itself.

- Do not discuss validity of requirements, validity and integrity of the evaluation process, and prohibited information. (See FAR 15.506(e)).

- Do not provide names of individuals providing reference information about an offeror's past performance. In addition, in order to prevent offeror's from contacting individuals after the debriefing and to avoid creating tension in ongoing working relationships on existing government contracts, avoid disclosing the names of individual evaluators or members of the Source Selection team.

- The debriefing slides, the offeror's request for debriefing (if any), previously submitted questions, any handouts, a list of written questions/answers, and any other relevant documents, must be included in the contract file.

Attachment B - Sample Notice of a Right to a Debriefing

A notice of the right to a debriefing is usually provided to the unsuccessful offerors when each is excluded from the competitive range or after award to another offeror. The following is a sample of this type of notice:

In accordance with FAR (15.505 for preaward notice or 15.506 for postaward notice), you are hereby reminded that you have the right to a debriefing of your unsuccessful proposal submitted in response to the solicitation for (insert name and number of solicitation). If you elect to receive a debriefing, you must email or fax a written request to (insert contracting officer's name) at (insert fax number and email address) on or before (insert date that is 3 days after offeror will receive the notice).

Your debriefing will discuss only your proposal and will provide you with the strengths, weaknesses and deficiencies of the proposal, a discussion of the total evaluated (cost or price) of your proposal as well as your rating and ranking within the competitive process. You will also be provided with a summary of the evaluation process and the rating scheme used to evaluate your proposal. You will not be provided any information on other unsuccessful proposals and will only receive appropriate publicly available information regarding the successful proposal. You may ask relevant questions regarding the source selection procedures, but not hypothetical questions, or those that would provoke debate, or require prohibited information to be disclosed in order to answer a question. A reasonable effort will be made to schedule your debriefing within five (5) days after your request is received. In order to assist with a prompt debriefing, please include the name, company, and title for each person who will attend the debriefing. Once your request is received, you will be contacted to complete the scheduling process. You are advised that if there are space limitations, not all requested attendees may be accommodated. In advance of the debriefing, please discuss with the contracting officer whether the subcontractors are permitted to attend the portion of the debriefing that discusses your past performance information.

If you have any questions regarding the above, please contact (insert name) at (insert phone number).

Notice of an explanation for the basis of award usually conducted after award of simplified acquisitions, GSA orders or other task or delivery orders under $5 million

In accordance with DHS policy, you may request an explanation of the basis for the award for (insert name and number of solicitation). The explanation will discuss the procurement process and how your bid was evaluated. It will provide an assessment of your offer or quotation, but will not provide the specific strengths, weaknesses or deficiencies noted. The explanation will not include any other offer submitted for this procurement or provide any information prohibited from disclosure. The explanation is offered in order to assist you in competing for other government procurements and assure you of DHS's commitment to transparency in its contracting process.

If you elect to receive a brief explanation of the award, please contact (insert contracting officer's name) at (phone number and email address) on or before (insert date that is 3 days after offeror will receive the notice). The information will be provided via (telephone call/email/face to face discussion). A reasonable effort will be made to schedule the event quickly. In order to assist with a prompt scheduling, please include the name, company, and title for each person who will participate. Once your request is received, you will be contacted to complete the scheduling process to ensure maximum participation.

If you have any questions regarding the above, please contact (insert name) at (insert phone number).

Attachment C - Sample Opening Statement for Debriefings

Welcome to your debriefing of (add the name and solicitation number of the procurement being debriefed). I want to thank you for participating in our competitive process. Our primary objective of this debriefing is to provide you with a basis for improving future proposals by informing you of the government's evaluation of the significant aspects of your proposal and discussing deficiencies and weaknesses which were observed. We will also provide you with the information required by law.

In this debriefing, we will not provide you with point-by-point comparisons of your offer to other offerors; nor will we reveal to you the relative merits or evaluation findings (i.e., strengths, weaknesses, and deficiencies) of competing proposals. In addition, we will not disclose the names of individuals providing reference information about your company's past performance. **(Note: Use the following information only when debriefing offerors who are within the competitive range). I wish to emphasize that your proposal was determined technically acceptable. However, after careful consideration by the evaluation teams and the Source Selection Authority, your proposal did not represent the most advantageous offer for the government.**

As I have noted, we cannot disclose the relative merits of competitors; however, we will provide you with the following information:

- Our evaluation of the significant weaknesses and deficiencies of your proposal. We also will provide you with the strengths and technical merits of your proposal;
- (Postaward Debriefings only) The overall evaluated cost and technical rating of the successful offeror.
- (Postaward Debriefings only) The overall ranking of the offer if ranking was part of the source selection;
- (Postaward Debriefings only) A summary of the rationale for the award;
- (Postaward Debriefings only) The make and model of the end item to be delivered under contract as offered by the successful offeror if applicable (if an end product was provided to the government); and
- Responses to relevant questions to clarify how we followed the source selection procedures set forth in the solicitation, evaluation plan and applicable regulations.

I can assure you that the evaluation criteria set forth in the solicitation were followed and that no additional criteria were used. Furthermore, all source selection procedures as required by the Federal Acquisition Regulation (FAR), Homeland Security Acquisition Regulation (HSAR), and Homeland Security Acquisition Manual (HSAM) were strictly implemented.

Attachment D - Sample Debriefing Memorandum

MEMORANDUM
FROM: _____, Contracting Officer
TO: File

Subj: (Title and Number of procurement) Debriefing Memo

1. On (insert date), a (preaward/postaward) debriefing was conducted for (insert name of company), a (successful or unsuccessful offeror). The debriefing was conducted (insert number of days) after the award of the contract. A copy of the sign-in sheet listing everyone who attended the debriefing is attached to this memo.
2. The debriefing was performed (describe the method – face to face/ telephone/email/writing or oral) and held at (if face to face, state the location).
3. Attached is the presentation used in the debriefing or a copy of the written debriefing. The debriefing included a discussion of the proposal's strengths, weaknesses, and deficiencies as well as its overall rating and rank for the debriefed offeror if appropriate. The proposal's (total cost or total price) of _____ was discussed and the offeror was advised of any cost/price adjustments made as part of the debriefed offeror's proposal evaluation.
4. The rationale for award was provided (orally or in writing) and is attached to this memo.
5. The (insert company name) asked the following questions. The summary of the government's answers is listed after each question.

Question:
Answer:

Question:
Answer:

6. The (insert company name) was provided (list any hand outs or documents provided to the offeror) as part of the debriefing process.
7. The (insert company name) was advised that the debriefing was completed (at the end of the session or state the date and method of ending the debriefing if questions were answered after the briefing).

Attachment E - Sample Questions that may be used for "Dry Run" Debriefing

1. FAR 15.506(d) (l): the government's evaluation of the significant weaknesses or deficiencies in the proposal.

a) *Please identify the strengths, weaknesses, or deficiencies in our proposal for each evaluation factor and sub factor*.

NOTE: Typically this is done as part of the debriefing presentation; however, you may not disclose detailed information regarding the strengths, weaknesses and/or deficiencies in other proposals. Such a disclosure could amount to a point-by-point comparison of proposals, prohibited per FAR 15.506(e), and/or could involve disclosure of protected/privileged information. However, if a strength is evident from the awarded contract (for example, a more attractive delivery schedule) you may be able to highlight that fact—consult counsel for guidance.

b) *What were the most significant weaknesses*?

c) *Were there any solicitation requirements that we failed to address*? If so, what were they?

d) *Were any significant deficiencies identified by the government during discussions not adequately addressed in our response in the Evaluation Notice (EN)? If so, how did the evaluation of the deficiencies change during the evaluation of our final proposal revision?*

e) *Were there any specific considerations that precluded us from being selected as the awardee? If so, what were those considerations?*

f) *What was missing from our proposal?*

NOTE: Be careful how you answer--what we "desired" may not have been "required" and thus the failure to propose should not have prejudiced the offeror's proposal. Often times the government highlights "desired" features in the RFP; if that is the case, direct the offeror to the relevant section of the RFP.

g) *Please explain how past performance was evaluated. What was our rating? How was that rating applied to the source selection process?*

h) *Was experience evaluated? If so, what was our rating and how was that information used in the source selection process*?

i) *Please explain the procedure for the evaluation of risk? What risks were identified in our proposal? How did they impact the rating of our proposal*?

2. FAR 15.506(d)(2) & (3): the overall evaluated cost or price (including unit prices) and technical and past performance rating of the successful offeror(s) and of our proposal and the overall ranking for all offerors if such a rating was developed as part of the source selection.

a) *Please provide the evaluated cost/price and technical, management, and past performance ratings for our proposal and all other offerors.*

NOTE: While a debriefed offeror is only entitled to the evaluated cost/price and technical and past performance ratings for themselves and the successful offeror and an overall rating for all offerors (if one was developed), you are strongly encouraged to provide evaluated cost/price and factor (and sub factor) ratings for all offerors (Use letter designations (vice names) for *other* offerors). Providing information at this level of detail facilitates the primary purpose of the debriefing, which is to ensure the offeror that the government conducted a thorough, fair evaluation and made a sound decision according to the established source selection methodology.

b) *Please provide the overall ranking for all offerors.*

NOTE: Depends on evaluation process and type of contract. We typically don't rank all offerors; rather, we typically only select the offeror(s) that represent the best value and assign no ranking to other offeror(s). However, if a ranking was developed as part of the source selection, then it is permissible to disclose such ranking at the debriefing.

c) *In what areas was our proposal considered "overpriced"?*

d) *Were we compliant with all technical requirements?*

NOTE: You may not discuss whether the other offerors were compliant with all technical (or any other) requirements. Regarding the successful offeror, it is permissible to generally assure the debriefed offeror that the awarded contract fully complies with all the solicitation requirements but avoid detailed discussion of weaknesses/deficiencies.

e) *In the proposal risk portion of the technical/management area, what criteria did the government use to determine the final evaluation ratings?*

How was this proposal risk rating reflected in the other areas of the evaluation?

f) *Was there anything not required by the solicitation that we could have offered that might have made us more competitive for the award?*

NOTE: The answer should be: "*An answer to this question would be* ***conjecture*** *on my part. It would therefore not be appropriate for me to predict a change of the outcome based on changes in your proposal*."

g) *Were our responses adequate? If not, how could we have improved our responses? How were our responses on past performance evaluated?*

3. FAR l5.506 (d) (4): a summary of the rationale for award.

a) Please explain in detail the methodology used to determine which proposal offered the greatest overall value to the government, especially with respect to any comparisons/trade-offs made between technical factors and costs proposed.

b) Please provide a copy of the Source Selection or Summary Decision Memorandum.

4. FAR l5.506 (d) (6): reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed.

a) *Please describe the evaluation process used for this procurement.*

b) *How important was cost in the source selection decision relative to past performance and technical considerations?*

NOTE: Be careful not to conflict with Section M of the RFP. Technical evaluation processes.

c) *If the costs were "normalized," please explain how the normalization was conducted.*

d) *Was a cost realism analysis used? If so, please describe what process was used.*

e) *Did your agency prepare an independent cost estimate?*

f) *What was the basis for not selecting us?*

NOTE: Be careful not to conflict with Section M of the RFP.

g) *Did you make a cost/technical trade-off?*

NOTE: If the basis for award was best value, the answer to this question should always be YES.

h) *In order of importance, what were the most critical evaluation criteria that distinguished our proposal?*

i) *What were the most critical evaluation criteria that proved to be tiebreakers in the evaluation of proposals?*

j) *Please identify any information not contained in our proposal that was used by the evaluators in assessing our offer.*

5. QUESTIONS TO WATCH OUT FOR

a) *Who was on the Source Selection Advisory Committee?*

NOTE: In order to prevent offeror's from contacting individuals after the debriefing and to avoid creating tension in ongoing working relationships on existing government contracts, do not

disclose the names of individual evaluators or members of the Source Selection team (e.g., the TET, Source Selection Evaluation Board (SSEB), and SSAC). However, those people in attendance at the debriefing should be introduced.

b) *Did the Source Selection Authority (SSA) and the SSAC (if applicable) fully accept the recommendations of their respective staffs (SSAC, SSEB or Technical Evaluation Team (TET))? If not, why not? Did either reach any independent determinations? If so, what independent determinations were made?*

NOTE: Providing this level of insight into the Source Selection process is discouraged as the existence of a dissenting viewpoint may encourage a protest. For purposes of the debriefing, the relevant items are the SSA decision and whether that decision is well supported and results from a source selection conducted in a thorough, fair and sound manner consistent with the requirements and source selection methodology established in the RFP. One way to answer is to simply state, "*The Source Selection decision memorandum speaks for itself*."

c) Were there any common areas of weaknesses or deficiencies in the proposals in the competitive range?

NOTE: Don't forget you may not do point-by-point comparisons of proposals. In addition, providing detailed information regarding the strengths, weaknesses or deficiencies of other proposals may disclose protected/privileged information. See FAR 15.506(e).

d) *What management structure did the agency consider as optimal for performing the contract? How did our proposal rate against this standard?*

NOTE: Be careful how you answer—the government should not have any preconceived ideas regarding how to meet the RFP requirements. And, if this preconceived "optimal management strategy" was not set forth in the RFP then the offerors proposal should not have been evaluated against that standard.

e) *Please identify any and all evaluation factors, sub factors, and elements not identified in the solicitation that were used to evaluate the proposals.*

NOTE: This is a trick question! There should never be any evaluation factors, sub factors and/or elements that were not identified in the solicitation that were used to evaluate proposals. If there are, you have a problem – consult counsel.

Attachment F - Oral and Written Explanation of Award Format

1. General information

The contracting officer should open thanking the firm for participating in the competition and describe the information that will be provided in the explanation of the basis of award. The contracting officer should make clear that it is not a debriefing and will not provide detailed information on the evaluation of the quote.

2. Content

- Award information:
  - Name and address of the awardee
  - Total value of the contract or order including options
  - Total amount obligated at the time of award
  - Awardee status as a small, small disadvantaged, small woman owned, small veteran owned, small disabled veteran owned or HUBZone contractor
  - The number of quotes received
- Recap of the award process
  - Type of solicitation issued
  - Date solicitation issued
  - Date solicitation closed or last date quotes were received
  - Method used to select the awardee (Note: if award is based on price alone, an explanation of the basis of the award is not appropriate)
    - State the criteria other than price used in the selection process
    - Remind the offeror of the information in the proposal used to evaluate the criteria
- Explanation of the award
  - Give a 1 to 2 sentence conclusion as to why the awardee was selected based on the criteria.
- Information on the firm's performance in the evaluation
  - If there were glaring problems with the quote or if there are specific things the firm could do to improve the likelihood of winning future competitions, provide a brief summary of these areas:
    - Example: Your quote would have been more competitive if you had followed all of the instructions in the request for quote. Your quote did not address (state the area) specifically required in the RFQ.
- Reasonable responses to relevant questions
  - Ask if the firm has any questions about the selection process and answer reasonable questions. If the questions seek information on details of the evaluation, or areas that cannot be discussed with the offeror, reiterate the opening remarks on the limits of an explanation of the basis of award.
- Ask the firm what could be improved in the process and what they found helpful.
- Closing
  - Thank the offeror for participating, state that it is the end of the explanation and you look forward to their participation in future competitions.

TEMPLATE FOR A DEMAND FOR PAYMENT LETTER TO A DHS CONTRACTOR.

TITLE	DESCRIPTION	PAGE
INTRODUCTION		AB-1
INSTRUCTIONS		AB-1
TEMPLATE #1	Use template #1 if you determine that the debt arises from the contract and the contract requires payment of interest ONLY in the **Interest clause**, FAR 52.232-17 or 52.212-4(i)(6).	AB-2
TEMPLATE #2	**Defective Pricing Debt** with debt required by a Defective Pricing clause. Use template #2 if you determine that the contract debt is a arises from a submission of defective cost or pricing data.	AB-4
TEMPLATE #3	**Cost Accounting Standards (CAS) Debt**. Use template #3 if you determine that the contract debt is as a result of operation of a CAS clause.	AB-7
TEMPLATE #4	Contract debt arises from a clause that requires payment of **interest beginning at the date of overpayment** (vs. beginning at date of demand for payment) OTHER THAN Defective Pricing or CAS.	AB-9
TEMPLATE #5	**Other Debt, with no interest payments** required by the contract. Use template #5 only if you determine that the contract DOES NOT include a clause that requires the contractor to pay interest on debts under the contract, such as the interest clause at FAR 52.232-17 or 52.212-4(i).	AB-12

INTRODUCTION:

This HSAM Appendix provides templates for various types of demand for payment letters to be sent to a contractor who owes money to the government as a result of a debt that has arisen under a DHS contract or order. Demands for payment of a contract debt are governed by FAR 32.6.

INSTRUCTIONS:

When you prepare a demand for payment letter, you should select the template that best fits the type of debt for which you are seeking payment. The difference between the various templates is due to differences in contract clauses regarding payment of interest by the contractor for different types of debts that can occur. For example, contract clauses governing some contract debts, such as a Defective Pricing debt, require a contractor to repay any overpayments PLUS interest on the overpayment amounts beginning at the date(s) of overpayment. Some other types of debts are

governed by a contract clause that only requires payment of interest beginning 30 days after issuance of a demand for payment. Other types of debts are not governed by any contract clause that addresses payment of interest on the debt; interest payments under these debts are governed by law and DHS financial management procedures.

The five sample templates provided for your use in this HSAM Appendix give a starting place for preparation of your demand for payment letter. Each must be customized to fit your situation. You should select the template that best fits your situation and prepare your letter to match the facts of your situation and the requirements of the FAR and other governing regulations or laws.

Demand For Payment Letter - Template #1 - Contract debt with interest required ONLY by Interest clause, FAR 52.232-17 or 52.212-4(i)(6).

INSTRUCTIONS FOR USE OF TEMPLATE #1.

1. Use template #1 if you determine that the debt arises from the contract and the contract requires payment of interest ONLY in the Interest clause, FAR 52.232-17 or 52.212-4(i)(6).
2. Modify template #1 to insert appropriate amounts to describe the debt.
3. Modify Template #1 to delete paragraphs that do not apply to your situation per instructions within the template.

Company Representative's Name
Company Name
Company Address
City, State, Zip Code

Dear _____ *(company representative's name)*

This letter is to inform you that _____ *(insert company name)* is indebted to the United States Government in the amount of $XX,XXX.XX) on Contract No. XXXXXX-XX-X-XXXX and that payment in full is due not later than 30 days after the date of this notification.

Please remit a check in the amount of $_____ payable to the payment office that is identified in your contract, annotated with the contract number and accompanied by a copy of this demand for payment.

Repayment of this debt is necessary to recoup overpayment made by the Government stemming from overpricing as a result of submittal of defective certified cost or pricing data. The reduced contract price is shown in the attached contract modification. The dates and amounts of overpayments are shown below along with the interest and penalty due on each overpayment (or see attached).

This debt resulted from *(fully describe the basis of debt).*

The amount due is comprised of—

Principal Amount of Debt	$
Interest (if there are previously accrued amounts)	$

Penalty (if applicable	$
Total Debt owed	$

(If the lines of accounting against which the debt is due are readily available, the letter should include the following. See FAR 32.604(b)(2) for specific instructions. DELETE THE PARAGRAPH IF YOU CANNOT FILL OUT THE DISTRIBUTION OF THE DEBT.)

The following is a distribution of the debt by lines of accounting:

AAAAAAAAA	$
BBBBBBBBB	$
CCCCCCCCC	$

(If the lines of accounting are not readily available, instead of the above paragraph and chart, the letter should include the below statement. Also see FAR 32.604(b)(2)(iv) for specific instructions. DELETE THE PARAGRAPH IF YOU FILLED OUT THE ABOVE TABLE.)

The distribution of the debt by lines of accounting will be provided in a separate letter by _____ *(insert date by which the lines of accounting will be provided].*

Any amounts not paid within 30 days from the date of this demand for payment will bear interest. Interest shall be computed from the date of the demand for payment until repayment by the contractor. The interest rate shall be the interest rate established by the Secretary of the Treasury, as provided in Section 611 of the Contract Disputes Act of 1978 (Public Law 95-563), which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six-month period as established by the Secretary until the amount is paid. This rate is published on the Department of the Treasury's website, http://www.fms.treas.gov/prompt/index.html.

If you are financially unable to pay the full amount of the debt at the present time, you may request an installment payment agreement or deferment of collection if immediate payment is not practicable or if the amount is in dispute. Your request for installment or deferment should be made in writing and supported by certified statements of income and financial position covering the last 12 months. Requests for installments or deferment should be made to the payment office accounts receivable division.

If you have not liquidated the debt within 30 days of the date due or requested installment payments or deferment of collection, the payment office may initiate withholding of principal, interest, penalties, and administrative charges. The debt may be subject to the Department of the Treasury offset from any Federal payments otherwise due your company. The debt may be referred to the Department of the Treasury for collection, and its collection actions could include credit bureau reporting, referral to the Treasury Offset Program for administrative offsets, and referral to third-party collection agencies. In addition, the Agency may seek to collect amounts owed through internal administrative offset or by referral to the Department of Justice for legal action. You will be responsible for all fees charged in collection of the debt, including the fee assessed by Treasury for any debt referred to it for collection. When you provide a check as payment, you authorize the Agency either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction.

You may review a Privacy Act Statement required by 5 U.S.C. 552a(e)(3) stating our authority for soliciting and collecting the information from your check, and explaining the purposes and routine uses which will be made by your check information, at (http://www.fms.treas.gov/otcnet/index.html). Furnishing the check information is voluntary, but a decision to not do so may require you to make payment by some other method.

In the event the contract is assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 15), the rights of the assignee will be scrupulously respected and withholding of payments shall be consistent with those rights.

If you believe that the debt is invalid or the amount is incorrect or you have any questions, please contact the undersigned immediately at (XXX) XXX-XXXX. You have a right to a full explanation of the debt and to inspect and copy records relating to the debt. Interest will continue to accrue while the debt is in dispute.

Sincerely,

Contracting Officer

cc: Payment office identified in the contract
****

Demand For Payment Letter - Template #2

DEFECTIVE PRICING

INSTRUCTIONS FOR USE OF TEMPLATE #2.

4. Use template #2 if you determine that the contract debt arises from a submission of defective cost or pricing data.
5. Modify template #2 to insert appropriate amounts to describe the debt.
6. Modify Template #2 to delete paragraphs that do not apply to your situation per instructions within the template.

Company Representative's Name
Company Name
Company Address
City, State, Zip Code

Dear _____ *(company representative's name)*

This letter is to inform you that _____ *(insert company name)* is indebted to the United States Government in the amount of $XX,XXX.XX) on Contract No. XXXXXX-XX-X-XXXX and that payment in full is due not later than 30 days after the date of this notification.

Please remit a check in the amount of $_____ payable to the payment office that is identified in your contract, annotated with the contract number and accompanied by a copy of this demand for payment.

Repayment of this debt is necessary to recoup overpayment made by the Government stemming from overpricing as a result of submittal of defective certified cost or pricing data. The reduced contract price is shown in the attached contract modification. The dates and amounts of overpayments are shown below along with the interest and penalty due on each overpayment (or see attached).

The interest due amount below above has been computed in accordance with _____ *(Insert clause number and title here; e.g.; FAR 52.215-10, Price Reduction for Defective Certified Cost or Pricing Data.).* Based on the requirements of that clause, your obligation to pay interest began on the date(s) of overpayment. The below table shows the amount you owe as of _____*(insert date interest computation ended – should be as close as possible to the date of the demand letter.)* Interest will continue to accumulate from that date until full payment is made. The computation of the amount of interest you owe for this initial period is as follows:

ITEM	OVERPAYMENT AMOUNT	DATE OF OVERPAYMENT	INTEREST DUE THRU (INSERT DATE)	PENALTY AMOUNT

The amount due is comprised of—

Principal Amount of Debt	$
Interest (if there are previously accrued amounts)	$
Penalty (if applicable	$
Total Debt owed	$

(If the lines of accounting against which the debt is due are readily available, the letter should include the following. See FAR 32.604(b)(2) for specific instructions. DELETE THE PARAGRAPH IF YOU CANNOT FILL OUT THE DISTRIBUTION OF THE DEBT.)

The following is a distribution of the debt by lines of accounting:

AAAAAAAAA	$
BBBBBBBBB	$
CCCCCCCCC	$

(If the lines of accounting are not readily available, instead of the above paragraph and chart, the letter should include the below statement. Also see FAR 32.604(b)(2)(iv) for specific instructions. DELETE THE PARAGRAPH IF YOU FILLED OUT THE ABOVE TABLE.)

The distribution of the debt by lines of accounting will be provided in a separate letter by _____ *(insert date by which the lines of accounting will be provided]*.

If you are financially unable to pay the full amount of the debt at the present time, you may request an installment payment agreement or deferment of collection if immediate payment is not practicable or if the amount is in dispute. Your request for installment or deferment should be made in writing and supported by certified statements of income and financial position covering the last 12 months. Requests for installments or deferment should be made to the payment office accounts receivable division.

If you have not liquidated the debt within 30 days of the date due or requested installment payments or deferment of collection, the payment office may initiate withholding of principal, interest, penalties, and administrative charges. The debt may be subject to the Department of the Treasury offset from any Federal payments otherwise due your company. The debt may be referred to the Department of the Treasury for collection, and its collection actions could include credit bureau reporting, referral to the Treasury Offset Program for administrative offsets, and referral to third-party collection agencies. In addition, the Agency may seek to collect amounts owed through internal administrative offset or by referral to the Department of Justice for legal action. You will be responsible for all fees charged in collection of the debt, including the fee assessed by Treasury for any debt referred to it for collection. When you provide a check as payment, you authorize the Agency either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. You may review a Privacy Act Statement required by 5 U.S.C. 552a(e)(3) stating our authority for soliciting and collecting the information from your check, and explaining the purposes and routine uses which will be made by your check information, at (http://www.fms.treas.gov/otcnet/index.html). Furnishing the check information is voluntary, but a decision to not do so may require you to make payment by some other method.

In the event the contract is assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 15), the rights of the assignee will be scrupulously respected and withholding of payments shall be consistent with those rights.

If you believe that the debt is invalid or the amount is incorrect or you have any questions, please contact the undersigned immediately at (XXX) XXX-XXXX. You have a right to a full explanation of the debt and to inspect and copy records relating to the debt. Interest will continue to accrue while the debt is in dispute.

Sincerely,

Contracting Officer

cc: Payment office identified in the contract
****

Demand For Payment Letter - Template #3
COST ACCOUNTING STANDARDS (CAS)

INSTRUCTIONS FOR USE OF TEMPLATE #3.

1. Use template #3 if you determine that the contract debt is as a result of operation of a CAS clause.
2. Modify template #3to insert appropriate amounts to describe the debt.
3. Modify Template #3 to delete paragraphs that do not apply to your situation per instructions within the template.

Company Representative's Name
Company Name
Company Address
City, State, Zip Code

Dear _____ *(company representative's name)*

This letter is to inform you that _____ *(insert company name)* is indebted to the United States Government in the amount of $XX,XXX.XX) on Contract No. XXXXXX-XX-X-XXXX and that payment in full is due not later than 30 days after the date of this notification.

Please remit a check in the amount of $_____ payable to the payment office that is identified in your contract, annotated with the contract number and accompanied by a copy of this demand for payment.

Repayment of this debt is necessary to recoup overpayment made by the Government stemming from overpricing as a result of submittal of defective certified cost or pricing data. The reduced contract price is shown in the attached contract modification. The dates and amounts of overpayments are shown below along with the interest and penalty due on each overpayment (or see attached).

The interest due amount below above has been computed in accordance with _____ *(Insert clause number and title here; e.g.; FAR 52.230-5, Cost Accounting Standards).* Based on the requirements of that clause, your obligation to pay interest began on the date(s) of overpayment. The below table shows the amount you owe as of _____*(insert date interest computation ended – should be as close as possible to the date of the demand letter.)* Interest will continue to accumulate from that date until full payment is made. The computation of the amount of interest you owe for this initial period is as follows:

ITEM	OVERPAYMENT AMOUNT	DATE OF OVERPAYMENT	INTEREST DUE THRU (INSERT DATE)

The amount due is comprised of—

Principal Amount of Debt	$
Interest (if there are previously accrued amounts)	$
Penalty (if applicable	$
Total Debt owed	$

The following is a distribution of the debt by contract and by lines of accounting:

Contract #1

AAAAAAAAA	$
BBBBBBBBB	$
CCCCCCCCC	$

Contract #2

AAAAAAAAA	$
BBBBBBBBB	$
CCCCCCCCC	$

Contract#3, Etc.

(If the lines of accounting are not readily available, instead of the above paragraph and chart, the letter should include the below statement. Also see FAR 32.604(b)(2)(iv) for specific instructions. DELETE THE PARAGRAPH IF YOU FILLED OUT THE ABOVE TABLE.)

The distribution of the debt by lines of accounting will be provided in a separate letter by _____ *(insert date by which the lines of accounting will be provided].*

If you are financially unable to pay the full amount of the debt at the present time, you may request an installment payment agreement or deferment of collection if immediate payment is not practicable or if the amount is in dispute. Your request for installment or deferment should be made in writing and supported by certified statements of income and financial position covering the last 12 months. Requests for installments or deferment should be made to the payment office accounts receivable division.

If you have not liquidated the debt within 30 days of the date due or requested installment payments or deferment of collection, the payment office may initiate withholding of principal, interest, penalties, and administrative charges. The debt may be subject to the Department of the Treasury offset from any Federal payments otherwise due your company. The debt may be referred to the Department of the Treasury for collection, and its collection actions could include credit bureau reporting, referral to the Treasury Offset Program for administrative offsets, and referral to third-party collection agencies. In addition, the Agency may seek to collect amounts owed through internal administrative offset or by referral to the Department of Justice for legal action. You will be responsible for all fees charged in collection of the debt, including the fee assessed by Treasury for any debt referred to it for collection. When you provide a check as payment, you authorize the Agency either to use information from your check to make a one-time

electronic fund transfer from your account or to process the payment as a check transaction. You may review a Privacy Act Statement required by 5 U.S.C. 552a(e)(3) stating our authority for soliciting and collecting the information from your check, and explaining the purposes and routine uses which will be made by your check information, at (http://www.fms.treas.gov/otcnet/index.html). Furnishing the check information is voluntary, but a decision to not do so may require you to make payment by some other method.

In the event the contract is assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 15), the rights of the assignee will be scrupulously respected and withholding of payments shall be consistent with those rights.

If you believe that the debt is invalid or the amount is incorrect or you have any questions, please contact the undersigned immediately at (XXX) XXX-XXXX. You have a right to a full explanation of the debt and to inspect and copy records relating to the debt. Interest will continue to accrue while the debt is in dispute.

Sincerely,

Contracting Officer

cc: Payment office identified in the contract
****

Demand For Payment Letter - Template #4

CONTRACT CLAUSE REQUIRING INTEREST FROM DATE OF OVERPAYMENT (OTHER THAN DEFECTIVE PRICING OR CAS)

INSTRUCTIONS FOR USE OF TEMPLATE #4.

1. Use template #4 if you determine that the contract debt arises from a clause that requires payment of interest beginning at the date of overpayment (vs. beginning at date of demand for payment) OTHER THAN Defective Pricing or CAS or the Interest Clause at FAR 52.212-17 or 52.212-4(i)(6).
2. Modify template #4 to insert appropriate amounts to describe the debt.
3. Modify Template #4 to delete paragraphs that do not apply to your situation per instructions within the template.

Company Representative's Name
Company Name
Company Address
City, State, Zip Code

Dear _____ *(company representative's name)*

This letter is to inform you that _____ *(insert company name)* is indebted to the United States Government in the amount of $XX,XXX.XX) on Contract No. XXXXXX-XX-X-XXXX and that payment in full is due not later than 30 days after the date of this notification.

Please remit a check in the amount of $_____ payable to the payment office that is identified in your contract, annotated with the contract number and accompanied by a copy of this demand for payment.

Repayment of this debt is necessary to recoup overpayment made by the Government stemming from overpricing as a result of submittal of defective certified cost or pricing data. The reduced contract price is shown in the attached contract modification. The dates and amounts of overpayments are shown below along with the interest and penalty due on each overpayment (or see attached).

The interest due amount below above has been computed in accordance with _____ *(Insert clause number and title here; e.g.; FAR* 52.216-5 -- *Price Redetermination – Prospective, or 52.216-16 -- Incentive Price Revision -- Firm Target).* Based on the requirements of that clause, your obligation to pay interest began on the date(s) of overpayment. The below table shows the amount you owe as of _____*(insert date interest computation ended – should be as close as possible to the date of the demand letter.)* Interest will continue to accumulate from that date until full payment is made. The computation of the amount of interest you owe for this initial period is as follows:

ITEM	OVERPAYMENT AMOUNT	DATE OF OVERPAYMENT	INTEREST DUE THRU (INSERT DATE)

The amount due is comprised of—

Principal Amount of Debt	$
Interest (if there are previously accrued amounts)	$
Penalty (if applicable	$
Total Debt owed	$

(If the lines of accounting against which the debt is due are readily available, the letter should include the following. See FAR 32.604(b)(2) for specific instructions. DELETE THE PARAGRAPH IF YOU CANNOT FILL OUT THE DISTRIBUTION OF THE DEBT.)

The following is a distribution of the debt by lines of accounting:

AAAAAAAAA	$

BBBBBBBBB	$
CCCCCCCCC	$

(If the lines of accounting are not readily available, instead of the above paragraph and chart, the letter should include the below statement. Also see FAR 32.604(b)(2)(iv) for specific instructions. DELETE THE PARAGRAPH IF YOU FILLED OUT THE ABOVE TABLE.)

The distribution of the debt by lines of accounting will be provided in a separate letter by _____ *(insert date by which the lines of accounting will be provided].*

If you are financially unable to pay the full amount of the debt at the present time, you may request an installment payment agreement or deferment of collection if immediate payment is not practicable or if the amount is in dispute. Your request for installment or deferment should be made in writing and supported by certified statements of income and financial position covering the last 12 months. Requests for installments or deferment should be made to the payment office accounts receivable division.

If you have not liquidated the debt within 30 days of the date due or requested installment payments or deferment of collection, the payment office may initiate withholding of principal, interest, penalties, and administrative charges. The debt may be subject to the Department of the Treasury offset from any Federal payments otherwise due your company. The debt may be referred to the Department of the Treasury for collection, and its collection actions could include credit bureau reporting, referral to the Treasury Offset Program for administrative offsets, and referral to third-party collection agencies. In addition, the Agency may seek to collect amounts owed through internal administrative offset or by referral to the Department of Justice for legal action. You will be responsible for all fees charged in collection of the debt, including the fee assessed by Treasury for any debt referred to it for collection. When you provide a check as payment, you authorize the Agency either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. You may review a Privacy Act Statement required by 5 U.S.C. 552a(e)(3) stating our authority for soliciting and collecting the information from your check, and explaining the purposes and routine uses which will be made by your check information, at (http://www.fms.treas.gov/otcnet/index.html). Furnishing the check information is voluntary, but a decision to not do so may require you to make payment by some other method.

In the event the contract is assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 15), the rights of the assignee will be scrupulously respected and withholding of payments shall be consistent with those rights.

If you believe that the debt is invalid or the amount is incorrect or you have any questions, please contact the undersigned immediately at (XXX) XXX-XXXX. You have a right to a full explanation of the debt and to inspect and copy records relating to the debt. Interest will continue to accrue while the debt is in dispute.

Sincerely,

Contracting Officer

cc: Payment office identified in the contract
****

Demand For Payment Letter - Template #5

CONTRACT DOES NOT INCLUDE A CLAUSE REQUIRING INTEREST PAYMENT.

INSTRUCTIONS FOR USE OF TEMPLATE #5–

1. Use template #5 only if you determine that the contract DOES NOT include a clause that requires the contractor to pay interest on debts under the contract, such as the interest clause at FAR 52.232-17 or 52.212-4(i).
2. Modify template #5 to insert appropriate amounts to describe the debt.
3. Modify Template #5 to delete paragraphs that do not apply to your situation per instructions within the template.

Company Representative's Name
Company Name
Company Address
City, State, Zip Code

Dear _____ *(company representative's name)*

This letter is to inform you that _____ *(insert company name)* is indebted to the United States Government in the amount of $XX,XXX.XX) on Contract No. XXXXXX-XX-X-XXXX and that payment in full is due not later than 30 days after the date of this notification.

Please remit a check in the amount of $_____ payable to the payment office that is identified in your contract, annotated with the contract number and accompanied by a copy of this demand for payment.

This debt resulted from *(fully describe the basis of debt).*

The amount due is comprised of—

Principal Amount of Debt	$
Interest (if there are previously accrued amounts)	$
Penalty (if applicable	$
Total Debt owed	$

(If the lines of accounting against which the debt is due are readily available, the letter should include the following. See FAR 32.604(b)(2) for specific instructions. DELETE THE PARAGRAPH IF YOU CANNOT FILL OUT THE DISTRIBUTION OF THE DEBT.)

The following is a distribution of the debt by lines of accounting:

AAAAAAAAA	$
BBBBBBBBB	$

CCCCCCCCC	$

(If the lines of accounting are not readily available, instead of the above paragraph and chart, the letter should include the below statement. Also see FAR 32.604(b)(2)(iv) for specific instructions. DELETE THE PARAGRAPH IF YOU FILLED OUT THE ABOVE TABLE.)

The distribution of the debt by lines of accounting will be provided in a separate letter by _____ *(insert date by which the lines of accounting will be provided].*

(Make sure you have checked with your general counsel to determine if interest and penalties apply to this debt. If they do not apply, remove the below paragraph. See also Section 3.13, Non-Tax Debt Collection, of the DHS Financial Management Policy Manual, which governs interest and penalty requirements on debt collection within DHS when a contract does not include a specific interest payment requirement.)

If you have not liquidated the debt within 30 days of the date due or requested installment payments or deferment of collection, the payment office may initiate withholding of principal, interest, penalties, and administrative charges. Handling charges will be assessed to cover administrative costs incurred as a result of not receiving timely payment. Handling charges will accrue at a rate of ten dollars ($10.00) per month if payment is not received within sixty (60) days of the date of this notice. In addition to interest and handling charges, if DHS does not receive payment within ninety (90) days of the date of this notice, a six percent (6%) per annum penalty will be assessed. Charges will be computed from the date of this notice and will accrue monthly with the applicable interest and handling charges. In the case of any late payment, the amount received will be applied in this sequence: (1) to any accrued penalty and handling charges; (2) to any accrued interest; and (3) to outstanding principle.

If you are financially unable to pay the full amount of the debt at the present time, you may request an installment payment agreement or deferment of collection if immediate payment is not practicable or if the amount is in dispute. Your request for installment or deferment should be made in writing and supported by certified statements of income and financial position covering the last 12 months. Requests for installments or deferment should be made to the payment office accounts receivable division.

If you have not liquidated the debt within 30 days of the date due or requested installment payments or deferment of collection, the payment office may initiate withholding of principal, interest, penalties, and administrative charges. The debt may be subject to the Department of the Treasury offset from any Federal payments otherwise due your company. The debt may be referred to the Department of the Treasury for collection, and its collection actions could include credit bureau reporting, referral to the Treasury Offset Program for administrative offsets, and referral to third-party collection agencies. In addition, the Agency may seek to collect amounts owed through internal administrative offset or by referral to the Department of Justice for legal action. You will be responsible for all fees charged in collection of the debt, including the fee assessed by Treasury for any debt referred to it for collection. When you provide a check as payment, you authorize the Agency either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction. You may review a Privacy Act Statement required by 5 U.S.C. 552a(e)(3) stating our authority for soliciting and collecting the information from your check, and explaining the purposes and routine uses which will be made by your check information, at

(http://www.fms.treas.gov/otcnet/index.html). Furnishing the check information is voluntary, but a decision to not do so may require you to make payment by some other method.

In the event the contract is assigned under the Assignment of Claims Act of 1940 (31 U.S.C. 3727 and 41 U.S.C. 15), the rights of the assignee will be scrupulously respected and withholding of payments shall be consistent with those rights.

If you believe that the debt is invalid or the amount is incorrect or you have any questions, please contact the undersigned immediately at (XXX) XXX-XXXX. You have a right to a full explanation of the debt and to inspect and copy records relating to the debt. Interest will continue to accrue while the debt is in dispute.

Sincerely,

Contracting Officer

cc: Payment office identified in the contract