# Department of Homeland Security Acquisition Manual

**October 2009**

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

| HSAM - RECORD OF NOTICES<br>October 2009 Edition<br>CONTINUED | | |
|---|---|---|
| **HSAM NOTICE NUMBER** | **DATE OF CHANGE** | **REPLACEMENT PAGES** |
| 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. |

| HSAM - RECORD OF NOTICES<br>October 2009 Edition<br>CONTINUED | | |
|---|---|---|
| **HSAM NOTICE NUMBER** | **DATE OF CHANGE** | **REPLACEMENT PAGES** |
| 2012-08 | September, 17 2012 | Appendix H pages H-1, H-6, H-11, H-23, H-30, and H-39. |
| 2012-09 | September 24, 2012 | Pages 41-1 through 41-2. |
| 2012-10 | September 28, 2012 | Appendix I (pages I-1 through I-54). |
| 2013-01 | November 20, 2012 | Appendices TOC, pages 1-2, 1-11, 2-1, 4-11, 4-11.1, 5-3 through 5-9, 7-1 through 7-17, 32-7, 32-8, 42-1 through 42-10, Appendix D, Appendix E, Appendix H (H-1 through H-74), Appendix W (W-1 through W-10), and Appendix AC (AC-1 through AC-4). |
| 2013-02 | December 19, 2012 | Pages 7-2 through 7-3, 7-5, 7-7 through 7-8, and Appendix H (pages H-1 and H-10 only). |
| 2013-03 | January 17, 2013 | Chapter 3007 (pages 7-2 through 7-6) and Appendix H (pages H-1, H-5, and H-10). |
| 2013-04 | February 28, 2013 | Revisions are on pages 5-7, 9-1, 9-2.1, 9-4, 9-5, 9-8, 9-9, and D-1 (Appendix D). |
| 2013-05 | April 30, 2013 | Revisions made to Chapter 3006 (pages 6-1 and 6-2), Appendix B, Appendix G (pages G-8 through G-10, G-20 through G-23, and G-25). |
| 2013-06 | May 31, 2013 | Chapter 3007 (all pages), Appendix C, and Appendix AB (pg AB-2). |
| 2013-07 | July 31, 2013 | Appendices TOC, pgs. 4-16, 4-17, 5-1, 5-3, 17-4, 17-5, 17-7 through 17-10, 17-14 through17-17, Appendix C, and Appendix E. |

| HSAM - RECORD OF NOTICES<br>October 2009 Edition<br>CONTINUED | | |
|---|---|---|
| **HSAM NOTICE NUMBER** | **DATE OF CHANGE** | **REPLACEMENT PAGES** |
| 2013-08 | August 30, 2013 | Chapter 3009 (all pages), Chapter 3018 (pg 18-1), Chapter 3027 (pg 27-1), Chapter 3032 (pgs 32-10 and 32-11), Chapter 3042 (pgs 42-2 through 42-4, 42-6, 42-9 and 42-10), and Appendix S (pgs S-2 through S-6). |
| 2014-01 | November 29, 2013 | Chapter 3007 (pgs 7-8 through 7-10) and Chapter 3025 (pg 25-1). |
| 2014-02 | December 31, 2013 | Revisions are on pages 7-8, 7-17, 19-6, and removed Appendix X (all pages). |
| 2014-03 | January 31, 2014 | Chapter 3010 (pgs 10-1 through 10-4). |
| 2014-04 | February 28, 2014 | Chapter 3049 (pgs 49-1 through 49-2) and added new Appendix AD. |
| 2014-05 | March 20, 2014 | Chapter 3007 (pgs 7-18 through 7-20). |
| 2014-06 | March 31, 2014 | Chapter 3007 (pgs 7-1, 7-4, and 7-12 through 7-14), Chapter 3010 (pg 10-1), Chapter 3019 (pg 19-3), Chapter 3042 (pg 42-2), added Appendix X, and removed Appendix V. |
| 2014-07 | April 30, 2014 | Chapter 3006 (pg 6-2) and Chapter 3007 (pg 7-6). |
| 2014-08 | June 30, 2014 | Chapter 3007 (table on pg 7-13), Chapter 3009 (pgs 9-1 through 9-6) and numerous conforming changes throughout the HSAM to make changes required as a result of the positive law codification of Title 41 implemented in the FAR on May 29, 2014. |
| 2014-09 | July 9, 2014 | Chapter 3017 (pgs 17-1, 17-3, 17-5, 17-7, 17-9, and 17-15 through 17-22). |
| 2014-09 | July 9, 2014 | Chapter 3017 (pgs 17-1, 17-3, 17-5, 17-7, 17-9, and 17-15 through 17-22). |

| HSAM - RECORD OF NOTICES<br>October 2009 Edition<br>CONTINUED | | |
|---|---|---|
| **HSAM NOTICE NUMBER** | **DATE OF CHANGE** | **REPLACEMENT PAGES** |
| 2015-01 | December 31, 2014 | Chapter 3003 (pgs 3-1 and 3-4) and Chapter 3010 (pg 10-2). |
| 2016-01 | March 31, 2016 | Chapter 3007 (pgs 7-12 through 7-14, and 7-20), Chapter 3008 (pg 8-2), Chapter 3009 (pg 9-2) Chapter 3016 (pgs 16-8 and 16-9), Chapter 3017 (pg 17-13), Chapter 3019 (pg 19-3), Appendix B (pg B-1), and Appendix AA (pg AA-8 and AA-22). |
| 2016-02 | April 29, 2016 | HSAM TOC (HSAM Appendices), Chapter 3019 (all pages), Chapter 3036 (pgs 36-3 and 36-4), Appendix B (pg B-1), and Appendix AC (AC-1). |
| 2016-03 | May 31, 2016 | HSAM TOC (HSAM Appendices), Chapter 3004 (pgs 4-2, 4-4 through 4-6, 4-12, 4-17, 4-21 and 4-22), Chapter 3007 (pgs 7-4 through 7-6, 7-8, and 7-11), Chapter 3008 (pgs 8-1 and 8-2), Chapter 3015 (pgs 15-1 through 15-4), Chapter 3016 (pg 16-9), and Appendix G (all pgs). |
| 2016-04 | June 30, 2016 | Chapter 3016 (pg 16-4) |
| 2016-05 | August 10, 2016 | Chapter 3005 (pgs 5-1, 5-3 through 5-6, 5-8, and 5-9) |
| 2017-01 | December 30, 2016 | HSAM Appendices TOC, Chapter 3015 (all pages), Chapter 3032 (pgs 32-1, 32-6 through 32-8, and 32-10 through 32-12), Chapter 3042 (pgs 42-1 through 42-5, 42-7, 42-8, and 42-12), and Appendix U (all pages). |
| 2017-02 | February 28, 2017 | Chapter 3007 (pgs 7-5 through 7-7) and Chapter 3046 (pgs 46-1, 46-3, and 46-5). |

| HSAM - RECORD OF NOTICES<br>October 2009 Edition<br>CONTINUED | | |
|---|---|---|
| **HSAM NOTICE NUMBER** | **DATE OF CHANGE** | **REPLACEMENT PAGES** |
| 2017-03 | June 30, 2017 | Chapter 3008 (pgs 8-1 and 8-3)<br>Chapter 3013 (pgs 13-1 through 13-4)<br>Chapter 3015 (pgs 15-1, 15-3 and 15-4)<br>Chapter 3016 (pgs 16-5 through 16-7)<br>Chapter 3036 (pgs 36-4 and 36-5) and Appendices B and AC |
| 2017-04 | August 31, 2017 | Chapter 3004 (pgs 4-2 through 4-11, 4-14, 4-16, 4-18, 4-21 and 4-22), Chapter 3007 (pg 7-6), and Appendix G |
| 2017-05 | September 29, 2017 | Chapter 3006 (pg 6-1), Chapter 3008 (pgs 8-1 and 8-2), Chapter 3015 (pgs 15-4, 15-5, 15-8 and 15-9), Chapter 3016 (pg 16-5 and 16-6), and Chapter 3039 (all pgs) |
| 2018-01 | December 29, 2017 | Chapter 3004 (pg 4-22), Chapter 3025 (all pages), Chapter 3033 (pg 33-2), Chapter 3042 (pg 42-1), and Appendix G (pg G-4) |
| 2018-02 | March 30, 2018 | HSAM Appendices TOC, Chapter 3004 (pg 4-21), Chapter 3005 (pgs 5-1 and 5-3 through 5-5), Appendix D (all pgs), Appendix E (all pgs), and Appendix F (Removed and Reserved) |
| 2018-03 | April 30, 2018 | Chapter 3003 (pgs 3-1 and 3-5), Chapter 3011 (pg 11-1), Chapter 3042 (pgs 42-1, 42-6 and 42-7), and Appendix A (pg A-1) |

| HSAM - RECORD OF NOTICES<br>October 2009 Edition<br>CONTINUED | | |
|---|---|---|
| **HSAM NOTICE NUMBER** | **DATE OF CHANGE** | **REPLACEMENT PAGES** |
| 2018-04 | June 29, 2018 | HSAM Appendices TOC, Chapter 3001 (pgs 1-7 and 1-10), Chapter 3003 (pg 3-2), Chapter 3006 (all pgs), Chapter 3008 (pg 8-1), Chapter 3012 (all pgs), Chapter 3014 (all pgs), Chapter 3015 (pg 15-1), Chapter 3016 (pg 16-9), Chapter 3017 (17-2, 17-12, 17-13, and 17-21 through 17-23), Chapter 3019 (pgs 19-4, 19-5 and 19-7), Chapter 3022 (pgs 22-4 and 22-6), Chapter 3023 (all pgs), Chapter 3027 (pg 27-1), Chapter 3031 (pg 31-1), Chapter 3032 (pgs 32-2, 32-4, 32-8 and 32-10), Chapter 3033 (pgs 33-1 and 33-2), Chapter 3036 (pgs 36-3, 36-4, 36-5 and 36-7), Chapter 3037 (pgs 37-3, 37-4 and 37-7), Chapter 3042 (pgs 42-1, 42-3, 42-5, 42-7 and 42-9), Chapter 3048 (all pgs), Chapter 3049 (49-1), Appendix W (all pgs) and Appendix AD (all pgs) |
| 2019-01 | October 31, 2018 | HSAM Appendices TOC, Chapter 3007 (7-13), Chapter 3017 (17-16 through 17-21), Chapter 3019 (19-3), Appendix H and Appendix I |
| 2019-02 | February 28, 2019 | HSAM Appendices TOC, Chapter 3004 (4-20), Chapter 3007 (7-2 and 7-3), Chapter 3017 (17-5 through 17-17), Appendix D (D-1), and Appendix V (all pgs) |
| 2019-03 | March 29, 2019 | Chapter 3002 (2-1), Chapter 3004 (4-21), Chapter 3007 (7-1, 7-19, and 7-20) |
| 2019-04 | May 31, 2019 | Chapter 3006 (6-3 and 6-4) |
| 2019-05 | June 28, 2019 | Chapter 3005 (5-1 through 5-4 and 5-6), Chapter 3017 (17-6, 17-7, and 17-11 through 17-13), Chapter 3053 (53-1 and 53-2), Appendix D (D-1), Appendix E (E-1), and Appendix Q (all pgs) |

| HSAM - RECORD OF NOTICES<br>October 2009 Edition<br>CONTINUED | | |
|---|---|---|
| 2019-06 | July 31, 2019 | Chapter 3006 (6-2 and 6-3), Chapter 3011 (11-1) Chapter 3013 (13-4), and Chapter 3025 (25-2 through 25-4) |
| 2020-01 | October 31, 2019 | Chapter 3053 (all pgs.) and Appendix E |
| 2020-02 | November 29, 2019 | HSAM Appendices, Chapter 3001 (1-8), and Chapter 3017 (17-2, 17-15, 17-21, and 17-23 through 17-25) |
| 2020-03 | December 31, 2019 | Chapter 3004 (4-4 through 4-6, 4-8, 4-13 through 4-16, 4-23, and 4-24), Chapter 3007 (7-1 through 7-6, 7-8, and 7-14), and Appendix G (all pgs) |
| 2020-04 | January 31, 2020 | HSAM Appendices TOC, Chapter 3004 (4-3, 4-15, 4-22, 4-23 and 4-25), Chapter 3007 (7-1, and 7-3 through 7-9), Chapter 3015 (15-2 and 15-3), Chapter 3034 (34-1 and 34-3), Appendix W (W-6), and Appendix Z (all pgs) |
| 2020-05 | February 28, 2020 | Chapter 3001 (1-5, 1-7 and 1-8), Chapter 3002 (2-1), Chapter 3003 (3-2), Chapter 3004 (4-5), Chapter 3007 (7-9 and 7-10), Chapter 3008 (8-2 and 8-3), Chapter 3009 (9-5), Chapter 3012 (12-1), Chapter 3015 (15-1), Chapter 3016 (16-4 and 16-5), Chapter 3017 (17-2, 17-6 and 17-7), Chapter 3022 (22-3 and 22-8), Chapter 3031 (31-1), Chapter 3032 (32-4 and 32-5), Chapter 3034 (all pgs), Chapter 3042 (42-8), Chapter 3048 (48-2) and Chapter 3049 (49-1) |

| HSAM - RECORD OF NOTICES<br>October 2009 Edition<br>CONTINUED | | |
|---|---|---|
| 2020-06 | March 31, 2020 | Chapter 3001 (1-6 and 1-8), Chapter 3003 (3-2 through 3-4), Chapter 3004 (4-8, 4-12, 4-13, 4-14, 4-16, 4-22 and 4-23), Chapter 3005 (5-6), Chapter 3006 (6-4), Chapter 3007 (7-4. 7-6, 7-10, and 7-14), Chapter 3008 (8-2 and 8-3), Chapter 3009 (9-5 and 9-6), Chapter 3011 (11-1), Chapter 3016 (16-4 and 16-5), Chapter 3019 (19-4 and 19-5), Chapter 3022 (22-6 and 22-9), Chapter 3031 (31-1), Chapter 3032 (32-2, 32-3, 32-4, 32-5 and 32-8), Chapter 3033 (33-2), Chapter 3041 (41-1), Chapter 3042 (42-7), Chapter 3048 (48-1 and 48-2), and Chapter 3049 (49-1) |
| 2020-07 | April 30, 2020 | Appendix I (I-1) and Appendix Z (Z-3 and Z-6) |
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

# DHS ACQUISITION MANUAL (HSAM)

## TABLE OF CONTENTS

CHAPTER 3001 FEDERAL ACQUISITION REGULATION SYSTEM

CHAPTER 3002 DEFINITION OF WORDS AND TERMS

CHAPTER 3003 IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

CHAPTER 3004 ADMINISTRATIVE MATTERS

CHAPTER 3005 PUBLICIZING CONTRACT ACTIONS

CHAPTER 3006 COMPETITION REQUIREMENTS

CHAPTER 3007 ACQUISITION PLANNING

CHAPTER 3008 REQUIRED SOURCES OF SUPPLIES AND SERVICES

CHAPTER 3009 CONTRACTOR QUALIFIACTIONS

CHAPTER 3010 MARKET RESEARCH

CHAPTER 3011 DESCRIBING AGENCY NEEDS

CHAPTER 3012 ACQUISITION OF COMMERCIAL ITEMS

CHAPTER 3013 SIMPLIFIED ACQUISITION PROCEDURES

CHAPTER 3014 SEALED BIDDING

CHAPTER 3015 CONTRACTING BY NEGOTIATION

CHAPTER 3016 TYPES OF CONTRACTS

CHAPTER 3017 SPECIAL CONTRACTING METHODS

CHAPTER 3018 EMERGENCY ACQUISITIONS

CHAPTER 3019 SMALL BUSINESS PROGRAMS

CHAPTER 3020 (RESERVED)

CHAPTER 3021 (RESERVED)

CHAPTER 3022 APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

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

CHAPTER 3024 PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION (RESERVED)

CHAPTER 3025 FOREIGN ACQUISITION

CHAPTER 3026 OTHER SOCIOECONOMIC PROGRAMS

CHAPTER 3027 PATENTS, DATA, AND COPYRIGHTS

CHAPTER 3028 BONDS AND INSRUANCE

CHAPTER 3029 TAXES

CHAPTER 3030 COST ACCOUNTING STANDARDS ADMINISTRATION

CHAPTER 3031 CONTRACT COST PRINCIPLES AND PROCEDURES

CHAPTER 3032 CONTRACT FINANCING

CHAPTER 3033 PROTESTS, DISPUTES, AND APPEALS

CHAPTER 3034 MAJOR SYSTEM ACQUISITION

CHAPTER 3035 RESEARCH AND DEVELOPMENT CONTRACTING

CHAPTER 3036 CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

CHAPTER 3037 SERVICE CONTRACTING

CHAPTER 3038 FEDERAL SUPPLY SCHEDULE CONTRACTING (RESERVED)

CHAPTER 3039 ACQUISITION OF INFORMATION TECHNOLOGY

CHAPTER 3040 (RESERVED)

CHAPTER 3041 ACQUISITION OF UTILITY SERVICES

CHAPTER 3042 CONTRACT ADMINISTRATION AND AUDIT SERVICES

CHAPTER 3043 CONTRACT MODIFICATIONS

CHAPTER 3044 SUBCONTRACTING POLICIES AND PROCEDURES

CHAPTER 3045 GOVERNMENT PROPERTY

CHAPTER 3046 QUALITY ASSURANCE

CHAPTER 3047 TRANSPORTATION

CHAPTER 3048 VALUE ENGINEERING

CHAPTER 3049 TERMINATION OF CONTRACTS

CHAPTER 3050 EXTRAORDINARY CONTRACTUAL ACTIONS

CHAPTER 3051 USE OF GOVERNMENT SOURCES BY CONTRACTORS (RESERVED)

CHAPTER 3052 SOLICITATION PROVISIONS AND CONTRACT CLAUSES (RESERVED)

CHAPTER 3053 FORMS

# HSAM APPENDICES


**A -** Heads of the Contracting Activities
**B -** Reporting Requirements
**C -** Review and Approval Matrix
**D -** Congressional Notification Requirements – Actions in Excess of $1 Million
**E -** Contract Award Notice Requirements
**F -** Designation Memorandum for Procuring Activity Advocate for Competition Template
**G -** Checklist for Sensitive Information
**H -** Acquisition Planning Forecast System and Small Business Review Form Requirements Matrix
**I -** Approval of an Intra-agency Assisted Acquisition Template
**J -** Structured Approach for Profit and Fee Objective
**K -** Unsolicited Proposals Procedures
**L -** Determination to Award a Task or Delivery order Contract to a Single Source
-AND-
Determination to Make a Single Award Blanket Purchase Agreement (BPA)

**M -** Determination and Findings – Time & Material, Labor Hour
**N -** Determination and Findings – Overtime Approval
**O -** Semi-Annual Labor Compliance Report
**P -** Department of Labor Sample Letter
**Q -** DHS Affirmative Procurement Plan (APP)
**R -** Determination and Findings – Authority to Make Progress Payments
**S -** Payment Approval Template
**T -** Checklist for Private Sector Temporary Personnel
**U -** Memorandum of Understanding – DCAA and DHS
**V -** Determination and Findings – Authority to Enter into an Interagency Acquisition Under the Economy Act
**W -** Contracting Officer's Representative (COR) Nomination and Appointment Correspondence
**X -** Partnership Agreement between U.S. Small Business Administration and U.S. Department of Homeland Security
**Y -** Determination and Findings – Authority to Award an Award Fee Contract
**Z -** Department of Homeland Security Acquisition Plan Template
**AA -** Debriefing Guide
**AB -** Demand for Payment Letter Template
**AC -** Template for Report of Planned Construction Requirements
**AD -** Template for Notice of Pending Termination

# CHAPTER 3001 FEDERAL ACQUISITION REGULATION SYSTEM


| | | |
|---|---|---|
| **Subchapter** | **3001.1** | **Purpose, Authority, Issuance** |
| | 3001.101 | Purpose. |
| | 3001.102 | Statement of guiding principles for the Federal Acquisition System. |
| | 3001.103 | Authority. |
| | 3001.104 | Applicability. |
| | 3001.105 | Issuance. |
| | 3001.105-170 | Publication of HSAM. |
| | 3001.105-270 | Arrangement of HSAM. |
| | 3001.105-3 | Copies. |
| | 3001.106 | OMB approval under the Paperwork Reduction Act. |
| **Subchapter** | **3001.2** | **Administration** |
| | 3001.202-70 | Departmental compliance with the FAR, HSAR and HSAM. |
| **Subchapter** | **3001.3** | **Agency Acquisition Regulations** |
| | 3001.301 | Policy. |
| | 3001.301-70 | Amendment of HSAM. |
| | 3001.301-71 | Effective date. |
| | 3001.301-72 | HSAM Notice numbering. |
| | 3001.304 | Agency control and compliance procedures. |
| **Subchapter** | **3001.4** | **Deviations from the FAR, HSAR, HSAM** |
| | 3001.403 | Individual deviations. |
| | 3001.404 | Class deviations. |
| **Subchapter** | **3001.6** | **Career Development, Contracting Authority, and Responsibilities** |
| | 3001.601 | General. |
| | 3001.601-70 | Designation of the Head of Contracting Activities and Chiefs of Contracting Offices. |
| | 3001.602 | Contracting officers. |
| | 3001.602-2 | Responsibilities. |
| | 3001.602-3 | Ratification of unauthorized commitments. |
| | 3001.603 | Selection, appointment, and termination of appointment. |
| | 3001.603-1 | General. |
| | 3001.603-2 | Selection. |
| | 3001.670 | Responsibility of other Government personnel. |
| | 3001.671 | Selection, appointment and termination of non-warranted ordering officials. |
| | 3001.671-1 | General. |
| | 3001.671-2 | Selection. |
| | 3001.671-3 | Procedures. |

3001.671-4 Specialized training.
3001.671-5 Temporary appointment.
3001.671-6 Surveillance of ordering officials.

## Subchapter 3001.1 Purpose, Authority, Issuance

### 3001.101 Purpose.

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

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

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

### 3001.103 Authority.

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

### 3001.104 Applicability.

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

### 3001.105 Issuance.

### 3001.105-170 Publication of HSAM.

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

**3001.105-270 Arrangement of HSAM.**

(b) *Numbering.*

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

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

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

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

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

**3001.105-3 Copies.**

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

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

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

(a) *Data collection under proposed contracts.* SF-83s shall be forwarded to the Office of the Chief Information Officer (CIO), for processing to OMB. Early coordination with Paperwork Clearance Officers prior to release of the solicitation should prevent delays caused by the requirement to obtain OMB approval.

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

## Subchapter 3001.2 Administration

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

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

## Subchapter 3001.3 Agency Acquisition Regulations

### 3001.301 Policy.

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

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

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

(iii) Authorities of this manual, except for those defined in (i) or (ii) above, may be assigned to a higher level within the Component unless specified otherwise. HSAM authorities reassigned or redelegated by a Component pursuant to this subparagraph shall be in writing and stored in a centralized location within the Component. A copy of the assignment/redelegation shall be submitted to the CPO within 30 days of issuance.

(2) Agency head approval or delegation requests must be prepared in the format established by the DHS Office of the Executive Secretary (ESEC), available at DHSConnect. 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, Executive Director, Acquisition Policy and Legislation.

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

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

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

(2) *HSAM Notices*.

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

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

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

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

Unless otherwise stated, the following applies—

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

(b) If solicitations are already in process or negotiations complete when the HSAM Notice is received, the new procedures or forms need not be used if it is determined by the Chief of the Contracting Office (COCO) that it would not be in the best interest of the Government. In no case shall the authority be delegated below the level of COCO.

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

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

(5) Pertain only to that Component.

(c) Component acquisition procedures shall:

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

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

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

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

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

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

### 3001.403 Individual deviations.

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

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

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

(3) Set forth the nature of the deviation;

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

(5) State the known impact of the deviation.

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

### 3001.404 Class deviations.

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

### 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 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. Components shall submit a copy of the signed designation to the CPO within 5 days of issuance.

### 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 3042.270 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, with authority to redelegate to no lower than the COCO, is delegated authority to ratify unauthorized commitments.

(c) *Limitations.*

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

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

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

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

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

(D) Whether any benefit was received;

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

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

(G) Status of performance;

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

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

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

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

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

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

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

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

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

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

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

(iv) Each contracting office shall establish a file system to ensure those actions for which a ratification was requested can be identified with the documentation

below in paragraphs (A) through (G). Each ratification request included in the office file shall be retained for 6 years and 3 months after final payment or after the ratifying official determines that the action will not be ratified. The office file pertaining to a ratification action shall contain the following:

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

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

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

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

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

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

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

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

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

**3001.603-1 General.**

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

**3001.603-2 Selection.**

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

**3001.670 Responsibility of other Government personnel.**

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

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

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

(2) Requirements are clearly defined and specified;

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

(4) Quality standards are prescribed and met;

(5) Performance or delivery is timely;

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

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

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

**3001.671-1 General.**

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

**3001.671-2 Selection.**

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

**3001.671-3 Procedures.**

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

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

(2) For contract actions deemed appropriate, a DHS non-warranted federal employee may be appointed as an ordering official to place delivery orders for supplies against indefinite delivery contracts and blanket purchase agreements (BPAs), that were awarded by DHS contracting officers, provided the contract terms permit placement of the orders and orders placed are within monetary limitations specified in the contract.

(b) *Appointment of ordering officials*.

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

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

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

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

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

(1) The ordering official appointment shall remain in effect until terminated by the HCA (or a designee identified in writing). Terminations of appointments shall be made in

writing, except for terminations that result when contracts expire. Ordering officials shall acknowledge the appointment termination in writing. The HCA (or designee) is responsible for ensuring appointments are terminated when they are no longer valid or required.

(2) After termination of the appointment, the contractor, disbursing officers and other interested personnel shall be provided written notification of the name of the ordering official who has been terminated and the name of the replacement ordering official, if available.

**3001.671-4 Specialized Training.**

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

**3001.671-5 Temporary Appointment.**

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

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

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

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

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

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

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

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

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

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

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

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

# CHAPTER 3002 DEFINITION OF WORDS AND TERMS

**Subchapter 3002.1 Definitions**
3002.101 Definitions.

## 3002.1 Definitions.

## 3002.101 Definitions.

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

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

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

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

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

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

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

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

# CHAPTER 3003 IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST


| | | |
|---|---|---|
| **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** |
| | 3003.901 | Applicability. |
| | 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. |
| | 3003.908-9 | Contracting Officer Responsibilities for Implementation of Contractor and Subcontractor Employee Whistleblower Protections. |
| **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 authority for actions with a total contract value of $25 million or less. The Head of the Contracting Activity (HCA), without redelegation, is the authorizing official for contract actions valued above $25 million.

### 3003.104-7 Violations or possible violations.

(a)(1) Violations or possible violations shall be reviewed one level above the contracting officer. In no case shall the authority be delegated below one level above the contracting officer.

(b)(5) The HCA shall make the recommendation to the 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 shall provide written notification to 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. The HCA shall provide written notification to the CPO before authorizing an exception.

**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, without redelegation, is delegated the responsibilities at FAR 3.705. The HCA shall provide written notification to the CPO before notifying the Department of Justice. The HCA shall submit copies of all written decisions and notifications to 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**

**3003.901 Applicability.**

This subpart applies to all Components except the USCG. The USCG shall follow DHS Class Deviation Number 14-01, Deviation from Federal Acquisition Regulation 3.908, Pilot program for enhancement of contractor employee whistleblower protections, until the final HSAR rule to implement 10 U.S.C. § 2409 for USCG is effective.

**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.

**3003.907 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.

**3003.908-9 Contracting Officer Responsibilities for Implementation of Contractor and Subcontractor Employee Whistleblower Protections.**

(a) The contracting officer shall ensure that every solicitation issued and contract awarded on or after September 30, 2013 over the simplified acquisition threshold contains FAR clause 52.203-17 (dated SEPT 2013 or later) for non-commercial contracts or FAR clause 52.212-4 (dated SEPT 2013 or later) for commercial contracts. If the contract contains the latter clause with the SEPT 2013 date or later, it will include subparagraph (r) referencing the law which requires contractors and subcontractors to notify employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections.

(b) The contracting officer shall inform the contractor about the contractor's responsibilities under FAR clause 52.203-17 (dated SEPT 2013 or later) or FAR clause 52.212-4 (dated SEPT 2013 or later) either in a postaward conference or a postaward notice if a conference is not held. For additional information, see HSAM 3042.5.

(c) Within 60 days of a contract award that contains FAR clause 52.203-17, Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (dated SEPT 2013 or later) or FAR clause 52.212-4, Contract Terms and Conditions – Commercial Items (dated SEPT 2013 or later) that includes subparagraph (r), the contracting officer shall seek written confirmation (which may include email) from the contractor that they and their subcontractors, as applicable, have informed their employees in writing, in the

predominant language of the workforce, of employee whistleblower rights and protections. The confirmation shall be maintained in the contract file.

(d) In the event a contracting officer is contacted by a contractor or subcontractor employee about a potential violation of whistleblower rights and protections, the contracting officer shall refer the employee to the DHS Office of Inspector General at: https://www.oig.dhs.gov/hotline.

**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 content 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** | **System for Award Management** |
| | 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** | **Reserved** |
| **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** | **3004.71** | **Contents of a Procurement Request Package** |
| | 3004.7100 | Scope. |
| | 3004.7101 | Documentation Requirements. |


## 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

(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 119-03, Personal Property Asset Management Program. 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 System for Award Management (SAM) 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, System for Award Management (SAM).

**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 Appendix Z - DHS Acquisition Plan Template). 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 Instruction 121-01-011, Department of Homeland Security Administrative Security Program;

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

(4) 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 Instruction 121-01-011, Department of Homeland Security Administrative Security Program, 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 DHS Instruction 121-01-011, 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.

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

(a) The following DHS publications apply to acquisitions where contractor employees require recurring access to DHS facilities; access to IT resources; or access to sensitive information, including personally identifiable information (PII) and sensitive PII (SPII):

(1) DHS MD Number 140-01, Information Technology (IT) Systems Security, the DHS Sensitive Systems Policy Directive 4300A, and the accompanying handbook, DHS 4300A Sensitive Systems Handbook;

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

(3) DHS MD Number 11056.1, Sensitive Security Information (SSI);

(4) DHS Directive Number 121-01, Office of the Chief Security Officer, Instruction Handbook Number 121-01-007, The DHS Personnel Security, Suitability and Fitness Program, Instruction Handbook Number 121-01-011, Department of Homeland Security Administrative Security Program;

(5) DHS Privacy Incident Handling Guidance; and

(6) DHS Handbook for Safeguarding Sensitive Personally Identifiable Information.

(b) The requiring office shall complete HSAM Appendix G - Checklist for Sensitive Information for all acquisitions, including assisted acquisitions, regardless of dollar value. A properly executed checklist serves as the high risk determination required by HSAR Class Deviation 15-01, Safeguarding of Sensitive Information. The checklist shall be coordinated with and signed by the offices listed in paragraphs (1) through (7) of this section, as applicable. The requiring office shall ensure the Statement of Work, Statement of Objectives, Performance Work Statement or specification is provided when coordinating review of the checklist. The requiring office shall submit the signed checklist to the contracting activity as part of the procurement request package.

(1) Component Chief Information Officer (CIO) or designee when information systems will be used to input, store, process, output, and/or transmit sensitive information;

(2) Component Chief Security Officer (CSO) or designee when contractor employees require recurring access to DHS facilities and/or access to sensitive information;

(3) Component Privacy Officer or designee when the contractor will have access to PII and/or SPII;

(4) TSA Sensitive Security Information (SSI) Program Office when contractor employees will have to access SSI. As the Department-wide SSI Program Office, TSA must review all SSI requirements. The TSA SSI Program Office can be contacted at SSI@HQ.DHS.gov;

(5) Cybersecurity and Infrastructure Security Agency (CISA) Chemical-terrorism Vulnerability Information (CVI) Program Office when contractor employees will have access to CVI. As the Department-wide CVI Program Office, CISA must review all CVI requirements. The CISA CVI Program Office can be contacted at to ISCDExcSec@cisa.dhs.gov;

(6) CISA Protected Critical Infrastructure Information (PCII) Program Office when contractor employees will have access to PCII. As the Department-wide PCII Program Office, CISA must review all PCII requirements. The CISA PCII Program Office can be contacted at PCII-Assist@hq.dhs.gov; and

(7) For Components and offices that do not have a Component level CIO, CSO, or Privacy Officer, the requirements official shall coordinate with the DHS Headquarters CIO, CSO and Chief Privacy Officer as follows:

CIO: OCIO-HSAR-Review.hq.dhs.gov
CSO: DD254AdministrativeSecurity@hq.dhs.gov (classified contracts)
PSDContractorReview@hq.dhs.gov (unclassified contracts)
Chief Privacy Officer: PrivacyContracts@hq.dhs.gov

(c) If it is not clear to the requiring official if the contractor will have access to sensitive information and/or if contractor information systems will be used to input, store, process, output,

and/or transmit sensitive information, the requirements official shall at a minimum consult with the Component CIO, CSO and Privacy Officer.

(d) The contracting officer shall route Appendix G - Checklist for Sensitive Information to the Head of Contracting Activity (or designee) for signature and ensure the solicitation and resultant contract reflect the requirements contained in the checklist.

**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 (see 3004.470(b) for additional coordination requirements). 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) Component Security Offices shall assist requiring offices and contracting activities by reviewing fitness requirements and other industrial or personnel security matters related to contractor employees requesting or providing support to DHS and who require unescorted access to DHS-owned facilities, DHS-controlled facilities, or commercial facilities operating on behalf of DHS; access to DHS information technology (IT) systems or their data; access to sensitive information and/or access to national security information. All Headquarters procurements meeting these requirements shall be coordinated with the DHS Office of the Chief Security Officer prior to release of the solicitation.

(c) Contracting officers and requiring officials shall coordinate the requirements for access and background investigations with the cognizant Component Security Office.

(d) In addition to incorporating the clauses required by HSAR 3004.470-3 (see HSAR Class Deviation 15-01, Safeguarding of Sensitive Information), contracting officers are responsible for ensuring that solicitations, contracts, and orders identify the documentation contractor employees must complete for determining contractor suitability, especially the requirements listed in the DHS Instruction Handbook 121-01-007, Department of Homeland Security Personnel Suitability and Security Program, which is located under DHS Security and Training Requirements for Contractors, Personnel Security Policy section of the Doing Business with DHS website (https://www.dhs.gov/do-business-dhs).

(e) In order to ensure potential contractors are aware of DHS security requirements for their employees, contracting officers shall clearly identify the clearance and risk levels, as defined in the DHS Instruction Handbook 121-01-007, Department of Homeland Security Personnel Suitability and Security Program, within each solicitation. The requiring office, in conjunction

with the Security Office, is responsible for providing the clearance and risk levels to contracting officers as part of its overall procurement request package.

**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 Component System Administrator 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 applicable contract/procurement actions directly to the Federal Procurement Data System (FPDS), see FAR 4.6 and 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 is the primary source of procurement data Governmentwide and is extensively used by a variety of stakeholders (e.g., Congress, GAO, OIG, the public, etc.) and downstream systems (e.g., USASpending.gov, etc.). As a result of the extensive use of FPDS data, the quality and timeliness of DHS submissions is critical (see FAR 4.604(b)(2) and (3) for required submission timelines). 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).

(b) Components with contracting authority (i.e., the Component issuing the contract/procurement action) are identified in FPDS as the 'awarding' agency. The 'awarding' agency is the entity that is required to enter data into FPDS. The 'funding' agency in FPDS denotes the organization that developed the requirement. Accurate reporting of 'awarding' and 'funding' agency information is necessary to satisfy the requirements of the Federal Funding Accountability and Transparency Act (FFATA), the Data Act, and FAR 4.603(c). Funding documents, interagency agreements, and/or purchase requests/requisitions are required to contain the appropriate funding agency, funding office, and Treasury Account Symbol to ensure accurate data is recorded. If this funding information is not provided, the Contracting Officer must request this data prior to award. A listing of available DHS awarding and funding 'agency' information is available in FPDS using the search function.

**3004.604 Responsibilities.**

(a) Components are responsible for performing quarterly verification and validation of FPDS data in accordance with the schedule posted in the Enterprise Reporting Application (ERA). 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) A completed final, approved version of the information entered into FPDS for each action shall be included in the contract file.

**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. The PIID refers to the Solicitation or the Award number and the SPIID refers to amendments or modifications to those instruments. The PIID is used extensively throughout the federal government to uniquely identify solicitations and awards, therefore Components must ensure the PIID is accurately created and recorded in all systems and documents. Alphanumeric characters other than those prescribed in FAR Subpart 4.16 and this subsection are not permitted. The PIID must consist of 17 alphanumeric characters and each PIID must be unique. Dashes, spaces, or any other symbols are not permitted. Task/Delivery orders and BPA calls must also follow the same 17 alphanumeric character DHS PIID structure required for any other award, (e.g., orders/calls may

not be identified as 001). The DHS PIID structure consists of:

(1) *Positions one through six*. The first six characters of the PIID represent the office issuing the award; this code is known as the activity address code (AAC). This code will be reported in FPDS in the contracting agency office id field and is also the issuing office information that appears on the contract award document. Every DHS AAC begins with the Department identifier of 70 followed by a letter representing the Component. The remaining three characters of the AAC are left to Component discretion. A listing of DHS AACs used for procurement purposes can be found in FPDS.

(2) *Positions seven and eight*. A two-digit numeric code that is the last two digits of the fiscal year in which the PIID is awarded. The fiscal year is the fiscal year during which the contract action is awarded/issued (i.e., the date signed), it does not represent the effective date. A contract signed on September 30, 2017 (FY'17), for example, with an effective date of October 4, 2017 (FY'18), would use '17' in the PIID because the award was signed in FY'17.

(3) *Position nine*. A one-digit alphabetic code, in the table below, identifies the type of procurement instrument (e.g., agreement, sealed bidding, contracts, etc.). Use of any code other than those listed below in position nine is prohibited.

| Letter | Purpose |
|---|---|
| **A** | ***Agreement:*** Use for blanket purchase agreement (BPA) as defined under FAR 13.3, 16.7, and 8.405-3 Federal Supply Schedules. Do NOT use for Cooperative Agreements. |
| **B** | ***Invitation for Bids:*** Use for solicitations as defined under FAR 14.2. |
| **C** | ***Contracts:*** Use for all contracts (e.g., letter, 8(a), etc.), except indefinite delivery type contracts (see FAR 16.5). |
| **D** | ***Indefinite Delivery Contracts:*** Use for Indefinite Delivery, Definite Quantity, Indefinite – quantity and Requirements contracts as defined under FAR 16.5. This category also includes DHS awarded Governmentwide Acquisition Contracts (GWACs) and Multi-Agency Contracts (MACs). |
| **F** | ***Task or Delivery Orders and BPA Calls:*** Use when placing task/delivery orders against any indefinite delivery type contract (e.g., FSS, GWAC, MAC, a DHS single award IDIQ, etc.). This code is also used to identify orders against a Basic Ordering Agreement (BOA) and any BPA call issued against a BPA. |
| **G** | ***Basic Ordering Agreement (BOA)*** See FAR 16.703. |
| **H** | ***Agreements:*** Agreements, including basic agreements and loan agreements, but excluding blanket purchase agreements, interagency agreements, basic ordering agreements, and leases. Do not use this code for contracts or agreements with provisions for orders or calls. |

| Letter | Purpose |
|---|---|
| **K** | ***DHS 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. |
| **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. |
| **P** | ***Purchase Orders:*** Use for ALL purchase orders (assign V if numbering capacity of P becomes exhausted during a fiscal year). |
| **Q** | ***Request for Quotation:*** Use when the procedures under FAR 13 or FAR 8.405 are followed (assign U if numbering capacity of Q becomes exhausted during a fiscal year). |
| **R** | ***Request for Proposal:*** Use when competitive or negotiated procedures are followed. |
| **S** | ***DHS Sales Contract:*** Use for sales and other disposal of real and personal property. |
| **T** | ***DHS Other Transactions:*** Use for awards made under Other Transactions Authority |
| **U** | See Q, Request for Quotation. |
| **V** | See P, Purchase Orders. |
| **Y** | ***Imprest Fund*** |

(4) *Positions ten through seventeen*. Components may use the remaining characters of the PIID in whatever way they choose, however, the PIID in its entirety must be exactly 17 characters long and must be unique.

(5) *Illustration of the PIID.* An example of a PIID is illustrated in the chart below. The PIID 70B02C18F01234567 identifies a task/delivery order issued by the Department of Homeland Security, Customs and Border Protection, Air and Marine Center Division Contracts office, fiscal year 2018.

| Position | Identification | Code |
|---|---|---|
| 1-6 | Activity Address Code | 70B02C |
| 7-8 | Fiscal Year | 18 |
| 9 | Type of Procurement Instrument | F |
| 10-17 | Unique identifiers of the procurement instrument | 01234567 |

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

(i) *Amendments to Solicitations.* Amendments shall be assigned a four-position

numeric serial number always sequentially beginning with 0001.

(ii) *Modifications to Contracts, Agreements, BPA Calls, and Orders*. Modifications to all awards (including contracts, agreements, BPA Calls, purchase orders, and task/delivery orders) shall be numbered sequentially with a six position alphanumeric serial number beginning with either A00001 or P00001. If contract administration is delegated to a contract administration office different from the original awarding office, the modifications issued by the administration office shall be prefaced with an "A", otherwise use "P". Please note that "A" shall not be used to identify an administrative modification. The "A" designation is intended only to identify contracting offices that did NOT issue the original award but are now in charge of contract administration.

(b) Certain exceptions, FAR 4.605(c) and FAR 4.1102, provide relief from the requirement that prospective contractors be registered in the System for Award Management (SAM) (which also requires a unique entity identifier), 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 unique entity identifier from a prospective contractor under one of the allowable exceptions of FAR 4.605(c), and FAR 4.1102, contracting officers may use, the following list of "generic" entity identifiers when reporting to FPDS. Because use of these identifiers precludes the ability of the government and the vendor to satisfy a number of other mandatory reporting requirements (e.g., eSRS, Service Contract Inventory, past performance, etc.), "Generic" entity identifiers must only be used when absolutely necessary. Additionally, contracting officers must ensure that contract award documents and related financial transaction data record the actual contractor information and NOT the "generic" information in order to prevent improper payments.

| **Entity Identifier** | **Description-Name** |
|---|---|
| 123456787 | Miscellaneous Foreign Awardees – (Used to report actions made to awardees located outside the US when there is no possible way to get an agency identifier) |
| 136666505 | Spouses of Service Personnel |
| 136721250 | Governmentwide Purchase Card (GPC) Consolidated Reporting – (Used to report purchase card actions under the micro-purchase threshold (MPT) when consolidated reporting is used) |
| 136721292 | Governmentwide Purchase Card (GPC) Foreign Contractor Consolidated Reporting - (Used to report purchase card actions under the MPT when consolidated reporting is used) |

| | |
|---|---|
| 153906193 | Foreign Utility Consolidated Reporting – (Used to report actions made to prime awardees located outside the US providing utilities services when a unique entity id is unavailable) |
| 167445928 | Student Workers in Laboratories |
| 167446249 | Navy Vessel Purchases in Foreign Ports |
| 790238638 | Domestic Contractor (Undisclosed) – (Used to report actions made to prime awardees located within the US where identifying the awardee could cause harm to the mission or awardee) |
| 790238851 | Foreign Contractor (Undisclosed) – (Used to report actions made to prime awardees located outside the US where identifying the awardee could cause harm to the mission or awardee) |

**3004.606 Reporting Data.**

(a) In situations where the Governmentwide commercial purchase card is used as a form of payment only (i.e., any transaction over the micro-purchase threshold), a corresponding procurement instrument must be created with a PIID and the transaction must be reported to FPDS. This requirement applies to all procurement actions, regardless of the solicitation process used, with the exception of those actions listed in FAR 4.606(c).

**3004.670 Acquisition related reporting requirements.**

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

**Subchapter 3004.8 Government Contract Files**

**3004.801 General.**

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

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

(a) There shall be an official contract file for every contract awarded, order issued, or agreement entered into by DHS Components. Beginning in FY 2020, DHS created the DHS Electronic Contract Filing System (ECFS) which will be used as the official contract file repository. Each Component, with the exception of the USCG, shall use ECFS based on the implementation schedule and in accordance with established business rules. Click here to access both documents. The USCG shall use ECFS for all awards with a total contract value greater than or equal to the SAT. New contract awards, including task\delivery orders, BPAs, and BPA calls,

and Interagency Agreements (IAAs) for assisted acquisitions, issued after the Component ECFS implementation date shall be stored and maintained in ECFS as the official contract file. The use of ECFS for pre-existing indefinite delivery vehicles (IDVs) (i.e., parent awards) will vary based on the single\multiple award nature of the IDV:

- For orders placed against single award IDVs, the IDV itself must also be stored and maintained in ECFS unless the IDV will expire in less than one year.
- For orders placed against multiple award IDVs that are for a single Component's use (i.e., the IDVs were awarded by one Component and only that Component can issue orders against it) the IDV itself must also be stored and maintained in ECFS unless the IDV will expire in less than one year.
- For orders placed against multiple award IDVs that are for multiple Components' use, the Head of Contracting Activity for the Component that awarded the IDV is responsible for determining if\when the IDVs are to be stored and maintained in ECFS. The HCA determination should take into consideration the benefits and ease of access to a centralized contract file storage system vs. maintaining both a paper and electronic contract files, paper file disposal, etc.
- For orders placed against multiple award non-DHS IDVs, the IDVs do not need to be stored and maintained in ECFS.

For all other pre-existing awards, meaning awards entered into prior to the Component implementation date, paper or non-ECFS electronic contract files may continue to be used but must be maintained and archived in accordance with HSAM 3004.8.

"*Contract file*" for purposes of this policy includes all the information cited in FAR 4.803 that are applicable to the action. Once a contract file has been established in ECFS, the ECFS record shall be considered the official contract file superseding any paper records. All information typically included in contract files shall be stored in ECFS. Once a contract file is established in ECFS the use of paper contract files or storage of contract documents outside of ECFS is not permitted.

(b) Each contract file shall be organized by sections using the applicable contract file checklist. Each checklist must contain a listing of items and subitems 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.

(c) At a minimum the contract, order or agreement file shall contain, as applicable:

(1) The records described at FAR 4.803;

(2) COR nomination package, including the documentation described in Appendix W, Contracting Officer's Representative (COR) Nomination and Appointment Correspondence;

(3) The COR appointment letter;

(4) The COR Supervisor notification letter;

(5) A completed, final, approved copy of the FPDS Contract Action Report.

**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 or HCA 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 or HCA 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.**

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

(b) Closeout of firm fixed price contracts or orders under the simplified acquisition threshold that involve no complexities. Contracting officers are not required to perform the same closeout

activities for cost reimbursement contracts on contracts or orders that are firm fixed price with a total estimated value under the simplified acquisition threshold and have no complexities. Complexities, for the purpose of this section, are defined as any of the following: rights in data, property, patent, trademark or copyright, disputes, terminations, equitable adjustments, or any potential legal concern. These types of contracts that are for supplies are considered automatically closed once all deliverables have been received, inspected, accepted, and the final invoice paid. Contracts meeting the criteria and are for services are considered automatically closed when all deliverables have been received, the final invoice paid and there has been no activity (no invoices, vendor communication, etc.) for six months. Any remaining contract funds after final invoice payment that still reside within the finance system would be deobligated. Components must work with their Chief Financial Officer (CFO) to determine the most efficient means of identifying these records so that excess funds in the finance systems can be deobligated. A modification deobligating these excess funds in the finance system after final invoice payment is not a requirement (for example, automatic deobligation upon final invoice payment is acceptable and encouraged). Contracting Officers are still required to document the closeout process in accordance with FAR 4.804-5(b). This documentation is often satisfied by a closeout screen in Component contract writing systems.

For any closeout of a firm fixed price contract or order with an estimated contract value under the SAT, Contracting Officers shall ensure:

- all deliverables have been received, inspected, accepted or services performed and the final invoice paid; and
- there are no complexities involved with the contract or order.

(c) *Reporting Contract Closeouts.* Contracting Officers are required to report contract closeouts to FPDS.

(1) Contract modifications issued to closeout the contract must be reported to FPDS using 'Closeout' under the 'Reason for Modification' drop down (please note closeout modifications may also serve multiple purposes such as deobligation of final funds, finalization of indirect cost\overhead rates, transfer of property, settlement of disputes, etc., but the 'Closeout' reason for modification should be used). Closeout modifications are intended to represent the last activity under a contract and are not easily corrected in FPDS, therefore Contracting Officers are required to take extra care when reporting these actions and shall thoroughly review the contract action reports before approving them. Contracting Officers must approve FPDS contract action reports for closeout modifications at the same time the modification is signed and/or released in the contract writing system.

(2) Physically complete firm fixed price contracts or orders under the SAT, with no complexities do not require a closeout modification but shall be reported to FPDS using the closeout button functionality. If for some reason a contract closeout modification was issued under these physically complete firm fixed price contracts or orders under the SAT, with no complexities, then the Contracting Officer shall report the modification to FPDS using 'Closeout' under the 'Reason for Modification' drop down instead of using the closeout button in accordance with HSAM 3004.804-5(c)(1).

In all cases Contracting Officers are required to adhere to record retention and disposal requirements.

**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.

(d) All contract files stored in ECFS will automatically be maintained in the system for the designated retention period once all closeout requirements have been met. Contract files stored in ECFS are not required to be printed out and physically 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 is paid $600 or more a year must be reported to the IRS.

**Subchapter 3004.11 System for Award Management (SAM).**

**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 unique entity identifier, and if applicable, the electronic funds transfer (EFT) identifier within the award document in accordance with FAR 52.204-7(b)(2). Also see HSAM 3004.605(b) regarding use of generic entity identifiers numbers for specialized reporting to FPDS.

**Subchapter 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.

**Subchapter 3004.15 Reserved**

**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:

(i) Subpart 8.4 (when not covered by paragraph (2) above);

(ii) FAR Part 13; or

(iii) FAR Part 16.

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

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

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

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

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

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

**3004.7001 Definitions.**

The following definitions are only applicable to HSAM 3004.70:

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

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

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

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

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

(b) *Review and Approval Requirements.* Appendix C, Review and Approval Matrix lists the review and approval requirements for the actions listed in subchapter 3004.7000. All Component reviews, comments, approvals, and resolution of comments shall be documented in writing and maintained in the contract file. If the award approving official conditionally approves the award, the contracting officer must include in the contract file a written determination (signed and dated) indicating that all of the conditions (e.g., corrections, deletions, additions, changes, etc.) were satisfied prior to award.

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

(i) *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.

(ii) *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 subparagraph 3004.7003(b).

**3004.7003 Legal review.**

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

(b) *Exception to Basic Rule for Legal Review.* When legal counsel has previously reviewed a contract, BPA, order, or inter/intra-agency agreement, legal review of certain modifications to those contractual instruments is not required. Such modifications include, but are not necessarily limited to: administrative modifications; modifications to add funding that do not increase scope; and, modifications to exercise options.

(c) *Documentation.* Incomplete documentation will not be reviewed until the complete file is submitted, and may be returned without review at the discretion of the legal counsel. For documentation to be complete, it must include all properly executed supporting documents,

including those required by the FAR, the HSAM and applicable Department and Component directives necessary to support the contract action.

(d) *Additional Requirements for Legal Review.*

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

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

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

(e) *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.

(f) *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.

**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) Procurement Strategy Roadmap (PSR);

(ii) Solicitation and contract actions selected by the CPO for review; and

(iii) In accordance with FAR 17.502-2(c)(2), HSAM 3017.502-170(c)(2), and HSAM 3017.502-171(g)(3), CPO/SPE approval is required prior to placing an order against another agency's contract that is not subject to the FAR or prior to obtaining acquisition assistance from an agency not covered by the FAR.

(b) *Information required for OCPO review and approval.*

(1) *General.*

(i) Reviews required by HSAM Subchapters 3004.7002, 3004.7003 and 3007.102-70 shall be obtained prior to transmittal to OCPO, including evidence of review and resolution of Component comments. Unless otherwise specified, all documents requiring CPO or higher-level approval shall be signed by the HCA as "Recommended for Approval" and transmitted to OCPO through the Reverse HCA Scheduler and Tracker Reporting Tool (RHCAST) at http://ocpo-sp.dhs.gov/sites/era/HCAST/Pages/RHCAST.aspx.

(ii) *Solicitations and contract awards.* If the solicitation and/or contract award will require OCPO review, OCPO will participate in the contracting activity's solicitation/contract review board. If the HCA does not have a solicitation/contract review board planned for the solicitation/contract, OCPO will conduct its review concurrently with the contracting activity's internal, policy and legal, reviews. To ensure these reviews do not impact the planned solicitation release or contract award dates, documentation necessary to complete the reviews timely shall be submitted to OCPO at the same time it is sent to the contract review board members or internal policy and legal reviewers. OCPO may request some or all of the following documentation to facilitate a solicitation/contract award review:

(A) Approved PSR (Note: If the procurement strategy is changed after the PSR is approved, submit the AP that reflects the revised procurement strategy);
(B) Solicitation Document (e.g., Request for Quote/Request for Proposal);
(C) Market Research Report;
(D) Requirements Document: Statement of Work/Statement of Objectives/Performance Work Statement/Specifications;
(E) Independent Government Cost Estimate;
(F) Source Selection Plan or Evaluation Plan/Strategy;
(G) Draft Award Document; and
(H) Source Selection Decision or Award Decision.

(iii) 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 3.104-4 and HSAM Subchapter 3003.104-4.

(c) *Notifications and other submissions to OCPO.* Unless otherwise specified, Components shall submit all required notifications and document submissions (e.g., copies of delegations, individual deviations) through RHCAST at http://ocpo-sp.dhs.gov/sites/era/HCAST/Pages/RHCAST.aspx.

**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.

**Subchapter 3004.71 Contents of a Procurement Request Package**

**3004.7100 Scope.**

This subchapter sets forth the minimum documentation requirements for submission of a procurement request package to the contracting activity.

**3004.7101 Documentation requirements.**

At a minimum, the following documentation shall be provided to the contracting activity when submitting a procurement request package. Failure to submit the required documentation will result in the rejection of the procurement request package. HCA procedures may prescribe additional documentation. Requirements offices should coordinate with their contracting activity to ensure the correct documentation is submitted for their requirement.

(1) Acquisition Plan (See HSAM 3007.103(e));

(2) Approved APFS record (See HSAM See HSAM 3007.172(a));

(3) Statement that none of the functions to be performed are inherently governmental. The statement shall be supported by a signed Inherently Governmental and Critical Functions analysis, as applicable;

(4) Certified funds (See HSAM 3032.702-70(a));

(i) Fiscal Year and Treasury Account Symbol (See HSAM 3032.702-70(c)(1))

(ii) Funding Agency and Funding Office

(5) Market Research Documentation (See HSAM 3010.001-70(d)(9));

(i) Recommended Sources

(6) COR Nomination Package (See HSAM 3032.72-70(b));

(7) Statement of Work/Statement of Objectives/Performance Work Statement or product specification, as appropriate;

(8) Independent Government Cost Estimate (See HSAM 3014.404-70);

(9) Chief Information Officer/Information Technology Acquisition Review (ITAR) of acquisitions that include information technology, as applicable (See DHS Directive 142-02, Information Technology Integration and Management and DHS Directive 102-01, Acquisition Management Directive);

(10) Section 508 documentation, as applicable (See HSAM 3039.203(a)(2));

(11) Justification for Full and Open Competition/Limited Source Justification/Brand Name Justification/Exception to Fair Opportunity, as applicable;

(12) Quality Assurance Plan when a Statement of Objectives or Performance Work Statement is contemplated, as applicable;

(13) Evaluation criteria/factors;

(14) DD Form 254, as applicable;

(15) Written statement addressing the factors enumerated in FAR 9.302 whenever first article testing and approval is required, as applicable (See HSAM 3009.302);

(16) Checklist for Private Sector Temporary Personnel, Appendix T, as applicable (See HSAM 3037.112(d));

(17) Appendix G - Checklist for Sensitive Information;

(18) For all acquisitions where a Contractor information technology system will be used to input, store, process, output, and/or transmit sensitive information, the requirements official shall submit a Requirements Traceability Matrix (RTM) as an attachment to the requirements document (i.e., Statement of Work, Statement of Objectives, Performance Work Statement). The requiring office shall coordinate the completion of the RTM with the Component CIO or designee; and

(19) All cloud computing acquisitions must be delivered through FEDRAMP ™ Cloud Service Provider (CSP) requirements and established in the Statement of Work. Please see www.fedramp.gov for more information. The Service Level Agreement Template shall not be used for cloud computing acquisitions.

# CHAPTER 3005 PUBLICIZING CONTRACT ACTIONS


| | | |
|---|---|---|
| **Subchapter** | **3005.000** | **Scope** |
| | 3005.003 | Governmentwide point of entry (GPE). |
| **Subchapter** | **3005.1** | **Dissemination of Information** |
| | 3005.102 | Availability of solicitations. |
| **Subchapter** | **3005.2** | **Synopses of Proposed Contract Actions** |
| | 3005.202 | Exceptions. |
| | 3005.207 | Preparation and transmittal of synopses. |
| **Subchapter** | **3005.3** | **Synopses of Contract Awards** |
| | 3005.301 | General. |
| | 3005.303 | 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** |
| | 3005.502 | Authority. |


## Subchapter 3005.000 Scope

### 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)(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 41 U.S.C. chapter 33, the contracting officer is held responsible for correctly classifying a FedBizOpps notice. A misclassified contract action must be corrected and re-synopsized in the FedBizOpps. Detailed classification codes are available on the FedBizOpps website at: http://www.fbo.gov.

## Subchapter 3005.3 Synopses of Contract Awards

### 3005.301 General.

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

### 3005.303 Announcement of contract awards.

(a) *Public announcement.* Contract actions valued in excess of $1 million and task or delivery orders using no-year or multi-year DHS funds in excess of $10 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 satisfied. Neither contracting officers nor any other DHS employee shall issue an award synopsis, public announcement, or any press release until the requirements in this subsection have been satisfied.

(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) It is essential that DHS contracting officers understand that complying with Appropriations law is a basic condition of holding a warrant. The Congressional notification requirements are required by the Consolidated Appropriations Act, which is appropriations law. These requirements apply not only to awards made with appropriated funds made available by DHS' annual appropriations acts, but to DHS contracts and orders in general regardless of the funding source. As a result, the Congressional notification requirements apply to all awards, including those funded by fees, offsetting receipts, gift funds, and any other budget authority. Any deliberate or reckless action leading to a violation of Congressional notification requirements may be grounds for warrant suspension or revocation. Therefore, if in doubt, send the Congressional notification out.

(b) Appendix D, Congressional Notification Requirements identifies contract actions that shall not be awarded, issued or distributed, nor information released to sources outside of DHS (except as described in FAR 15.503(a)(1)), until the requirements of Appendix D and this subsection have been satisfied. It is the responsibility of the contracting officer to confirm that three (3) business days have elapsed following the DHS Office of the Chief Procurement Officer (OCPO) notification to the Senate and House of Representatives Appropriations Committees. Heads of Contracting Activities (HCAs) are required to provide the oversight necessary to ensure contracting officer compliance with Appendix D and this subsection.

(c) OCPO is responsible for reviewing all Congressional notifications prior to submission to the Senate and House of Representatives Appropriations Committees. OCPO will review the notification for accuracy and to ensure supplies or services are clearly described and easily understood. Most delays in the notification process are the result of poorly worded or overly technical descriptions of supplies or services. Therefore, do not use undefined acronyms, vague language or technical jargon that may not be known by the general public within the notification. Contracting officers can prevent delays in awards by using plain language in the description allowing individuals not familiar with the requirements to comprehend what is being procured. Examples of summary description do's and don'ts are available under Job Aids at this link.

(d) *Announcement and notification procedures.* The DHS OCPO will use the information contained on the electronic Congressional notification form within the DHS Office of the Chief Procurement Officer Enterprise Reporting Application (ERA) tool to notify Senate and House of Representative Appropriations Committees.

(1) Contracting officers or other officials designated by the Component shall prepare and electronically submit the Congressional notification (after internal Component coordination as required) via the ERA tool located at http://ocpo-sp.dhs.gov/sites/era/Pages/Congressional-Notifications.aspx to OCPO at least five (5) full business days prior to the anticipated award or notice of award per Appendix D.

(i) The business day begins at 9:00 a.m. Eastern Time (ET). For notifications received after 9:00 a.m. ET, the first full business day will be the day following receipt. For example, if a contract or order is planned to be awarded/issued on a Friday, the electronic Congressional notification must be received electronically within ERA by OCPO no later than 9:00 a.m. the previous Friday.

(2) The contracting officer shall complete a separate electronic Congressional notification form for each anticipated award or notice of award per Appendix D. Thus, multiple actions on the same electronic Congressional notification form are not permissible.

(3) Contracting officers shall note the anticipated date of award on the electronic Congressional notification form, which shall be at least five (5) full business days after the electronic Congressional notification form is transmitted to the DHS OCPO via ERA. The contracting officer, or the official who transmitted the electronic Congressional notification form, will receive an ERA systems or OCPO-generated email as confirmation to proceed with award or notification per Appendix D.

(4) Descriptions of classified Congressional notifications or notices that would jeopardize national security shall not be included in the ERA tool as these types of notices shall be coordinated directly with OCPO outside the ERA tool.

(e) *Discretionary notification.* HCAs are authorized to provide discretionary Congressional notification when otherwise not required if it is determined the action is of special interest. Discretionary Congressional notification shall be made under the same procedures and timeframe as required Congressional notification that is required. HCAs or their designated representative must coordinate with OCPO before submitting the electronic Congressional notification form.

(f) *Request for Congressional Notification Deferral.* Congressional notification to the Committees of Appropriation of the Senate and House of Representatives for contract actions as provided in Appendix D which use FY 2009 or subsequent years' appropriations may be deferred only in very limited circumstances. Such 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 shall be made concurrently or prior to awarding a contract or issuing an order. If a contracting officer determines a substantial risk to human life, health, or safety exists, the following procedures apply:

(1) The contracting officer shall notify the Component HCA concerning circumstances that warrant an award of any action shown in Appendix D which would defer the five (5) business day Congressional notification waiting period. The Component HCA must request approval from the DHS Chief Procurement Officer (CPO) or Deputy Chief Procurement Officer (DCPO) of the intent to defer the five (5) business day Congressional notification waiting period. The HCA is responsible for ensuring Congressional notifications are entered into the ERA tool based on the Components anticipated award date as approved by CPO/DCPO.

(i) *Deferral Format.* The DHS Congressional Notification Deferral Job Aid is available under Job Aids at this link. The job aid provides additional guidance and details, including a sample format of the deferral memo to be approved by CPO or DCPO. All deferral requests must include a justification clearly

demonstrating how the delay of award due to Congressional notification procedures would pose a substantial risk to human life, health, or safety.

(ii) *Timeline for notification to CPO/DCPO.* The Component HCA should notify the CPO/DCPO as soon as the Component reasonably anticipates an award of an action covered in Appendix D where compliance with Congressional notification would pose a substantial risk to human life, health, or safety. At a minimum, the Component HCA should provide a cursory notification to the CPO/DCPO at the time of solicitation.

(iii) *Timeline for receiving approval from CPO/DCPO.* Due to the nature of the substantial risk to human life, health, or safety, it is the CPO/DCPO intention to respond to Component deferral submissions as soon as possible. If after exhausting all means of reaching CPO or DCPO (including email and mobile phone) and is unable to establish contact with the CPO/DCPO the Component HCA may proceed with concurrent award and Congressional notification one (1) business day following the request. Such action should be taken only after ensuring that all efforts have been made to obtain CPO/DCPO approval during that timeframe. This timeline applies to any Component request received overnight and/or weekends to include during FEMA emergency activation periods.

(iv) *Consolidation of substantial risk to human life, health, or safety deferrals under the same disaster relief or recovery effort.* Due to the unpredictable nature of disaster and emergency situations, Components are highly encouraged to submit one consolidated deferral request to OCPO in order to cover multiple contract actions. When a disaster related contract action requires a substantial risk to human life, health, or safety deferral, the Component HCA should submit a consolidated deferral request to the CPO/DCPO that covers potential additional related relief or recovery contract actions. See Job Aid for additional information.

(2) The electronic Congressional notification form within ERA will require the contracting officer to upload the approved DCPO/CPO deferral document for review by OCPO.

## 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 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.

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

**3005.404-1 Release procedures.**

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

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

**Subchapter 3005.5 Paid Advertisements**

**3005.502 Authority.**

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

# CHAPTER 3006 COMPETITION REQUIREMENTS


| | | |
|---|---|---|
| **Subchapter** | **3006.1** | **Full and Open Competition** |
| | 3006.102 | Use of competitive procedures. |
| **Subchapter** | **3006.3** | **Other than Full and Open Competition** |
| | 3006.302 | Circumstances permitting other than full and open competition. |
| | 3006.302-1 | Only one responsible source and no other supplies or services will satisfy agency requirements. |
| | 3006.302-2 | Unusual and compelling urgency. |
| | 3006.302-7 | Public interest. |
| | 3006.303 | Justification. |
| | 3006.303-1 | Requirements. |
| | 3006.303-2 | Content. |
| | 3006.304 | Approval of the justification. |
| | 3006.304-70 | Legal review. |
| | 3006.305 | Reserved. |
| **Subchapter** | **3006.5** | **Advocates for Competition** |
| | 3006.501 | Requirement. |
| | 3006.502 | Duties and responsibilities. |
| | 3006.570 | Advocates for competition for the procuring activity. |


## Subchapter 3006.1 Full and Open Competition

### 3006.102 Use of competitive procedures.

(b) If only one responsible offer is received in response to a solicitation using competitive procedures, and the award exceeds $250,000, the contracting officer must complete a One-Bid Award Questionnaire within seven days of email notification from the DHS Enterprise Reporting Application (ERA) and ensure information in the contract file supports the responses.

(1) The contracting officer must follow up with at least one anticipated source and attempt to discover the reason(s) an offer was not submitted. The contracting officer must consider response(s) provided, review all actions taken, and document the contract file with conclusions for the lack of competition.

(2) Paragraph (1) does not apply when the solicitation was open at least 16 days and at least one of the following was used:

(i) A RFI, draft RFP, RFQ, SOW, or similar document was provided to potential offerors, or

(ii) Held an Industry Day, or pre-proposal conference; or

(iii) Held one-on-one meetings with at least three potential offerors.

**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 Chief Procurement Officer (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.

**3006.302-7 Public interest.**

(d) The CPO approves any determination and Justification and Approval (J&A) for Other than Full and Open Competition covered under 6.302-7, regardless of dollar amount, prior to review and approval by the Secretary.

**3006.303 Justification.**

**3006.303-1 Requirements.**

(a) The DHS Justification and Approval for Other than Full and Open Competition Guide provides guidance on preparing justifications, including a sample format. All justifications requiring review and approval by the Office of the Chief Procurement Officer (OCPO) shall follow the sample format provided in the guide. The guide is located at http://dhsconnect.dhs.gov/org/comp/mgmt/cpo/paw/Pages/AcquisitionPolicyLegislation(APL).aspx.

**3006.303-2 Content.**

(b)(9)(iii) For a proposed contract 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 (see HSAR 3006.302-270) or one year (see FAR 6.302-2(d)(1)(ii)).

**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)). Class determinations and findings and J&As under the authority at FAR 6.302-7, Public Interest, are prohibited. When awarding a contract based on a class justification, a copy of the approved J&A must be included in the contract file.

(e) Justifications and approvals that result in the invocation of the exception to the Buy American statute at FAR 25.103(b)(2) or 25.202(a)(2) shall be reviewed and approved in accordance with HSAM 3025.103(b)(2)(i) or 3025.202(a)(2), as applicable. The justification and approval shall follow the sample format in the DHS Justification and Approval for Other than Full and Open Competition Guide and be submitted to the CPO for review and approval using the DHS Buy American Reporting Tool (see HSAM 3025.001(c)(74)).

(f) All justifications submitted to the OCPO for approval shall be accompanied by the approved acquisition plan. Any previous justification shall also be submitted.

(g) Revisions to justifications may be made with change pages or by a complete revision of the J&A. The revisions must be either highlighted or identified by the use of change bars alongside the revised text to facilitate identification of the changes.

(h) When a revision is made to a justification that impacts the description of the supplies or services being purchased and there is no impact to the dollar value of the action, the contracting officer must ensure that the revised J&A is reviewed and approved by the original approving official.

(i) When a revision is made to a justification that impacts the dollar value of the J&A, the contracting officer must ensure that the revised J&A is reviewed and approved by the original approving official and any other approving official necessitated by the change in the dollar value.

**3006.304-70 Legal review.**

Legal counsel shall review J&As 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 Reserved.**

**Subchapter 3006.5 Advocates for Competition**

**3006.501 Requirement.**

The Component is authorized to designate a Procuring Activity Advocate for Competition (PAAC) and, if applicable, an Alternate(s) Procuring Activity Advocate for Competition (APAAC) subject to OCPO review and concurrence. Designation memoranda shall be forwarded to the Departmental Advocate for Competition through the Component HCA using the required template entitled "Designation Memorandum for Procuring Activity Advocate for Competition Template" located at Appendix F. When a Component has determined that it is necessary for the PAAC and APAAC(s) to be active at the same time, the designation memoranda shall identify the specific areas of responsibility for each (e.g., geographic region, operational division, approval thresholds, etc.). In order to qualify as a PAAC or APAAC, 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 Advocate for Competition's annual report to the CPO and Chief Acquisition Officer (CAO) in accordance with FAR 6.502(b)(2), each PAAC shall prepare and submit an annual Component Competition Report to the Departmental Advocate for Competition on or before December 20th of each year for the preceding fiscal year. The PAAC is responsible for obtaining input from the APAAC(s), as applicable, for inclusion in the Component Competition Report.

(b)(5) In the absence of the PAAC and APAAC, the duties and responsibilities identified in this subchapter shall be performed by the Component HCA or designee.

**3006.570 Advocates for competition for the procuring activity.**

A listing with point of contact information for the Department Advocate for Competition and each PAAC/APAAC(s) is maintained by the CPO on the Doing Business with DHS page, and is accessible at https://www.dhs.gov/competition-advocates-and-task-order-and-delivery-order-ombudsman.

# CHAPTER 3007 ACQUISITION PLANNING


| | | |
|---|---|---|
| **Subchapter** | **3007.1** | **Acquisition Plans** |
| | 3007.101 | Reserved. |
| | 3007.102 | Policy. |
| | 3007.102-70 | Procurement Strategy Roadmap. |
| | 3007.102-7000 | Policy. |
| | 3007.102-7001 | General Procedures. |
| | 3007.102-7002 | Additional Considerations. |
| | 3007.103 | Agency-head responsibilities. |
| | 3007.103-70 | Reserved. |
| | 3007.104 | General procedures. |
| | 3007.105 | Contents of written acquisition plans. |
| | 3007.106 | Reserved. |
| | 3007.107 | Additional requirements for acquisitions involving bundling. |
| | 3007.170 | Reserved. |
| | 3007.171 | Reserved. |
| | 3007.172 | Acquisition Planning Forecast System. |
| **Subchapter** | **3007.2** | **Planning for the Purchase of Supplies in Economic Quantities** |
| | 3007.204 | Responsibilities of contracting officers. |
| | 3007.270 | Additional requirements for acquisitions involving strategically sourced commodities. |
| | 3007.270-1 | Scope. |
| | 3007.270-2 | Definitions. |
| | 3007.270-3 | General requirements. |
| | 3007.271 | Department-wide contracts. |
| | 3007.271-1 | General requirements. |
| | 3007.271-2 | Use of department-wide contracts. |
| | 3007.271-3 | Source selection evaluation for department-wide contract vehicles. |
| | 3007.271-4 | Post-award notification. |
| | 3007.272 | Federal Strategic Sourcing Initiatives (FSSI). |
| | 3007.272-1 | Reserved. |
| | 3007.272-2 | Definition. |
| | 3007.272-3 | Procedures. |
| **Subchapter** | **3007.4** | **Equipment Lease or Purchase** |
| | 3007.401 | Acquisition considerations. |
| **Subchapter** | **3007.5** | **Inherently Governmental Functions** |
| | 3007.502 | Applicability. |
| | 3007.503 | Policy. |

3007.503-70 Reserved.
3007.503-71 Reserved.

## Subchapter 3007.1 Acquisition Plans

### 3007.101 Reserved.

### 3007.102 Policy.

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

(b) Reserved.

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

(1) For an assisted acquisition:

(i) The requesting agency (DHS or other agency) may delegate preparation of an AP to the servicing agency (DHS or other agency), but the requesting agency shall provide support and assistance as needed. Either the requesting or the servicing agency may prepare and approve the AP in accordance with the applicable interagency agreement (IAA). If the IAA states that DHS shall prepare the AP, the AP shall be completed in accordance with this Chapter. See HSAM 3017.502-171(c) for the policy if an agency other than DHS prepares the AP.

(ii) Acquisition plans are not required for interagency assisted acquisitions with the Department of Energy (DOE) for work to be performed by a DOE laboratory or sites (see HSAM 3017.502-172).

(2) For a direct acquisition:

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

(3) IA documentation requirements:

(i) For intra-agency assisted acquisitions, a copy of the AP shall be maintained in the servicing Component's contract file.

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

(d) When a written AP is required, a solicitation shall not be issued until the written AP has been approved. See exceptions in paragraph (f).

(e) APs for Department-wide vehicles may include planning for all task/delivery orders and calls to be placed against the vehicles, when feasible. Language in the Department-wide vehicle AP shall specifically state that the AP covers all task and/or delivery orders or calls within scope of the contract or agreement. When an AP for a Department-wide vehicle does not cover the task/delivery orders or calls, separate APs may be required for the task/delivery orders or calls.

(f) *Exceptions.* Written APs are required for acquisitions that meet the criteria and thresholds in the Written Acquisition Plan Matrix located at HSAM 3007.103(e). Written APs are <u>not</u> required for the following:

(1) For firm-fixed price (FFP) acquisitions of supplies and/or services less than $50M. This includes BPAs, BOAs and IDVs with only FFP task/delivery orders and calls;

(2) Other than firm-fixed price (OTFFP) actions below the simplified acquisition threshold (SAT) (See FAR Class Deviation 20-02, Written Acquisition Planning Requirements).

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

(4) Transactions under which all work is performed by DHS personnel;

(5) *Emergency acquisitions.* An acquisition is considered an emergency acquisition when the need for the supplies/services is of such unusual and compelling urgency that the Government would be seriously injured if the supplies/services were not immediately acquired;

(6) Task/delivery orders where a written AP has been approved at the base contract level (e.g., indefinite delivery vehicle (IDV)) and the approved AP includes planning for all task or delivery orders issued after award;

(7) Orders/calls under Basic Ordering Agreements (BOAs) or Blanket Purchase Agreements (BPAs) where a written AP has been approved prior to award of the initial BOA or BPA and the AP includes planning for the orders/calls issued after award;

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

(9) Acquisitions conducted under the Small Business Innovative Research Program (SBIR) or Small Business Technology Transfer (STTR); and

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

**3007.102-70 Procurement Strategy Roadmap.**

**3007.102-7000 Policy.**

(a) The Chief Procurement Officer (CPO) will review and approve the procurement strategy of certain procurement actions prior to the drafting of the APs. The threshold for these procurement actions are outlined in each HCA's Designation Letter. HCA Designation Letters are accessible at http://dhsconnect.dhs.gov/org/comp/mgmt/ocpo/APL/Pages/DelegationsDesignations.aspx.

**3007.102-7001 General Procedures.**

(a) *Procurement Strategy Discussion with the CPO.* The HCA, along with key stakeholders, which includes the requirements owner, contracting officer, legal counsel, Category Management and Strategic Sourcing, Office of the Small Disadvantaged Business Utilization, Program Accountability and Risk Management, Office of the Chief Information Officer and other experts, as needed, shall meet to present and discuss the proposed procurement strategy for procurement actions that meet the Procurement Strategy Roadmap (PSR) threshold outlined in each HCA's Designation Letter. To facilitate this discussion, contracting activities shall:

(1) Include the CPO as a participant in the contracting activity's existing planning/strategy session; or

(2) Schedule a procurement strategy meeting with the CPO.

(b) *Documentation Requirements.* The procurement strategy shall be documented in writing using the PSR template. The PSR template addresses the high-risk areas for the procurement, including but not limited to a description of the requirement, competition, strategic sourcing, small business, industry engagement, evaluation factors, contract type, safeguarding of sensitive information, and unique terms and conditions. With the exception of classified procurements, the PSR shall be submitted to OCPO for approval. If the CPO is attending the contracting activity's planning/strategy session, the PSR shall be submitted to OCPO at least five (5) business days prior to the session. If a PSR briefing with the CPO has been scheduled in advance of the PSR submission, the PSR shall be submitted to OCPO at least five (5) business days prior to the meeting.

(c) The PSR template is accessible at the following link:
http://dhsconnect.dhs.gov/org/comp/mgmt/ocpo/APL/Pages/Guides&Tools.aspx

(d) The CPO may determine after reviewing the PSR that a meeting is not necessary, and in that case will conduct a paper briefing of the PSR.

(e) *APs with an Approved PSR.*

(1) Through the PSR, the CPO will inform the HCA if the AP and/or solicitation/award documents are to be submitted to the CPO for review and approval. See HSAM 3004.7004.

**3007.102-7002 Additional Considerations.**

(a) Approval of the procurement strategy does not constitute final approval of any related D&F, J&A or Strategic Sourcing Waiver documents. Approvals are required for these documents in accordance with existing regulations and policy. The approved PSR document shall accompany the submission of any acquisition document (e.g., AP, D&F, and J&A) requiring OCPO review and approval. See also 3004.7004(a).

**3007.103 Agency-head responsibilities.**

(e) *Criteria and Thresholds.*

(1) Written APs for supplies and services shall be prepared in accordance with the following Written AP Matrix. In situations where a written AP is not required, acquisition planning is still required, per FAR 7.102.

**Written Acquisition Plan Matrix**

| Contract Type | Written AP Required Yes/No | CPO Approval Threshold |
|---|---|---|
| **FFP < $50M**<br>(includes BPA, BOA or IDV with only FFP task/delivery orders and calls) | No | N/A |
| **FFP ≥ $50M**<br>(includes BPA, BOA or IDV with only FFP task/delivery orders and calls) | Yes | ≥ $100M |
| **OTFFP < SAT**<br>(includes contracts, BPA, BOA or IDV with OTFFP orders and calls) | No | N/A |
| **OTFFP ≥ SAT**<br>(includes contracts, BPA, BOA or IDV with OTFFP orders and calls) | Yes | ≥ $100M |

(2) *FFP Actions.* A written AP shall be prepared for FFP actions greater than or equal to $50M.

(3) *OTFFP Actions.* A written AP shall be prepared for OTFFP actions above the SAT. (See FAR Class Deviation 20-02, Written Acquisition Planning Requirements)

(4) *Hybrid Actions.* A written AP shall be prepared if (1) the contract is a hybrid with both FFP and OTFFP CLINS; and (2) the OTFFP portion is greater than or equal to the SAT.

(5) The editable version of Appendix Z, DHS Acquisition Plan template is accessible at the following link:
http://dhsconnect.dhs.gov/org/comp/mgmt/ocpo/APL/Pages/Guides&Tools.aspx

(j) Review and Approval of APs.

(1) *Review.* All APs shall be reviewed and signed by at least the acquisition planner/program manager, small business specialist, the contracting officer and the HCA or designee. For acquisitions that include or use information technology in any form, the Component CIO shall review and sign the AP before it is submitted to the contracting activity for review and approval. The HCA may require additional reviews.

(2) *Approval.*

(i) Unless instructed otherwise through the PSR, CPO approval of a written AP is required (1) for APs with a total procurement value greater than or equal to $100M; or (2) for any other AP designated by the CPO.

(ii) All APs not requiring CPO approval shall be approved/signed by the HCA or designee.

(iii) APs requiring CPO approval shall be (1) submitted in accordance with the format provided in Appendix Z, DHS Acquisition Plan template, (2) properly coordinated with pertinent functional office/stakeholders prior to submission to the CPO, and (3) signed by the HCA prior to submitting for CPO approval.

(iv) For acquisitions that include or use information technology in any form, in addition to the CPO, the DHS CIO shall also review and sign the AP. When the AP is sent to OCPO for review, OCPO will coordinate with the HQ OCIO to obtain the DHS CIO review and signature.

(v) All APs that require CPO approval shall also comply with the following procedures:

(A) In those instances where the initial AP was approved below the CPO approval threshold, but a revised AP is subsequently prepared that meets the threshold, the revised plan shall be approved by the CPO. Revisions may be made using change pages or by complete revision of the AP.

(B) Other than through the PSR, the HCA may request a waiver from the requirement for CPO approval of an AP. Any such waiver request shall be submitted by the HCA to OCPO. Waiver requests shall contain sufficient detail to clearly demonstrate the basis for the request.

(C) Classified APs that require CPO approval shall be coordinated with the Executive Director, OCPO/Acquisition Policy and Oversight or the Director, OCPO/CAAS.

**3007.103-70 Reserved.**

**3007.104 General procedures.**

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

(b) Acquisition planners shall assess all requirements to ensure applicable projects and requirements are planned. HCAs should issue instructions establishing PALT and cut-off dates to assist planners and reduce end of year rushed procurements. When establishing PALT and cut-off dates, HCAs shall remain cognizant of federal holidays and their possible impact to the procurement process. Acquisition planners in conjunction with their contracting officer shall set realistic procurement-specific milestones that take into account federal holidays as non-business days for contracting staff and industry partners. Contractors shall be given a reasonable amount of time to prepare submissions assuming no work is performed on Federal holidays.

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

(d) At a minimum, the acquisition planning team shall include the acquisition planner/program manager, contracting officer and small business specialist. The team shall also include, as applicable, information security, personnel security, budget, environmental, privacy, legal, energy, safety, earned value management, logistics and end user personnel when the circumstances of the proposed acquisition requires the expertise of these individuals (Also see HSAM 3004.470(b)). The contracting officer, as the developer of the acquisition strategy plays a key role in the planning. Working together, the acquisition planner and the acquisition planning team prepare and execute the AP.

(1) *Acquisition planner/Program manager*. The acquisition planner, shall develop the AP making sure to:

(i) Coordinate with an acquisition planning team comprised of personnel responsible for significant aspects of the AP. (See 3007.104(d))

(ii) Document the IGCE. IGCEs shall be fully documented so that contracting officials can understand the basis of the estimate and can use the estimate in later steps of the acquisition process. A fully documented estimate also increases information sharing. A well-documented estimate shall be supported by detailed documentation that describes how it was derived, capturing the source of the data used and the assumptions underlying the estimate.

(iii) Document lessons learned from the acquisition history, which includes knowledge gained from previous contracts, or potential issues that should be addressed in the new contract because lessons learned from previous contracts improve acquisition planning for new requirements. Knowledge gained from prior acquisitions can be used to further refine requirements and acquisition strategies.

(iv) Provide input into the AP as necessary; and

(v) Route the AP through the approval process;

(2) *Contracting officer.* The contracting officer, as a member of the acquisition planning team, shall provide applicable input for the plan such as the type of contract, contract vehicle to be used, setting procurement milestones, and on set-aside considerations. The contracting officer shall also document the rationale for the selection of OTFFP contract type such as cost-reimbursement, labor hour, time & material, etc. In addition, the contracting officer shall:

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

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

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

(3) *Small business specialist*. The small business specialist, as a member of the acquisition planning team, shall review and sign the AP.

(e) *Contractor support.* While contractors may provide acquisition planning support, contractors are prohibited from making any acquisition planning decisions. Administrative services in support of acquisition planning are not generally considered to be inherently governmental functions (see FAR 7.503(d)). However, in order to avoid any potential personal or organizational conflicts of interest (OCI), 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 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 should contact the Office of General Counsel or Component legal office before allowing any contractor to assist in the acquisition planning process. (For further guidance regarding organizational and consultant conflicts of interest, see FAR 9.5; Homeland Security Acquisition Regulation (HSAR) Subpart 3009.5; and HSAM Subpart 3009.5.)

**3007.105 Contents of written acquisition plans.**

(c) Refer to the requirements of FAR Class Deviation 20-02, Written Acquisition Planning Requirements and Appendix Z, DHS Acquisition Plan template. (See 3007.103(d)) Template sections shall not be deleted. If a section does not apply, planners shall insert "N/A" and the basis for non-applicability. Planners shall ensure that due diligence is performed to support an "N/A" response. If there is additional information that needs to be added to the template based on the requirement, Components have the flexibility to tailor the template to add the additional information.

(d) If there is additional information that needs to be added to the template based on the requirement, Components have the flexibility to tailor the templates to add the additional information.

(e) The written AP shall indicate if it is a new plan or a revision. Revisions to plans may be tracked using a table that shows the document version, date completed, and reason for revision.

(f) Each page of the written AP shall state the following: "SOURCE SELECTION INFORMATION - SEE FAR 2.101 and 3.104."

**3007.106 Reserved.**

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

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

(b) Reserved.

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

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

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

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

**3007.170 Reserved.**

**3007.171 Reserved.**

**3007.172 Acquisition Planning Forecast System.**

(a) In the fiscal year preceding the award of a new procurement all potential procurements shall be entered into the APFS database in accordance with HSAM 3019.202-270. APFS records shall be created and approved for all acquisitions over the SAT except as identified in Appendix H, Acquisition Planning Forecast System and Small Business Review Form Requirements Matrix. The APFS database can be accessed at the following link: http://apfs.dhs.gov. APFS record requirements are provided in Appendix H, Acquisition Planning Forecast System and Small Business Review Form Requirements Matrix.

(b) An APFS record shall be entered into the APFS database on or before August 31st of each year for all potential procurements that could arise in the following fiscal year. Unplanned procurements during the fiscal year shall be entered into the APFS as soon as the requirement is known.

(c) The requirements office initiates the APFS record by entering program information regarding the potential procurement into the APFS database and electronically routing the APFS record to the contracting activity. Once all requirement office fields are complete, the contracting officer reviews the requirements office fields, enters data for the contracting activity and approves or rejects the APFS record. Once the APFS record is approved by the contracting officer it is routed to the APFS Coordinator for action.
(d) The APFS Coordinator selects the appropriate small business program, reviews all APFS records within the Component, ensures APFS record accuracy and approves or rejects APFS

records. Once the APFS record is approved by the APFS Coordinator the APFS number on the record has an "F" placed in front of the number indicating it is final. The APFS record is then published in APFS for the procurement forecast. The Component APFS Coordinator shall work with the Component requirements offices and Component Acquisition Executive to ensure all of the Component's potential procurements are entered into the APFS database on time.

(e) The requirements office shall include a copy of the approved APFS record (marked with an "F") in the procurement request package. The contracting officer shall return procurement requests that do not include a final APFS record. Contracting officers shall not release any solicitations without first receiving a final APFS record.

(f) In the event of an emergency acquisition, the APFS record may be prepared concurrent with the submission of the procurement request. The final APFS record shall be delivered to the contracting activity prior to the release of the solicitation.

(g) APFS is not authorized for the processing or storage of classified or sensitive information. Requirements offices and contracting officers should consult with the appropriate representatives from Legal Counsel, Privacy Office, Security Office, and Freedom of Information Act Office before inputting information into APFS if they have questions or concerns regarding the sensitivity of information.

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

### 3007.204 Responsibilities of contracting officers.

(a) Reserved.

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

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

### 3007.270-1 Scope.

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

### 3007.270-2 Definitions.

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

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

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

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

**3007.270-3 General requirements.**

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

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

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

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

**3007.271 Department-wide contracts.**

**3007.271-1 General requirements.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) In accordance with Department of Homeland Security Memorandum, Source Selection Evaluators for the Department of Homeland Security Wide Contract Vehicles, dated October 24, 2011, DHS Components and Headquarter offices shall nominate at least one person to serve as an evaluator to support source selection efforts for Department-wide contract vehicles. The memorandum is available at: http://dhsconnect.dhs.gov/org/comp/mgmt/cpo/oss/Documents/Strategic%20Sourcing/Strategic%20Sourcing%20Policy%20Links/USM%20Borras%20signed%20memo%20Source%20Selection%20Evaluators%20DHS%20Wide%20Contract%20Vehicles%2010.24.11.pdf.

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

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

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

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

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

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

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

**3007.272-1 Reserved.**

**3007.272-2 Definition.**

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

**3007.272-3 Procedures.**

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

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

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

**Subchapter 3007.4 Equipment Lease or Purchase.**

**3007.401 Acquisition considerations.**

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

**Subchapter 3007.5 Inherently Governmental Functions**

**3007.502 Applicability.**

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

**3007.503 Policy.**

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

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

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

**3007.503-70 Reserved.**

**3007.503-71 Reserved.**

# CHAPTER 3008 REQUIRED SOURCES OF SUPPLIES AND SERVICES


| | | |
|---|---|---|
| **Subchapter** | **3008.000** | **Scope of part.** |
| | 3008.004 | Use of other sources. |
| **Subchapter** | **3008.4** | **Federal Supply Schedules** |
| | 3008.404 | Use of 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. |
| | 3008.405-70 | Evaluation practices. |
| **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

### 3008.004 Use of other sources.

In accordance with HSAM 3017.7102, the contracting officer or ordering official shall review the list of available Department-wide contract vehicles on the DHS Strategic Sourcing intranet page (http://dhsconnect.dhs.gov/org/comp/mgmt/cpo/Strategic%20Programs/Pages/StrategicSourcing.aspx) prior to making a purchase from other sources. An acquisition should be made from a DHS-wide contract vehicle after considering FAR 8.002 and FAR 8.003 mandatory sources but before considering FAR 8.004 other sources. If a DHS-wide contract vehicle is available, but not being used, the contracting officer shall document the basis for the decision and obtain an exception or waiver as described in HSAM 3017.7102. Note that this policy applies to all supplies and services, including those from FAR 8.002/8.003 mandatory sources available on a Department-wide contract vehicle.

## Subchapter 3008.4 Federal Supply Schedules

### 3008.404 Use of federal supply schedules.

(a) *General.*

(1) If only one quote is received in response to a RFQ that is issued using competitive procedures (including calls under single-award or multiple-award BPAs) that is expected

to result in an award including options exceeding $150,000, the contracting officer must complete a One-Bid Award Questionnaire within seven days of email notification from the DHS Enterprise Reporting Application (ERA) and ensure information in contract file supports responses.

(i) The contracting officer must follow up with at least one anticipated source and attempt to discover the reason(s) an offer was not submitted. The contracting officer must consider response provided, review all actions taken, and document the contract file with conclusions for the lack of competition.

(ii) Paragraph (i) does not apply when the solicitation was open at least 16 days and at least one of the following was used:

(A) A RFI, draft RFP, RFQ, SOW, or similar document was provided to potential offerors; or

(B) Held an Industry Day or pre-proposal conference; or

(C) Held one-on-one meetings with at least three potential offerors.

**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.

(f) *Minimum documentation.* When an IGCE is required, and the difference between the IGCE and the value of the proposal or quotation of an apparent successful awardee is 10 percent or greater, the contract file documentation shall explain the reasons for the differences. Documentation is required whether the difference results in a greater or lower contract value. At a minimum the analysis shall include any relevant information contained in the IGCE or any other items affecting price that were not considered as part of the IGCE. This analysis helps ensure that significant variances are addressed to determine price reasonableness. Contracting officers should consider addressing differences between an IGCE and the proposal or quotation of an apparent successful awardee that are lower than the 10 percent threshold when the price or complexity of the requirement warrant such an analysis.

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

(a)(3)(ii) All determinations for any single award blanket purchase agreement (BPA) exceeding the threshold at 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 not later than 14 days *prior* to issuance of the solicitation. The determination must be signed by the Component HCA as *"Recommended for Chief Procurement Officer Approval"*. The determination should be accompanied by such background information as will allow evaluation of the proposed determination, including, without limitation, any related justification and approval for other than full and open competition or separate determination for advisory and assistance services under FAR 8.4. Determinations shall be submitted in the format provided at Appendix L. All determinations submitted for CPO approval shall be accompanied by the approved acquisition plan.

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

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

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

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

**3008.405-70 Evaluation practices.**

(a) When evaluating non-price factors in a competitive acquisition, and when the Government evaluation team includes more than one person, the team may collaboratively arrive at ratings or findings. It is not necessary for an evaluation team to first develop individual member evaluation ratings or findings before starting a consensus evaluation.

(b) The advisory multi-step process described in FAR 15.202 may be adapted for use with acquisitions under this subpart. This advisory process is based on a pre-solicitation notice and occurs before release of the RFQ.

(c) *Down-Select Process*. When a large number of responses is anticipated in a competitive acquisition, the acquisition team may consider a phased evaluation. In a down-select, many quotes are evaluated in the first phase under some of the evaluation factors and fewer quotes are considered in one or more subsequent phases on the remaining evaluation factors. The process

described in HSAM 3016.505(b)(70)(iii) may be adapted for use with acquisitions under this subpart.

**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.

**Subchapter 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 QUALIFIACTIONS


| | | |
|---|---|---|
| **Subchapter** | **3009.1** | **Responsible Prospective Contractors** |
| | 3009.104 | Standards. |
| | 3009.104-5 | Certification regarding responsibility matters. |
| | 3009.104-6 | Federal Awardee Performance and Integrity Information System. |
| | 3009.105 | Procedures. |
| | 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. |
| | 3009.172 | Prohibition against contracting with corporations that have a felony criminal violation under any Federal or state law or unpaid Federal tax liability. |
| **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. |
| | 3009.306 | Solicitation requirements. |
| **Subchapter** | **3009.4** | **Debarment, Suspension, and Ineligibility** |
| | 3009.402 | Policy. |
| | 3009.405 | Effect of listing. |
| | 3009.405-1 | Continuation of current contracts. |
| | 3009.405-2 | Restrictions on subcontracting. |
| | 3009.406 | Debarment. |
| | 3009.406-1 | General. |
| | 3009.407 | Suspension. |
| | 3009.407-1 | General. |
| **Subchapter** | **3009.5** | **Organizational and Consultant Conflicts of Interest** |
| | 3009.501 | Reserved. |
| | 3009.503 | Waiver. |
| | 3009.570 | Limitations on Lead System Integrators. |
| | 3009.570-1 | Reserved. |
| | 3009.570-2 | Reserved. |
| | 3009.570-3 | Procedures. |

## Subchapter 3009.1 Responsible Prospective Contractors

### 3009.104 Standards.

### 3009.104-5 Certification regarding responsibility matters.

(a)(2) If an apparent successful offeror that is otherwise responsible submits an affirmative certification under FAR 52.209-5 Certification Regarding Responsibility Matters indicating the existence of an indictment, charge, conviction or civil judgment or Federal tax delinquency in an amount that exceeds the threshold specified FAR 9.104-5(a)(2), the contracting officer shall request additional information regarding the issue to determine whether the apparent successful offeror is presently responsible. If the contracting officer determines that the apparent successful offeror is presently responsible, the contracting officer shall forward the certification and supporting documentation, and a specific statement that the apparent successful offeror is presently responsible to the Office of Inspector General (OIG) requesting that a suspension and debarment referral file be created and forwarded to the Suspension and Debarment Official (SDO) in accordance with DHS Directive 146-01 and DHS Instruction Number 146-01-001 are available at this link. The contracting officer shall not award the contract until the SDO acknowledges receipt and specifically states that suspension or debarment will not be considered.

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

(c)(2) If the contracting officer identifies adverse information in the Federal Awardee Performance Information System (FAPIIS) that could indicate that the apparent successful offeror should be suspended or debarred, the contracting officer shall provide the information to the OIG and request that the facts be investigated. If appropriate, the OIG shall create a suspension and debarment referral and forward it to the SDO for consideration.

### 3009.105 Procedures.

### 3009.105-2 Determinations and documentation.

(a) *Determinations*. (1) The contracting officer shall promptly provide a copy of the nonresponsibility determination to the prospective contractor and a copy to the OIG who will prepare a referral to the SDO in accordance with DHS Directive 146-01 and DHS Instruction Number 146-01-001.

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

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

(ii) The contracting officer shall submit a copy of each nonresponsibility determination documented in FAPIIS to the OIG who will prepare a referral to the SDO in accordance with DHS Directive 146-01 and DHS Instruction Number 146-01-001.

(3) *Task and Delivery Orders and Exercise of Options*. A responsibility determination is not required when placing orders under indefinite delivery contracts, including orders placed under the GSA Federal Supply Schedule. However, the contracting officer shall check SAM to verify that the contractor is not excluded.

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

An affirmative certification provided by an apparent successful offeror under HSAR 3052.209-76 indicating it is a business concern owned, controlled, or operated by an individual convicted of a felony shall be promptly transmitted by the contracting officer to the OIG prior to proceeding with contract award. DHS contracting professionals shall follow DHS Directive 146-01 and DHS Instruction Number 146-01-001 concerning procedures, documentation, and process for each referral to consider for potential suspension and debarment.

**3009.172 Prohibition against contracting with corporations that have a felony criminal violation under any Federal or state law or unpaid Federal tax liability.**

An affirmative certification provided by an apparent successful offeror under HSAR 3052.209-79 indicating it is a corporation that was convicted (or had an officer or agent of such corporation acting on behalf of the corporation convicted) of a felony criminal violation under any Federal or State law within the preceding 24 months or has an unpaid Federal tax liability, shall be promptly transmitted by the contracting officer to the OIG prior to proceeding with contract award. DHS contracting professionals shall follow DHS Directive 146-01 and DHS Instruction Number 146-01-001 concerning procedures, documentation, and process for each referral to consider for potential suspension and debarment.

**Subchapter 3009.2 Qualification Requirements**

**3009.202 Policy.**

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

**Subchapter 3009.3 First Article Testing and Approval**

**3009.302 General.**

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

**3009.306 Solicitation requirements.**

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

**Subchapter 3009.4 Debarment, Suspension, and Ineligibility**

**3009.402 Policy.**

(c) Components shall follow the DHS Management Directive (MD) 146-01 and DHS Instruction Number 146-01-001 concerning procedures, documentation, and process for each referral to consider for potential suspension and debarment. Referrals for contractor suspension and

debarment and possible criminal or fraudulent activities shall be made to the Office of the Inspector General.

**3009.405 Effect of listing.**

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

**3009.405-1 Continuation of current contracts.**

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

**3009.405-2 Restrictions on subcontracting.**

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

**3009.406 Debarment.**

**3009.406-1 General.**

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

**3009.407 Suspension.**

**3009.407-1 General.**

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

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

**3009.501 Reserved.**

**3009.503 Waiver.**

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

**3009.570 Limitations on Lead System Integrators.**

**3009.570-1 Reserved.**

**3009.570-2 Reserved.**

**3009.570-3 Procedures**

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

# CHAPTER 3010 MARKET RESEARCH

**Subchapter 3010.000 Scope of part**
3010.001 Policy.
3010.001-70 Responsibilities.

## Subchapter 3010.000 Scope of part.

## 3010.001 Policy.

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

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

(b) Market research shall be conducted throughout the acquisition process (from pre-award through post-award) beginning with the mission needs statement. The level of specificity and scope varies, but market research shall be a continuous process. The acquisition team/IPT shall review HSAM 3008.002, Priorities for use of Government supply sources, early in the planning process and also consult with the DHS Strategic Sourcing Program Office (SSPO) to verify whether a strategic sourcing contract or order is appropriate. For information on the DHS SSPO, see http://dhsconnect.dhs.gov/org/comp/mgmt/cpo/oss/Pages/Strategicsourcing.aspx. The DHS Directive 060-01, Development and Use of Strategic Sourcing Contract Vehicles, is available by clicking here.

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

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

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

(2) Review a requirement if it is determined that a commercial item may not satisfy the agency's needs to determine if modifying the requirement may meet mission needs as well as allow a commercial item to be acquired; and perform trade-off analysis to determine if the modification is in the best interest of the Government;

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

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

(5) Support price reasonableness determinations;

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

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

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

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

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

(2) Market research methods used;

(3) Timeframes when staff used the market research methods; and

(4) Outcome and conclusion of the market research identifying potential sources, an analysis of the capabilities of potential sources, and findings that impact the procurement, e.g., any actions taken as a result of the market research such as re-evaluation of the requirement to determine whether the need can be restated to permit commercial or non-

developmental items to satisfy the agency's needs; and solicitation and award of resultant contract using policies and procedures in FAR Part 12 - Acquisition of Commercial Items. (See FAR 10.002(c) and (d).)

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

**3010.001-70 Responsibilities.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(8) Writing the market research report.

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

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

(f) *Strategic Sourcing Program Office (SSPO).* The SSPO shall provide DHS stakeholders economic and performance benefits through collaboration, application of sound analysis, and enterprise planning for acquisition initiatives. The SSPO collaborates with stakeholders to develop, deploy, and maintain strategic sourcing strategies that enhance mission performance

and optimize commodity management. The SSPO provides support to acquisition teams on Department-wide or multi-Component contracting initiatives.

| | | |
|---|---|---|
| **CHAPTER** | **3011** | **DESCRIBING AGENCY NEEDS** |
| **Subchapter** | **3011.1** | **Selecting and developing requirement documents** |
| | 3011.105 | Items peculiar to one manufacturer. |
| **Subchapter** | **3011.2** | **Using and Maintaining Requirements** |
| | 3011.202 | Maintenance of standardization documents. |
| **Subchapter** | **3011.6** | **Priorities and Allocations** |
| | 3011.602-70 | General. |

## Subchapter 3011.1 Selecting and developing requirement documents

### 3011.105 Items peculiar to one manufacturer.

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

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

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

## Subchapter 3011.2 Using and Maintaining Requirements Documents

### 3011.202 Maintenance of standardization documents.

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

## Subchapter 3011.6 Priorities and Allocations

### 3011.602-70 General.

For the purposes of the Defense Priorities and Allocations System (DPAS), Components shall comply with the DHS Federal Priorities and Allocations System Guide available at this link.

| | | |
|---|---|---|
| **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** | **3012.4** | **Unique Requirements Regarding Terms and Conditions for Commercial Items** |
| | 3012.403 | Terminations. |


## 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) Waivers shall be approved by the HCA. This authority is non-delegable. Waivers shall be reviewed by legal counsel. A copy of the approved waiver shall be submitted to OCPO within 5 working days of approval.

## Subchapter 3012.4 Unique Requirements Regarding Terms and Conditions for Commercial Items

### 3012.403 Terminations.

(a) Contracting officers shall follow guidance at HSAM Chapter 3049 to the extent that it does not conflict with this subchapter and the language of the termination paragraphs in FAR 52.212-4.

# 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. |
| | 3013.106-70 | Evaluation practices. |
| **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 | Use of strategic sourcing contract vehicles. |
| | 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** | **Simplified Procedures for Certain Commercial Items** |
| | 3013.501 | Special documentation requirements. |


## Subchapter 3013.1 Procedures

### 3013.101 General.

Except for acquisitions of $25,000 of 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.

**3013.106-70 Evaluation practices.**

(a) When evaluating non-price factors in a competitive acquisition, and when the Government evaluation team includes more than one person, the team may collaboratively arrive at ratings or findings. It is not necessary for an evaluation team to first develop individual member evaluation ratings or findings before starting a consensus evaluation.

(b) The advisory multi-step process described in FAR 15.202 may be adapted for use with acquisitions under this part, including Subpart 13.5. This advisory process is based on a pre-solicitation notice and occurs before release of the solicitation.

(c) *Down-Select Process.* When a large number of responses is anticipated in a competitive acquisition, the acquisition team may consider a phased evaluation. In a down-select, many quotes are evaluated in the first phase under some of the evaluation factors and fewer quotes are considered in one or more subsequent phases on the remaining evaluation factors. The process described in HSAM 3016.505(b)(70)(iii) may be adapted for use with acquisitions under this part, including Subpart 13.5.

**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 Financial Management Policy Manual (FMPM) Chapter 3, Section 3.2, Part 3.2.2 Purchase Card Manual.

**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 Financial Management Policy Manual (FMPM) Chapter 3, Section 3.2, Part 3.2.2 Purchase Card Manual.

**3013.301-70 Use of strategic sourcing contract vehicles.**

(a) Before using a purchase card, regardless of value, the contracting officer or ordering official shall review DHS Directive 060-01, Development and Use of Strategic Sourcing Contract Vehicles. All DHS strategic sourcing contract vehicles are mandatory for use unless the procurement meets one of the exceptions listed in the Directive, the contracting officer obtains a waiver from the CPO, or the CPO specifically designates the vehicle as non-mandatory..

**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 Simplified Procedures for Certain Commercial Items**

**3013.501 Special documentation requirements.**

(a)

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

(3) Sole source (including brand name) justifications that result in the invocation of the exception to the Buy American statute at FAR 25.103(b)(2) or 25.202(a)(2), shall be reviewed and approved in accordance with HSAM 3025.103(b)(2)(i) or 3025.202(a)(2), as applicable. The justification and approval shall follow the sample format in the DHS Justification and Approval for Other than Full and Open Competition Guide and be submitted to the CPO for review and approval using the DHS Buy American Reporting Tool (see HSAM 3025.001(c)(74)).

.

# 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) The Chief of the Contracting Office (COCO), without redelegation, is 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.

The COCO, without redelegation, is authorized to make the written determination at (c), (e), and (f).

### 3014.407 Mistakes in bids.

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

The COCO, without redelegation, is authorized to make the written determination 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. |
| | 3015.304 | Evaluation factors and significant subfactors. |
| | 3015.305 | Proposal evaluation. |
| | 3015.305-70 | Making better use of performance information. |
| | 3015.305-71 | Evaluation practices. |
| | 3015.370 | One offer received under competitive procedures. |
| **Subchapter** | **3015.4** | **Contract Pricing** |
| | 3015.400-70 | Scope of subpart. |
| | 3015.404 | Proposal analysis. |
| | 3015.404-2 | Data to support proposal analysis. |
| | 3015.404-4 | Profit. |
| | 3015.404-70 | Independent government cost estimate. |
| | 3015.406 | Documentation. |
| | 3015.406-170 | Prenegotiation objectives. |
| | 3015.406-370 | Documenting the negotiation. |
| | 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 HCA, without further delegation, is authorized to exempt contracts from the uniform contract format. By December 1st of each year, the Component shall discuss with the Executive Director of Acquisition Policy and Oversight the challenges experienced in the previous fiscal year with use of 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).

**3015.304 Evaluation factors and significant subfactors.**

(c)(3)(i) When past performance is an evaluation factor, DHS Source Selection officials shall use the Contractor Performance Assessment Reporting System (CPARS) at www.cpars.gov, 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.epa.gov/epp/), and the environmental objectives set forth in FAR 23.703(b), must be considered when developing source selection factors. (See HSAM Subchapter 3023.4 and Appendix Q, DHS Affirmative Procurement Plan).

**3015.305 Proposal evaluation.**

(a)(2)(ii) For purposes of conducting a past performance evaluation during a source selection, contracting officers shall use CPARS to review contractor past performance information. The contractor's past performance evaluation is distinct from any responsibility determination under the procurement. (See HSAM Subchapter 3009.1.)

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

**3015.305-70 Making better use of performance information.**

(a) *Scope.*

This section implements the steps described in the Office of Federal Procurement Policy (OFPP) memorandum titled, "Making Better Use of Contractor Performance Information," dated July 10, 2014. The purpose of the memorandum is to expand the number of contractor performance information sources to make it possible for contracting officers to make better informed award

decisions. The OFPP memorandum is accessible at https://www.whitehouse.gov/sites/default/files/omb/procurement/memo/making-better-use-of-contractor-performance-information.pdf.

(b) *Policy.*

(1) The FAR allows the Government to consider information from sources of information beyond CPARS. This includes information gathered when conducting additional research and outreach.

(2) At a minimum, contracting officers shall follow the steps provided in Attachment 1 of the OFPP memorandum for contracts or orders when acquiring complex information technology (IT) development, systems or services over $500,000. Also follow Attachment 1 for contracts or orders when the acquisition presents a significant risk as follows:

(i) Cost reimbursement type contracts: cost-plus award fee, cost-plus incentive fee; cost-plus fixed fee. Also, time-and-materials or labor-hour contracts and orders;

(ii) Complex awards, such as large construction, architect-engineer, research and development, software development and implementation acquisitions, etc.;

(iii) High dollar value awards or major acquisition systems, consistent with OMB Circular No. A-109, regardless of contract type;

(iv) Overseas and contingency operations actions, regardless of contract type; and

(v) Other contracts or orders determined to be high risk by DHS.

(3) The contracting officer shall document the use of Attachment 1 procedures in the source selection plan. The contracting officer shall also describe the past performance information evaluation method in the solicitation (see FAR 15.305(a)(2)). The contracting officer shall provide offerors an opportunity to respond to adverse past performance information. The contracting officer shall document how the performance information was used during source selection in the contract file..

**3015.305-71 Evaluation practices.**

(a) When evaluating non-price factors in a competitive acquisition, and when the Government evaluation team includes more than one person, the team may collaboratively arrive at ratings or findings. It is not necessary for an evaluation team to first develop individual member evaluation ratings or findings before starting a consensus evaluation.

(b) [Reserved]

(c) *Down-Select Process.* When a large number of responses is anticipated in a competitive acquisition, the acquisition team may consider a phased evaluation. In a down-select, many offers are evaluated in the first phase under some of the evaluation factors and fewer offers are considered in one or more subsequent phases on the remaining evaluation factors. The process described in HSAM 3016.505(b)(70)(iii) may be adapted for use with acquisitions under this subpart. However, the contracting officer must be mindful that FAR 15.503(a)(1) requires a prompt pre-award notice to unsuccessful offerors when their proposals are excluded from the competitive range or otherwise eliminated from the competition. While a down-select decision is not a competitive range decision, it does eliminate proposals from the competition, so a pre-award notice to unsuccessful offerors is required for a down-select process under this subpart.

**3015.370 One offer received under competitive procedures.**

(a) *Scope of policy.*

(1) The policy applies to any solicitation using competitive procedures expected to result in a contract, order, or call, including options, exceeding the thresholds cited in paragraph (b) and (c) below:

(2) This policy does not apply when emergency acquisition flexibilities of FAR Part 18 apply or to acquisitions of basic and applied research in FAR 35.016.

(b) *Actions when only one offer received.* If only one offer is received in response to a solicitation using competitive procedures, and is expected to exceed the dollar threshold for submission of certified cost or pricing data under FAR 15.403-4(a)(1), the contracting officer must:

(1)

(i) Advise the Component Competition Advocate if the solicitation was open for less than 16 days in order to provide an opportunity for advisory consultation; and

(ii) If additional time is expected to promote competition, issue a solicitation amendment to reopen the solicitation and extend the due date for offers; or

(iii) Consult with the requiring activity to determine if the requirements document should be revised in order to promote more competition and issue an amendment to reopen the solicitation, revising the requirements or terms and conditions and extending the due date for receipt of offers.

(2) The HCA may approve an exception to the requirements in paragraph (1) above. The HCA authority cannot be delegated.

(c) *Price analysis requirements for one offer.* If only one offer to the solicitation is received, and is expected to exceed the SAT, the contracting officer must:

(1) For a non-commercial item exceeding the threshold for submission of certified cost or pricing data under FAR 15.403-4(a)(1):

(i) Obtain certified cost or pricing data for use in negotiations, unless the contracting officer determines that the price is set by law or regulation, the requirement to obtain certified cost or pricing data is waived per FAR 15.403-1(c)(4) or HCA approval in paragraph (iii) is obtained; and

(ii) Negotiate a fair and reasonable price. The price should not exceed the original offer except as necessary for differing or additional terms; or

(iii) The HCA is the approval authority for a determination of fair and reasonable price based on offeror's expectation of adequate price competition (FAR 15.403-1(c)(1)(ii)). The HCA authority cannot be delegated. The U.S. Coast Guard cannot use FAR 15.403-1(c)(1)(ii) as a basis of price reasonableness based on 10 U.S.C. § 2306a paragraph (b)(1)(A)(i).

(iv) The determination must include circumstances that indicate the offeror believed that at least one other offeror was capable of submitting a meaningful offer and the offeror had no reason to believe that other potential offerors did not intend to submit an offer. The determination should include any other basis that supports the conclusion that the offer was submitted with the expectation of competition.

(2) For all commercial items exceeding the SAT or non-commercial items exceeding the SAT up to the threshold for submission of certified cost or pricing data (FAR 15.403-4(a)(1):

(i) Obtain supporting data other than certified cost or pricing data, see FAR 15.403-3, Requiring data other than certified cost or pricing data; and

(ii) Negotiate a fair and reasonable price. The price should not exceed the original offer except as necessary for differing or additional terms; or

(iii) For actions up to the threshold for submission of certified cost or pricing data under FAR 15.403-4(a)(1), the determination of fair and reasonable price based on offeror's expectation of adequate price competition (FAR 15.403-1(c)(1)(ii)) must be approved one level above the contracting officer. The U.S. Coast Guard cannot use FAR 15.403-1(c)(1)(ii) as a basis of price reasonableness based on 10 U.S.C. § 2306a paragraph (b)(1)(A)(i).

(iv) Actions exceeding the threshold for submission of certified cost or pricing data under FAR 15.403-4(a)(1) must be approved by the HCA. The HCA authority cannot be delegated. The determination must include circumstances that indicate the offeror believed that at least one other offeror was capable of submitting a meaningful offer and the offeror had no reason to believe that other

potential offerors did not intend to submit an offer. The determination should include any other basis that supports the conclusion that the offer was submitted with the expectation of competition..

## Subchapter 3015.4 Contract Pricing

### 3015.400-70 Scope of subpart.

Whenever agreement on pricing 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 Data to support proposal analysis.

(a) *Field pricing assistance.* Contracting officers should contact the Defense Contract Audit agency (DCAA) to obtain information that DCAA has on file, such as the status of the contractor's accounting system, provisional billing or forward pricing indirect rates, and any other readily available relevant information. Contracting officers may contact the cognizant DCAA office directly by using the locator tool at www.DCAA.mil, or may request the OCPO Pricing Team to assist in collecting field pricing information by sending an e-mail to PROCUREMENTSUPPORT@hq.dhs.gov.

(c) *Audit Assistance for prime contractors or subcontracts*.

(1) Pursuant to the Memorandum of Understanding (MOU) between Defense Contract Audit Agency (DCAA) and U.S. Department of Homeland Security, all requests for DCAA audit services shall be made directly by the cognizant contracting officer to the cognizant DCAA Office. If the cognizant DCAA office is not identified in the offeror's proposal, it can be obtained from the DCAA website, www.dcaa.mil, by using the "Locator" feature and searching by the DUNS number of the offeror. 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) If DCAA is not cognizant of the offeror or is unable to provide assistance, field pricing support is available through the Contract Audit and Review Services (CA&RS) Blanket Purchase Agreement (BPA). The BPA and Ordering Guide are accessible at the OCPO Strategic Sourcing webpage, http://dhsconnect.dhs.gov/org/comp/mgmt/cpo/oss/Pages/StrategicSourcing.aspx. Questions regarding data to support proposal analysis, and coordination with DCAA or the CA&RS BPA Holders, may be directed to the OCPO Oversight and Pricing Branch at PROCUREMENTSUPPORT@hq.dhs.gov.

(4) *Copies of Audit Reports.* Contracting officers shall provide a copy of the audit report (whether performed by DCAA or under the CA&RS BPA) to OCPO by sending an e-mail to PROCUREMENTSUPPORT@hq.dhs.gov for contractor system reviews (e.g., accounting system reviews, estimating system reviews, compensation reviews, etc.)..

**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 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, Weighted Guidelines Profit/Fee Objective.

(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.

(b) When an IGCE is required, and the difference between the IGCE and the value of the proposal or quotation of an apparent successful awardee is 10 percent or greater, the contract file documentation shall explain the reasons for the differences. Documentation is required whether the difference results in a greater or lower contract value. At a minimum the analysis shall include any relevant information contained in the IGCE or any other items affecting price that were not considered as part of the IGCE. This analysis helps ensure that significant variances are addressed to determine price reasonableness. Contracting officers should consider addressing differences between an IGCE and the proposal or quotation of an apparent successful awardee that are lower than the 10 percent threshold when the price or complexity of the requirement warrant such an analysis.

**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:

(i) 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;

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

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

(iv) 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 Appendix AA, Debriefing Guide, for guidance on the debriefing process and appropriate timely information to provide to the offeror in addition to the requirements of FAR 15.505.

### 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 Appendix AA, Debriefing Guide, for guidance on the debriefing process and appropriate timely information to provide to the offeror in addition to the requirements of FAR 15.506.

## Subchapter 3015.6 Unsolicited Proposals.

### 3015.606-70 Agency procedures.

Unsolicited proposals are not marketing or advertising materials, product catalogs, or commercial item offers submitted either on the initiative of a vendor or at the request of a DHS employee conducting market research. Appendix K, Unsolicited Proposal Procedures, provides DHS procedures, presented in the form of a multi-level flow chart, for the review, evaluation and disposition of unsolicited proposals. Appendix K should be used in conjunction with FAR Subpart 15.6 and HSAR Subchapter 3015.6. Additional information on unsolicited proposals is accessible at http://www.dhs.gov/unsolicited-proposals.

| | | |
|---|---|---|
| **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 using the automation tool provided by OCPO/Acquisition Workforce and Systems Support.

## 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 ordering period limitations on task order or delivery order 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 the threshold specified at 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 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 must be accompanied by such background information as will allow evaluation of the proposed determination including 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. The request shall also include either the approved exception or the CPO approved waiver request to using the mandatory strategic sourcing vehicles (see DHS Directive 060-01, Development and Use of Strategic Sourcing Contract Vehicles), as applicable.

(2) The notification to Congress required by FAR 16.504(c)(1)(ii)(D)(2) for single award task or delivery order contracts exceeding the threshold specified at FAR 16.504(c)(1)(ii)(D)(1) 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 notice to OCPO 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)).

(70) *Documentation.* When an IGCE is required, and the difference between the IGCE and the value of the proposal or quotation of an apparent successful awardee is 10 percent or greater, the contract file documentation shall explain the reasons for the differences. Documentation is required whether the difference results in a greater or lower contract value. At a minimum the analysis shall include any relevant information contained in the IGCE or any other items affecting price that were not considered as part of the IGCE. This analysis helps ensure that significant variances are addressed to determine price reasonableness. Contracting officers should consider addressing differences between an IGCE and the proposal or quotation of an apparent successful awardee that are lower than the 10 percent threshold when the price or complexity of the requirement warrant such an analysis.

(b) *Orders under multiple award contracts.*

(1) *Fair Opportunity.*

(iii) *Orders exceeding the simplified acquisition threshold.*

(A) The contracting officer must complete a One-Bid Award Questionnaire within seven days of email notification from the DHS Enterprise Reporting Application (ERA) and ensure information in contract file supports responses. The contracting officer must follow up with at least one multiple award contract holder and attempt to discover the reason(s) for no offer. The contracting officer must consider response(s) provided, review all actions taken, and document the order file with conclusions for the lack of competition. The contracting officer does not have to follow up with any multiple award contract holder when the solicitation was open at least 16 days and a RFI, draft RFP, SOW, or similar document was provided to the multiple award contract holders or

one-on-one meetings were held with at least three multiple award contract holders. HSAM 3015.370 *One offer received under competitive procedures* applies only when the order will exceed the simplified acquisition threshold, the price is not established in the basic contract, and an exception to fair opportunity does not apply.

(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.

(70) *Evaluation practices*.

(i) When evaluating non-price factors in a competitive acquisition, and when the Government evaluation team includes more than one person, the team may collaboratively arrive at ratings or findings. It is not necessary for an evaluation team to first develop individual member evaluation ratings or findings before starting a consensus evaluation.

(ii) The advisory multi-step process described in FAR 15.202 may be adapted for use with acquisitions for orders under multiple-award contracts. This advisory process is based on a pre-solicitation notice and occurs before release of the notice (solicitation) required by FAR 16.505(b)(1)(iii)(B)(1) or (iv)(A).

(iii) *Down-select process.* When a large number of responses is anticipated in a competitive acquisition, the acquisition team may consider a phased evaluation. In a down-select, many offers are evaluated in the first phase under some of the evaluation factors and fewer offers are considered in one or more subsequent phases on the remaining evaluation factors.

(A) The notice (solicitation) may require a multiple-step offer submission (where the initial offer will address some evaluation factors and one or more subsequent offer updates will address the remaining evaluation factors). This is a matter for the contracting officer's discretion and sound business judgment, considering the realities of the marketplace and the complexities of the acquisition. A notional two-phase scenario is described in the table below. This notional scenario describes or illustrates the down-select process. The contracting officer should not infer that this notional scenario must be followed without adjustment in any particular acquisition; rather, the process should be adapted to fit the particular acquisition.

**Notional Scenario —Down-Select with Multiple-Step Offer Submissions**

| | | |
|---|---|---|
| Phase 1 | 1 | Release Notice Describing all Evaluation Factors, and Request Offers Addressing Phase 1 Factors |
| | 2 | Receive Phase 1 Offers |
| | 3 | Evaluate Phase 1 Factors |
| | 4 | Down-Select a Subset of Offers to Proceed to Phase 2 |
| Phase 2 | 5 | Request Offer Updates Addressing Phase 2 Factors only from Offers Selected to Proceed to Phase 2 |
| | 6 | Receive Offer Updates |
| | 7 | Evaluate Phase 2 Factors |
| | 8 | Select Awardee |

(B) The notice (solicitation) should clearly detail the evaluation factors which are relevant for each phase. The notice may provide that some or all of the evaluation factors used in an earlier phase may be considered again in the decision process for a subsequent or final phase. As explained in Sevatec (B-413559.3, Jan. 11, 2017), it is not required to consider price during every phase; however, price must be considered in any phase where a down-select decision is based on a tradeoff approach. Price must be evaluated for all awardees.

(C) For acquisitions where the contracting officer is not the selecting official—

*(1)* the contracting officer may make the down-select decision, while the selecting official retains award decision; or

*(2)* the selecting official may make both the down-select decision as well as the award decision.

(D)

*(1)* An oral presentation or product demonstration may occur in any phase, but the contracting officer should consider holding these in a subsequent or final phase with a smaller number of offerors. The contracting officer should consider the oral presentation or demonstration as a stand-alone evaluation factor, rather than allowing the oral presentation or demonstration to affect other evaluation factors

*(2)* If the solicitation allows for briefing slides or submission of other written materials as part of the oral presentation or demonstration, the solicitation should establish a common cut-off date and time for receipt of these materials and limit the amount of written material permitted to avoid duplication with other written submission requirements and minimize the complexity of the oral presentation or demonstration evaluation process. The solicitation

should also advise offerors that the submission of written materials for the oral presentation or demonstration does not constitute an opportunity to submit a revised offer.

(E) *Advisory*. In an advisory, soft, or voluntary down-select process, an offeror not selected to proceed to the next phase may still elect to participate in the next phase, and if so, will be considered for award. At the conclusion of an advisory down-select phase, the contracting officer shall inform each offeror either *(1)* that it is invited to participate in the next phase; or *(2)* that, based on the information it has already submitted, it is unlikely to be a viable competitor along with the general basis for that opinion. However, the notice should not restrict any offeror from submitting an offer in the next phase. The notices should inform offerors of the next submission requirements and deadlines.

(F) *Firm*. In a firm, hard, or involuntary down-select process, an offeror not selected to proceed to the next phase will not be further considered for award. At the conclusion of a firm down-select process, it is recommended that the contracting officer inform each offeror either *(1)* that it is invited to participate in the next phase and provide information on the next submission requirements and deadlines; or *(2)* that it is no longer considered eligible for award. While FAR 16.505(b)(6) does not require a pre-award notice to unsuccessful offerors, providing a notice in a down-select process is a preferred business practice.

(iv) Webinar recordings and additional resources on evaluation practices can be found on the DHS Procurement Innovation Lab (PIL) website. Search PIL on DHS Connect.

## 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 SAT. 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) The Chief of the Contracting Office (COCO), without redelegation, has the authority to approve a contracting officer's determination of a reasonable price or fee for a letter contract. The COCO, without redelegation, must approve extensions to the definitization of a letter contract.

**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** |
| | 3017.104 | General. |
| | 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. |
| | 3017.207-70 | Exercise of options. |
| **Subchapter** | **3017.5** | **Interagency Acquisitions** |
| | 3017.500 | Scope of subchapter. |
| | 3017.501-70 | General. |
| | 3017.501-71 | Definitions. |
| | 3017.501-72 | Policies applicable to direct and assisted interagency acquisitions. |
| | 3017.501-73 | Reserved. |
| | 3017.502 | Procedures. |
| | 3017.502-1 | General. |
| | 3017.502-170 | Direct Acquisitions. |
| | 3017.502-171 | Assisted Acquisitions. |
| | 3017.502-172 | Work performed by Department of Energy national laboratories and sites. |
| | 3017.502-173 | Assisted acquisitions with DHS as the servicing agency. |
| | 3017.502-2 | The Economy Act. |
| | 3017.502-270 | Funding restrictions and requirements under the Economy Act. |
| | 3017.504 | Reserved. |
| **Subchapter** | **3017.70** | **Intra-Agency Acquisitions** |
| | 3017.7000 | Scope. |
| | 3017.7001 | Definitions. |
| | 3017.7002 | Policy. |
| | 3017.7003 | Procedures. |
| **Subchapter** | **3017.71** | **Requirements for Acquisitions Involving Strategically Sourced Commodities** |
| | 3017.7100 | Scope. |
| | 3017.7101 | Reserved. |
| | 3017.7102 | Using department-wide contract vehicles. |
| | 3017.7103 | Post-award notification. |
| | 3017.7104 | Office of Management and Budget (OMB) reporting for department-wide contract vehicles. |

**Subchapter 3017.72 Reverse Auctions**
3017.7200 Scope.
3017.7201 Definition.
3017.7202 General.
3017.7203 Policy.

## Subchapter 3017.1 Multi-Year Contracting

### 3017.104 General.

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

### 3017.105 Policy.

### 3017.105-1 Uses.

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

### 3017.106 Procedures.

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

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

(f) *Annual and multi-year proposals*. The Chief of the Contracting Office (COCO), without redelegation, is delegated the authority under FAR 17.106-3(f).

(g) *Level unit prices.* The COCO, without redelegation, 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, without redelegation, may approve total contract periods exceeding five years. Documentation shall include rationale describing circumstances that warrant a period longer than five years, the results of market research, benefits to the Government and how price risks normally associated with a long performance period are being mitigated.

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

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

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

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

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

**3017.207-70 Exercise of options.**

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

## Subchapter 3017.5 Interagency Acquisitions

### 3017.500 Scope of subchapter.

This subchapter establishes DHS policy and procedures to ensure the appropriate execution of interagency acquisitions (IA) in accordance with FAR Subpart 17.5 (see www.acquisition.gov/browsefar). This subchapter does not apply to:

(a) Intra-agency acquisitions. When DHS Components place an order against another DHS Component's contract or request another DHS Component provide acquisition services, Components shall follow the procedures at HSAM 3017.70.

(b) Interagency reimbursable work agreements (IRWA). An IRWA is an agreement between federal agencies where one agency obtains supplies or services from another federal agency and that agency provides the supplies and services using its own resources (e.g., employees, contracts, inventory). IRWAs are executed under the authority of the DHS Chief Financial Officer (CFO). For DHS policy on IRWAs see Chapter 3, Section 3.7, Intergovernmental Actions, Transactions, and Reporting of the DHS CFO Financial Management Policy Manual. Examples of IRWAs are reimbursement for salaries of temporarily detailed employees and Reimbursable Work Authorizations for building renovations requested through the General Services Administration such as those entered into under the authority of 40 U.S.C. § 592(b)(2).

(c) Interagency activity where contracting is incidental to the purpose of the transaction, see HSAM 3017.501-71.

### 3017.501-70 General

An interagency acquisition is a procedure where one federal agency (the requesting agency) obtains goods or services from another federal agency (the servicing agency). The requesting agency may obtain goods or services by directly placing an order against another agency's contract (*i.e.*, a direct acquisition) or by requesting a servicing agency to perform acquisition activities on behalf of the requesting agency (*i.e.*, an assisted acquisition).

### 3017.501-71 Definitions.

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

*Contracting Incidental to the Purpose of the Transaction* – When a servicing agency enters into a written interagency agreement to provide a service or supply to a requesting agency and the servicing agency uses a contract to fulfill the need, the contract is incidental to the purpose of the

transaction. This is because the requesting agency is asking the servicing agency to provide a service and not to award a contract action (e.g., contract, order, or modification) or to provide other acquisition assistance (e.g., conduct market research, develop an acquisition strategy, prepare a statement of work, modify a contract to add the work of a requesting agency). For example, when a federal agency requests the Office of Personnel Management (OPM) to conduct background investigations, any contracts OPM may enter into to support its effort to complete the investigations are incidental to the purpose of the transaction. The purpose of the transaction is for OPM to conduct background investigations and is not for OPM to award a contract on behalf of the requesting agency.

*Interagency Agreement (IAA)* – A written agreement between federal agencies (or Components within a federal agency), which is part of an inter- or intra-agency transaction, for supplies and services to be provided by a servicing agency in support of a requesting agency. An IAA is required for assisted acquisitions and IRWAs. Specific formats of IAAs are negotiated between agencies, also known as Trading Partners.

*Intra-governmental Payment and Collection (IPAC)* – A Treasury based system to provide a standardized interagency fund transfer mechanism for Federal Program Agencies. Payments or collections are initiated by Federal agencies to settle the exchange of goods and services. (See Treasury Financial Manual, Chapter 4000 at https://tfm.fiscal.treasury.gov/v1/p4/c400.html).

**3017.501-72 Policies applicable to direct and assisted interagency acquisitions.**

Below are policies applying to direct acquisitions and assisted interagency acquisitions.

(a) A DHS contracting officer is the signatory official for all interagency acquisitions (IAs).

(b) All IAs must be authorized by statute. The statutory authority for placing orders against Federal Supply Schedules (FSS) contracts is 40 U.S.C. § 501 and for government-wide acquisition contracts (GWAC) the authority is 40 U.SC. § 11302(e). For work performed by the Department of Energy's national laboratories the statutory authority is 6 U.S.C. § 189. The Economy Act (31 U.S.C. § 1535) is the statutory authority when more specific authority does not exist. When the Economy Act is the authorizing statute, contracting officers shall also follow FAR 17.502-2, HSAM 3017.502-2, and HSAM 3017.502-270.

(c) IAs shall not be used to circumvent conditions and limitations imposed on the use of funds.

(d) Appropriated funds used to pay for goods or services obtained using IA procedures (see HSAM 3017.502-170, HSAM 3017.502-171, and HSAM 3017.502-172) must:

(1) Meet an existing *bona fide* need of the fiscal year in which goods or services are acquired;

(2) Be properly obligated before the expiration of available funds; and

(3) Comply with any other applicable appropriations law principles.

(e) Because IAs result in the award of a contract action (e.g., contract, order, modification), in addition to adhering to the applicable requirements of FAR Subpart 17.5, IAs must also comply with other applicable requirements of the FAR, HSAR, and HSAM. For example, IAs require market research, acquisition planning (see FAR Subpart 7.1 and HSAM 3007.1), compliance with FAR Subpart 7.3, Contractor Versus Government Performance and OMB Circular A-76 , and congressional notification. For assisted acquisitions, requesting and servicing agencies must document in the interagency agreement the party responsible for accomplishing required procurement activities and documentation (see HSAM 3017.502-171(c)).

(f) When DHS appropriations statutes, other laws, or policy place prohibitions or restrictions on the use of funds or how DHS may procure supplies or services, those prohibitions and restrictions apply even when DHS issues orders against another agency's contract or when another agency provides acquisition assistance to DHS. Therefore, before placing an order against another agency's contract or signing an interagency agreement for an assisted acquisition, the DHS contracting officer shall review the HSAR and DHS class deviations to identify DHS contract clauses applicable to the requirement. When clauses apply to a particular requirement, the DHS contracting officer shall incorporate applicable clauses into the order for direct acquisitions or the interagency agreement for assisted acquisitions. If either the servicing agency or contractor disagrees with the inclusion of applicable DHS clauses, the DHS contracting officer cannot place the order or enter into the agreement for an assisted acquisition. For example:

(1) HSAR class deviation 15-01 applies to contracts and orders when the requirement has been determined high risk and where (1) a contractor will have/has access to sensitive information, as defined in HSAR 3052.204-71 Contractor Employee Access, or (2) contractor IT systems are used to input, store, process, output, and/or transmit sensitive information.

(2) HSAR class deviation 13-01 applies to contracts and orders for the purchase of textiles (e.g., uniforms, tents, protective equipment (such as body armor), etc.).

**3017.501-73 Reserved.**

**3017.502 Procedures.**

**3017.502-1 General.**

(a) *Written agreement on responsibility for management and administration* – See HSAM 3017.502-171(c) for assisted acquisitions or when work will be performed by a DOE national laboratory or site see HSAM 3017.502-172(f).

(b) *Business-case analysis requirements for multi-agency contracts and governmentwide acquisition contracts*. The business case, including the HCA recommendation and contracting activity legal counsel concurrence, and related acquisition documents, shall be forwarded to the Director, Strategic Sourcing Program Office, Office of the Chief Procurement Officer (OCPO), for approval. Business cases shall be approved by the agency's Senior Procurement Executive

(SPE), following coordination with the agency's Director of the Office of Small and Disadvantaged Business Utilization (OSDBU) and – if the acquisition involves information technology – the agency's Chief Information Officer. The contracting activity shall indicate whether the business case has been approved or canceled. For additional information on development of a business case, see DHS's OCPO Strategic Sourcing Program Office at: http://dhsconnect.dhs.gov/org/comp/mgmt/ocpo/SSPO/Pages/default.aspx.

**3017.502-170 Direct Acquisitions.**

(a) *Additional Requirements.*

(1) Before placing an order against another agency's contract, the DHS contracting officer shall review materials about the other agency's contract and, as necessary, contact the servicing agency with questions about the vehicle, such as scope, terms and conditions, competition requirements, and ordering procedures.

(2) DHS contracting officers shall place orders in accordance with the servicing agency's instructions.

(3) The statutory authority permitting the use of another agency's contract shall be identified in the contract file. If the direct acquisition is authorized by the Economy Act, the applicable requirements in FAR 17.502-2, HSAM 3017.502-2, and HSAM 3017.502-270 must also be followed.

(4) DHS contracting officers shall comply with the Congressional Notification requirements of HSAM 3005.303 and HSAM Appendix D for orders or blanket purchase agreements funded with DHS multi-year or no-year funds.

(b) *Review and Approvals.*

(1) Orders to be placed against other agencies' contracts are subject to the review and approval requirements of HSAM 3004.70 for task and delivery orders. Reviews and approvals shall be completed prior to placement of the order.

(2) The DHS CPO shall approve the use of another agency's contract that is not subject to the FAR prior to placement of an order (See HSAM 3004.7004).

**3017.502-171 Assisted Acquisitions.**

(a) For interagency acquisitions with the Department of Energy (DOE) for work to be performed by DOE laboratories and site, follow HSAM 3017.502-172.

(b) Because servicing agencies generally charge fees for providing acquisition services, the first choice for performing acquisition services is a Component's contracting office. Therefore, the contract file must reflect the contracting officer's rationale for obtaining acquisition assistance

from another agency. The rationale may be included in other file documentation such as the acquisition plan, if one is required, or, when required, an Economy Act D&F.

(c) *Interagency Agreements.*

(1) Per FAR 17.502-1(a), all assisted acquisitions require a written interagency agreement that is signed by both parties before a servicing agency issues a solicitation.

(2) Preparing an interagency agreement is a joint effort between the requesting and servicing agency. While each interagency agreement is tailored to the extent of acquisition assistance required and the complexity of the requirement, all interagency agreements must contain the elements enumerated in Appendix 2 of the Office of Federal Procurement Policy's (OFPP memo on Improving the Management and Use of Interagency Acquisitions, dated June 6, 2008). While there is no standard government-wide form or format for interagency agreements, OFPP's memo includes a model, two part (Part A and B) agreement (see Appendix 3 of OFPP's memo) available for use. In addition, the Department of Treasury encourages the use of its two part form, FMS Form 7600 A and B, to help standardize business processes and data elements. Use of other agencies' forms such as Treasury's forms 7600 A and B (at https://www.fiscal.treasury.gov/g-invoice/resources.html#admin) or the Department of Defense DD Forms 448, Military Interdepartmental Purchase Request (at https://www.acq.osd.mil/dpap/dars/dfars/html/previous/dd0448.pdf), and 448-2, Acceptance of MIPR (at https://www.acq.osd.mil/dpap/dars/dfars/html/previous/dd0448-2.pdf), is acceptable provided the agreement contains all elements required by Appendix 2 of OFPP's memo and the accounting data required by the Department of Treasury. When contracting offices use another agency's form and the form is completed outside of a Component's contract writing system, contracting offices shall include the form as an attachment to the Component's interagency acquisition form. Only appropriately warranted contracting officers shall sign interagency agreements for assisted acquisitions.

(3) When preparing an interagency agreement, include the general terms and conditions that govern the relationship between the requesting and servicing agencies to include the roles and responsibilities of each party (see Part A of OFPP's model agreement or Treasury's 7600A form). The DHS contracting officer prepares the general terms and conditions, in coordination with the DHS requiring office and the servicing agency. In assigning roles and responsibilities, the contracting officer shall use the checklist shown in Appendix 1 of OFPP's memo on Improving the Management and Use of Interagency Acquisitions.

(i) Per OFPP's memo, the requesting agency must retain the following responsibilities:

(A) Establishing a *bona fide* need in terms that are specific, definite and clear;

(B) Certifying that funds are appropriate for the designated purpose, meet time limitations, and are legally available for the specified acquisition;

(C) Identifying any acquisition laws, fiscal laws or related policies that are unique to the agency, or that restrict the agency; and

(D) Providing the servicing agency with the correct funding agency/office codes needed for accurate reporting to the Federal Procurement Data System (FPDS).

(ii) Per OCPO policy, DHS requiring offices and contracting officers are responsible for ensuring statements of work include no inherently governmental functions and for following the requirements of HSAM 3007.5, Inherently Governmental Functions (also see HSAM 3037.103 when obtaining acquisition assistance for contractor services).

(iii) Other responsibilities concerning acquisition activities are a matter of negotiation between DHS and the servicing agency. These activities include:

(A) *Market Research.* All procurements require market research. For assisted acquisitions, DHS requiring offices are responsible for initiating market research to develop requirements documents. Servicing agencies may complete the market research with the support of the DHS requiring office.

(B) *Acquisition Planning.* Acquisition planning is required for all procurements. For assisted acquisitions, HSAM 3007.102 states that either DHS (the requesting agency) or the servicing agency may develop and approve the Acquisition Plan (AP) per the terms of the interagency agreement. If the agreement states that DHS prepares the AP, it must be completed and approved in accordance with HSAM Chapter 3007 and a copy retained in the contract file. If the servicing agency prepares the plan, the requesting agency provides support as per agreement between the parties and the interagency agreement must state where the AP is physically located.

(iv) While the terms and conditions of each agreement vary, each agreement must include:

(A) The applicable DHS contract provisions and clauses.

(B) Security and suitability requirements of contractor employees and facilities if not identified in the statement of work.

(C) The requirement for the servicing agency to enter the DHS funding agency/office codes into FPDS when reporting any contract action (e.g.,

contract, order, modification) resulting from the interagency assisted acquisition.

(D) A statement identifying the agency responsible for costs associated with termination, disputes, and protests, including settlement costs, and a statement that the servicing agency shall obtain approval in writing from the requesting agency to terminate a contract or order five business days prior to terminating a contract or order (see HSAM 3049.101(c)).

(E) Per Appendix D of the HSAM, the contracting officer shall provide in ERA the estimated contract award details of the IAA at the time the agreement is signed by the DHS contracting officer and shall stipulate that the servicing agency **may** provide a Congressional Notification consistent with its agency policy. Also see paragraph 3017.502-171(d) for congressional notification requirements.

(4) Agreements shall also demonstrate a *bona fide* need and include the financial information required to authorize the transfer and obligation of funds for both the acquisition and the assistance provided by the servicing agency in connection with the acquisition. Contracting officers shall ensure agreements include all of the funding information shown in Block B.12 of OFPP's model agreement and a statement on how the planned acquisition will be funded (i.e., direct cite or reimbursement). When using OFPP's or Treasury's two part form, this information is provided on Part B of the applicable form. Because Part B addresses the requirement and funding, the DHS requiring office prepares Part B, in coordination with its finance/budget office, the DHS contracting officer, and the servicing agency.

(d) *Congressional Notification.* Interagency acquisitions for assisted acquisitions with a total estimated value in excess of $1 million (including options) or modifications that cause an assisted acquisition to exceed $1 million in value (including options) require congressional notification following the requirements of HSAM 3005.303 and HSAM Appendix D.

(e) *Contract files.* DHS files for assisted acquisitions shall contain the fully executed copy of the interagency agreement. If using a two part form, both parts of the agreement are included in the file.

(f) *Periodic Reviews.* Per OFPP's memo on Improving the Management and Use of Interagency Acquisitions dated June 6, 2008, agreements that exceed a year shall be reviewed annually to confirm the terms and conditions remain valid and that the parties are fulfilling its obligations. The contracting officer, in coordination with the requiring office, conducts the review and shall include a summary of the review in the IA file.

(g) *Review and Approvals.*

(1) Interagency agreements shall be approved at least one level higher than the contracting officer and reviewed by legal when the total value of the interagency

acquisition, inclusive of options and servicing agency fees, is estimated to exceed $500,000. Approvals and reviews shall be accomplished before the agreement is transmitted to the servicing agency for signature and shall follow the requirements HSAM 3004.7002 and 3004.7003.

(2) If an interagency agreement addresses multiple procurement actions that will be executed by separate orders (e.g., Part B documents), each order is subject to the review and approval requirements of paragraph (g)(1).

(3) DHS CPO approval is required before transmitting any interagency agreement to a servicing agency not subject to the FAR (See HSAM 3004.7004).

(4) Unless otherwise approved by the COCO, without re-delegation, the agreement period shall not exceed five years. If the agreement period is approved to exceed five years during the effective period of the IA, the contracting officer must amend the agreement to reflect this change and the COCO's approval must be documented in the file. For USCG, see HSAM 3016.5 and 3017.2 for limitations on task order or delivery order contracts.

**3017.502-172 Work performed by Department of Energy national laboratories and sites.**

Section 309(a)(1)(A) of the Homeland Security Act of 2002 (6 U.S.C. § 189) authorizes DHS to use the unique expertise of the DOE national laboratories and sites in carrying out its mission on a work for others basis. Transactions between DHS and DOE under this authority are governed by an overarching Memorandum of Agreement dated February 28, 2003. DHS has determined that access to DOE Laboratories and Sites on a work for others basis constitutes an interagency assisted acquisition covered by FAR Subpart 17.5. DOE provides acquisition assistance by providing DHS access to their contractor operated national laboratories and sites. This is the extent of DOE's acquisition assistance. For example, DOE does not conduct market research, develop acquisition plans, or award new contracts on behalf of DHS. Therefore, given this unique statutory authority and the limited acquisition assistance DOE provides to DHS, when entering into an interagency agreements with DOE for the use of a DOE laboratory or site the following applies in lieu of the procedures at HSAM 3017.502-171, except as otherwise stated:

(a) Section 309(a)(1)(A) of the Homeland Security Act of 2002 (6 U.S.C. § 189) is the statutory authority for entering into agreements with DOE. Therefore, the requirements of FAR 17.502-2 and HSAM 3017.502-2 do not apply.

(b) Per DHS Directive 143-04, Establishing or Contracting with Federally Funded Research and Development Centers (FFRDC) and National laboratories, requiring/program offices shall ensure the Office of National Laboratories (ONL) within the Science and Technology Directorate reviews all statements of work directed to DOE laboratories or sites before submitting a procurement request package to the Component contracting office. Documentation of ONL's review shall be included in the procurement request package.

(c) Program offices shall submit the documentation required by HSAM 3004.7101 except as follows:

(1) Market research is required only to confirm the work to be performed by a DOE Laboratory is not work that can be performed by the private sector. The results of this market research may also serve to document the contracting officer's rationale for obtaining acquisition assistance from another agency consistent with FAR 4.801(b).

(2) Acquisition plans are not required for interagency agreements with DOE national laboratories or sites. However, the Checklist for Sensitive Information, Appendix G, (see HSAM 3007.103(e)(4)) shall be completed.

(3) An Independent Government Cost Estimate is required using the contract rates of the applicable DOE laboratory or site.

(4) Evaluation criteria/factors are not required..

(d) Per OCPO policy, DHS requiring offices and contracting officers are responsible for ensuring statements of work include no inherently governmental functions and for following the requirements of HSAM 3007.5, Inherently Governmental Functions (also see HSAM 3037.103 when obtaining acquisition assistance for contractor services).

(e) A written interagency agreement is required and shall be signed by both parties before work commences. Agreements shall demonstrate a bona fide need and include the financial information required to authorize the transfer and obligation of funds. Sample terms and conditions and statement of work for work performed by DOE laboratories and sites are available at the Science and Technology's Office of National Laboratories website.

(f) The review and approval requirements of HSAM 3017.502-171(g) apply to interagency agreements for work to be performed by DOE national laboratories and sites.

(g) DHS files for assisted acquisitions shall contain the fully executed copy of the interagency agreement. If using a two part form, both parts of the agreement are included in the file.

(h) Congressional notification is required for interagency agreements with a total estimated value in excess of $1 million (including options) or modifications that cause an agreement to exceed $1 million in value (including options). See HSAM 3005.303 and HSAM Appendix D for specific requirements.

(i) Per OFPP's memo on Improving the Management and Use of Interagency Acquisitions dated June 6, 2008, agreements that exceed a year shall be reviewed annually to confirm the terms and conditions remain valid and that the parties are fulfilling its obligations. The contracting officer, in coordination with the requiring office, conducts the review and shall include a summary of the review in the IA file.

**3017.502-173 Assisted acquisitions with DHS as the servicing agency.**

(a) DHS shall not agree to provide acquisition services if:

(1) Accepting the request will prevent DHS from fulfilling its mission; or

(2) The requesting agency does not provide all required procurement documentation or support in development of procurement documentation as agreed to by the parties. DHS shall not accept an interagency agreement that lacks information or specificity to such a degree that is not feasible to award or modify a contract or task/delivery order (i.e., "contractually obligate") within a reasonable time.

(b) When DHS agrees to provide acquisition services, the DHS contracting officer shall process the procurement request for the resulting acquisition in accordance with DHS procurement policies and procedures and ensure applicable contract clauses of the requesting agency are included in the resulting contract action. When DoD is the requesting agency, DHS shall comply with DoD procurement requirements (see FAR Subpart 17.7, Interagency Acquisitions: Acquisitions by Nondefense Agencies on Behalf of the Department of Defense).

(c) When DHS is the servicing agency for an interagency assisted acquisition, the DHS contracting officer shall:

(1) Assist in preparing the interagency agreement, in coordination with the requesting agency, in accordance with FAR 17.502-1(a). Review the requesting agency's documentation to include a copy of their acquisition plan (if prepared by the requesting agency) and the interagency agreement to ensure it includes the information required by Appendix 2 of OFPP's memo and the accounting data required by the Department of Treasury. DHS prohibits interagency acquisitions undertaken to circumvent any agency's regulations, policies, and/or procedures.

(2) Ensure the terms and conditions (typically provided in Part A) of the interagency agreement are clear and complete and includes, at a minimum, the following:

(i) The signature of the requesting agency official authorized to approve the IA;

(ii) A termination provision for the interagency agreement.

(iii) Identification of the contractor and contract number (as applicable);

(iv) A statement of work and the estimated cost (IGCE);

(v) Provisions for inspection and acceptance of the contractor's work;

(vi) Intellectual property provisions, if applicable;

(vii) Unique terms and conditions required by the requesting agency, if applicable, including unique requesting agency provisions and clauses;

(viii) Unique or specific security requirements including safeguarding sensitive but unclassified information;

(ix) Roles and responsibilities regarding contract functions, including contract administration; and

(x) A positive affirmation that the requesting agency is not circumventing their own policy, procedures, and/or regulations by contracting with DHS.

(xi) The requesting agency's FPDS-NG funding agency/office codes.

(3) Ensure that the requesting agency complies with all legal and regulatory requirements applicable to the contract action, including, but not limited to:

(i) Performing acquisition planning (if completed by the requesting agency) to include any applicable clearance reviews in accordance with established approval thresholds;

(ii) Ensuring proper statutory authority for the contractual action;

(iii) Compliance with competition requirements of FAR Part 6;

(iv) Compliance with requirements under small business set-asides in FAR Subpart 19.5; and

(v) Performing contract administration (if performed by the requesting agency) duties such as preparing a quality assurance plan, voucher examination and past performance data collection and reporting as required by FAR 42.1502.

(4) The DHS contracting officer shall ensure compliance with fiscal law including purpose, time, and amount and ensure the requesting agency's accounting information (typically included in Part B of the agreement) includes, at a minimum, the following:

(i) Billing data with the names and mailing addresses of both agencies' accounting offices;

(ii) A citation of the requesting agency's funding and appropriation data and validation of statutory or regulatory use of the funds, including disclosure of any special restrictions;

(iii) When using a two part agreement, a statement that the terms and conditions in Part A are incorporated by reference or attached to Part B. Work requested under an on-going contract must be within the scope of the contract. When DHS is the servicing agency, each procurement action executed in support of the interagency agreement must either include or incorporate by reference Part A of the agreement and forward a copy of Part B to the applicable DHS or Component

budget office. The requesting agency's program office and financial/budget office shall maintain a copy of Part B; and

(iv) Any other documents necessary to support the statutory authority for the funds.

(5) As needed, the DHS contracting officer shall coordinate with the requesting agency on proposal revisions.

(6) When the requesting agency's requirement results in the award of a DHS contract, a delivery/task order, or a purchase order, the action will be processed by the DHS contracting officer like any other procurement action in PRISM/FPDS-NG or Component's contract writing system.

**3017.502-2 The Economy Act.**

(c) *Requirements for determinations and findings.* The D&F shall be prepared following the format in Appendix V of the HSAM.

(2) The HCA is delegated the authority to designate other authorized officials to approve D&Fs; however, only DHS contracting officers may approve D&Fs in support of assisted acquisitions. The D&F shall be approved at least one level higher than the contracting officer when the total estimated value of the interagency acquisition, inclusive of options, is estimated to exceed $500,000.

**3017.502-270 Funding restrictions and requirements under the Economy Act.**

(a) Deobligations of excess funds under the Economy Act. As required by the Economy Act, 31 U.S.C. § 1535, Components must deobligate any fixed year funds at the end of their period of availability to the extent that the servicing agency did not perform or incur valid obligations under an assisted acquisition. Therefore, after all financial obligations of the requesting agency have been paid to the servicing agency, and there remains excess funds associated with an interagency assisted acquisition, the contracting officer shall request the requiring office submit a procurement request to deobligate excess funds. If excess funds result from a servicing agency accomplishing less work than initially planned, the requiring office should submit a revised statement of work and the contracting officer must amend the agreement to reflect the reduced effort.

**3017.504 Reserved.**

**Subchapter 3017.70 Intra-Agency Acquisitions**

**3017.7000 Scope.**

This subchapter establishes DHS policies and procedures for processing intra-agency acquisitions. This subchapter does not apply to:

(a) Interagency acquisitions. See HSAM 3017.5 for DHS policy and procedures on interagency acquisitions (note: DHS strategic sourcing contracts that designate the use of another agency's contract vehicle are interagency acquisitions and subject to the procedures at HSAM 3017.5); or

(b) Intra-agency reimbursable work agreements (IRWA) (non acquisition transactions). See section 3.7 of the DHS Financial Management Policy Manual for policy on inter/intra-agency reimbursable work agreements. IRWAs include interagency activity where contracting is incidental to the purpose of the transaction (see HSAM 3017.7001).

**3017.7001 Definitions.**

*Requesting Component* is the Component that has the requirement for an intra-agency assisted acquisition. For a direct acquisition, the requesting Component places an order against a servicing Component's contract.

*Servicing Component* is the Component that will conduct an assisted acquisition on behalf of the requesting Component. For a direct acquisition, the servicing Component awards a contractual vehicle that allows one or more Components to place orders against the contract.

*Contracting Incidental to the Purpose of the Transaction* – When a servicing Component enters into a written agreement to provide a service or supply to a requesting Component and the servicing Component uses a contract to fulfill the need, the contract is incidental to the purpose of the transaction. This is because the requesting Component is asking the servicing Component to provide a service and not to award a contract action (e.g., contract, order, or modification) or provide other acquisition assistance (e.g., conduct market research, develop an acquisition strategy, prepare a statement of work, modify a contract to add the work of a requesting agency). For example, when a Component requests the Federal Protective Service to protect its buildings and properties, any contracts that FPS may enter into to support its effort to provide that protection are incidental to the purpose of the transaction. The purpose of the transaction is for FPS to provide protection to buildings and properties and not to award contracts on behalf of the requesting Component.

*Direct fund citation* applies to assisted acquisitions and is the process by which a servicing Component cites a requesting Component's funding (i.e., the line(s) of accounting) as the financing source on the contract action that a servicing Component ultimately awards for a requesting Component. When a servicing Component directly cites a requesting Component's funding on a contract action, the signed contract, order, or modification is returned to a requesting Component for all required accounting, obligation and contractor payment.

*Intra-agency acquisition* is a procedure by which a requesting Component needing supplies or services obtains them from a servicing Component by:

(1) *Intra-agency assisted acquisition* whereby a servicing Component performs acquisition activities on behalf of a requesting Component. Acquisition activities include awarding or administering a contract, task order, or delivery order or performing other acquisition activities such as conducting market research or drafting a statement of work.

(2) *Intra-agency direct acquisition* whereby a Component needing supplies or services obtains them directly by issuing an order under another Component's contract. An example is a DHS contracting officer issuing an order against a DHS strategic sourcing contract.

*Payment by Reimbursement* applies to assisted acquisitions and is the process by which a requesting Component will pay or reimburse a servicing Component for the goods and services it procured. When payment is by reimbursement, the servicing Component pays contractor invoices and is reimbursed by the requesting Component.

*Strategic Sourcing* – See HSAM 3017.7101.

**3017.7002 Policy.**

(a) *Statutory Authority.* Although the procedures of FAR Subpart 17.5 do not apply, all intra-agency acquisitions including orders placed under DHS Strategic Sourcing contracts must be authorized by statute.

(b) *Proper Use.* DHS shall not use an intra-agency direct or assisted acquisition to circumvent conditions and limitations imposed on the use of funds. This is because when funding moves from one Component to another, the funding retains its statutory restrictions for the use of that funding.

(c) *Appropriations Principles.* The appropriated funds used to pay for goods or services obtained by means of an intra-agency acquisition shall:

(1) Meet an existing *bona fide* need of the fiscal year in which goods or services are acquired;

(2) Be properly obligated on the ultimate contract or order within a reasonable time before the expiration of available funds; and

(3) Comply with all other applicable appropriations law, regulation, and policy. For example, the Economy Act requires Components deobligate any fixed year funds at the end of their period of availability to the extent that the servicing Component did not perform or incur valid obligations under an intra-agency assisted acquisition. Therefore, after all financial obligations of the requesting Component have been paid to the servicing agency, and there remains excess funds associated with an intra-agency assisted acquisition, the contracting officer shall request the requesting Component submit a procurement request to deobligate excess funds.

(d) *Review and Approvals.* Review and approvals shall be in accordance with HSAM subchapter 3004.70, as applicable.

**3017.7003 Procedures.**

(a) *Intra-agency assisted acquisitions*.

(1) *Approvals.* When a requiring office of one DHS Component wishes to use the acquisition services of another DHS Component, the requiring office must obtain the approval of its assigned HCA (or delegated official(s) per Component procedures). HCAs without re-delegation may also grant approval on a class basis. Approval from the requesting Component's contracting office ensures that the requested acquisition services meet a program's mission need and promote economies and efficiencies. Requiring offices shall request approval following Component procedures. The approval shall be documented using the template provided in Appendix (I), Approval of an Intra-agency Assisted Acquisition, and included in the procurement request package submitted to the servicing Component's contracting office. Factors approving officials should consider when evaluating such requests include:

(i) The servicing Component's authority, experience, and expertise in acquiring the needed product or service;

(ii) The servicing Component has an existing contract vehicle that meets the needs of the requesting Component;

(iii) Collaborating on the purchase of supplies or services is anticipated to strengthen the Government's negotiating positions and thus result in better pricing or terms and conditions than if each Component awarded a contract separately;

(iv) The servicing Component's ability to comply with unique requirements or prohibitions of the requesting Component such as restrictions on a Component's appropriations; and

(v) Any additional factors unique to a particular procurement.

(2) *Procedures.*

(i) The requiring office of the requesting Component (hereafter referred to as the requiring office) determines the requirement and initiates market research per HSAM 3010.

(ii) If market research determines that the best way to satisfy the requirement is through an intra-agency assisted acquisition, the requiring office contacts the servicing Component's personnel responsible for the program or contract vehicle to confirm the program or contract vehicle appropriately satisfies the requesting Component's needs. The requiring office also determines the proper statutory authority to undertake the intra-agency assisted acquisition (e.g., Economy Act (31 U.S.C. 1535)). If the servicing Component disagrees, the parties should consult legal counsel. At this step the requiring office and the servicing Component (program office and contracting office) may also determine the roles and responsibilities of each Component; identify the parties responsible for completing the procurement request documentation required by 3004.71; and establish how a contract action will be funded per subparagraph (iii);

(iii) The servicing Component's contracting office determines whether a contract will be funded by direct fund citation or by reimbursement.

(iv) If an intra-agency assisted acquisition is appropriate, the requiring office requests approval from its Component contracting office by completing the template provided in Appendix I of the HSAM.

(A) When an intra-agency assisted acquisition is conducted under the authority of the Economy Act, the requiring office shall also affirm, using the template in Appendix I of the HSAM, that all of the conditions of the Economy Act have been met.

(B) If a specific statute applies, the requiring office shall use the specific statute and shall not use the Economy Act.

(v) Upon receiving the approval of the requesting Component's contracting office, the requiring office works with its budget or finance office and the servicing Component to prepare an intra-agency agreement and to ensure the commitment of funds is recorded in the financial system. The agreement may be documented using Treasury's forms 7600 A and B (at https://www.fiscal.treasury.gov/g-invoice/resources.html) or any other form that is mutually agreeable to the parties and include the following information:

(A) Key roles and responsibilities of the parties, the terms and conditions of the agreement (including how the contract action will be funded, who will serve as the contracting officer representative, and who is responsible for payment of contractor invoices), funding information (see Treasury Form 7600B for required funding information), and the FPDS-NG funding agency/office codes;

(B) The procurement request documentation required by the servicing Component's contracting office;

(C) Unique terms and conditions required by the requesting Component such as security requirements unique to the requesting Component, if applicable;

(D) A written statement that the requesting Component is not circumventing DHS or Component policies, directives, or procedures by requesting acquisition assistance from the servicing Component;

(E) The requesting agency's funding and appropriation data and validation of statutory or regulatory use of the funds, including disclosure of any special restrictions on the use of funds.

(vi) Upon finalizing the intra-agency agreement and all required procurement documentation, including the requesting Component's contracting office's approval, the requiring office transmits the information to the servicing Component for final signatures. The servicing Component's Head of Contracting Activity, or designee, is the accepting official for the servicing Component. When the requesting Component will reimburse the servicing Component for the goods or services procured, the requiring office works with its budget/finance office to arrange for the obligation of funds in the requesting Component's financial system following Component procedures. When the parties agree the contract action will be funded using direct fund citation, the requesting Component records the obligation of funds in its financial system when the servicing Component awards the contract action.

(vii) Upon all parties signing the intra-agency agreement, the contracting officer of the servicing Component shall process the procurement request for the resulting procurement action in accordance with the FAR, HSAR, HSAM, Component policy and procedures, and, if applicable, unique statutory requirements.

(viii) Upon award of the action, the servicing Component's contracting officer shall:

(A) Report the resulting contract action in FPDS including identifying the funding agency/office codes from the applicable codes maintained by each Component in FPDS. These codes represent the Component and office that provided the predominant amount of funding for the contract action. The requesting Component will receive socioeconomic credit for meeting its Component small business goals where applicable;

(B) Provide a copy of the award document to the requiring office of the requesting Component;

(C) Administer the contract or order as per agreement of the parties; and

(D) Ensure the obligation is recorded following Component procedures. If payment by reimbursement occurs, the contract obligation is recorded in the servicing Component's accounting system. If a direct fund citation is used, the servicing Component's contracting officer provides a copy of the award document to the requesting Component and receives evidence that the obligation was recorded in the requesting Component's accounting system.

(b) *Intra-agency direct acquisitions*. FAR Subpart 17.5 does not apply to intra-agency direct acquisitions. However, statutory authority is required. The requiring office is responsible for identifying the appropriate statutory authority. If the action is authorized by the Economy Act,

the requiring office shall include in its procurement request the following statements supported by market research and analysis:

(1) The funding for the purchase is actually available;

(2) The purchase is in the best interest of the Government;

(3) The ordered goods or services cannot be provided as conveniently or as inexpensively as by a Component's contract; and

(4) The contract allows the requesting Component to directly order the goods or services.

Components shall follow the ordering procedures of the Strategic Sourcing or other DHS-wide contract (also see FAR 16.505 and HSAM 3016.505).

## Subchapter 3017.71 Requirements for Acquisitions Involving Strategically Sourced Commodities

### 3017.7100 Scope.

This section describes the use of Department-wide contract vehicles.

### 3017.7101 Definitions.

*Component-wide contract* means a contract that has been established for use by a single Component.

*Department-wide contract* means a contract that has been established for use by multiple DHS Components to acquire goods or services. Department-wide contract vehicles are also known as strategic sourcing contract vehicles.

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

### 3017.7102 Using department-wide contract vehicles.

(a) DHS policy is to use Department-wide contracts unless one of the exceptions in (b) applies or a waiver as described in (c) is obtained. For information on the DHS Strategic Sourcing Program, see http://dhsconnect.dhs.gov/org/comp/mgmt/cpo/Strategic%20Programs/Pages/StrategicSourcing.aspx. The DHS Directive 060-01, Development and Use of Strategic Sourcing Contract Vehicles, is available by clicking here.

(b) *Exceptions.* The contracting officer shall use a Department-wide contract, if one is available, unless an exception is approved. Exceptions shall be approved by a Component procurement

official at least one level above the contracting officer. The following exceptions apply:

(1) Emergency operations where use of a Department-wide contract vehicle would have an adverse impact on the mission.

(2) Purchases where use of a Department-wide contract vehicle would reduce or compromise national security.

(3) Purchases made from remote locations where the use of a Department-wide contract vehicle would result in higher cost or delays.

(4) Purchases where savings from use of a non-Department-wide contract vehicle exceed the savings of a Department-wide contract vehicle.

(5) Purchases where the use of a non-strategic sourcing contract vehicle is required by statute.

(6) Purchases where FAR 8.002, *Priorities for Use of Mandatory Government Sources,* or FAR 8.003, *Use of Other Mandatory Sources,* require the use of higher priority sources. (See HSAM 3008.004.)

(7) Purchases where DHS or a Component is not making satisfactory progress toward meeting a fiscal year socioeconomic contracting goal and where no appropriate strategic sourcing vehicle offers an opportunity to meet that socioeconomic contracting goal. This exception requires concurrence of the Component small business specialist.

The contracting officer shall document the exception by completing an exception form, obtaining approval, and including all documentation in the contract or order file. The contracting officer shall provide a copy of the documentation to the OCPO's Strategic Sourcing Program Office (SSPO) at: SSPO@hq.dhs.gov. The exception form is available on the DHS Strategic Sourcing intranet page http://dhsconnect.dhs.gov/org/comp/mgmt/cpo/Strategic%20Programs/Pages/StrategicSourcing.aspx.

(c) *Waivers.* If using a source other than an available Department-wide contract vehicle and none of the paragraph (b) exceptions apply, a waiver must be obtained in accordance with Directive 060-01 (or successor policy) prior to approval of the acquisition plan (or the release of a solicitation if an acquisition plan is not required). The contracting officer obtains a waiver by:

(1) completing a waiver request form (available on the DHS Strategic Sourcing intranet page (http://dhsconnect.dhs.gov/org/comp/mgmt/cpo/Strategic%20Programs/Pages/StrategicSourcing.aspx),

(2) providing the justification,

(3) attaching supporting documentation (including the specification and/or statement of work and market research report), and

(4) obtaining Component HCA approval prior to submitting the request to the CPO for final approval.

Components shall submit waiver requests to the CPO at: SSPO@hq.dhs.gov. The CPO reviews waiver requests and provides final decisions regarding approval within 10 business days of the Component's submission of the waiver. Upon disposition of the waiver request, the contracting officer adds all documentation to the contract or order file.

**3017.7103 Post-award notification.**

(a) The HCA must notify and provide contract and other supporting documentation to the OCPO, within ten (10) business days following the award of a Department-wide contract so that information about the contract can be distributed and posted on the SSPO intranet site.

(b) Congressional notification requirements apply for orders with a dollar value that exceeds $1 million issued against awarded Department-wide multiple award contracts as well as those using multi-year funds. See HSAM 3005.303-70 for requirements and procedures.

**3017.7104 Office of Management and Budget (OMB) reporting for department-wide contract vehicles.**

OCPO's SSPO shall consolidate data on all Department-wide contract vehicles and summarize the results for reporting to the OMB or other Government agencies, as appropriate.

**Subchapter 3017.72 Reverse Auctions**

**3017.7200 Scope.**

This subchapter establishes DHS policies and procedures on the use of reverse auctions.

**3017.7201 Definition.**

*Reverse Auction* means a process for pricing contracts supported by an electronic tool where offerors bid down, as opposed to the traditional auction, which requires buyers to submit sequentially higher bids, the main goal of which is to drives prices downward.

**3017.7202 General.**

(a) When properly employed, reverse auctions may have potential benefits, to include enhanced competition, price reductions, and improved procurement process efficiency for some procurements.

(b) To facilitate obtainment of these potential benefits, DHS has awarded an enterprise-wide Blanket Purchase Agreement (BPA) for a reverse auction provider. For information on that BPA, including the fees associated with its use, see the OCPO Category Management and Strategic Sourcing website.

(c) When using a GSA Federal Supply Schedules contract, and when an order will contain a brand name specification, FAR 8.405-1(e) requires the contracting officer to post the RFQ on e-buy along with the justification (see FAR 8.405-6).

**3017.7203 Policy.**

(a) Because there are fees associated with conducting a reverse auction, contracting officers must confirm early in the acquisition-planning phase that the appropriate conditions exist to optimize the benefits of a reverse auction to include more robust competition, larger supplier base, and enhanced price reductions. Therefore, before conducting a reverse auction, the contracting officer shall:

(1) Confirm the product or service to be procured is suitable for a reverse auction. Products and services best suited for reverse auctions:

(i) Are sold in a highly competitive marketplace such as commodities;

(ii) Have specific, unambiguous specifications or work statements;

(iii) Are products that do not require extensive customization or tailoring; and

(iv) Are procurements that result in fixed price contracts.

(2) Confirm through market research that there is a reasonable expectation that two or more sources will participate in an auction. Ensuring the existence of adequate competition is particularly important when conducting reverse auctions under multiple award indefinite delivery, indefinite quantity contracts where the number of sources eligible to participate in auctions is limited.

(3) Understand all fees associated with the procurement to include fees charged by the DHS reverse auction provider (see the Reverse Auction Ordering Guide at the OCPO Category Management and Strategic Souring website for fee information including caps on fees) and fees charged when placing orders under another agency's vehicle, such as GSA's federal supply schedule. This evaluation ensures the whole cost of the transaction is evaluated and will allow the contracting officer to assess if a reverse auction is expected to result in overall cost savings in light of the additional fees being charged.

(b) Include in the contract file the rational for using a reverse auction and how it's use supports the acquisition.

(c) Analyze and document the use of low price technically acceptable (LPTA) selection criteria as required by Section 880 of the FY 2019 National Defense Authorization Act. For additional guidance on the use of LPTA selection criteria see Section 3.5.2, Lowest Price Technically Acceptable Process, of the DHS Source Selection Guide.

(d) When using a reverse auction, contracting officers shall:

(1) Allow for multiple rounds of bidding to strengthen competition.

(2) When only one source participates in the auction, consider if an award is still in the best interest of the government. If an award is made, follow the applicable one-bid procedures at HSAM 3006.102(b), HSAM 3008.404(a)(1), or HSAM 3016.505(b)(1)(iii).

(3) Upon concluding a reverse auction, include in the contract file the bid results and the supporting documentation provided by the reverse auction provider and identify the benefits achieved by using the tool.

(e) In light of the fees charged, Components shall review the contractor provided auction reports at least annually to assess if reverse auctions are providing value to the organization by increasing competition, improving pricing, providing efficiencies, and promoting small business.

# CHAPTER 3018 EMERGENCY ACQUISITIONS

**Subchapter 3018.2 Emergency Acquisition Flexibilities**
3018.201 Contingency operation.
3018.202 Defense or recovery from certain attacks.
3018.203 Emergency declaration major disaster declaration.

## Subchapter 3018.2 Emergency Acquisition Flexibilities

### 3018.201 Contingency operation.

(b) The Chief Procurement Officer (CPO) or designee shall make the required determination to increase the micro-purchase threshold to support a contingency operation.

(c) The CPO or designee shall make the required determination to increase the simplified acquisition threshold to support a contingency operation.

### 3018.202 Defense recovery from certain attacks.

(a) The CPO or designee shall make the required determination to increase the micro-purchase threshold to support defense against or recovery from nuclear, biological, chemical, or radiological attack.

(b) The CPO or designee shall make the required determination to increase the simplified acquisition threshold to support defense against or recovery from nuclear, biological, chemical, or radiological attack.

### 3018.203 Emergency declaration or major disaster declaration.

(a) DHS Components must comply with statutory requirements and guidance regarding preferences given to local organizations, firms, and individuals when contracting for major disaster or emergency assistance activities when the President has made a declaration under the Robert T. Stafford Disaster Relief Act. (See HSAM 3005.303 regarding Congressional notifications of covered contract actions (limited waiver). See

HSAR 3006.303 and HSAM 3006.303 for competition authorities. See HSAM Chapters 3026.202 and 3026.203 for guidance regarding local area set-aside preference and transition of work approval requirements.

# CHAPTER 3019 SMALL BUSINESS PROGRAMS


| | | |
|---|---|---|
| **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 |
| | 3019.506 | Withdrawing or modifying small business set-asides. |
| **Subchapter** | **3019.6** | **Certificates of Competency and Determinations of Responsibility** |
| | 3019.602 | Procedures. |
| | 3019.602-1 | Referral. |
| | 3019.602-3 | Resolving differences between the agency and the Small Business Administration. |
| **Subchapter** | **3019.7** | **The Small Business Subcontracting Program** |
| | 3019.704 | Subcontracting plan requirements. |
| | 3019.704-70 | Reporting requirements. |
| | 3019.705 | Responsibilities of the contracting officer under the subcontracting assistance program. |
| | 3019.705-2 | Determining the need for a subcontracting plan. |
| | 3019.705-470 | Reviewing the subcontracting plan. |
| | 3019.705-6 | Reserved. |
| **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. |


## Subchapter 3019.2 Policies

### 3019.201 General policy.

(c)(7) and (8) The Head of the Contracting Activity (HCA) (See HSAM 3001.301(a)(1)(ii)) is delegated the authority of the Director Office of Small and Disadvantaged Business Utilization (OSDBU) to assign a small business technical advisor also known as 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.

(c)(9) The responsible Component small business specialist acting on behalf of the OSDBU must review each procurement request that requires a DHS Form 700-22 to comply with the requirements of FAR 19.

(d) The HCA must appoint small business specialists in accordance with HSAM 3019.201(d)(7) and (d)(8). The small business 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 are prepared concerning small business participation in acquisition programs;

(8) Act as the liaison with appropriate SBA offices or representatives in connection with set-asides, Certificates of Competency (COC), 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.

**3019.202 Specific policies.**

**3019.202-270 Procurement forecast.**

(a) *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 following requirements apply:

(1) *Responsibility.* The procurement forecast is a summary of each Component's final Acquisition Planning Forecast System (APFS) records that are input into the APFS database. The Component Acquisition Executive shall ensure APFS records are created and the HCA shall ensure they are approved for all acquisitions over the simplified acquisition threshold, in accordance with HSAM 3007.172(a), and input into the APFS database available at http://apfs.dhs.gov.

(2) *Preparation.* The procurement forecast shall be completed the year prior to the fiscal year in which the procurement action will be initiated.

(b) *Reporting.* The DHS Office of the Chief Procurement Officer 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.

**3019.202-271 DHS Small Business Review Form.**

(a) *Purpose.* The DHS Form 700-22, Small Business Review Form, documents efforts to ensure small business concerns are considered for inclusion in Federal Government acquisitions and to ensure that proper market research is conducted.

(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. DHS Form 700-22 requirements are provided in Appendix H, Acquisition Planning Forecast System and Small Business Review Form Requirements Matrix. The DHS Form 700-22 shall be used to:

(1) Review for small business considerations in procurement actions greater than the simplified acquisition threshold except when:

(i) Issuing orders/calls under single award Indefinite-Delivery Indefinite Quantity (IDIQ) contracts and under single award blanket purchase agreements (BPAs); and

(ii) Issuing orders/calls under multiple award IDIQ contracts or BPAs when the initial vehicle was awarded under a single Small Business program under FAR Part 19 and;

(2) Review for substantial bundling for all procurements of $2,500,000 or more planned under open market procurement as well as for pre-existing contract vehicles (such as Multiple Award Schedules (MAS), including GSA Federal Supply Schedules (FSS) delivery and task orders, Multi-Agency Contracts (MAC), Governmentwide Acquisition

Contracts (GWAC), DHS-wide contracts (DWAC), Component/Office-Wide Acquisition Contracts (C/OWAC),, and orders and calls under 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 and the SBA Procurement Center Representative (PCR), respectively, shall complete the review process within two (2) business days after receipt of a completed DHS Form 700-22. The completed DHS Form 700-22 shall b included in the contract file.

**Subchapter 3019.5 Set-Asides for Small Business**

**3019.501 General.**

(c) Each DHS proposed acquisition exceeding the simplified acquisition threshold, and in accordance with the requirements of HSAM 3019.202-271(b)(1), must be reviewed by the responsible Component small business specialist before submitting the requirement for synopsis. The results of the review shall be documented in the contract file.

(1) The requirement must be reviewed for the purpose of determining whether socio-economic programs should be included.

(2) The Chief of the Contracting Office (COCO) must resolve any disagreement between the small business specialist and the contracting officer on the determination. In no case shall the authority be delegated below the level of COCO. Disagreement between the contracting officer and personnel from the SBA will be resolved in accordance with FAR 19.505. The HCA shall coordinate this action with the OSDBU prior to the COCO's final decision. 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, without redelegation, is authorized to make the determination. The HCA shall coordinate this action with the OSDBU prior to the COCO's final decision.

**3019.505 Rejecting Small Business Administration recommendations.**

(b) and (d) The HCA, without redelegation, is delegated the authority to make the decision and forward the justification for its decision to the agency head. The HCA shall coordinate this action with the OSDBU prior to the COCO's final decision.

**3019.506 Withdrawing or modifying small business set-asides.**

(b) The COCO is responsible for resolving disagreements between the contracting officer and the Component small business specialist. In no case shall the authority be delegated below the

level of COCO. The HCA shall coordinate this action with the OSDBU prior to the COCO's final decision.

**Subchapter 3019.6 Certificates of Competency and Determinations of Responsibility**
**3019.602 Procedures.**

**3019.602-1 Referral.**

(a)(2) The contracting officer shall forward ta copy of the notice of nonresponsibility determination sent to SBA to the small business specialist for submission to the OSDBU.

**3019.602-3 Resolving differences between the agency and the Small Business Administration.**

(a) Under the procedures of FAR 19.602-3, the SBA and contracting officer must attempt to reach a resolution before the SBA takes final action on a COC. Before approaching SBA, the contracting officer must coordinate his or her actions through the HCA and OSDBU.

(b) For the purposes of filing a COC appeal, the designated official is the COCO. In no case shall the authority be delegated below the level of 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 https://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 shall be provided to the Director, OSDBU. See FAR 19.705-2(c).

**3019.705-470 Reviewing the subcontracting plan.**

(a) The individuals responsible for the subcontracting plan review process include the contracting officer, the Component small business specialist, and the SBA's Procurement Center Representative (PCR). The approval authority for the subcontracting plan is the contracting

officer, with the small business specialist and the SBA PCR providing support in advisory and assistance roles in accordance with FAR 19.705-4(d)(7).

(1) The checklist for documenting the review process, Subcontracting Plan Review Checklist, DHS Form 700-23, is mandatory for all DHS Subcontracting Plan reviews. The Component small business specialist 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 SBA PCR's advice or recommendations. The contracting officer approves the subcontracting plan if the contractor has satisfactorily addressed the eleven 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 and the plan shall be managed.

(b) The small business specialist and SBA PCR review process and recommendations for the subcontracting plan should be completed within three (3) working days of receipt of the plan from the contracting officer. The Government's objective is to approve 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. If the subcontracting plan first submitted does not satisfy these requirements, the Government will need to negotiate with the prospective awardee to reach these goals.

(d)(7) The contracting officer should obtain the advice of the Component small business specialist, as well as, the SBA's PCR.

**3019.705-6 Reserved.**

**Subchapter 3019.8 Contracting with the Small Business Administration (The 8(A) Program)**

**3019.800 General.**

(b) The current DHS and SBA Partnership Agreement (PA) was executed on October 23, 2012, and has no expiration date. The PA is applicable to all new DHS acquisitions under the 8(a) Program. The PA 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, according to Component procedures prior to contracting officer submission to SBA pursuant to the 8(a) PA. 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) As required by HSAM 3019.800(b), the contract to be awarded shall be prepared according to the PA in HSAM Appendix X.

**3019.812 Contract administration.**

(d) The COCO, without redelegation, 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 Hours and Safety Standards** |
| | 3022.302 | Liquidated damages and overtime pay. |
| **Subchapter** | **3022.4** | **Labor Standards for Contracts Involving Construction** |
| | 3022.404 | Construction Wage Rate Requirements statute 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** | **Contracts for Materials, Supplies, Articles, and Equipment Exceeding $15,000** |
| | 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 Labor Standards** |
| | 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, Acquisition Policy and Oversight, 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.

Artifact(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 Component's labor advisor or DHS Labor Advisor 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**

**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 Construction Wage Rate Requirements statute 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 furnish to the contractor a copy of Department of Labor (DoL) Form WH-1321, Notice to Employees Working on Federal and Federally Financed Construction Projects, for posting with wage rates. Copies of the poster may be obtained downloaded or ordered through the Department of Labor – Wage and Hour Division (WHD) publication ordering system at www.dol.gov/whd/publications/index.htm or by calling the WHD Publications Office at 202-693-0675.

**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 Chief of the Contracting Office (COCO), without redelegation, 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. A copy of the report shall also be provided to OCPO.

**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 Contracts for Materials, Supplies, Articles, and Equipment Exceeding $15,000**

**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 furnish a copy of the Department of Labor Publication WH-1313, Employee Rights on Government Contracts. Copies of the poster may be downloaded or ordered through the Department of Labor – Wage and Hour Division (WHD)

publication ordering system at www.dol.gov/whd/publications/index.htm or by calling the WHD Publications Office at 202-693-0675.

(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 P, 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 Labor Standards**

**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 Service Contract Labor Standards statute.**

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 Executive Director, Acquisition Policy and Legislation Branch, Acquisition Policy and Oversight, 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 general counsel, with a copy provided to OCPO. 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 Labor Standards 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.

**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 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 | Reserved. |
| | 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 | Reserved. |
| **Subchapter** | **3023.7** | **Contracting for Environmentally Preferable Products and Services** |
| | 3023.703 | Reserved. |
| | 3023.704 | Electronic products environmental assessment tool (EPEAT). |


## Subchapter 3023.2 Energy and Water Efficiency and Renewable Energy

### 3023.203 Reserved.

### 3023.204 Procurement exemptions.

The contracting officer shall make the determination and document the contract file with the reason(s) why no ENERGY STAR® or Federal Energy Management Program (FEMP)-designated product is reasonably available that meets the functional requirements of the Department or that no ENERGY STAR® or FEMP-designated product is cost effective over the life of the product taking energy cost savings into consideration.

### 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 protocols for any ESPC actions: DHS Energy Program Manager, Office of the Chief Readiness Support Officer, Sustainability and Environmental Programs. The purpose of early notification is to provide DHS Sustainability 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) DHS Components shall comply with the DHS Affirmative Procurement Plan (APP), Appendix Q. The contracting officer shall provide the DHS APP to program offices during the

acquisition planning stage to ensure consideration of environmentally preferable, biobased, and energy efficient products are incorporated into procurement actions. The contracting officer with overall responsibility for administration of a contract (including Department-wide indefinite delivery vehicles) shall monitor the contractor's compliance with environmental representation and reporting required in the System for Award Management when requirements under FAR 52.223-2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts, FAR 52.223-22, Public Disclosure of Greenhouse Gas Emissions and Reduction Goals-Representation or paragraph (t) of FAR 52.212-3, Offeror Representations and Certifications—Commercial Items are included in the contract.

## Subpart 3023.7 Contracting for Environmentally Preferable Products and Services

### 3023.703 Reserved.

### 3023.704 Electronic products environmental assessment tool (EPEAT).

(a)(1)(iii) The authority to grant an exception that no Electronic products environmental assessment tool (EPEAT)-registered product meets agency requirements is delegated to the contracting officer. 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


| | | |
|---|---|---|
| | 3025.001 | General |
| **Subchapter** | **3025.1** | **Buy American--Supplies** |
| | 3025.103 | Exceptions. |
| | 3025.104 | Reserved. |
| | 3025.105 | Determining reasonableness of cost. |
| **Subchapter** | **3025.2** | **Buy American—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** | **3025.11** | **Solicitation Provisions and Contract Clauses** |
| | 3025.1101 | Acquisition of supplies. |
| **Subchapter** | **3025.70** | **American Recovery and Reinvestment Act Restrictions on Foreign Acquisition** |
| | 3025.7000 | Scope of subpart. |
| | 3025.7003 | Contract clauses. |


## 3025.001 General

(c)

(70) *FPDS-NG*. When a contract action requires reporting in FPDS-NG (see FAR Subpart 4.6), the contracting officer shall accurately enter data for fields "Country of Product or Service Origin" and "Place of Manufacture." For a service contract, field "Country of Product or Service Origin" should show the country in which the firm providing the services is established.

(71) *Contracting officer discretion.* Although the Buy American Act (BAA) is not applicable to purchases at or below the micro-purchase threshold (see FAR 25.100(b)(1) and 25.1101(a)(1)), a contracting officer, under either of these circumstances, may exercise his or her discretion to purchase a reasonably-available and reasonably-priced domestic end product.

(72) *Construction materials versus construction.* FAR Subpart 25.1, Buy American—Supplies applies when supplies (including construction materials) are being acquired under a contract for supplies or a contract for services that involves the furnishing of supplies. In contrast, FAR Subpart 25.2, Buy American—Construction Materials applies to contracts for construction, and addresses the use of foreign construction materials by the construction contractor in the work.

(73) *Annual Posting.* No later than March 31 of each fiscal year, in coordination with the Acquisition Policy and Legislation Branch within the Office of the Chief Procurement Officer (OCPO), the Head of the Contracting Activity (HCA) shall publish a list of domestically nonavailable articles acquired by the Component using Buy American Act waivers, and the dollar values associated with those articles during the previous fiscal year, in the Federal Business Opportunities site to promote and enhance public awareness and visibility.

(74) *DHS Buy American Reporting Tool*. The DHS Buy American Reporting Tool serves as a repository of all DHS BAA waivers requiring approval by the CPO or the Secretary. It is located in the OCPO Enterprise Reporting Application (ERA) and is accessible at http://ocpo-sp.dhs.gov/sites/era/BART/Buy%20American%20Act.aspx.

## Subchapter 3025.1 Buy American—Supplies

### 3025.103 Exceptions.

(a) *Public Interest.* The determination may only be made by the Secretary. The determination request shall be concurred by the HCA and submitted for CPO review and concurrence. The contracting officer shall submit the request using the DHS Buy American Reporting Tool. The request shall include a discussion of whether a significant portion of the cost advantage of a foreign-sourced product is the result of the use of dumped steel, iron, or manufactured goods or the use of injuriously subsidized steel, iron, or manufactured goods, and shall integrate any findings as appropriate.

(b) *Nonavailability.*

(1) *Class Determinations.*

(iv) *Documentation requirements*. Before acquisition of an item on the list of nonavailable articles at FAR 25.104, contracting officers shall ensure the market research conducted to confirm the article is nonavailable, including actions taken to seek domestic sources, is documented in writing in the market research report or other appropriate document. This documentation is required to be included in the contract file.

(2) *Individual Determinations.*

(i) The determination shall be concurred by the HCA and approved by the CPO. The contracting officer shall submit the request for an approval using the DHS Buy American Reporting Tool.

(3) The contracting officer shall transmit to the CPO a notice to make an award without a written nonavailability determination promptly upon realizing that the conditions in FAR 25.103(b)(3)(i) through (iii) apply, but in any case at least five calendar days before award. The transmittal shall be made using the DHS Buy American Reporting Tool. All

of the conditions in FAR 25.103(b)(3)(i) – (iii) must be satisfied, the acquisition must have been unrestricted (not set-aside), and the period for submission of offers must have been at least thirty calendar days.

(c) *Unreasonable cost.* The determination shall be concurred by the HCA and approved by the CPO. The contracting officer shall submit the request for an approval using the DHS Buy American Reporting Tool.

(d) *Resale.* The determination shall be concurred by the HCA and approved by the CPO. The contracting officer shall submit the request for an approval using the DHS Buy American Reporting Tool.

**3025.103-70 Documentation Requirements.**

For documentation requirements applicable when the exception at 3025.103(b)(2) results in a justification for other than full and open competition under FAR 6.302 or a sole source justification under FAR 13.501(a), see HSAM 3006.304(e) and 3013.501(a)(3). All other determinations required for the exceptions in HSAM 3025.103(a) through (d) shall be documented using the Determination and Findings format in FAR 1.704.

**3025.104 Reserved.**

**3025.105 Determining reasonableness of cost.**

(a)(1) The HCA is delegated the authority to determine that the use of factors higher than 6% and 12% for FAR 25.105(b)(1) and (2), respectively, is more appropriate for an acquisition. Once approved by the HCA, the contracting officer shall transmit the determination to use the higher factors to the CPO using the DHS Buy American Reporting Tool. If a higher factor is used, the contracting officer shall note the use of the higher factor by altering paragraph (c) of the provision at FAR 52.225-2, Buy American Certificate, or paragraph (d) of the provision at FAR 52.225-4, Buy American—Free Trade Agreements—Israeli Trade Act Certificate, to identify the factor(s) that will be used instead of the factors shown in FAR 25.105(b)(1) and (2).

**Subchapter 3025.2 Buy American—Construction Materials**

**3025.202 Exceptions.**

(a)

(1) *Impractical or inconsistent with public interest.* The determination may only be made by the Secretary. The determination request shall be concurred by the HCA and submitted for CPO review and concurrence. The contracting officer shall submit the request using the DHS Buy American Reporting Tool. The request shall include a discussion of whether a significant portion of the cost advantage of a foreign-sourced product is the result of the use of dumped steel, iron, or manufactured goods or the use of injuriously subsidized steel, iron, or manufactured goods, and shall integrate any findings as appropriate.

(2) *Nonavailability.* The determination shall be concurred by the HCA and approved by the CPO. The contracting officer shall submit the request for an approval using the DHS Buy American Reporting Tool.

(3) *Unreasonable cost.* The determination shall be concurred by the HCA and approved by the CPO. The contracting officer shall submit the request for an approval using the DHS Buy American Reporting Tool.

(b) *Determination and Findings*. For documentation requirements applicable when the exception at 3025.202(a)(2) results in a justification for other than full and open competition under FAR 6.302 or a sole source justification under FAR 13.501(a), see HSAM 3006.304(e) and 3013.501(a)(3). All other determinations required for the exceptions in HSAM 3025.202(a)(1) through (3) shall be documented using the Determination and Findings format in FAR 1.704.

**3025.204 Evaluating offers of foreign construction material.**

(b) The HCA is delegated the authority to determine that the use of a factor higher than 6% is more appropriate for an acquisition. Once approved by the HCA, the contracting officer shall transmit the determination to use the higher factor to the CPO using the DHS Buy American Reporting Tool. If a higher factor is used, the contracting officer shall note the use of the higher factor in the solicitation and contract by altering paragraph (b)(3)(i) of the clause at FAR 52.225-9, Buy American—Construction Materials, or paragraph (b)(4)(i) of the clause at FAR 52.225 11, Buy American—Construction Materials under Trade Agreements, to identify the factor that will be used (instead of 6%).

**Subchapter 3025.4 Trade Agreements**

**3025.401 Exceptions.**

(a)(6) When an exception to the Trade Agreements is applicable to the acquisition, the Buy American statute applies unless one of the exceptions at FAR 25.103 or 25.202 is also applicable to the acquisition.

**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.

**Subchapter 3025.11 Solicitation Provisions and Contract Clauses**

**3025.1101 Acquisition of supplies.**

(c)(1) Consistent with the General Services Board of Contract Appeals (GSBCA) decision in the protest of International Business Machines Corporation, GSBCA No. 10532-P, May 18, 1990,

for acquisitions covered by the World Trade Organization (WTO) Agreement on Government Procurement (GPA), the restrictions of the Buy American statute are not applicable to U.S.-made end products.

## Subchapter 3025.70 American Recovery and Reinvestment Act Restrictions on Foreign Acquisition

(Note: This subchapter may be deleted once the HSAR is changed to accommodate the HSAR deviations of 3/5/2013 and 3/14/2013.)

### 3025.7000 Scope of subpart.

HSAR class deviation, Applicability of the "Kissell Amendment" to Department of Homeland Security Acquisitions, dated March 5, 2013 (available at https://www.dhs.gov/sites/default/files/publications/cpo-HSARclassdeviation13-01_0.pdf), makes permanent and extends the restrictions on the acquisition of certain foreign textile products, directly related to national security interests, described in HSAR Subpart 3025.70 to all DHS acquisitions. A contracting officer with an acquisition involving items such as clothing, clothing components, tents, tarpaulins, covers, textile belts, bags, body armor, sleeping bags, fieldpacks, textile marine equipment, parachutes, bandages, or any other products containing natural fiber products, woven silk or blends, spun silk yarn, synthetic fabric or coated synthetic fabric, canvas, or wool should carefully consider the class deviation. The class deviation indicates it is applicable until the HSAR is appropriately changed.

### 3025.7003 Contract clauses.

HSAR class deviation 13-01, Amendment 1, Requirement for Use of Certain Domestic Commodities, dated March 14, 2013 (available at https://www.dhs.gov/sites/default/files/publications/cpo-HSARclassdeviation13-01%E2%80%93amendment1_0.pdf), amends the clause at HSAR 3052.225-70, Requirement for Use of Certain Domestic Commodities (AUG 2009). Accordingly, the new amended clause in the deviation (with a date of MAR 2013) shall be used. The deviation version is reprinted below for the convenience of the contracting officer.

**REQUIREMENT FOR USE OF CERTAIN DOMESTIC COMMODITIES (MAR 2013) (DEVIATION 13-01)**

(a) Definitions. As used in this clause-

(1) "Commercial," as applied to an item described in subsection (b) of this clause, means an item of supply, whether an end product or component, that meets the definition of "commercial item" set forth in (FAR) 48 CFR 2.101.
(2) "Component" means any item supplied to the Government as part of an end product or of another component.
(3) "End product" means supplies delivered under a line item of this contract.

(4) "Non-commercial," as applied to an item described in subsections (b) or (c) of this clause, means an item of supply, whether an end product or component, that does not meet the definition of "commercial item" set forth in (FAR) 48 CFR 2.101.
(5) "Qualifying country" means a country with a memorandum of understanding or international agreement with the United States under which DHS procurement is covered.
(6) "United States" includes the possessions of the United States.

(b) The Contractor shall deliver under this contract only such of the following commercial or non-commercial items, either as end products or components, that have been grown, reprocessed, reused, or produced in the United States:

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

(c) The Contractor shall deliver under this contract only such of the following non-commercial items, either as end products or components, that have been grown, reprocessed, reused, or produced in the United States:

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

(d) This clause does not apply-

(1) To items listed in (FAR) 48 CFR 25.104, or other items for which the Government has determined that a satisfactory quality and sufficient quantity cannot be acquired as and when needed at United States market prices;
(2) To incidental amounts of non-compliant fibers if the total value of non-compliant fibers contained in the end item does not exceed 10 percent of the total purchase price of the end item; or
(3) To items that are eligible products per (FAR) 48 CFR Subpart 25.4.

(End of clause)

# 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

### 3026.202 Local area preference.

### 3026.202-2 Evaluation preference.

DHS Components may establish additional guidance regarding preferences given to local organizations, firms, and individuals when contracting for major disaster or emergency assistance activities when the President has made a declaration under the Robert T. Stafford Disaster Relief Act.

### 3026.203 Transition of work.

(b) The authority to determine that transitioning work in the performance of response, relief, and reconstruction contracts or activities in effect on the date on which the President declares a major disaster or emergency to local firms is not feasible or practicable is delegated to the Head of the Contracting Activity.

# CHAPTER 3027 PATENTS, DATA, AND COPYRIGHTS

**Subchapter 3027.2 Patents and Copyrights**
3027.201 Patent and copyright infringement liability.
3027.201-2 Contract Clauses.

**Subchapter 3027.3 Patent Rights Under Government Contracts**
3027.302 Policy.
3027.303 Contract clauses.
3027.304 Procedures.
3027.304-1 General.
3027.305 Administration of patent rights clauses.
3027.305-4 Protection of invention disclosures.

## Subchapter 3027.2 Patents and Copyrights

### 3027.201-2 Contract clauses.

(e) The Chief of the Contracting Office (COCO), without redelegation, is authorized to approve the use of the Waiver of Indemnity clause upon coordination with the Assistant General Counsel of Intellectual Property.

## Subchapter 3027.3 Patent Rights Under Government Contracts

### 3027.302 Policy.

(a)(4) The Head of the Contracting Activity (HCA) is responsible for promoting commercialization.

### 3027.303 Contract clauses.

(b)(3) and (e)(1)(ii). The HCA is delegated the authority to make these determinations. However, the Secretary may redelegate this authority in a Determination of Exceptional Circumstances (see 37 CFR 401.1(2)(e)

### 3027.304 Procedures.

### 3027.304-1 General.

(a), (b)(1), and (g). The COCO, without redelegation, is delegated this authority, after coordination with legal counsel. (c)(1)-(4). The contracting officer shall coordinate determinations to grant requests for greater rights with legal counsel.

### 3027.305 Administration of patent rights clauses.

### 3027.305-4 Protection of invention disclosures.

(b) When a contractor discloses an invention under a contract, the contracting officer shall consult with the Component Patent Counsel to determine the proper action to be taken. Components without Patent Counsels should contact the DHS Office of General Counsel, Intellectual Property Attorney.

# CHAPTER 3028 BONDS AND INSRUANCE


| | | |
|---|---|---|
| **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.

## 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), without redelegation, for precontract costs not to exceed $25 million, and the Head of Contracting Activity (HCA), without redelegation, for precontract costs greater than $25 million. The determination shall 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 | Procurement requests prior to availability of funds. |
| | 3032.702-72 | Use of private sector financing. |
| | 3032.703-3 | Contracts crossing fiscal years. |
| | 3032.703-70 | Issuing a Solicitation before funding is made available. |
| **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), without redelegation, 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), after consultation with the Chief Procurement Officer (CPO). 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, after consultation with the CPO; 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, after consultation with the CPO.

**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, after consultation with the CPO.

(g)(2) The HCA is authorized to develop procedures under FAR 32.206, after consultation with the CPO.

**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, after consultation with the CPO.

(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**

**3032.501-1 General.**

**3032.501-2 Unusual progress payments.**

(a)(3) The Chief of the Contracting Office (COCO), without redelegation, 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 HCA, without redelegation, to provide a progress payment rate higher than the customary rate (see FAR 32.501-1). The HCA shall consult with the CPO before approving the action;

(b) From the HCA, without redelegation, to deviate from the progress payment terms prescribed in FAR Part 32. The HCA shall consult with the CPO before approving the action; and

(c) When providing progress payments to a contractor--

(1) From the HCA (with advice from Component legal counsel), without redelegation, when the contractor's financial condition is in doubt. The HCA shall consult with the CPO before approving the action;

(2) From the HCA (with advice from Component legal counsel), without redelegation, 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. The HCA shall consult with the CPO before approving the action; 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"). The HCA shall consult with the CPO before approving the action.

**3032.504 Subcontracts under prime contracts providing progress payments.**

(c) The contracting officer shall obtain approval from the HCA, without redelegation, 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, and comply with other applicable requirements.

**3032.702-70 Procurement requests.**

(a) Acceptance of electronically submitted fund documents. The contracting officer shall accept certified funds submitted electronically via Component approved financial and procurement systems. The contracting officer may require a hardcopy procurement request only from units exempt from the use of Component approved financial and procurement systems.

(b) The requisitioning office/program office is responsible for nominating a qualified Federal employee to serve as a contracting officer's representative (COR), who is trained and certified according to the DHS Acquisition Workforce Policy, number 064-04-003, Federal Acquisition Certification for Contracting Officer's Representatives and Appointment and Revocation or any successor. A procurement request submission for a new procurement lacking a COR nomination package (see HSAM 3004.803-70) unless otherwise exempted by HSAM 3042.270-1 may result in rejection as an incomplete acquisition/procurement request, unless the complete COR nomination package was submitted prior to the procurement request.

(c) *Treasury Account Symbol (TAS).*

(1) The DHS Office of the Chief Financial Officer issued guidance to Component Budget Directors and Chief Financial Officers on March 18, 2008 mandating inclusion of the Fiscal Year and Treasury Account Symbol on all Procurement Requests (PR) prior to submission to the contracting office for action. The guidance stipulates that as of April 15, 2008, a PR will not be considered complete unless and until this funding information is included in the PR. Failure to include the Fiscal Year and Treasury Account Symbol on the PR constitutes grounds for the contracting office to reject the PR until such time as the information has been entered. See 3032.702-71 for policy regarding a PR that is submitted before funds are available.

(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 DHS Congressional Notification requirements (see HSAM 3005.303-70).

**3032.702-71 Procurement requests prior to availability of funds.**

(a) The Federal Acquisition Regulation does not prohibit a contracting officer from initiating action in response to a procurement request in advance of receipt of certified funds. However, the contracting officer should initiate preaward action only if there is a reasonable expectation that funds will be committed and certified to result in an obligation under an award of a contract or order. If funds are not available, the contracting officer shall not award a contract or order unless:

(1) The requirements of FAR 32.703-2, Contracts conditioned on the availability of funds, are met, and

(2) The appropriate clause cited at FAR 32.706-1, Clauses for contracting in advance of funds, is incorporated into the action (either FAR 52.232-18, Availability of Funds, or 52.232-19, Availability of Funds for the Next Fiscal Year). See HSAM 3032.703-70 for policy on release of a solicitation prior to funds being provided.

**3032.702-72 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 approval.

**3032.703-3 Contracts crossing fiscal years.**

(b) The HCA, with authority to redelegate to no lower than one level above the contracting officer, 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.

**3032.703-70 Issuing a Solicitation before funding is made available.**

(a) *Policy.* The Federal Acquisition Regulation does not prohibit release of a solicitation before funds are made available. A solicitation may be released prior to funds being provided only if there is a reasonable expectation that the requirement will be funded prior to award and the procedures of paragraph (b) are satisfied. The requirements of FAR 32.703-2 and FAR 32.706-1, Clauses for contracting in advance of funds apply if the action is intended to be awarded without funds.

(b) *Procedures.* A solicitation may be released before funds are committed for the action if:

(1) Based on information provided by the Component, the Contracting Officer determines in writing:

(i) The resulting action is expected to be funded prior to award; and

(ii) The program/requirement has been included in the President's budget as submitted to Congress;

(2) The solicitation clearly places offerors on notice that there are currently no funds for the solicitation requirement and a contract or order can be awarded only if funds become available; and

(3) For requirements expected to exceed $1 million,

(i) The program manager or program representative at the O-6/GS-15 level or above, provides the contracting officer a written statement that funds are expected to be available for the proposed acquisition; and

(ii) The statement is approved by the appropriate component finance office.

**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.

An in-depth review of all invoices and vouchers submitted by contractors under contracts shall be performed consistent with the requirements of this chapter and as supplemented by Component procedures.

### 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 (DCAA) or both. Circumstances that would support delegating the voucher processing to DCAA would include situations where DCAA already audits the contractor. In such cases, it is typically more efficient to use DCAA to process vouchers.

(i) If DCAA is identified in a contract as the cognizant audit office, 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 first vouchers submitted under the contract or delivery order and sample the remaining vouchers. However, for any particular voucher, the contracting officer can request a DCAA review of that specific voucher if the contracting officer has concerns.

(c) If the contracting officer determines the amount billed is allocable and allowable, he/she shall furnish the designated payment office with written approval of the amount to be paid the contractor. (See Appendix S for a sample format).

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

(1) When processing vouchers (or commercial invoices submitted per FAR 52.212-4 Alternate I) for payment under time-and-materials (T&M) or labor-hour contracts, appropriate use of sampling is encouraged for verifying the adequacy of supporting information for the voucher/commercial invoice. The checklist at Appendix S, or a component authorized form that is substantially similar, should be used as a basis for the review. The responsible Government official should verify:

(i) That the employees meet the qualifications for the labor categories to which they are being billed;

(ii) That the hourly rates for each category on the voucher match the rates specified in the contract for the period being invoiced;

(iii) That the material costs included in the voucher/commercial invoice are adequately supported by invoices and/or evidence of payment to vendors;

(iv) The accuracy of the mathematical calculations contained in the voucher; and

(v) That the hours worked match the hours billed.

(2) The responsibility for reviewing and recommending approval of vouchers or commercial invoices on T&M and labor-hour contracts may be delegated by the contracting officer to either the COR or to the DCAA or both. Circumstances that would support delegating the voucher processing to DCAA would include situations where DCAA already audits the contractor. In such cases, it is typically more efficient to use DCAA to process vouchers.

(i) If DCAA is identified in a contract as the cognizant audit office, it is delegated responsibility to review vouchers per the MOU at HSAM Appendix U. The contracting officer shall require that the contractor submit vouchers directly to the cognizant DCAA auditor at the same time as the original is sent to the COR/contracting officer.

(ii) DCAA will review all first vouchers submitted under the contract or delivery order and sample the remaining vouchers. However, for any particular voucher, the contracting officer can request a DCAA review of that specific voucher if the contracting officer has concerns.

(3) The responsibility for review and approval of interim payment vouchers/commercial invoices on T&M and labor-hour contracts or orders may be delegated by the contracting officer only to the COR.

(i) If the contracting officer delegates review and approval of vouchers/commercial invoices to the COR or if the contracting officer retains authority for approval of vouchers/commercial invoices:

(A) The contracting officer shall direct the contractor to support each voucher/commercial invoice such as with the information addressed in the sample letter at Appendix S.

(B) The contracting officer or, if delegated, the COR is responsible to verify that the hours worked by the contractor match the hours billed through use of an appropriate sampling plan or other verification process.

(C) The contracting officer or, if delegated, the COR is required to accomplish the verifications required by paragraph (d)(1) of this subsection.

*(1)* Review of information provided by the contractor per direction of the contracting officer's letter at Appendix S is adequate for this purpose. The accuracy of this information should be verified by the COR at appropriate intervals.

*(2)* If the contractor fails to provide the supporting information directed by the contracting officer to support a voucher/commercial invoice, the voucher/commercial invoice should be rejected as an improper invoice.

*(3)* The contracting officer may negotiate an advance agreement with a contractor on reduced or streamlined information support requirements under special circumstances, such as when the contractor has been approved for direct billing by the DCAA.

(D) If the contracting officer delegates the authority to approve interim payment vouchers/commercial invoices, the authority shall not include authority to approve the final payment for the completion invoice or voucher.

**3032.7003 Record of payment.**

(a) The contracting officer shall establish a record (either hard copy or electronic) of payment file for each contract. The file must provide evidence of the amount paid; any amounts disallowed or withheld, and the rationale for the disallowances or withholdings; balance available for payment under the contract after the invoice or voucher has been paid, and any correspondence to the contractor concerning the payments.

# CHAPTER 3033 PROTESTS, DISPUTES, AND APPEALS

**Subchapter 3033.1 Protests**
3033.102 General.
3033.103 Protests to the agency.
3033.104 Protests to the Government Accountability Office (GAO).

**Subchapter 3033.2 Disputes and Appeals**
3033.201 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.
3033.213 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), without redelegation, 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.

(g) *Notice to GAO.* The HCA shall submit the report to GAO after consulting with the CPO.

**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 Disputes statute 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 Contract Disputes Act matters.

**3033.209 Suspected fraudulent claims.**

These matters shall be referred to the Office of the Inspector General (OIG) or other appropriate investigative organizations one level above the contracting officer. In no case shall the authority be delegated below one level above the contracting officer.

**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 SYSTEM 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 Reserved.
3034.205 Reserved.

## Subchapter 3034.0 General

### 3034.002 Policy.

DHS Directive 102-01, Acquisition Management Directive, and the implementing DHS Instruction 102-01-001, Acquisition Management Instruction, establish the review and approval requirements for major system acquisitions. DHS Directive 102-01 and DHS Instruction 102-01-001 are located on the Office of Program Accountability and Risk Management's (PARM) DHSConnect website.

### 3034.004 Acquisition strategy.

An acquisition plan for a major system acquisition shall be prepared in accordance with FAR Subpart 7.1, FAR Class Deviation 20-02, Written Acquisition Planning Requirements and HSAM Chapter 3007.

## Subchapter 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, Preparation, Submission, and Execution of the Budget and its supplement, Capital Programming Guide, were written to meet the requirements of the FASA and the Clinger Cohen Act. In addition, OMB Circular No. A-11 requires the use of an Earned Value Management System (EVMS).

**3034.201 Policy.**

A 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. At DHS, a system is a major system if total expenditures for the system are estimated to exceed $100 million. Regardless of contract type, an EVMS is required for major system acquisitions for each contract valued over $100 million (including all options). An EVMS, or an alternative effective technique, is discretionary for each contract that is valued at less than or equal to $100 million (including all options).

**3034.202 Integrated Baseline Reviews.**

(d)

(1) Integrated Baseline Reviews (IBR) are normally conducted after award. Post-award IBRs shall be completed within ninety days of contract award by the program manager.

(2) If approved by the Head of Contracting Activity, 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 Reserved.**

**3034.205 Reserved.**

# 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. |
| | 3036.213-70 | 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 HCA, without redelegation, 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 HCA is authorized to waive the requirement to send presolicitation notices to prospective bidders on any construction requirement when the proposed contract is expected to equal or exceed the simplified acquisition threshold. In no case shall the authority be delegated below the level of COCO.

**3036.213-70 Report of proposed Federal construction.**

(a) *Report.* Section 1.4 of the Davis-Bacon Procedural Rules, 29 CFR Part 1, Procedures for Predetermination of Wage Rates, as outlined at http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&rgn=div5&view=text&node=29:1.1.1.1.2&idno=29, requires agencies using wage determinations under the Construction Wage Rate Requirements statute, among other statutes, to furnish the Administrator, Department of Labor (DOL), a general outline of its proposed construction programs for the coming fiscal year (FY) indicating the estimated number of projects for which wage determinations will be required, the anticipated types of construction, and the locations of construction.

In a memo entitled "Report of Proposed Construction Programs", dated January 17, 2017, DOL requested that agencies, if practicable, provide data under this reporting requirement for an additional two (2) FYs. Further, DOL requested that the data include, for all three (3) FYs, details related to projected construction amounts, projected project start and completion dates, and assigned wage determinations. This additional data will assist DOL with its multi-year planning efforts for scheduling wage surveys which will result in more up-to-date and accurate wage determinations.

(b) *Component single point of contact*. Each Component shall designate a single point of contact (POC) responsible for the timeliness and accuracy of planned construction information reported to OCPO. Unless advised otherwise by the Component, the POC is the chief of the procurement policy function within the Component.

(c) *Report format and submission*. Accordingly, Components shall submit a report for the coming FY under this requirement. The Component may, if practicable, also provide information on construction projects for the two additional consecutive FYs.
Each Component shall model its report after the template provided in HSAM Appendix AC, Template for Report of Proposed Federal Construction, and shall submit the report as an Excel document. Data for each individual FY must be reported on separate Excel worksheets. Negative reports are required. OCPO will consolidate the Component reported data and transmit a collective report to DOL.

(d) *Significant report changes*. During the fiscal year, each Component shall notify OCPO of any significant changes to its proposed construction programs from those outlined in the Component reported data presented at the beginning of the fiscal year. OCPO will notify DOL.

**Subchapter 3036.6 Architect-Engineer Services**

**3036.602 Selection of firms for architect-engineer contracts.**

**3036.602-1 Selection criteria.**

(b) The HCA is authorized to approve the use of design competition. In no case shall the authority be delegated below the level of COCO. Approval must be obtained prior to soliciting proposals.

**3036.602-2 Evaluation boards.**

The contracting officer 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 HCA is delegated the authority to receive the report prepared by the evaluation board.

**3036.602-4 Selection authority.**

(a) The HCA is authorized to make the final selection of the most highly qualified firms. In no case shall the authority be delegated below the level of COCO.

(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 HCA is authorized to review and approve the selection report. In no case shall the authority be delegated below the level of COCO.

**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** |
| | 3037.103 | Contracting officer responsibility. |
| | 3037.104 | Personal services contracts. |
| | 3037.104-70 | Personal services contracts. |
| | 3037.106 | Funding and term of service contracts. |
| | 3037.112 | Government use of private sector temporaries. |
| | 3037.112-70 | Stenographic reporting services. |
| | 3037.113-1 | Waiver of cost allowability limitations. |
| **Subchapter** | **3037.2** | **Advisory and Assistance Services** |
| | 3037.203 | Policy. |
| | 3037.203-70 | Services of individual experts and consultants. |
| | 3037.203-71 | Third party benefits. |
| | 3037.204 | Guidelines for determining availability of personnel. |
| | 3037.205 | Contracting officer responsibilities. |
| | 3037.205-70 | Accounting and information system. |
| **Subchapter** | **3037.5** | **Management Oversight of Service Contracts** |
| | 3037.503 | Agency-head responsibilities. |
| **Subchapter** | **3037.6** | **Performance-Based Acquisition** |
| | 3037.601 | General. |


## Subchapter 3037.1 Service Contracts-General

### 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.

### 3037.104 Personal services contracts.

**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), without redelegation, 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 HCA is delegated this authority. The HCA may redelegate this authority, but in no case shall the authority be delegated lower than one level above the contracting officer.

**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 Office (COCO), without redelegation, 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, without redelegation, 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.
3039.170 Information Technology Acquisition Review.

**Subchapter 3039.2 Electronic and Information Technology**
3039.201 Scope of Subpart.
3039.203 Applicability.
3039.204 Exceptions.

## Subchapter 3039.1 General

### 3039.101 Policy.

(b)(1) Department of Homeland Security Directives and Instructions that apply to the acquisition of information technology (IT) and provide policy and guidance for information and technology management are:

(i) Directive 102-01, Acquisition Management Directive;

(ii) Directive 102-02, Capital Planning and Investment Control (CPIC);

(iii) Directive 139-05, Office of Accessible Systems and Technology, and Instruction 139-05-001, Managing the Accessible Systems and Technology Program;

(iv) Directive 140-01, Information Technology Security Program; and

(v) Directive 142-02, Information Technology Integration and Management, and Instruction 142-02-001, Information Technology Integration and Management.

(2) See HSAM 3004.470 for security requirements for contractor access to unclassified facilities, IT resources, and sensitive information.

(3) See HSAM 3004.13 for Homeland Security Presidential Directive-12 (HSPD-12), Policy for a Common Identification Standard for Federal Employees and Contractors, for HSPD-12 requirements.

### 3039.170 Information Technology Acquisition Review.

(a) *Policy.* Directive 142-02, Information Technology Integration and Management, establishes the authorities, responsibilities, and policies of the DHS Chief Information Officer (CIO) with respect to the management of IT and directs the DHS CIO and Component CIOs to establish the IT Acquisition Review (ITAR) process for acquisitions that include IT.

(b) *Requirements.*

(1) *Investments with a lifecycle cost under $50 million.* Procurement request packages that include any IT and have a total estimated procurement value (TEPV) greater than or equal to $500,000 and are funded by an investment with a lifecycle cost of under $50 million shall be reviewed and approved by the Component CIO through the Component-level ITAR or acquisition review process.

(2) *Investments with a lifecycle cost greater than or equal to $50 million.* Procurement request packages that include any IT and have a TEPV greater than or equal to $500,000 and are funded by an investment with a lifecycle cost greater than or equal to $50 million shall be reviewed and approved by both the Component CIO and DHS CIO through the Component-level ITAR or acquisition review process and the DHS Headquarters ITAR process.

(3) *Components without a Chief Information Officer.* Components, Directorates, and Offices for which the DHS CIO is the senior IT executive, i.e., there is no Component CIO, procurement request packages that include any IT and have a TEPV greater than or equal to $500,000 or for which a written acquisition plan is required shall be reviewed and approved by the DHS CIO through the DHS Headquarters ITAR process.

(4) *Documentation.* For all procurements that include IT and have a TEPV greater than or equal to $500,000, the approval document must be signed by the Component CIO and DHS CIO, when applicable. The DHS CIO signature can be delegated to the DHS Deputy CIO and the Component CIO signature can be delegated to the Component Deputy CIO. Such delegation is authorized only when the DHS CIO or Component CIO is unavailable to sign in a timely manner. The approval document for procurements that go through the DHS Headquarters ITAR process will be the Acquisition Review Decision (ARD), the Acquisition Plan Review Decision (APRD), or a document that combines the ARD and the APRD. Component policies shall identify the approval document for procurements that only go through the Component-level ITAR or acquisition review process.

(5) Contracting officers shall ensure that procurement request packages that include any IT and have a TEPV greater than or equal to $500,000 include documentation of approval for the procurement by the Component CIO or Deputy CIO and the DHS CIO or Deputy CIO, when applicable, before issuance of a solicitation.

## Subchapter 3039.2 Electronic and Information Technology

### 3039.201 Scope of Subpart.

(a) Directive 139-05, Office of Accessible Systems and Technology, and Instruction 139-05-001, Managing the Accessible Systems and Technology Program, implement Section 508 of the Rehabilitation Act of 1973 and apply to all proposed acquisitions of Electronic and Information Technology (EIT) products and services.

### 3039.203 Applicability.

(a) The requiring official is responsible for ensuring that requirements documents (i.e., Statements of Objectives (SOO), Statements of Work (SOW), Performance Work Statements (PWS), or Specifications) for EIT products and services are in compliance with the EIT Accessibility Standards set forth by the Architectural and Transportation Barriers Compliance Board in 36 CFR Part 1194. These standards are also set forth in Appendices A through H of Instruction 139-05-001. Responsibilities include:

(1) Defining business needs;

(2) Identifying applicable Section 508 exceptions;

(3) Requesting authorization for National Security or Undue Burden Exceptions from the Office of Accessible Systems and Technology and all other exceptions from the Component Section 508 Coordinator;

(4) Identifying applicable Section 508 EIT accessibility standards;

(5) Performing market research; and

(6) Selecting the product or service that best meets the business needs and Section 508 requirements.

**3039.204 Exceptions.**

(e)(2) *Documentation*.

(i) The requiring official is responsible for documenting and obtaining authorization for exceptions. Exception determinations shall be justified in writing using the applicable DHS Form: DHS Form 4103, Undue Burden Exception Request and Authorization Form; DHS Form 4105, National Security Exception Request and Authorization Form; DHS Form 4108, Fundamental Alteration Exception Request and Authorization; or DHS Form 4109 Back Office Exception Request and Authorization. The form shall be approved in accordance with Component procedures and forwarded with the procurement request package to the contracting activity for inclusion in the contract file.

(ii) The requiring official is responsible for including appropriate Section 508 language in the requirements document (i.e., SOO, SOW, PWS, or Specification). Section 508 language should be based on the DHS Accessibility Requirements Tool (DART). The DART is accessible at http://dhsconnect.dhs.gov/org/comp/mgmt/cio/oast/Documents/DART1_5_2_strict.html. Appropriate contract language lists:

(A) All of the EIT items in the solicitation that fall under the scope of the Section 508 standards;

(B) Each EIT exception;

(C) For all remaining EIT items (or item(s) that contain EIT), the specific Section 508 standards that apply to the EIT (Note: Different standards apply to different technologies.);

(D) Instructions to contractors on how to provide accessibility conformance information to support the Government's evaluation and verification of conformance of each deliverable with the Section 508 standard(s); and

(E) Acceptance criteria to support the Government's post-award evaluation of deliverables for conformance to the Section 508 standards.

(iii) Contracting officers shall ensure that procurement request packages that include any EIT products and services include documentation of approval for the procurement before issuance of a solicitation. This documentation includes the following:

(A) DHS Form 4103, Undue Burden Exception Request and Authorization Form, when applicable, approved by the DHS Office of Accessible Systems and Technology (OAST); or

(B) DHS Form 4105, National Security Exception Request and Authorization Form; when applicable, approved by the DHS OAST; or

(C) DHS Form 4108, Fundamental Alteration Exception Request and Authorization; when applicable, approved by the Component Section 508 Coordinator; or

(D) DHS Form 4109, Back Office Exception Request and Authorization; when applicable, approved by the Component Section 508 Coordinator; or

(E) Section 508 language in the requirements document (see 3039.204(e)(2)(ii)).

(iv) Contracting officers shall ensure the Section 508 requirements and language provided by the requiring office (see 3039.204(e)(2)(ii)) is included in solicitations and contracts for EIT products and services.

# 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). As part of the request, HCAs must attest in writing that the Component has:

(1) An established acquisition program. Provide evidence of Component operation as established acquisition program (e.g., copies of Acquisition Plan, Milestone Decision Document);

(2) Personnel technically qualified to deal with specialized utilities problems. Provide evidence of the technical qualification for the personnel monitoring the utilities contracts over the course of the current performance period (e.g., copies of training certificates, name and contact information of Component Energy Manager, Contracting Officer's warrant); and

(3) The ability to accomplish its own pre-award contract review. Provide evidence of evaluations (e.g., copies of the current Internal Control Plan (ICP) Agreement, copies of most recent compliance reviews conducted).

All certification requests shall receive Office of General Counsel review and coordination prior to submission to CPO. OCPO requires 30 days processing time from receipt of certification requests.

## Subchapter 3041.2 Acquiring Utility Services

### 3041.201 Policy.

(d)(2)(i) The contracting officer is authorized to enter into a contract pursuant to 42 U.S.C. 8287 (which pertains to the subject of shared energy savings including cogeneration).

(d)(3) The contracting officer is delegated the authority for FAR 41.201(d)(3).

## Subchapter 3041.5 Solicitation Provision and Contract Clauses

### 3041.501 Solicitation provision and contract clauses.

(a) Variations in the provisions and clauses shall be reviewed by counsel for legal sufficiency.

| | | |
|---|---|---|
| **CHAPTER** | **3042** | **CONTRACT ADMINISTRATION AND AUDIT SERVICES** |
| **Subchapter** | **3042.002** | **Interagency agreements** |
| **Subchapter** | **3042.1** | **Contract Audit Services** |
| | 3042.102 | Assignment of contract audit services. |
| | 3042.170 | Contract audit follow-up. |
| **Subchapter** | **3042.2** | **Contract Administration Services** |
| | 3042.202 | Assignment of contract administration. |
| **Subchapter** | **3042.270** | **Contracting Officer's Representative (COR)** |
| | 3042.270-1 | Policy. |
| | 3042.270-2 | COR nomination process. |
| | 3042.270-3 | COR appointment letter**.** |
| | 3042.270-4 | Procedures for issuance of COR appointment letter. |
| | 3042.270-5 | Reserved. |
| **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** | **3042.5** | **Postaward Orientation** |
| | 3042.503-70 | Contractor and Subcontractor Employee Whistleblower Protections – Postaward Employee Notification. |
| **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. |
| | 3042.708 | Quick-closeout procedures. |
| | 3042.708-70 | DHS quick-closeout procedures. |
| **Subchapter** | **3042.8** | **Disallowance of Costs** |
| | 3042.803 | Disallowing costs after incurrence. |

**Subchapter 3042.15 Contractor Performance Information**
3042.1502 Policy.
3042.1503 Procedures.
3042.1503-70 Contractor performance assessments.

**Subchapter 3042.002 Interagency agreements.**

(c) A Memorandum of Understanding (MOU) for audit services is established between the Department of Homeland Security (DHS) and the Defense Contract Audit Agency (DCAA). (See Appendix U, MOU between DHS and DCAA).

**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 DCAA to order audit services. (See Appendix U)

**3042.170 Contract audit follow-up.**

OCPO shall be responsible for audit follow-up. This follow-up shall occur on a quarterly basis. OCPO shall obtain a listing of all open audits from DCAA. A listing of open audits for which audit reports are older than 90 days shall be provided to the Components. The Components shall provide the status of each audit (e.g., disposition with a copy of the price negotiation memorandum, negotiations in process, etc.) to OCPO within 30 days after the list is provided to the Component. OCPO shall maintain a listing of all open audits older than 90 days and the status of those audits.

**Subchapter 3042.2 Contract Administration Services**

**3042.202 Assignment of contract administration.**

(a) Contracting officers shall comply with FAR 42.202 when ordering contract administration support services from DCMA. Each request for contract administration services from DCMA shall be sent via a Letter of Delegation to the cognizant DCMA field office(s). However, prior to formally requesting contract administration support services, contracting officers should contact the Non-DoD Customer Liaison Representative (CLR) at the DCMA Non-DoD Service Portfolio Division, at (703) 647-6074. The CLR will identify the appropriate contract management office and interface with the DHS contracting officer regarding any potential issues in the delegation. All new contract administration support services work requests should be considered on a case-by-case basis under DCMA's standard policies for accepting new work requests from non-DoD customers.

If DCMA accepts the delegation, follow up with the Component's Chief Financial Officer using the Component's financial transaction process to reimburse DCMA for the services provided.

(c) *Delegating additional functions*.

(2) The authority to approve the delegation to the contract administration office (CAO) is delegated to one level above the contracting officer. In no case shall the authority be delegated below one level above the contracting officer.

**3042.270 Contracting Officer's Representative (COR).**

**3042.270-1 Policy.**

(a) DHS Acquisition Workforce Policy, number 064-04-003, Federal Acquisition Certification for Contracting Officer's Representatives and Appointment and Revocation" dated August 8, 2012, or any successor, provides policy and procedures concerning the selection and training, experience, certification, appointment, and termination of a COR. This policy, and any successor acquisition workforce policies, apply to all Components.

(b) In very limited instances a contracting officer may retain and execute the contract administration functions in accordance with FAR Subpart 42.3. This may be appropriate when administration of the contract does not require complex technical knowledge or when the contracting officer has sufficient time and training to personally monitor the contractor's performance. Unless the contracting officer retains and executes all contract administration functions, CORs shall be nominated and appointed as follows:

(1) A Level II or III certified COR shall be nominated and appointed for every firm-fixed price contract or order that exceeds the simplified acquisition threshold, and that is neither a high risk contract/order nor a contract/order for a major investment.

(2) A Level III COR shall be nominated and appointed for every contract or order that is high risk, or a major investment, regardless of value (See HSAI Policy 064-04-003).

(3) A Level II or III COR may be appointed on fixed price contracts or orders below the simplified acquisition threshold if the contracting officer does not perform the inspection and acceptance of the supplies or services.

(c) Note that by statute, no funding made available to DHS shall be available to pay the salary of any employee serving as a COR, or anyone acting in a similar capacity, who has not received COR training.

(d) The COR nomination shall be submitted as soon as practicable, but no later than with the procurement request. (See HSAM 3032.702-70, Procurement requests). The COR will be appointed prior to award of the contract or order.

(e) Technical organizations (requisitioning/program offices) are responsible for:

(1) Ensuring that the individual nominated for the COR position possesses the training and experience requirements (including appropriate level of certification), commensurate

with the duties and responsibilities to be delegated (See HSAM 3032.702-70, regarding submission of procurement requests).

(2) Ensuring that the COR's annual performance appraisal includes an evaluation of how well the COR functions are performed.

**3042.270-2 COR nomination process.**

(a) The DHS COR Nomination Letter format in Appendix W shall be used for nominating a prospective COR, except that Components may use their own form if it contains all of the information in the Appendix W format.

(b) Each COR nomination package will include, in addition to the COR Nomination Letter, the documents or information required by Appendix W, as summarized below:

(1) Federal Acquisition Certification for CORs.

(2) Training qualifications which confirm initial COR certification training of at least 40 hours for Level II and 60 hours for Level III and 40 hours continuous learning points (CLPs) earned within the last two years (for either Level II or III). Eight of the CLPs must have been earned in resident or online COR-related classes. One hour of procurement ethics training must have been completed within the past year.

(3) Technical and experience qualifications.

(4) COR contact information.

(5) Other information as appropriate.

**3042.270-3 COR appointment letter.**

(a) The DHS COR Appointment Letter Format in Appendix W, shall be used in preparing the DHS COR or Alternate COR appointment letter and for ensuring format/framework consistency throughout the DHS. Supplements to the required COR appointment letters framework elements/content must be established with Component written procedures.

(b) Required key elements for the DHS COR appointment letter are: COR core responsibilities and functions, exclusions, and authority, ethics and training. DHS required elements (see Appendix W, Exhibits 1-3) must be addressed in each COR appointment letter as described below, unless otherwise not applicable or delegated by the contracting officer:

(1) Core COR responsibilities and functions. For DHS, the five core responsibility elements (performing surveillance/inspections/acceptance, monitoring activities including providing input to contractor performance evaluations, making recommendations for invoice and payment, managing Government-furnished property, and managing contractor employee access to facilities or systems) shall be specifically delegated to at

least a Level II COR, unless retained by the contracting officer or not applicable (e.g., contract does not include Government-furnished property or security access requirements) or delegated by the contracting officer to a contract administration office. The detailed content instructions for each of these five core elements may be expressed, altered or varied through Component's written supplement procedures to the extent the variation is substantially the same in nature. (See Appendix W, Exhibit 1, for described duties.) Components must also include the COR performance duties or requirements for certain contract types and functions, see HSAM, 3016.601(c)(1), Time-and-materials (T&M) and labor-hour contracts and HSAM 3032.7002, Invoice and voucher review and approval. Nothing in the HSAM guidance or Component procedures should limit responsibilities and functions that the contracting officers may assign to the COR unless otherwise limited or prohibited by law or acquisition regulation.

(2) *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.

(3) *Authorities, Ethics, and Training*. Components shall establish written procedures identifying their needs and requirements within the categories of authorities, ethics and training. Components may use the content provided in Appendix W, Exhibit 3, to establish uniformity within their organization but must require submission of the OGE 450, Confidential Financial Disclosure Report.

**3042.270-4 Procedures for issuance of COR appointment letter.**

(a) Component administrative processing for issuance of the COR appointment letter must comply with Acquisition Workforce Policy 064-04-003 which provides guidance for COR appointment letters (also see Appendix W), specifically –

(1) Acknowledgement and receipt of the appointment letter;

(2) Acceptance of the COR appointment letter;

(3) Appointment of Alternate COR letter; and

(4) Termination of COR Appointment.

(b) Components must ensure where an individual is appointed as a COR on more than one contract, separate COR and Alternate COR appointment letters shall be issued for each contract.

(c) Component procedures must address the COR appointment letter's distribution requirements unique to the Component needs.

**3042.270-5 Reserved.**

## Subchapter 3042.3 Contract Administration Office Functions

### 3042.302 Contract administration functions.

(a)(12) FAR 16.301-3(a)(4) stipulates that a cost–reimbursement contract can be used only when the contractor's accounting system is adequate for determining costs applicable to the contract. The contracting officer is responsible for determining if a contractor's accounting system is adequate. Consult with DCAA or Defense Contract Management Agency (or other cognizant Federal Agency) to see if there is an existing determination that can be used. If not, the DHS contracting officer is responsible for determining whether or not a contractor's accounting system is adequate.

### 3042.302-70 Earned value management.

Responsibility for reviewing Earned Value Management System (EVMS) plans and verifying initial and continuing contractor compliance with Government EVMS criteria and conformity with American National Standards Institute/Electronic Industries Alliance (ANSI/EIA) Standard 748, Industry Guidelines for EVMS, is normally delegated to DCMA when EVMS support is required at a location under DCMA cognizance. Refer to HSAM 3034.204 for guidance relating to identification of contracts that require the application of EVMS. Refer to HSAM 3042.202 for procedures for ordering DCMA services.

### 3042.302-71 Trafficking in persons.

Monitor contractor compliance with the requirements of FAR 52.222-50, Combating Trafficking in Persons. The contracting officer shall include documentation in the contract file that the contractor has informed all employees and subcontractors of the Government policy on combating trafficking in persons. The contracting officer shall also include documentation in the contract file that all subcontractor employees have been informed of the policy. In the event that the contractor or a subcontractor violates FAR 52.222-50, the contracting officer shall document the file and provide the information to the DHS Inspector General for investigation. If a violation has occurred the contracting officer shall document the file and the remedies imposed in accordance with FAR 52.222-50.

## Subchapter 3042.5 Postaward Orientation

### 3042.503-70 Contractor and Subcontractor Employee Whistleblower Protections – Postaward Employee Notification.

(a) The contracting officer shall inform the contractor about the contractor's responsibilities under FAR clause 52.203-17, Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (dated SEPT 2013 or later) or FAR clause 52.212-4, Contract Terms and Conditions – Commercial Items (dated SEPT 2013 or later) either in a postaward conference or a postaward notice if a conference is not held. FAR clause 52.203-17 and FAR clause 52.212-4 implement the law which requires contractors and their subcontractors

to inform their employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections.

(b) Within 60 days of a contract award that contains FAR clause 52.203-17 (dated SEPT 2013 or later) or FAR clause 52.212-4 (dated SEPT 2013 or later) that includes subparagraph (r), the contracting officer shall seek written confirmation (which may include email) from the contractor that they and their subcontractors, as applicable, have informed their employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections. The confirmation shall be maintained in the contract file.

## 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) This authority is delegated to one level above the contracting officer. In no case shall the authority be delegated below one level above the contracting officer. A copy of the approved waiver shall be submitted to OCPO within five days of approval.

### 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) Pursuant to the Memorandum of Understanding (MOU) between DHS and DCAA at Appendix U, DCAA audits are based on its policy for sampling low-risk incurred cost proposals (also see DHS FAR Class Deviation Number 16-04 entitled "Defense Contract Audit Agency Policy and Procedure For Sampling Low-Risk Incurred Cost Proposals.") An audit will not be performed if the incurred cost proposal is classified as low risk and not selected for audit in the sampling process. If an audit was not performed because the incurred cost proposal was classified as low risk and not sampled, DCAA will provide the customer a memorandum stating that the submission was not selected for an audit. This memorandum will include the Certificate of Final Indirect Costs, signed rate agreement, schedule of direct and indirect costs proposed during the fiscal year (Schedule H), and cumulative allowable cost worksheet, if this can be readily prepared. If an audit is performed, DCAA will provide the customer with an incurred cost audit report at the conclusion of the audit. A copy of the annual audit reports or low risk memoranda provided by DCAA shall be maintained in the contract file.

(2) 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, Executive Director, Acquisition Policy and Oversight via PROCUREMENTSUPPORT@HQ.DHS.GOV of their decision to not obtain the audit. The contract file documentation shall include, as a minimum, a discussion of the reason the audit was not obtained (e.g., small dollar amounts remaining unaudited or unsettled; low dollar value of the contracts; the necessary audit will not be performed for many years and there is an urgency to close the contract).

(3) Annual audit reports or low risk memoranda 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 or low risk memoranda. In such cases, the allowable direct and indirect costs shall be determined based on the rates negotiated by the cognizant federal agency.

(4) 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. In no case shall the authority be delegated below the COCO.

**3042-708 Quick-closeout procedures.**

**3042.708-70 DHS quick-closeout procedures.**

The contracting officer may:

(a) Require the contractor to submit the following: (1) the contractor's final indirect cost rate proposal reflecting actual cost experience during the covered period(s), together with supporting cost or pricing data, for each of its fiscal years for which quick-closeout is involved, and (2) a final voucher and a summary of all costs by cost element and for each of its fiscal years for the contract(s) in question.

(b) Notify the cognizant audit activity, either verbally or in writing, identify the contract(s), and request:

(1) the contractor's indirect cost history covering a sufficient number of fiscal years to see the trend of claimed, audit questioned, and disallowed costs; and

(2) any other information that could impact the decision to use quick-closeout procedures. Indirect cost histories should be requested from the contractor only when the cognizant audit activity is unable to provide the information.

(c) Review the contract(s) for indirect cost rate ceilings and any other contract limitations, as well as the rate history information.

(d) If quick-closeout procedures are appropriate based upon the information obtained pursuant to paragraphs (a), (b), and (c), the contracting file shall be documented with the findings and rationale.

(e) Final indirect cost rates should be established using one of the following:

(1) Contractor's claimed actual rates adjusted to reflect an appropriate percentage of unallowable costs in prior year claims; or

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

(f) If an agreement is reached with the contractor, obtain a release of all claims and other applicable closing documents (see HSAR 3004.804-570).

**Subchapter 3042.8 Disallowance of Costs**

**3042.803 Disallowing costs after incurrence.**

(b) *Auditor receipt of vouchers.*

(3)(ii) When the contractor files a claim for unreimbursed costs under the Disputes clause of the contract, contracting officers shall process the claim in accordance with Component procedures.

**Subchapter 3042.15 Contractor Performance Information**

**3042.1502 Policy.**

The HCA shall ensure that contractor performance evaluations are completed to meet the requirements of FAR Subpart 42.15 and reported into the Department of Defense Contractor Performance Assessment Reporting System (CPARS) or other system as designated by the DHS Chief Procurement Officer.

DHS FAR Class Deviation 11-03, applicable to instruments awarded after August 11, 2011, requires evaluations for all supply contracts and orders that exceed $500,000, and for all service contracts and orders that exceed $1,000,000, except as provided in (d) below. Evaluation thresholds for other types of contracts and orders established by FAR 42.15 paragraphs (e) and (f) remain unchanged. For instruments awarded prior to August 11, 2011, evaluations are required for all contracts, including task and delivery orders, which exceed the simplified acquisition threshold, or other thresholds established by FAR 42.15 except as provided in (d) below. Notwithstanding that, however, Components shall prioritize assessments of contracts and orders that: 1) use high-risk vehicles, such as cost-reimbursement, time-and-materials type, or award fee contracts, 2) are complex in nature, such as large construction, architect-engineer, research, software development and implementation contracts, or 3) involve high dollar values or major acquisitions, regardless of the contract type. Interim evaluations shall be performed on contracts and orders exceeding one year in duration (but see FAR 42.1502 (h)) to assist with improving the contractor's marginal performance and identifying any major deficiencies.

(d)(1) Task orders or delivery orders may be combined into one evaluation under certain circumstances. Combining orders is generally not feasible when the requiring activities differ, when contracts are used by multiple activities, or when individual orders could be significantly different. For task order or delivery order contracts and blanket purchase agreements awarded by DHS Offices or Components, contractor performance evaluations for multiple orders may be

consolidated, at either the contract level or based on one of the orders, providing that all orders covered by a single evaluation were:

(i) active during the period of evaluation;

(ii) issued by the same office; and

(iii) procuring substantially similar supplies or services.

(2) When a decision is made to consolidate orders, contracting offices shall input the relevant data into the Enterprise Reporting Application under the Contractor Performance tab and shall indicate in CPARS the order numbers covered by the assessment.

**3042.1503 Procedures.**

(a) Component procedures shall provide that:

(1) Contracts and task/delivery orders that require past performance evaluations shall be registered in the CPARS within 30 days of award of the instrument.

(2) Input for evaluations shall generally be obtained from the technical office, the contracting office, and where appropriate, the end users of the product or service.

(3) Appropriate Government personnel will be identified as (i) "Assessing Official Representatives" (AORs) for the purpose of providing input into contractor performance evaluations, and (ii) "Assessing Officials" (AOs) for the purpose of reviewing, finalizing and signing the evaluations and forwarding them to the contractor for comment. A contract may have multiple AORs, always including the COR and possibly including the program manager and end users. CORs will not be designated as AOs. Evaluations prepared by the AOR(s) will be forwarded to the AO who will be the contracting officer or other official at a level above the COR.

(4) Government personnel will be identified as CPARS "Focal Points" (FP), who will be responsible for CPARS access authorizations for Government and contractor personnel registering the contract, and the monitoring, distribution and control of evaluations. To ensure continuity of operations, it is recommended that each Component identify a Primary and Alternate FP for each of their contracting activities or sites. FPs can serve as Alternates for more than one contracting activity or site. The Component Focal Point will grant users access to input records via the FAPIIS input module of the Contractor Performance Assessment Reporting System. The FAPIIS input module is located at https://www.cpars.gov.

(5) A CPARS "Senior Command Official" (SCO) will be identified. (SCO is a CPARS term, and is used here even though DHS is not organized by "Commands.") The SCO will be at a level higher than the CPARS FP. SCO functions include assisting the CPARS

FP with training, monitoring and policy; evaluating quality and compliance metrics; providing metrics to management. SCOs may not also be FPs.

(b) Component procedures shall provide that disagreements between the contractor and the Assessing Official regarding the evaluations will be resolved by a Reviewing Official, who shall be at a level above the contracting officer.

(f) The contracting officer shall be the AO for evaluations prepared per FAR 42.1503(h) related to a defective cost or pricing data determination made in accordance with FAR 15.407. This responsibility is not delegable.

**3042.1503-70 Contractor performance assessments.**

Component procedures shall ensure that:

(a) Assessments clearly and completely describe the contractor's performance in the narrative statement, in sufficient detail to justify the rating;

(b) In order to record critical details, performance issues are documented promptly during contract term, as opposed to waiting until the end of the performance period;

(c) Award fee determinations, when required by the contract, are reflected in the contractor's performance assessment;

(d) Narratives are supported by documentation sufficient to support the assigned rating, and should include:

(1) A level of detail and documentation that provides evidence and establishes a basis for the assigned rating;

(2) An explanation of how problems were resolved and the extent to which solutions were effective;

(3) Objective, fact based statements, and examples of the contractor's impact on improving or hindering Government performance;

(4) 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 3043.2 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), without redelegation, 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), without redelegation, 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. Also see 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.

**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).**

(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**

## Subchapter 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. Exemptions shall be retained in the contract file.

(b) The Chief Procurement Officer (CPO) is responsible for managing and monitoring value engineering (VE) efforts at DHS (see OMB Circular A-131).

### 3048.103 Processing value engineering change proposals.

(a) Component technical personnel are responsible for: conducting a comprehensive review of Value Engineering Change Proposals (VECPs) for technical feasibility, usefulness, and adequacy of the contractor's estimate of cost savings; making a written report; and recommending acceptance or rejection to the contracting officer.

### 3048.104 Sharing arrangements.

### 3048.104-3 Sharing collateral savings.

The Chief of the Contracting Office (COCO), without redelegation, 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. Exemptions will be retained in the contract file.

(e) The COCO, without redelegation, 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, without redelegation, 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, Executive Director, Acquisition Policy and Oversight via PROCUREMENTSUPPORT@hq.dhs.gov. Information for completing the report is available in Circular A-131. HCAs should contact APMD to obtain an Excel file that is suitable for the report. APMD will ensure the consolidated DHS report is forwarded to OMB by December 31. Negative reports are required.

# CHAPTER 3049 TERMINATION OF CONTRACTS

**Subchapter 3049.1 General Principles**
3049.101 Authorities and responsibilities.
3049.106 Fraud or other criminal conduct.
3049.111 Review of proposed settlements.
3049.402-6 Repurchase against contractor's account.

## Subchapter 3049.1 General Principles

### 3049.101 Authorities and responsibilities.

(a) *Notice to the Office of the Chief Procurement Officer (OCPO).* The contracting officer shall coordinate with the Component's Head of Contracting Activity and Component legal counsel or the Office of the Chief Counsel, as applicable and provide a copy of all termination notices, including terminations under FAR Part 12, for anticipated terminations of contracts or orders for default or cause with an undelivered balance exceeding $1 million to the OCPO at least five business days ***prior*** to issuing the notice to the contractor. An undelivered balance is the total dollar value of products and/or services that remains to be delivered to the Government, excluding unexercised options, when the contracting officer determines that the contract should be terminated. The contracting officer shall complete the template in HSAM, Appendix AD and shall submit it along with the termination notice to the Executive Director, Acquisition Policy and Oversight for the Chief Procurement Officer notification. As necessary, OCPO's Component Acquisition & Audit Support Branch shall coordinate with the Component regarding the termination on behalf of OCPO.

(b) *Suspension and Debarment for Terminations for Default or Cause.* Contracting officers shall refer all terminations for default or cause for potential suspension and debarment. Components shall follow the DHS Management Directive (MD) 146-01 and DHS Instruction Number 146-01-001 concerning procedures, documentation, and process for each referral. All referrals for terminations for default or cause shall be made to the Office of the Inspector General (OIG). The contracting officer shall document the contract file with the reason(s) for referring the contractor for suspension and debarment.

(c) In an assisted acquisition, the interagency agreement shall state whether the requesting or servicing agency is responsible for costs associated with termination, disputes, and protests, including settlement costs. The servicing agency shall obtain approval in writing from the requesting agency to terminate a contract or order five business days prior to terminating a contract or order.

### 3049.106 Fraud or other criminal conduct.

For DHS, the Termination Contracting Officer (TCO) is the contracting officer assigned at the time the decision is made to terminate the contract. The TCO shall submit the report required by FAR 49.106, along with supporting documentation, to legal counsel and the OIG for review and concurrence.

**3049.111 Review of proposed settlements.**

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

**3049.402-6 Repurchase against contractor's account.**

If the contracting officer repurchases against the contractor's account, the contracting officer shall:

(a) Place a brief explanation for the repurchase in the contract file.

(b) If practical, use the original terms, conditions, and specification for the repurchase. Whether or not the original terms are used, obtain the advice of legal counsel, as necessary, before issuing a solicitation for similar supplies or work.

(c) If the reprocurement is delayed, protect the Government's rights to recover reprocurement costs by documenting the file to explain the circumstances of the delay.

# CHAPTER 3050 EXTRAORDINARY CONTRACTUAL ACTIONS

**Subchapter 3050.1 Extraordinary Contract Actions**
3050.102 Delegation of and Limitations on Exercise of Authority.
3050.102-1 Delegation of authority.
3050.104 Residual Powers.
3050.104-1 Standards for use.

## Subchapter 3050.1 Extraordinary Contract Actions

### 3050.102 Delegation of and Limitations on Exercise of Authority

### 3050.102-1 Delegation of authority.

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

## Subchapter 3050.104 Residual Powers

### 3050.104-1 Standards for use.

Generally, it is DHS policy not to authorize indemnification to contractors or subcontractors against unusually hazardous or nuclear risks, pursuant to Public Law 85-804 (National Defense Contract Authorization Act), as amended, and FAR Subpart 50.1. Contracting officers shall not include in solicitations or contracts the clause at FAR 52.250-1, Indemnification Under Public Law 85-804, unless specifically authorized by the Secretary. Components must direct all requests for indemnification through the Component's Office of the Chief Counsel and forward to the Office of the Chief Procurement Officer for appropriate coordination with the DHS Office of General Counsel before transmittal to the Secretary.

# CHAPTER 3051

## USE OF GOVERNMENT SOURCES BY CONTRACTORS

## (RESERVED)

There is no text implementing or supplementing FAR Part 51.

# CHAPTER 3052

## SOLICITATION PROVISIONS AND CONTRACT CLAUSES

**(RESERVED)**

There is no text implementing or supplementing FAR Part 52.

| | | |
|---|---|---|
| **CHAPTER** | **3053** | **FORMS** |
| **Subchapter** | **3053.1** | **General.** |
| | 3053.101 | Requirements for use of forms. |
| | 3053.103 | Exceptions. |
| | 3053.105 | Computer generation. |
| **Subchapter** | **3053.2** | **Prescription of Forms** |
| | 3053.203-70 | Proprietary information. |
| | 3053.203-71 | Source selection information. |
| | 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. |
| | 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 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; and
DHS Form 700-21, Material Inspection Acceptance 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 Connect *(select Employee Resources and then Forms)*.

**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).

**3053.213-70 Simplified acquisitions.**

*DHS Form 700-16, Simplified Acquisition Summary*, shall be used as specified in HSAM 3013.101.

**3053.215-70 Contracting by negotiation.**

*DHS Form 700-17, Weighted Guidelines Profit/Fee Objective*, shall be used as specified in HSAM 3015.404-4.

**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)).

**3053.236-70 Construction and architect-engineer contracts.**

*DHS Form 700-11, Preconstruction Conference Agenda and Checklist,* shall be used as specified in HSAM 3036.212.

**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.

# APPENDIX A
# HEADS OF THE CONTRACTING ACTIVITIES

| | |
|---|---|
| DHS OPO | Director, Office of Procurement Operations |
| DHS OSA | Director, Office of Selective Acquisitions |
| FEMA | Director, Office of Acquisition Management |
| FLETC | Chief, Procurement Division |
| TSA | Assistant Administrator for Acquisition |
| US CBP | Deputy Assistant Commissioner, Office of Acquisition |
| USCG | Director of Contracting and Procurement (Commandant (CG-91)) |
| US ICE | Director, Office of Acquisition Management |
| USSS | Chief, Procurement Operations |

# APPENDIX B
# 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, April 1 | OCPO (OCPO sends final report to Department of Labor by April 10) |
| Semi-annual Labor Enforcement Report* | FAR Part 22.406-13; HSAM 3022.406-13; 29 CFR 5.7(b); DOL AAM 189 | Component submission Semi-annually: April 30, October 31 | Department of Labor |
| Use of Project Labor Agreements for Federal Construction Contracts | FAR 22.5; OMB Memorandum M-09-22 | Component submission Quarterly: February 1, May 1, August 1, November 1 | OCPO |
| OMB Sustainable Acquisition Progress Report | HSAM 3023; Appendix Q | Quarterly; semi-annual (Jan/Jul) | OCRSO |
| Undefinitized Contract Action (UCA) Report | HSAM 3043.7004 | Upon issuance of a UCA | DHS Enterprise Reporting Application http://ocpo-sp.dhs.gov/sites/era |
| Value Engineering Report* | OMB Circular A-131 HSAM 3048.7000 | Annually; December 7 | PARM |
| Report on Federal Support to Universities, Colleges, and Nonprofit Institutions | Section 3(a)(7) of the National Science Foundation (NSF) Act | Annually; O/A May 15 | Upon request from NSF |
| Procurement Forecast Initial and Update | Public Law 100-656; HSAM 3019.202-270 | Initial – Annually; Update – Semiannually or as needed | OSDBU |

| TITLE OF REPORT | REFERENCE | DATE DUE | WHERE |
|---|---|---|---|
| Sudan Report | Sudan Accountability and Divestment Act of 2007 (Public Law 110-174)§ 6(c)(1) | Semiannually, April 15th, October 15th | OFPP |
| Advocate for Competition Report | HSAM 3006.502(b)(2) | December 20 for the preceding year | OCPO |
| Use of Priority Rating Authority in Support of Emergency Preparedness, Response, Recovery, and Mitigation Activities for Homeland Security Technology Programs | DHS Acquisition Alert 10-07 (issued as a result of Executive Order 12919) | Quarterly (submit no later than 10 days after the end of each FY quarter) | OCPO (OCPO sends final report to FEMA) |

For those reports with an (*), if there was no activity for the period being reported, a negative response for the period shall be submitted to the requiring office.

# APPENDIX C
# REVIEW AND APPROVAL MATRIX

| | REVIEW TYPE AND THRESHOLDS | | REVIEW AND APPROVAL LEVELS<br>*OCPO may require review of any DHS contract actions in accordance with HSAM Subchapter 3004.7004.* | | | | |
|---|---|---|---|---|---|---|---|
| | | | Contracting Officer | Level above Contracting Officer Approval | Legal Review | Program Office | Other |
| 1 | Sealed Bids<br>- Solicitation and Award - | <$500,000 | R/A | | D | D | |
| | | >$500,000 | R | R/A | R | D | |
| 2 | Negotiated Procurements –<br>Solicitation & Award | <$500,000 | R/A | | | D | |
| | | >$500,000 | R | R/A | R | D | |
| 3 | Pre-Negotiation or Negotiation Memoranda | Any amount | R | R/A | D | | |
| 4 | Solicitations, Orders, BPAs –<br>Issued and awarded using a SOW, SOO, or PWS, or requiring licenses | <$500,000 | R/A | | D | D | |
| | | >$500,000 | R | R/A | R* | D | |
| 5 | Solicitations & Orders –<br>Issued and awarded IAW FAR Part 16 for ID/IQ contracts, or FAR Part 13 or Subpart 8.4 for orders & BPAs & orders against BOAs | <$500,000 | R/A | | D | D | |
| | | >$500,000 | R | R/A | R* | D | |
| 6 | Letter Contracts - IAW HSAM 3016.603 | All | R | R | R | D | COCO – R/A |
| 7 | Modifications to the above actions - Items 1-6 | <$500,000 | R/A | | D | D | |
| | | >$500,000 | R | R/A* | R* | D | |
| | **ADDITIONAL REQUIREMENTS FOR LEGAL REVIEW** | | | | | | |
| 8 | Private Sector Financing | | | | All | | |
| 9 | Agreement with Termination or Cancellation Fees | | | | All | | |
| 10 | Agreement with Indemnification for Contractor | | | | All | | |

## REVIEW AND APPROVAL MATRIX LEGEND

***R*** *= Review.* ***R/A*** *= Review/Approval.* ***R**** *= Review required, but see exceptions at HSAM 3004.7003(b).* ***R/A**** *= Review and Approval required, but see exceptions at 3004.7002(d).* ***D*** *= Discretionary as determined by the Contracting Officer. CPO = Chief Procurement Officer. OCPO= Office of the Chief Procurement Officer. COCO=Chief of the Contracting Office.*

**WHEN IN DOUBT SEND A CONGRESSIONAL NOTIFICATION OUT**

# APPENDIX D
# CONGRESSIONAL NOTIFICATION REQUIREMENTS (HSAM 3005.303- 70)

| | |
|---|---|
| **Contract Award or Action** | **Congressional Notification (CN) Reporting Rules**<br><br>*Provide notification to the Office of the Chief Procurement Officer (OCPO) via the Enterprise Reporting Application (ERA) tool at least five (5) business days prior to contract award or action.* ***Note:*** *New awards and modifications Subject to Availability of funds (SAF) that exceed $1M in value shall be reported at the time of initial award and not when the subsequent modification to obligate funds is executed.* |
| **New Contract Awards & Modifications** | • Report a new contract award with a total contract value (i.e. base and all option quantities or periods) exceeding $1M<br>• Report a modification exceeding $1M (excluding option exercises)<br>  • Report a modification of any dollar value that causes the overall contract value to exceed $1M |
| **Blanket Purchase Agreements (FAR Part 13)** | • Report establishment of Blanket Purchase Agreements with estimated ceiling amounts exceeding $1M<br>• Report BPA orders under multiple award BPAs exceeding $1M in value (i.e. base and all option quantities or periods)<br>• Report BPA order modifications exceeding $1M (excluding option exercises) |
| **DHS Orders** | • Report any order exceeding $1M in value placed against DHS Indefinite Delivery Contracts (multiple award only) |
| **Multi-Year Funds*** | • Report any order awarded using multiyear or no-year funds exceeding $10M (includes modifications increasing contract value over $10M). |
| **Interagency Acquisitions (IA) - Assisted Acquisitions** | • Report IAs for Assisted Acquisitions exceeding $1M in value (excluding IAs that will result in GWAC or MAC contract orders) and IA modifications exceeding $1M<br>  ○ The DHS Contracting Officer shall provide in ERA the estimated contract award details of the IA at the time the agreement is signed by the DHS Contracting Officer<br>○ The DHS Contracting Officer shall stipulate that the Servicing Agency may provide a CN consistent with its agency policy |
| | **Unique Congressional Notification Reporting Rules** |
| **Small Business Set-Asides** | • Report competitive Small Business Set-Asides exceeding $1M in value to Congress concurrent with pre-award notice (IAW FAR 15.503(a)(2)) |
| **Architect-Engineer Services Contracts** | • Report an Architect-Engineer services contract exceeding $1M in value conducted using FAR 36.6 procedure<br>• After the Contracting Officer has completed negotiations and ensured that the contract is ready for signature by both parties, the Contracting Officer shall suspend award as necessary to ensure Congressional notification is made at least five (5) business days prior to award |

## WHEN IN DOUBT SEND A CONGRESSIONAL NOTIFICATION OUT

| | |
|---|---|
| **Other Transaction Agreements** | • Report an award exceeding $1M for Other Transaction Agreements |
| | **Congressional Notification Reporting Not Required** |
| **Multiple Agency Contracts – Other Agency** | • Do not report an order placed against another agency's contract vehicle when ***using single or annual year appropriations*** regardless of dollar amount ***See instructions above when using multi-year funds**<br>• |
| **GSA FSS Orders (FAR Part 8)** | • Do not report an order placed against GSA Federal Supply Schedules when ***using single or annual year appropriations; and***<br>• Do not report BPAs established under Schedules or associated orders regardless of dollar value when ***using single or annual year appropriations***<br>***See instructions above when using multi-year funds** |

# APPENDIX E
# 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 | See Appendix D | >$4 Million | Upon request |
| **Required By** | FAR 5.301 | HSAM 3005.303 | FAR 5.303<br>HSAM 3005.303 | FAR 5.403,<br>HSAM 3005.403 |
| **Format** | Synopsis | Electronic Congressional notification<br>using ERA tool | Satisfied by FedBizOpps Synopsis, may issue press releases case-by-case | As requested |
| **From/To** | Contracting officer to FedBizOpps | • Contracting officer to OCPO<br>• OCPO to Congress | • Contracting officer to FedBizOpps<br>• Press releases to OPA | • Contracting officer to HCA<br>• HCA to OLA& OCPO; FOIA Office & Legal as applicable<br>• OLA to Congress, w/copy to OCPO |
| **Time of Submission** | No required timeframe | See Appendix D | Not before 5:00 p.m. Washington, DC time, Date of Award | As requested |
| **Applies To** | • New contract awards<br>• Mods for additional supplies or services exceeding $25,000 (beyond the original scope of the contract) | See Appendix D | • New contract awards<br>• Mods for additional supplies or services exceeding $4M (beyond the original scope of the contract)<br>• Orders over the estimated value of an Indefinite-quantity contract<br>• Orders under a BPA established under the Commercial Item Test Program | Detailed information regarding any particular contract |
| **Exclusions** | • Disclosure would compromise national security<br>• Awards resulting from acceptance of an unsolicited research proposal<br>• Awards under the Small Business Innovation Development Act<br>• Orders placed under Subpart 16.5, unless FY 2012 or FY 2013 multi-year funds are utilized.<br>• Awards for perishable subsistence supplies<br>• Awards for utility services, other than telecommunication services, and only one source is available<br>• The contract action—<br>○ Is for an amount not greater than the simplified acquisition threshold;<br>○ Was made through a means where access to the notice of proposed contract action was provided through the GPE; and<br>○ Permitted the public to respond to the solicitation electronically<br>• Awards for the services of an expert to support the Federal Government in any current or anticipated litigation or dispute pursuant to the exception to full and open competition authorized at 6.302-3. | See Appendix D | Same as FedBizOpps and Congressional Notice, plus:<br><br>• Contracts placed with the SBA under Section 8(a) of the Small Business Act<br>• Contracts with foreign firms when the place of delivery or performance is outside the United States and its outlying areas<br>• Contracts for which synopsis was exempted under 5.202(a)(1). | None |

# APPENDIX F
# DESIGNATION MEMORANDUM FOR PROCURING ACTIVITY ADVOCATE FOR COMPETITION TEMPLATE

MEMORANDUM FOR: *(designee)* Date:

THROUGH: *(DHS Advocate for Competition)*

FROM: (*HCA (include signature))*

SUBJECT: Designation as Procuring Activity Advocate for Competition for *(activity)*

Pursuant to Federal Acquisition Regulation (FAR) Subpart 6.5 and Homeland Security Acquisition Manual Chapter (HSAM) 3006.5, I hereby designate you as the Procuring Activity Advocate for Competition (PAAC) for *(activity)*. Your designation is supported by the documentation described at the end of this document. Your areas of responsibility include all the customers, organizations, and programs that are provided contracting support by *(activity)*. As the PAAC, you are responsible for the following:

- Promoting the acquisition of commercial items;
- Promoting full and open competition;
- Challenging requirements that are not stated in terms of functions to be performed, performance required or essential physical characteristics;
- Challenging barriers to the acquisitions of commercial items and full and open competition (such as unnecessarily restrictive statements of work, unnecessarily detailed specifications and unnecessarily burdensome contract clauses);
- Implementing initiatives that motivate program managers, and contracting officers to maximize competition.
- Submitting an annual report to the DHS Advocate for Competition;
- Participating in the DHS Advocate for Competition Council;
- Approving justifications for other than full and open competition in accordance with FAR 6.304;
- Approving Justifications for Exceptions to Fair Opportunity in accordance with FAR 16.505(b)(2)(ii)(C)(2);
- Approving sole source, including brand name justifications under FAR 13.501;
- Approving sole source awards for a proposed order or BPA with an estimated value exceeding $700,000, but not exceeding $13.5 million in accordance with FAR 8.405-6(d)(2); and
- Notifying the Departmental Advocate for Competition when an individual will be acting as the PAAC on his or her behalf and ensuring that a new designation is submitted

through the Component HCA for consideration by the Departmental Advocate for Competition when the individual will be acting for longer than one week.

You are encouraged to work closely with contracting and program office personnel to ensure success with your part of the DHS competition program. This delegation is effective upon approval and is in effect until further notice.

The following documentation satisfies the FAR Subpart 6.501 requirement, and as a result, supports your designation as PAAC.

_____

_____

_____

Should you have any questions, please do not hesitate to contact me at *(HCA email and phone number).*

# APPENDIX G
# CHECKLIST FOR SENSITIVE INFORMATION

**Procurement Title:** _____ **Requisition #:** _____
**Estimated Contract Value (incl. options):** _____

**Instructions:** The requiring office shall complete this checklist for all acquisitions, including assisted acquisitions, regardless of dollar value. A properly executed checklist serves as the high risk determination required by HSAR Class Deviation 15-01, Safeguarding of Sensitive Information. If the requiring official determines that a contractor will have access to sensitive information and/or contractor IT systems will be used to input, store, process, output and/or transmit sensitive information, the requiring official shall ensure the Statement of Work, Statement of Objective, Performance Work Statement or specification is reviewed by the organizations identified at HSAM 3004.470(b) and obtain signatures, as applicable, on this checklist. If it is not clear to the requiring official if the contractor will have access to sensitive information and/or if contractor IT systems will be used to input, store, process, output, and/or transmit sensitive information, the requirements official shall at a minimum consult with the Component Chief Information Officer (CIO), Chief Security Officer (CSO) and Privacy Officer. The requiring office shall submit the completed checklist as part of the procurement request package in accordance with HSAM 3004.7101. Failure to submit a completed checklist will result in the return of the procurement request package. The contracting officer is responsible for routing the checklist to the Head of Contracting Activity (HCA) or designee for signature and ensuring the solicitation and resultant contract reflect the requirements contained in the checklist.

**A. Sensitive Information and Access Requirements** (completed by the requiring office)**:**

1. Will the contractor have access to any of the types of the sensitive information listed below during the acquisition?

   ☐ Yes ☐ No Chemical-terrorism Vulnerability Information (CVI)
   ☐ Yes ☐ No For Official Use Only (FOUO)
   ☐ Yes ☐ No Law Enforcement Sensitive Information
   ☐ Yes ☐ No Protected Critical Infrastructure Information (PCII)
   ☐ Yes ☐ No Personally Identifiable Information (PII)
   ☐ Yes ☐ No Sensitive PII (SPII)
   ☐ Yes ☐ No Sensitive Security Information (SSI)
   ☐ Other type of sensitive information _____

2. Will contractor employees have access to DHS information systems? ☐ Yes ☐ No

3. Will contractor employees require recurring access to Government facilities?
   ☐ Yes ☐ No

   **Note:** If the answer is **"No"** to questions 1 through 3, proceed to the Signatures section of the checklist. When the answer is "No" to questions 1 through 3, the checklist shall, at a minimum, be signed by the requiring official and the HCA (or designee).

4. If the answer is **"Yes"** to either of questions 1 through 3 above, have information security, personnel security, and/or privacy provisions been identified and coordinated with the following, as applicable (see HSAM 3004.470(b) for coordination requirements).

   **Definitions:**
   - **Information security provisions** include the development of the Requirements Traceability Matrix, identification of incident reporting and response requirements, and requests for the contractor to: provide security authorization documentation, obtain an independent assessment, perform continuous monitoring, provide the Government with necessary access to perform security reviews, comply with federal reporting requirements.

   - **Personnel security provisions** include reviewing fitness requirements and other security matters related to access to sensitive but unclassified information and recurring access of contractor employees to Government facilities, information systems, security items or products.

   - **Privacy provisions** include requirements for handling PII and/or SPII, incident reporting, notification and credit monitoring.

   ☐ Yes ☐ No ☐ N/A Component CIO or designee
   ☐ Yes ☐ No ☐ N/A Component CSO or designee
   ☐ Yes ☐ No ☐ N/A Component Privacy Officer
   ☐ Yes ☐ No ☐ N/A TSA SSI Program Office
   ☐ Yes ☐ No ☐ N/A Cybersecurity and Infrastructure Security Agency (CISA) CVI Program Office
   ☐ Yes ☐ No ☐ N/A CISA PCII Program Office

   **Note:** For Components and offices that do not have a Component level CIO, CSO, or Privacy Officer, the requiring official shall coordinate with the DHS Headquarters CIO, CSO and Chief Privacy Officer (or designee for each). (See HSAM 3004.470(b)(7))

5. Has the Component CIO, CSO, Privacy Officer, HCA (or designee for each) and program manager determined that this effort will have a "high risk" of unauthorized access to or disclosure of sensitive information in accordance with the requirements of HSAR Deviation 15-01, Safeguarding of Sensitive Information, applicable to this acquisition?
   ☐ Yes ☐ No

   **Note:** If the answer to this question is "Yes" special clauses Safeguarding of Sensitive Information (MAR 2015), Information Technology Security and Privacy Training (MAR 2015) and HSAR clause 3052.204-71 Contractor Employee Access shall be included <u>without revision</u> in the solicitation and subsequent contract (as defined in FAR 2.101).

6. If the answer is "Yes" to any of the preceding questions, identify and describe the information security, personnel security, and privacy provisions to be included in the

solicitation including the special clauses from HSAR Class Deviation 15-01, Safeguarding of Sensitive Information if applicable. _____

_____

7. If foreign end products or services are allowed under the contract, what additional security provisions are to be included in the solicitation to protect sensitive information and facilities from unauthorized access and disclosure? _____

_____

**B. Authority to Operate (ATO) and Continuous Monitoring Data Requirements** (completed by requiring office in coordination with Component CIO or designee)**:**

1. Will contractor IT systems be used to input, store, process, output, and/or transmit sensitive information? ☐ Yes ☐ No

2. If "Yes" to #1, has the requiring office coordinated development of the Requirements Traceability Matrix (RTM) with the Component CIO or designee for inclusion in the solicitation? ☐ Yes ☐ N/A (only if "No" to #1)

3. If "Yes" to #1, will the solicitation require the submission of a draft security plan and instructions on how the draft security plan will be evaluated? ☐ Yes ☐ N/A (only if "No" to #1)

4. If "Yes" to #1, does the requirements document identify how the contractor should submit monthly continuous monitoring data to the Government? ☐ Yes ☐ N/A (only if "No" to #1)

5. If "Yes" to #1, identify and describe the continuous monitoring data requirements to be included in the solicitation.

_____

_____

_____

**Note:** When a contractor IT system will be used to input, store, process, output, and/or transmit sensitive information, the RTM shall be included in the solicitation. The RTM is prepared by the Component CIO or designee in coordination with the requiring office and shall be included in the procurement request package as an attachment to the requirements document (i.e., Statement of Work, Statement of Objectives, Performance Work Statement). Contracting officers shall ensure the solicitation requires vendors to submit a draft security plan with their proposal/quotation as their response to the RTM. Instructions on how the draft security plan will be evaluated shall be included in the solicitation.

**C. Data Retention Requirements** (completed by requiring office)**:**

1. Will the contractor be required to retain sensitive information for the Government? ☐ Yes ☐ No

2. If "Yes" to #1, does the requirements document identify (a) retention requirements (e.g., length of time data must be retained before return and/or destruction) and (b) security requirements for the protection of retained data? ☐ Yes ☐ N/A (only if "No" to #1)

3. If "Yes" to #1, identify and describe the retention and security requirements to be included in the solicitation. _____

   _____

4. Does the Government have a plan to monitor and/or ensure contractor compliance with the retention and security requirements identified? ☐ Yes ☐ N/A (only if "No" to #1)

5. If "Yes" to #1, describe the Government's plan to monitor and/or ensure contractor compliance with the retention and security requirements identified in the acquisition.

   _____

   _____

**D. Additional Privacy Considerations** (completed by requiring office in coordination with Component Privacy Officer or designee)**:**

1. Is contractor support needed to complete privacy compliance documentation (Privacy Threshold Analysis, Privacy Impact Assessment, and/or System of Record Notice, as appropriate)? ☐ Yes ☐ No ☐ N/A

2. If contractor support is needed to complete the privacy compliance documentation, does the requirements document identify the activities and level of contractor support needed? ☐ Yes ☐ N/A (only if "No" or "N/A" to #1)

3. If "Yes" to #1, identify and describe the activities and level of contractor support needed to complete the privacy compliance documentation.

   _____

   _____

**<u>Signatures</u>**:

_____
Name Date
Program Official (or official title)
(DHS Component and Organization)
(Telephone number)

_____
Name Date
Component Chief Information Officer (CIO) or designee
(DHS Component and Organization)
(Telephone number)

_____
Name Date
Component Chief Security Officer (CSO) or designee
(DHS Component and Organization)
(Telephone number)

_____
Name Date
Component Privacy Officer or designee
(DHS Component and Organization)
(Telephone number)

_____
Name Date
TSA SSI Program Office, as applicable
(Telephone number)

_____
Name Date
CISA CVI Program Office, as applicable
(Telephone number)

_____
Name Date
CISA PCII Program Office, as applicable
(Telephone number)

_____
Name Date
Head of Contracting Activity or designee
(DHS Component and Organization)
(Telephone number)

# APPENDIX H
# ACQUISITION PLANNING FORECAST SYSTEM AND SMALL BUSINESS REVEW FORM REQUIREMENTS MATRIX

| Procurement Type | APFS Record Required? (Yes/No)<br><br>See HSAM 3007.172 | DHS 700-22 Small Business Review Form (Yes/No)<br><br>See HSAM 3019.202-271 |
|---|---|---|
| New contracts over the simplified acquisition threshold (SAT) | Yes | Yes |
| Exercise of an option | No | No |
| Federal Prison Industries/Ability One actions over the SAT | Yes | No |
| Blanket Purchase Agreements (BPA), Basic Ordering Agreement (BOA) and Indefinite Delivery Vehicles (IDV) over the SAT | Yes | Yes |
| Task/delivery orders and calls over the SAT placed against a multiple award BPA, BOA and IDV (e.g., orders and calls placed against DHS Strategically Sourced Vehicles, GSA Federal Supply Schedules, OASIS, GWACS, DWACS, etc.) | Yes | Yes |
| Task/delivery orders and calls over the SAT placed against a single award BPA, BOA, IDV, Component/Office-Wide Acquisition Contract (C/OWAC). (The requirements office shall coordinate with the contracting officer activity on the procurement strategy). | No | No |
| Task/delivery orders and calls over the SAT placed against a multiple award BPA, BOA or IDV initially awarded under a single small business program. (e.g., PACTS II, 8(a) STARS II, etc.)) | Yes | No |
| Intra-agency assisted acquisitions over the SAT. (The servicing DHS Component completes the APFS record and Small Business Review form for the resulting contract action.) | Yes | Yes |
| Interagency assisted acquisitions over the SAT where DHS is the servicing agency. (The servicing DHS Component completes the APFS record and Small Business Review form for the resulting contract action.) | Yes | Yes |
| Interagency assisted acquisitions over the SAT where DHS is the requesting agency. (The servicing agency shall forecast the opportunity based on their agency policy) | No | No |
| Classified procurements | No | No |
| Broad Agency Announcement | Yes | No |
| Other Transaction Authority (e.g. Silicon Initiative) | Yes | No |

# APPENDIX I
# TEMPLATE: APPROVAL OF AN INTRA-AGENCY ASSISTED ACQUISITION

Per HSAM 3017.7003(a), this template shall be used to document the requesting Component's contracting office's approval for obtaining acquisition assistance from another DHS Component contracting office.

**Requesting Component:** _____

**Requesting Program Office:** _____

**Description of the supply or service to be procured:** _____

_____

_____

_____

_____

**Estimated Dollar Amount of Supply or Service (including options):** _____

**Estimated Period of Performance (including options):** _____

**Component Providing Acquisition Assistance:** _____

**Acquisition services to be provided by the servicing Component's contracting office:** _____

_____

_____

_____

_____

**Rationale for using the servicing Component:** *[Note: Factors requiring offices must consider in its rationale when requesting another DHS Component contracting office provide acquisition assistance:*

- *The servicing Component's authority, experience, and expertise in acquiring the needed product or service.*
- *The servicing Component has an existing contract vehicle that legally meets the needs of the requesting Component.*
- *Collaborating on the purchase of supplies or services is anticipated to strengthen the Government's negotiating positions and thus result in better pricing or terms and conditions than if each Component awarded a contract separately.*

- *The servicing Component's ability to comply with any unique requirements or prohibitions of the requesting Component such as restrictions on a Component's appropriations.*
- *Reasonableness of the servicing Component's costs associated with providing acquisition assistance.*
- *Other factors or circumstances unique to the procurement.]*

_____

_____

_____

_____

_____

**Statutory authority for the Assisted Acquisition:** _____

If the statutory authority cited is the Economy Act (31 U.S.C. 1535), as required by that Act, the above named requesting program office warrants all of the following conditions are met *[NOTE: the requiring office shall place a check in each space for each finding to indicate it has been substantiated.]*:

___ The funding for the purchase is available;

___ The purchase is in the best interest of the Government;

___ The ordered goods or services cannot be provided as conveniently or as inexpensively as by a Component contract; and

___ The servicing Component is able to contract for the ordered goods or services.

**Additional information as needed:** _____

_____

_____

_____

_____

**Name of Requestor:**_____ **Phone:**_____

**Email Address:**_____

I confirm the above information is correct to the best of my knowledge and that obtaining acquisition assistance from the above named Component is in the best interest of the Government.

**Signature of Requestor:** _____ **Date:** _____

**HCA (or designee) Name:** _____ **Phone:** _____

**Contracting Organization:** _____ **Email:** _____

( ) **Approve** ( ) **Disapprove** (see below)

**Signature of HCA (or designee):** _____ **Date:** _____

**Rationale for disapproving:**

_____

_____

_____

_____

# APPENDIX J
# 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.

# APPENDIX K
# UNSOLICITED PROPOSALS AND PROCEDURES

## HSAM SECTION 3015.606-70 AGENCY PROCEDURES

| HSAM Section 3015.606-70 – Agency procedures.. | | | | | |
|---|---|---|---|---|---|
| **DHS PROCESS STEPS FOR RECEIVING, REVIEWING, EVALUATING, AND TIMELY DISPOSAL OF UNSOLICITED PROPOSALS (Note: This flowchart must be used in conjunction with FAR 15.6 and HSAR 3015.6)** | **Phase 1** | **Phase 2** | **Phase 3** | **Phase 4** | **Phase 5** |
| | **Receipt** ▶ | **Initial Review** ▶ | **Evaluation** ▶ | **Decision** ▶ | **Action** |
| **AGENCY PROCEDURES** | >Each HCA shall designate a contracting office Point of Contact (POC) who must receive and track all Unsolicited Proposals. Typically, the POC is a Contracting Officer.<br><br>>Unsolicited Proposals must be protected as they often contain sensitive information and/or trade secrets. | >The POC must complete initial review; however, POC may obtain assistance from identified cross-functional team members.<br><br>>If POC determines that submission is not an Unsolicited Proposal, Phase 2 is final phase of process. | >POC and appropriate cross-functional team members must complete Comprehensive Evaluation. | >Based on evaluation results, which typically include input from the Program Office, POC and team members make a recommendation to the responsible Contracting Officer.<br><br>>When the recommendation is to proceed with contract negotiations, Phase 5 is needed. | >Contracting Officer, with other members of the DHS negotiation team, conducts contract negotiations as needed.<br><br>>Contracting Officer ensures compliance with all applicable procurement laws and regulations. |
| **OUTCOMES/GOALS** | **Establish Milestones & Identify Team** | **Complete Initial Review within 7 calendar days** | **Complete Comprehensive Evaluation within 60 calendar days** | **Process (Accept) or Reject Unsolicitated Proposal** | **Negotiate & Award Contract** |
| **TASK (TYPICAL)** | >POC establishes milestones and identifies appropriate team members.<br><br>>If Unsolicited Proposal is received by other DHS official, it must be immediately forwarded to designated POC. | >Within 3 calendar days after initial review completion, POC must advise Offeror of-- rejection with reasons, or, acceptance with general timeframe for completing Phase 3 Evaluation. | >If additional information is needed from the Offeror, only the POC may contact the Offeror and make the request. | >Within 60 calendar days, POC must advise Offeror of-- rejection with reasons, or, tentative acceptance with timeline for contract negotiations. If rejected, Phase 4 is final phase of process. | >Responsible Program Office must ensure funds are committed and provide approved requisition to Contracting Officer. |

| **FAR & HSAR Citations** | FAR 15.604 & 15.606, HSAR 3015.606 & 3015.606-1 | FAR 15.605 & 15.606, HSAR 3015.606-1 | FAR 15.4, 15.606-2 & 15.607, HSAR 3015.606-2 | FAR 15.606-2 & 15.607, HSAR 3015.606-2 | FAR 15.402, 15.606-2 & 15.607, & HSAR 3015.606-2 |
|---|---|---|---|---|---|

# APPENDIX L
# DETERMINATION TO AWARD A TASK OR DELIVERY ORDER CONTRACT TO A SINGLE SOURCE

---

## 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. 4103(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

# APPENDIX L
# DETERMINATION TO MAKE A SINGLE AWARD BLANKET PURCHASE AGREEMENT (BPA)

---

## 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;*

o *Explain the consequences if more than one source is considered for each expected order under the BPA;*
o *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*
o *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:*
o *Explain what the exceptional circumstances are and why it is in the public's interest to make a single award;*
o *Explain why there is no acceptable alternative to deal with the exceptional circumstance;*
o *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*
o *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

# APPENDIX M
# DETERMINATION AND FINDINGS – TIME & MATERIAL, LABOR HOUR

## 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

# APPENDIX N
# DETERMINATION AND FINDINGS - OVERTIME APPROVAL

## 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}

# APPENDIX O
# SEMI-ANNUAL LABOR COMPLIANCE REPORT

The following semi-annual report (Construction Wage Rate Requirements and Contract Work Hours and Safety Standards) 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. Construction Wage Rate Requirements statute: (prevailing wage violations)

    b. Contract Work Hours and Safety Standards: (overtime violations)

8. Amount of back wages paid:
    a. Construction Wage Rate Requirements statute:

    b. Contract Work Hours and Safety Standards:

9. Total number of employees paid wage restitution under the Davis-Bacon and related Acts and/or Contract Work Hours and Safety Standards:

10. Amount of liquidated damages assessed under Contract Work Hours and Safety Standards:
    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 Construction Wage Rate Requirements statute (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 Construction Wage Rate Requirements statute; and (b) the amount of back wages found due because of violations of the Contract Work Hours and Safety Standards.

8. Enter the amount of back wages paid showing under (a) the back wages paid due to violations of the Construction Wage Rate Requirements statute; and (b) the back wages paid due to violations of the Contract Work Hours and Safety Standards.

9. Enter the number of employees paid wage restitution (i.e., back wages) under the Construction Wage Rate Requirements statute and/or the Contract Work Hours and Safety Standards. 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 Construction Wage Rate Requirements statute and also paid wage restitution under the Contract Work Hours and Safety Standards.

10. Enter the total amount of liquidated damages assessed as a result of violations of the Contract Work Hours and Safety Standards, including any such amounts assessed by your Component as a result of investigations made by DOL.

# APPENDIX P
# DEPARTMENT OF LABOR SAMPLE LETTER

**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. 2102). 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 pre-award 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 pre-award 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/.

# APPENDIX Q
# DEPARTMENT OF HOMELAND SECURITY

## AFFIRMATIVE PROCUREMENT PLAN (APP)

## Summary

The U.S. Department of Homeland Security (DHS) procures a variety of products ranging from office equipment and computers to services such as janitorial and landscaping. This affirmative procurement (or sustainable acquisition) plan (APP) provides guidelines for an effective sustainable acquisition program. For the purpose of this document, sustainable acquisition is defined as the *utilization of cost-effective procedures to buy recycled content products, environmentally preferable products and services, biobased products, energy- and water-efficient products, alternate fuel vehicles, products using renewable energy, and alternatives to hazardous or toxic chemicals*.

DHS's affirmative procurement plan consists of policy, planning, implementation and operation, monitoring, corrective action, and management review. DHS's APP has been developed to ensure that sustainable products and services will be purchased to the maximum extent practicable and fulfills the applicable affirmative procurement requirements under the Federal Acquisition Regulation Part 23.

## Table of Contents

I. Purpose, Authority, and Applicability ..... 3
A. Purpose ..... 3
B. Authority ..... 3
C. Applicabililty ..... 3
II. Scope of Sustainable Products and Services ..... 3
A. Energy Efficient (ENERGY STAR® for Federal Energy Management Program (FEMP-designated) Products and Services ..... 4
B. Water Efficient Products ..... 4
C. Biobased Products and Services ..... 4
D. Environmentally Preferable Products and Services ..... 4
E. Non-Ozone Depleting Substances ..... 5
F. Recovered Materials ..... 5
G. Alternative Fuel Vehicles and Alternative Fuels ..... 5
H. Hazardous Material Management ..... 5
III. DHS Policy ..... 5
A. General ..... 5
B. Program Implementation ..... 6
C. Balancing Environmental Considerations with Performance, Availability and Cost (Life Cycle Cost Analysis) ..... 6
D. Promotion Program ..... 6
E DHS Sustainable Acquisition Working Group ..... 7
F. Annual Review and Monitoring ..... 7
G. Energy Savings Performance Contracts ..... 7
IV. Recogition Programs ..... 7
V. Waste Prevention and Recycling Programs ..... 7

Appendix A Request for Waiver Affirmative Procurement Program Item(s) ..... 9
Appendix B DHS FPDS-NG Sustainability Coding Guidelines ..... 10
Appendix C Definitions ..... 15

# I. Purpose, Authority and Applicability

## *A. Purpose*

The purpose of this document is to formally establish the Department of Homeland Security's (DHS) Affirmative Procurement (also known as sustainable acquisition) Program. Affirmative procurement is the purchase of environmentally preferable products and services in accordance with one or more of the established Federal sustainable acquisition preference programs.

Section 6002 of the Resources Conservation and Recovery Act (RCRA), as amended (42 U.S.C. § 6962), requires procuring agencies to implement an affirmative procurement program consisting of four elements: 1) a preference program; 2) a promotion program; 3) procedures for estimation, certification, and verification; and 4) procedures for annual review and monitoring.

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 preferable 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. Thus, the type of materials purchased can impact disposal costs, air emissions, water and energy use. Wise planning can help manage these impacts.

## *B. Authority*

- Federal Acquisition Regulation (FAR) Part 23, Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace
- Section 6002 of the Resource Conservation and Recovery Act
- Section 104 of the Energy Policy Act of 2005
- Section 9002 of the Farm Security and Rural Investment Act of 2002
- Executive Order 13834, Efficient Federal Operations

## *C. Applicability*

The policies outlined in this APP apply to all DHS purchases, including those at or below the micro-purchase threshold.

# II. Scope of Sustainable Products and Services

The purpose of the DHS APP is to give preference to acquisition of the following types of products and services over like products and services lacking the preferable attribute:

## *A. Energy-efficient (ENERGY STAR® or Federal Energy Management Program (FEMP) – designated) Products and Services*

Energy efficiency is the goal to reduce the amount of energy required to provide products and services. For example, insulating a home allows a building to use less heating and cooling energy to achieve and maintain a comfortable temperature. Installing LED lighting, fluorescent lighting, or natural skylight windows reduces the amount of energy required to attain the same level of illumination compared to using traditional incandescent light bulbs. Information about energy efficient products and services is available at ENERGY STAR® and the Federal Energy Management Program (FEMP).

### *B. Water-efficient Products*

FAR 23.202(b) states: "It is the policy and objective of the Government to use and manage water through water-efficient means by:

(1) Reducing potable water consumption intensity to include low-flow fixtures and efficient cooling towers;

(2) Reducing agency, industry, landscaping, and agricultural water consumption; and

(3) Storm water management in accordance with section 438 of the Energy Independence and Security Act of 2007 (42 U.S.C. § 17094).

The Department of Energy's (DOE) FEMP sets the purchasing specifications for water-efficient product categories commonly purchased by Federal agencies.

### *C. Biobased Products and Services*

The procurement of biobased products is established in Section 9002 of the Farm Security and Rural Investment Act (FSRIA) of 2002. Biobased products are products determined by the Secretary of Agriculture to be commercial or industrial products (other than food or feed) that are composed in whole, or in significant part, of biological products or renewable domestic agricultural materials (including plant, animal, and marine materials) or forestry materials. Examples of United States Department of Agriculture (USDA)-designated biobased products include mobile equipment, hydraulic fluids, roof coatings, diesel fuel additives, penetrating lubricants, water tank coatings, and bedding, bed linens, and towels. Information about biobased products is available at this link:

### *D. Environmentally Preferable Products and Service*

Environmentally Preferable Products (EPP) are 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 products or services. (e.g., Electronic Product Environmental Assessment Tool (EPEAT®-registered), or non-toxic or less toxic alternatives). More information about environmentally preferable products or services is available at the Environmental Protection Agency's (EPA's) website.

### *E. Non-Ozone Depleting Substances*

Ozone depleting substances are man-made gases that destroy ozone once the gases reach the ozone layer. FAR 23.802 requires that Federal agencies:

1) Implement cost-effective programs to minimize the procurement of materials and substances that contribute to the depletion of stratospheric ozone and/or result in the use, release or emission of high global warming potential hydrofluorocarbons; and

2) Give preference to the procurement of acceptable alternative chemicals, products, and manufacturing processes that reduce overall risks to human health and the environment by minimizing the depletion of ozone in the upper atmosphere; and the potential use, release, or emission of high global warming potential hydrofluorocarbons. A listing of ozone-depleting substances is available on the EPA website.

### *F. Recovered Materials*

Recovered materials designated by the EPA are items produced with waste materials and byproducts recovered or diverted from solid waste. Section 6002 of the Resource Conservation and Recovery Act (RCRA) requires agencies to purchase EPA-designated products at the highest recovered content practicable. EPA-designated items are listed in the Comprehensive Procurement Guidelines (CPG) at this link.

### *G. Alternative Fuel Vehicles and Alternative Fuels*

Under the Energy Policy Act (EPAct) of 2005, alternative fuel vehicles (AFVs) are defined as any dedicated, flexible-fuel, or dual-fuel vehicle designed to operate on at least one alternative fuel. As defined by EPAct, alternative fuels are substantially non-petroleum based fuels and include (but are not limited to) the following: ethanol at a 85% blend or higher (E85); liquefied petroleum gas (propane); compressed natural gas (CNG); biodiesel; electricity; hydrogen; and P-series fuels. Additional information about AFVs and alternative fuels is available at DOE's FEMP website.

### *H. Hazardous Materials Management*

Under the Toxic Substances Control Act (TSCA) and the Pollution Prevention Act, EPA evaluates potential risks from new and existing chemicals and finds ways to prevent or reduce pollution before it gets into the environment. Chemicals under the TSCA are listed at this link.

## III. DHS Policy

### *A. General*

It is DHS policy to achieve 100 percent compliance with mandatory Federal sustainable acquisition requirements in all acquisition transactions, unless an exemption in FAR Part 23 applies. Exemptions to the purchase of sustainable products and services shall be included in the contract file. A sample justification template is available in Appendix A.

### *B. Program Implementation*

The implementation of DHS's Affirmative Procurement Program includes all parties in the acquisition process, but acquisition planning begins with the requirements official. FAR Subpart 7.103 requires agency planners to comply with the policy in FAR 11.002(d) regarding procurement of sustainable products and services. Program and contracting personnel are encouraged to solicit businesses that demonstrate or adopt environmentally sound policies and systems, institute proper environmental management and auditing, disclose environmental information, and conform to environmental laws and regulations.

### *C. Balancing Environmental Considerations with Performance, Availability and Cost (Life Cycle Cost Analysis)*

DHS shall consider the life-cycle costs in making decisions about investments in products, services, construction, and other projects to lower the Department's costs and to reduce energy and water consumption. When comparing costs, acquisition personnel should not focus exclusively on the initial price. Instead, they should calculate and compare total costs over the life of the item, which includes the initial cost along with maintenance, operating, insurance, disposal, replacement, safety and health, training, hazardous material management, and potential liability costs.

### *D. Promotion Program*

Each Component is responsible for promoting DHS's APP. This may be accomplished by outreach and training. This shall be accomplished by including sustainable products and services preference standards in appropriate statements of work, solicitations, and contracts.

The promotional program should require contracting officers to:

(1) Include in their FedBizOpps announcements a statement of the recycling and recovery requirements of the solicitation, if applicable;

(2) Seek from the marketplace and annotate sources/bidders lists with information on vendors offering recovered products and services;

(3) Encourage each contractor under a value engineering program to look for savings opportunities which could be proposed; and

(4) Promote the fact that they are seeking to buy recovered materials at pre-bid and pre-proposal conferences, where applicable.
Training resources are available at Fedcenter.

### *E. DHS Sustainable Acquisition Working Group*

The DHS Sustainable Acquisition Working Group (SAWG) is an intra-agency working group that is advisory to the DHS Chief Sustainability Officer. The SAWG is co-chaired by a senior

environmental specialist representing Office of the Chief Readiness Support Officer (OCRSO) and a procurement analyst representing the Office of the Chief Procurement Officer (OCPO). The purpose of the working group is to foster communication and participation in developing sustainable acquisition guidance and initiatives that support the DHS Strategic Sustainability Performance Plan (SSPP) and Affirmative Procurement Program. The working group monitors DHS progress related to sustainable acquisition goals and shares best practices among agencies. Membership is open to all DHS activities, but at a minimum each Component with delegated contracting authority has a representative from the environmental field and a member from the procurement field. The DHS SAWG meets, at a minimum, on a quarterly basis.

### *F. Annual Review and Monitoring*

DHS tracks procurement sustainable products and services through the Federal Procurement Data System Next Generation (FPDS-NG) and Component contract writing systems. Each agency's success in meeting the sustainable acquisition requirements is measured in part by the information entered in FPDS-NG. Appendix B contains DHS FPDS-NG Sustainability Coding Guidelines. DHS tracks progress in achieving its sustainability goals through the OCRSO's Strategic Sustainability Performance Plan (SSPP) and through metrics established by the Office of Management and Budget.

### *G. Energy Savings Performance Contracts*

In accordance with FAR 23.205, acquisition personnel should make maximum use of the authority provided in the National Energy Conservation Policy Act (42 U.S.C. § 8287) to use an energy-savings performance contract (ESPC), when life-cycle cost-effective, to reduce energy use and cost in the agency's facilities and operations. For additional information on ESPC, contact the DHS OCRSO.

## IV. Recognition Programs

DHS encourages its employees' commitment to environmental stewardship through recognition and awards programs. Examples of award programs include the Sustainable Purchasing Leadership Council Leadership Awards, DHS's Sustainable Practices Awards Program, and the Green Electronics Council Awards.

## V. Waste Prevention and Recycling Programs

Each Federal agency is required to initiate a program to promote cost-effective waste prevention and recycling of reusable materials in all its facilities (including the acquisition and management of all leased space and in the construction and improvements of buildings), consistent with applicable state and local recycling requirements. DHS follows GSA's Federal Management Regulations for the donation, sale, and recycling of electronic equipment no longer needed by the Federal Government. DHS implements this mandate as follows:

● Components' contracting and program officials shall consider all waste prevention opportunities such as recyclability, reusability, and reparability when acquiring products and services.

● Contracting Officers shall include the clause at 52.223-10, 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 Government-owned or –operated facilities.

**Appendix A**

**Request for Waiver**
**Affirmative Procurement Program Item(s)**

For purchases over the micro-purchase threshold, the requirements official (program official) and the contracting officer, as appropriate, must document the joint determination when items subject to DHS's affirmation procurement program are not procured.

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

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

Procurement Request/Contract Number: _____

Products/Services meeting DHS's preference standards for the following designated items
_____
_____
_____
_____
were not obtained because:

Check the applicable justification:

___ Products/services are not reasonably available within a reasonable period of time
___ Products/services could not meet the performance standards set forth in the applicable specifications (attach a description of the performance standards and explain why an environmentally preferable product or service or a fuel/energy efficient product will not meet those standards)
___ Products/services are only available at an unreasonable price
___ Products/services are not cost-effective over the life of the product (considering energy cost savings)
___ Other (please specify)

_____ _____
Requirements/Program Official Name Date

_____ _____
Contract Specialist/Contracting Officer Name Date

D. Please provide supporting rationale/Justification when items subject to DHS's APP are not procured.

**Appendix B**

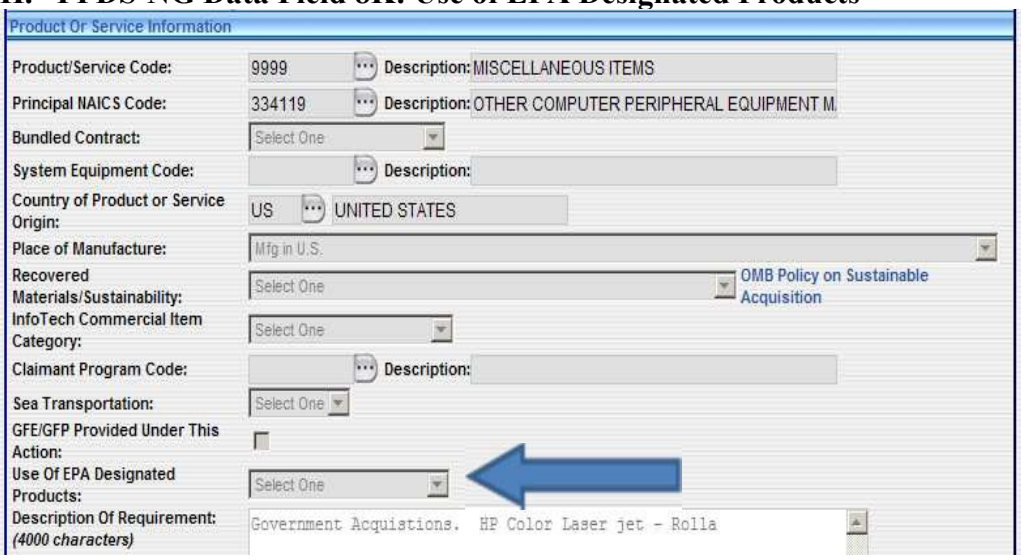
## DHS FPDS-NG Sustainability Coding Guidelines

### I. Overview

Federal agencies are required to demonstrate compliance with statutory, regulatory, or Government policy or executive order requirements when procuring products and/or services. The entry of accurate information into FPDS-NG is critical to assess DHS's progress in meeting sustainable acquisition requirements. For Multiple Award Schedules, Government-wide Acquisition Contracts, Blanket Purchase Agreements, and Indefinite Delivery Indefinite Quantity Contracts, this information is to be provided at the task or delivery order level.

Currently, there are two (2) separate sustainable acquisition data fields within FPDS-NG that must be completed by contracting officers in order to capture information on sustainability-related requirements language and clauses incorporated into contracts, task orders and delivery orders – these fields are "Use of EPA Designated Products" (FPDS-NG field 8K) and "Recovered Materials/Sustainability" (FPDS-NG field 8L). The following guidance will assist DHS in accurately reporting sustainability-related acquisition data, whether using a contract writing system or entering data directly into FPDS-NG manually.

### II. FPDS-NG Data Field 8K: Use of EPA Designated Products



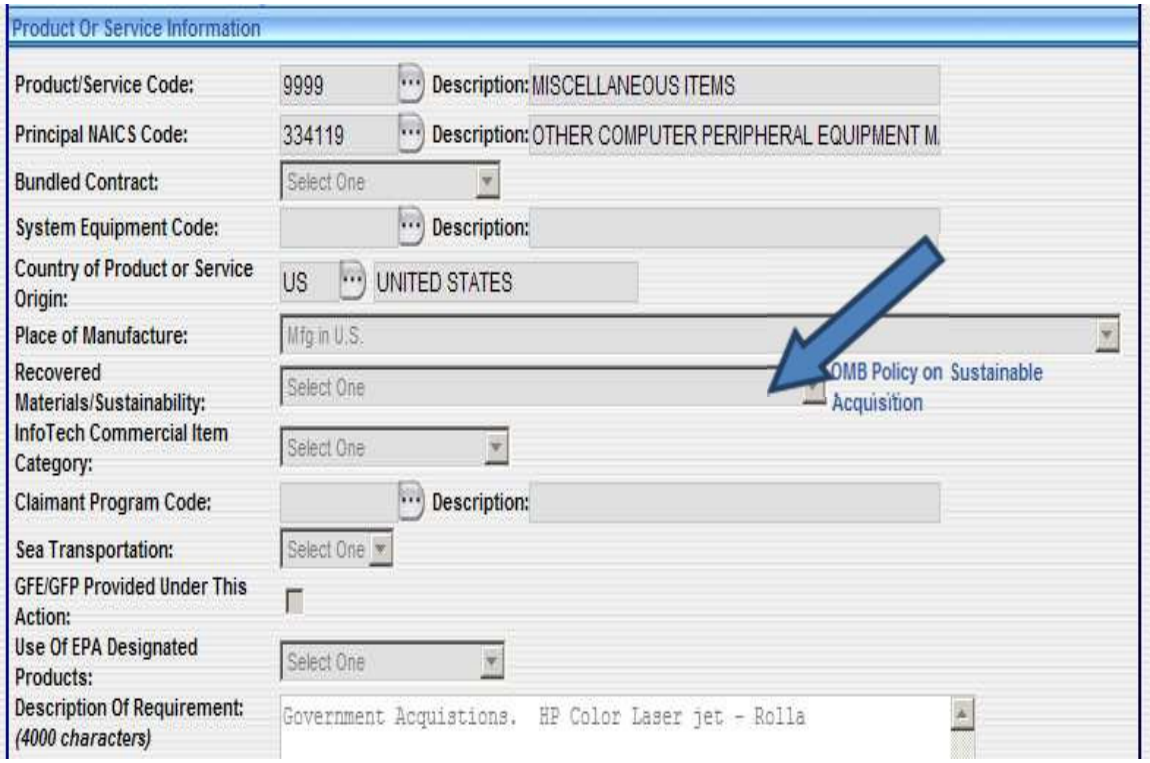

EPA's Comprehensive Procurement Guidelines (CPG) designate products containing recovered materials (also known as recycled-content products). You can find the current list either by going to the EPA CPG website or the Green Procurement Compilation.
Federal law requires agencies to purchase these designated products containing recovered materials, unless one of the three statutory exceptions are met and documented in the contract file. The three exceptions are - performance, availability (time), and price, which must be documented in the contract file per FAR 23.405(b) and in FPDS-NG.

To make your selection in FPDS-NG, you must first check the contract award documents to determine whether FAR clause 52.223-17 and/or other language requiring the delivery or use of recycled-content products meeting the minimum CPG content levels were required. Your selection from the "Use of EPA Designated Products" data field options must reflect the following criteria for selecting an appropriate choice:

**FPDS-NG Data Field 8K Use of EPA Designated Products**

| FPDS-NG Drop Down Selections | When to Use… |
|---|---|
| Code A - Meets Requirements | EPA-designated products were required to be purchased that contain the required minimum recovered material content. |
| Code B - Justification – Time | EPA-designated products were required to be purchased without the required minimum recovered material content and a justification was completed based on inability to acquire the product(s) competitively within a reasonable time (FAR 23.404(b)(1)(i)). |
| Code C - Justification - Price | EPA-designated products were required to be purchased without the required minimum recovered material content and a justification was completed based on inability to acquire the product(s) at a reasonable price (FAR 23.404(b)(1)(iii)). |
| Code D - Justification - Performance | EPA-designated products were required to be purchased without the required minimum recovered material content and a justification was completed based on inability to acquire the product(s) to reasonable performance standards in the specifications (FAR 23.404(b)(1)(ii)). |
| Code E - Not Required | No EPA-designated product(s) were required. |

## III. FPDS-NG Data Field 8L: Recovered Materials/Sustainability




The Recovered Materials/Sustainability drop-down is used to record the use of the sustainable product categories below.

- Energy efficient products
- ENERGY STAR ® products
- Federal Energy Management Program (FEMP)-designated products
- Biobased products (USDA BioPreferred products)
- Environmentally preferable products
- Electronic Product Environmental Assessment Tool (EPEAT)-registered Products
- Water-efficient products (e.g., EPA WaterSense)
- Non-toxic/less toxic products
- EPA Significant New Alternatives Policy Program (SNAP)-listed products
- Other Environmentally Preferable

This data field records whether the contract action included a sustainable products requirement, indicated by the inclusion of a clause and/or contract language in the final award documents. Several combinations of these attributes and the recovered materials clauses are listed in this FPDS-NG field. Your selection from the "Recovered Materials/Sustainability" data field options must reflect the following criteria for selecting an appropriate choice:

**FPDS-NG Data Element 8L – Recovered Materials/Sustainability**

| FPDS-NG Drop Down Selections | When to Use… |
|---|---|
| Code A - FAR 52.223-4 Included | The solicitation included the provision at FAR 52.223-4, Recovered Material Certification. |
| Code B - FAR 52.223-4 & FAR 52.223-9 Included | The solicitation included the provision at FAR 52.223-4, Recovered Material Certification and the contract includes the clause at FAR 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Products. |
| Code C - No Clauses Included and No Sustainability Included | Neither clause is included in the contract. |
| Code D - Energy Efficient | Energy Efficient |
| Code E – Biobased | Biobased |
| Code F - Environmentally Preferable | Environmentally Preferable (https://obamawhitehouse.archives.gov/omb/procurement_index_green) |
| Code G - FAR 52.223-4 & Energy Efficient | FAR 52.223-4 & Energy Efficient |
| Code H - FAR 52.223-4 & Biobased | FAR 52.223-4 & Biobased |
| Code I - FAR 52.223-4 & Environmentally Preferable | FAR 52.223-4 & Environmentally Preferable |
| Code J - FAR 52.223-4 & Biobased & Energy Efficient | FAR 52.223-4 & Biobased & Energy Efficient |
| Code K - FAR 52.223-4 & Biobased & Environmentally Preferable | FAR 52.223-4 & Biobased & Environmentally Preferable |

| | |
|---|---|
| Code L - FAR 52.223-4 & Biobased & Energy Efficient & Environmentally Preferable | FAR 52.223-4 & Biobased & Energy Efficient & Environmentally Preferable |

NOTE: When EPA Designated Product(s) is coded “Not Required” (E), then Recovered Materials/Sustainability must be “No Clauses Included and No Sustainability Included” (C), Energy Efficient (D), “Biobased” (E), or “Environmentally Preferable” (F)

## Appendix C

## Definitions

**Affirmative Procurement -** A term used to describe an organization's policy to purchase products made with recycled material. The term also encompasses a policy to purchase environmentally friendly products including those with reduced packaging. Governed by the Resource Conservation and Recovery Act (RCRA) Section 6002, there are requirements for the establishment of Affirmative Procurement Programs (APPs) by Federal agencies. An APP is an agency's strategy for maximizing its purchases of Environmental Protection Agency (EPA)-designated items.

**Alternative Fuel Vehicle** – Alternative fuel vehicles (AFVs) are defined as any dedicated, flexible-fuel, or duel-fuel vehicle designed to operate on at least one alternative fuel as defined in Section 301 of the Energy Policy Act (EPAct) of 2005.

**Biobased Product** – A biobased product is a product determined by the U.S. Department of Agriculture to be a commercial or industrial product (other than food or feed) that is composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials and forestry materials. Preference for procurement of biobased products is established under the authority of section 9002 of the FSRIA of 2002, and further amended by the Food Conservation and Energy Act of 2008 (2008 Farm Bill), the Agricultural Act of 2014 (2014 Farm Bill), and the Federal Acquisition Regulation (FAR) subpart 23.4.

**Biodegradable** – Biodegradable means the ability of a substance, material, or product ingredient to readily decompose by the action of microbes.

**Biopreferred** - Managed by the U.S. Department of Agriculture (USDA), the goal of the BioPreferred program is to increase the purchase and use of biobased products. The BioPreferred program was created by the 2002 Farm Bill and reauthorized and expanded as part of the Agricultural Act of 2014 (the 2014 Farm Bill). The increased development, purchase, and use of biobased products reduces our nation's reliance on petroleum, increases the use of renewable agricultural resources, and contributes to reducing adverse environmental and health impacts. The two major parts of the program are: 1) mandatory purchasing requirements for Federal agencies and their contractors; and 2) a voluntary labeling initiative for biobased products.

**Comprehensive Procurement Guidelines** - Regulations issued by EPA pursuant to Section 6002 of RCRA identifying items produced (or which can be produced) with recovered materials.

**Designated Item** - A product or category of products designated by EPA, made with recovered material, in the Comprehensive Procurement Guideline and whose procurement by Government agencies will help to create markets for materials recovered from solid waste.

**Energy-Efficient Product** – An energy-efficient product is a product that (i) Meets Department of Energy and Environmental Protection Agency criteria for use of the Energy Star trademark

label; or (ii) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy's Federal Energy Management Program.

**Energy-Savings Performance Contract** – An energy-savings performance contract (ESPC) is a contract that requires the contractor to: (1) Perform services for the design, acquisition, financing, installation, testing, operation, and where appropriate, maintenance and repair, of an identified energy conservation measure or series of measures at one or more locations; (2) Incur the costs of implementing the energy savings measures, including at least the cost (if any) incurred in making energy audits, acquiring and installing equipment, and training personnel in exchange for a predetermined share of the value of the energy savings directly resulting from implementation of such measures during the term of the contract; and (3) Guarantee future energy and cost savings to the Government.

**ENERGY STAR®** –A program jointly sponsored by the Environmental Protection Agency and the Department of Energy that allows manufacturers of products with superior energy efficiency that meets or exceeds specified criteria to use the ENERGY STAR® logo on their products to assist consumers in selecting energy efficient products. Examples of Energy Star® products include computers, copiers, clothes washers, dishwashers, light fixtures, and compact fluorescent light bulbs.

**Environmentally Preferable** - Environmentally preferable products and services are those 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 product or service disposal. Examples of environmentally preferable products include a printer that is Energy Star® compliant, prints on recycled paper and also has a two-sided copying capability, paint with no or low volatile organic compounds, and 100 percent post-consumer paper that is not chemically de-inked and is process chlorine free.

**EPA-designated Item** – An EPA-designated item means a product or category of products containing recovered materials that has been designated by the EPA in the Comprehensive Procurement Guidelines.

**EPEAT®** – The Electronic Product Environmental Assessment Tool (EPEAT®) helps purchasers evaluate, compare and select electronic products based on their environmental attributes. EPEAT® enables manufacturers to obtain market recognition through achievement of specific performance criteria in electronic product design and sales.

**Estimation** - Quantitative determination made by vendors of the total percentage of recovered material contained in offered products.

**Federal Energy Management Program (FEMP)-Designated Products** – FEMP-designated energy-efficient products are designated by the Federal Energy Management Program of the Department of Energy. These products are among the highest 25 percent of equivalent products for energy efficiency. For each product, FEMP identifies the efficiency levels needed to meet the requirements for procurement of energy-efficient products. Examples of FEMP-designated products include electric and gas water heaters, ice machines, boilers and chillers.

**Green Building Practices** – Green Building Practices means the incorporation of environmental, health, and waste prevention criteria in building design, site-planning and preparation, materials acquisition, construction or remodeling, deconstruction, and waste disposal.

**Greenhouse Gases (GHG)** – Greenhouse gases means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, nitrogen trifluoride, and sulfur hexafluoride.

**Life-Cycle Cost** - The comprehensive examination of a product's environmental and economic effects throughout its lifetime including new material extraction, transportation, manufacturing, use, and disposal.

**Life-Cycle Cost Assessment** - The amortized annual cost of a product, including costs associated with capital, installation, operations, maintenance, and disposal, discounted over the lifetime of the product.

**Low Standby Power** - Standby power is the level of power consumption that occurs when a device is in the lowest power-consuming mode—typically when the product is switched off or not performing its primary purpose. Federal agencies are required to purchase energy-consuming products with a standby power level of 1 watt or less when compliant models are available on the market. If a product with a standby power level of 1 watt or less is not currently available, a product with the lowest possible standby power level in the product category should be purchased.

**Post Consumer Materia**l - A material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. "Postconsumer material" is a part of the broader category of "recovered material".

**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.

**Recovered Material** - Waste materials and by-products recovered or diverted from solid waste, excluding those materials and by-products generated from, and commonly reused within, an original manufacturing process.

**Significant New Alternative Policy (SNAP)** – SNAP is a program under Section 612 of the Clean Air Act to ensure that alternatives to ozone-depleting substances present lower overall risk to human health and the environment than the substances they replace. Under SNAP, EPA identifies lists of acceptable and unacceptable substitutes for ozone-depleting substances used in industrial sectors that include air conditioning and refrigeration; fire suppression; cleaning solvents; foam blowing agents; aerosols; adhesives, coatings and inks; sterilants; and tobacco expansion.

**Safer Choice labeled products –** Safer Choice, previously known as Design for the Environment, identifies best in class products that contain chemical ingredients that are safer for human and environmental health.

**SmartWay Program –** The SmartWay Program is an initiative between EPA and the private sector to improve fuel efficiency and reduce greenhouse gas emissions and air pollution resulting from the movement of goods within supply chains. SmartWay Transport Partners are freight carriers and shippers that have committed to benchmark operations, track fuel consumption and improve performance annually. SmartWay vehicles are certified by EPA to have better than average ratings based on both greenhouse gas and smog ratings found on all new vehicle fuel economy labels.

**Sustainable** - Sustainability is the multidisciplinary integration of mission and environmental considerations, in which an activity and its phases are viewed on a full life-cycle basis. The sustainable approach balances economic and environmental performance, from beginning to end, and how they integrate with cost, schedule, operations, maintenance, and worker/employee considerations.

**Sustainable Products/Materials** – For the purposes of this document, sustainable products and services are defined as products and services meeting the requirements of one or more of the components of FAR Part 23 requirements.

**Toxic Chemical** – A toxic chemical means a chemical or chemical category listed in 40 CFR § 372.65.

**Waste Reduction** - Preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

**Water Efficiency** - A reduction in the intensity of water usage, such as through toilets, faucets, urinals and sinks. Included in a water efficiency program are tools, techniques, and approaches for improving water use efficiency for both potable and non-potable water resources.

**WaterSense certified products and services (water efficient products) –** Products with the WaterSense label are 20% more water efficient than average products in that category. Independent, third-party licensed certifying bodies certify that products meet EPA criteria for water efficiency and performance by following testing and certification protocols specific to each product category.

# APPENDIX R
# DETERMINATION AND FINDINGS – AUTHORITY TO MAKE PROGRESS PAYMENTS

## DETERMINATION AND FINDINGS

## Authority to Make Progress Payments

## FINDINGS

1. The *(identify the Component and the contracting office)* of the Department of Homeland Security proposes to contract for *(describe the supplies and/or services being procured and identify the program/project, if applicable)*.

2. *(Indicate the type of contract proposed and the estimated amount of the contract.)*

## DETERMINATION

On the basis of the above findings, I hereby determine that *(explain why progress payments based on costs cannot be practically used and why it will be feasible to administer progress payments based on a percentage or stage of completion basis)*.

*(Signature of the Head of the Contracting Activity (HCA))*

# APPENDIX S
# PAYMENT APPROVAL TEMPLATE

**ACTION:** Payment under *(Enter the DHS number assigned to the contractual instrument)*

From: *(Enter the name and title of the individual authorized to sign this portion of the memorandum - e.g., contracting officer, specialist/administrator, etc.)*

To: *(Enter the name of the person to whom the memorandum is being sent - e.g., contracting officer's representative, inspector, etc.)*

The attached invoice/voucher was submitted by the contractor for payment under the subject contract. Please review this document and provide, as appropriate, your recommendation or acceptance by endorsement below.

*(Signature of individual authorized to sign)*

Attachment *(Enter the invoice or voucher number and the amount)*

_____

**FIRST ENDORSEMENT**

From: *(Enter the name and title of the individual authorized to sign this portion of the memorandum - e.g., Contracting Officer's Representative, inspector, etc.)*

To: *(Enter name of the person to whom the memorandum is being sent - e.g., contracting officer, specialist/administrator, etc.)*

I have reviewed the attachment(s) and the following applies *(check one)*:

(a) Cost-reimbursement contract. I recommend ___ approval ___ disapproval. The costs incurred ___ are ___ are not reasonable or allocable for the reasons indicated on the attachment.

(b) Fixed-price contract. I recommend ___ approval ___ disapproval.
(1) The supplies or services were accepted on _____ OR
(2) The supplies or services ___ are not acceptable for the reasons indicated on the attachment.

(c) Progress Payment. I recommend ___ approval ___ disapproval for the reasons indicated on the attachment.

*(Signature of individual authorized to sign)*
Attachment

_____

**SECOND ENDORSEMENT**

From: *(Enter name of the Contracting Officer)*
To: *(Enter name of the Finance Officer)*

The attached Invoice/Voucher No. *(Insert number and amount)* is approved for payment in the amount of *(Insert amount)*. After this payment, the balance remaining available for payment under this contract is *(Insert amount)*. Please contact me if this balance does not agree with your payment record.

*(Signature of Contracting Officer)*

Attachment

**VOUCHER/COMMERCIAL INVOICE SUPPORT LETTER (T&M/LH CONTRACTS OR ORDERS) per HSAM 3032.7002(d)(3).**

Below is a sample letter that should be sent from a contracting officer to a contractor whenever the contracting officer delegates authority to a COR to approve interim payment vouchers/commercial invoices under a time-and-material/labor hour contract or order. The letter may also be sent when the contracting officer retains authority to approve interim vouchers/commercial invoices. This letter directs the contractor to provide certain information with each voucher to support payment of the amount requested. Additional support information may be added to the list contained in the letter.

Contractor Name
Street Address
City

Dear (name of contractor POC),

Your contract (insert contract number) requires the Government to approve individual vouchers/commercial invoices prior to interim payments being made under the contract. An essential portion of this responsibility involves ensuring that the payment amounts are correct and that the amounts are adequately supported by information provided by the contractor. The payment clause in your contract requires you to substantiate vouchers with information determined necessary by the contracting officer to support payment amounts requested for labor hours expended or material costs incurred. Accordingly, for each voucher/commercial invoice submitted for approval for an interim payment, you are directed to provide the following accompanying information:

- A calculation showing the number of hours for each labor hour rate times the labor hour rate and a total amount for each such labor rate together with a grand total for all labor rates.
- A calculation supporting costs for materials.

- A statement that all employees billed under the voucher meet the qualifications for the labor categories to which they are being billed and the location of records verifying that these facts.
- A comparison matching the hourly rates for each category on the voucher with the rates specified in the contract for the period being invoiced.
- A statement that the material costs included in the voucher are adequately supported by invoices and/or payment and the location of records verifying that statement.

You may be required to provide additional information after your voucher or invoice is received. You should review the Homeland Security Acquisition Manual 3032.70 and its Appendix S to understand the types of analysis that may be applied to your vouchers. Failure to provide necessary supporting information may result in your voucher/commercial invoice being determined not to be a proper invoice and returned to you without payment. Approval of the final payment will likely involve more detailed Government review of your records.

You are encouraged to develop streamlined means of providing this information through proposing advance agreements for review and approval of your vouchers/invoices. If you have been approved for direct billing by the Defense Contract Management Agency, you may qualify for submission of a reduced set of data for most vouchers.

For questions, please contact *(insert name and contact information).*

Sincerely,

[Contracting Officer]

**********

**VOUCHER/COMMERCIAL INVOICE REVIEW AND APPROVAL CHECKLIST TIME AND MATERIAL/LABOR HOUR CONTRACT OR ORDER**

The following is a checklist that should be used to verify that payments are appropriate under a voucher/commercial invoice submitted for interim payment under a T&M/LH contract or order. If all elements are marked "Yes," payment should be approved. If any are marked "No," consultation with the contracting officer should occur to determine appropriate action.

The payment clause in a T&M/LH type contract requires a contractor to substantiate vouchers with information determined necessary by the contracting officer to support payment amounts requested based on labor hours expended or material costs incurred. Prior to approving a voucher or recommending it for approval, the amount requested for payment should be evaluated to determine if it is properly supported and if it is the proper amount required to be paid under the contract.

*As long as the contractor is using its approved accounting system* to generate the voucher, not every labor hour or material cost billed by a voucher needs to be evaluated and confirmed for every voucher. However, individual elements supporting the amount requested for payment under various vouchers should be checked occasionally. If an error or problem is detected that indicates the requested amount is not proper, the requested amount should be adjusted accordingly and prior vouchers should be examined to determine if that same issue is present. If this reexamination of previously approved vouchers shows they have the same issue, the payment amounts for those previously paid vouchers should be recalculated based on the new information. If the contractor was overpaid for those vouchers, the next payment should be offset and reduced by that overpayment amount.

Each of the elements in the checklist below is required to be approved for each voucher. Depending on the type of service provided, and the makeup of the contractor's workforce, some or all of the following elements should be reviewed or verified in order to approve a voucher for payment. The contracting officer may also negotiate an agreement with a contractor who has a billing system that meets special qualifications, such as direct billing authority granted by Defense Contract Management Agency. Such an advance agreement would permit the COR to check "Yes" in some of the blocks below solely on the basis of the agreement. However, random or other sampling checks of information may still be performed or required occasionally, based on the authority granted in the contract.

The checklist below should be used in accordance with HSAM 3032-7002(d) to verify the adequacy of vouchers (or commercial invoices submitted for payment under time –and-material/labor-hour contracts containing FAR 52.212-4 Alternate I) for time-and-materials (T&M) or labor-hour (LH) contracts.

# VOUCHER/COMMERCIAL INVOICE REVIEW AND APPROVAL CHECKLIST

## TIME AND MATERIAL/LABOR HOUR CONTRACT OR ORDER

| YES | NO | SUPPORT ELEMENTS FOR $ AMOUNT REQUESTED |
|---|---|---|
| | | The contractor provided the voucher support information required by the contracting officer. *If not, return the voucher without payment as not a proper invoice.* |
| | | Each employee billed under the voucher meets the qualifications for the labor categories being billed? *Stable workforce, homogeneous workforce-review supporting info less often. Roving/rotating workforce-review supporting info more often (perhaps each time).* |
| | | Overtime rates not applied unless approved in advance by contracting officer or specifically included as overtime rates in the contract. |
| | | Hourly rates for each labor category on the voucher match the rates specified in the contract for the period being invoiced? |
| | | The number of hours for each labor hour rate times the labor hour rate equal the grand total amount for labor hours billed? |
| | | Material Costs – Non-commercial item contract (FAR clause 52.232-7).<br>The material costs are adequately supported by invoices and/or payment records?<br>☐ Contractor paid for material or services (or within 30 days?)<br>☐ Correct indirect cost rate applied?<br>☐ No fee/profit included?<br>☐ Labor Hour contract? $0 allowable for material, ODC, etc. |
| | | Material Costs – Commercial item contract (FAR clause 52.212-4, Alt I)<br>The material costs are adequately supported by invoices and/or payment records?<br>☐ Contractor paid for material or services (or within 30 days)?<br>☐ Indirect cost - Prorated from fixed amount identified in contract? If none in contract, then $0 allowable.<br>☐ No fee/profit included?<br>☐ Other Direct Costs - Match authorized list in contract? If none listed, then $0 allowable.<br>☐ Labor-Hour contract? $0 allowable for material, ODC, etc. |
| | | The payment will not exceed the ceiling price cited in the contract or order. |
| | | The correct quantity of items or services performed (e.g., actual # of hours performed under a labor-hour type contract) |
| | | A correct extended amount (quantity * unit price = extended amount) |
| | | Terms of any discount for prompt payment offered |
| | | **ADMINISTRATIVE ELEMENTS** |
| | | The correct name and address of the contractor |
| | | The invoice date and invoice number |
| | | A period of performance (e.g., the billing period) clearly identified, accurate and which is covered by the contract/order cited on the invoice |
| | | The correct contract and/or order number |
| | | Contract Line Item Numbers (CLINS) that match those contained in the contract/order |
| | | The correct description of supplies or services that match the description of the supplies or services in the contract/order |
| | | Name and address of official to whom payment is to be sent |
| | | Other details or data required by the contract/order |
| | | Attachments or supplemental pages required by the contract/order |
| | | No other payment for the billing period have been previously received or processed |
| | | If this is a final payment for a supply or service after acceptance by DHS, the COR or other designated Government official has prepared an Inspection and Acceptance Report, such as a DHS Form 700-21, Material Inspection and Receiving Report. |

| | | |
|---|---|---|
| | | ☐ The Inspection and Acceptance Report indicates that all invoiced items/services have been accepted by the Government<br>☐ The Inspection and Acceptance Report indicates that all or some invoiced items/services have been rejected by the Government |

# APPENDIX T
# CHECKLIST FOR PRIVE 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)*

# APPENDIX U
# MEMORANDUM OF UNDERSTANDING – DCAA AND DHS

## 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 outyear projections. These estimates will be updated on a recurring basis whenever a significant change becomes known (such as a billing rate change announced by the Department of Defense).**

## 4. DCAA RESPONSIBILITIES

a. The criteria in the DCAA Contract Audit Manual (DCAAM 7640.1) will be used to determine the following:

(1) The locations where contract audit coverage will be maintained by DCAA.

(2) Audit cognizance.

(3) Compliance with Generally Accepted Government Auditing Standards (GAGAS). DCAA will conform to GAGAS in determining the scope of audit, including the manner and the level of effort necessary to provide complete audit coverage at a contractor location. Under GAGAS the approach to contract auditing is to audit contractor systems and pursue corrective action as necessary to provide a basis for maximum reliance and to minimize the extent of contract testing necessary. Therefore, it must be understood that contract audits include DCAA evaluations of internal controls and examinations of contractor accounting and financial management systems.

b. At contractor locations where DCAA has audit cognizance, DCAA will respond to specific requests from the customer or their designee for contract audit coverage as follows:

(1) Forward Pricing Audits. DCAA will respond to all customer requests for audit of specific price proposals. This includes audits of specific proposal elements or agreed upon procedures (e.g., rate audits only). It is understood that adequate proposal audit coverage may require the DCAA auditor at the prime contractor location to request assistance from a DCAA

office at a subcontractor location. In such cases, the detail supporting the DCAA bill will show each participating DCAA office separately. Requests for audits will normally be limited to those that exceed the current dollar threshold of the applicable procurement regulations. However, in special situations, the customer may request audits of lesser amounts. Available labor and overhead information will also be provided where appropriate.

(2) Audit of Incurred Cost Proposals.

(a) DCAA audits incurred cost proposals 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 proposals at a contractor location. DCAA does not audit incurred cost proposals on a contract by contract basis, and will not audit an incurred cost proposal 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 audits are based on its policy for sampling low-risk incurred cost proposals. An audit will not be performed if the incurred cost proposal is classified as low risk and not selected for audit in the sampling process. 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 with an incurred cost audit report at the conclusion of the audit. If an audit was not performed because the incurred cost proposal was classified as low risk and not sampled, DCAA will provide the customer a memorandum stating that the submission was not selected for an audit. This memorandum will include the Certificate of Final Indirect Costs, signed rate agreement, schedule of direct and indirect costs proposed during the fiscal year (Schedule H), and cumulative allowable cost worksheet, if this can be readily prepared. 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 proposal 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 proposal. 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, 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 memorandum on the evaluation of the final voucher upon request. DCAA bills for the direct effort required to reconcile the contractor's final claim to amounts previously audited, or accepted based on determination of low risk. After reconciliation, DCAA prepares a memorandum on the evaluation of the final voucher. 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 Truth in Negotiation (TINA) Audits. DCAA will perform postaward TINA audits for all contracts identified by the customer in accordance with paragraph 5d of this agreement. If requested DCAA will compile a recommended list of contracts for customer consideration.

(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 Field Audit Offices (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. 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 ensure 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 Chief Procurement Officer, Director, Oversight and Strategic Support Division, electronically, to Procurement.Support@hq.dhs.gov:

(1) Audits of Incurred Cost Submissions and Low Risk Memorandums;

(2) Contractor Internal Control System Reviews (accounting system reviews, estimating system reviews, compensation reviews, etc.);

(3) Audits of Compliance with Cost Accounting Standards;

(4) Audits of Cost Impact of Cost Accounting Standards (changes in cost accounting practice and/or noncompliances);

(5) Defective Pricing Audits (Reviews for Compliance with the Truth in Negotiation Act);

(6) All DCAA reports and memorandum that contain questioned costs or cost disallowances; and

(7) All DCAA Form 1s.

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] 10/30/2015
William J. Thoreen Date
Executive Director
Oversight and Strategic Support

**DEFENSE CONTRACT AUDIT AGENCY (SERVICE PROVIDER)**

[SIGNED] 10/6/2015
Thomas J. Peters Date
Assistant Director, Operations

# ANNEX I
# CUSTOMER CONTACT POINTS FOR MEMORANDUM OF UNDERSTANDING
**Between**
**Defense Contract Audit Agency**
and
**Department of Homeland Security**

## 1. PURPOSE

This annex identifies the names, titles, addresses, and phone numbers of the appropriate contact points for DCAA and the DHS OCPO as discussed in the Memorandum of Understanding (MOU). It is recognized that individuals and organizations change periodically. It is intended that this annex be updated as necessary without changing the content of the MOU. Updates to this annex will be coordinated between the Office of the Assistant Director, Operations, for DCAA, and the DHS OCPO.

## 2. CUSTOMER CONTACT POINTS

The following individual should be contacted for questions concerning provisions or implementation of the MOU:

William J. Thoreen
Executive Director
Oversight & Strategic Support
Office of the Chief Procurement Officer
U.S. Department of Homeland Security
Washington, DC 20528
(202) 447-0726

Hyosun Ro
Director
Oversight & Pricing Branch
Office of the Chief Procurement Officer
U.S. Department of Homeland Security
Washington, DC 20528
(202) 447-5401

Eileen Klase
Procurement Analyst
Office of the Chief Procurement Officer
U.S. Department of Homeland Security
Washington, DC 20528
(202) 447-5217

## 3. DCAA CONTACT POINTS

Thomas J. Peters
Assistant Director
Operations
Headquarters, DCAA
8725 John J. Kingman Road, Suite 2135
Fort Belvoir, VA 22060-6219
(703) 767-2290

Maureen B. Higgins
Assistant Director, Human Capital and Resource Management
Headquarters, DCAA
8725 John J. Kingman Road, Suite 2135
Fort Belvoir, VA 22060-6219
(703) 767-2247

Paulette Stephens
Program Manager, Workload Analysis Div.
Headquarters, DCAA
8725 John J. Kingman Road, Suite 2135
Fort Belvoir, VA 22060-6219
(210) 652-0779

## 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 Oversight and Strategic Support.

## 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]_____ 10/30/2015_____
William J. Thoreen Date
Executive Director, Oversight and Strategic Support

**DEFENSE CONTRACT AUDIT AGENCY (SERVICE PROVIDER)**

[SIGNED]_____ 10/6/2015_____
Thomas J. Peters Date
Assistant Director, Operations

# ANNEX II
# COST REIMBURSEMENT VOUCHER PROCESSING PROCEDURES
**Between**
**Defense Contract Audit Agency**
**and**
**Department of Homeland Security**

## 1. PURPOSE

This annex sets forth the procedures by which the Defense Contract Audit Agency (DCAA) will provide cost reimbursement voucher processing to the Department of Homeland Security.

## 2. REQUIREMENTS

DCAA must perform and bill for incurred cost audits at the contractor location in accordance with paragraph 4b(2) of the MOU in order to be involved in processing vouchers.

## 3. PROCEDURES

DHS cost reimbursement and T&M/LH contracts may require the contractor to submit a copy of the voucher to DCAA at the same time as the original is sent to the COTR/contracting officer, who will certify and process them for payment. DCAA will review vouchers in accordance with Agency procedures. DCAA will review all first vouchers submitted under the contract or delivery order and 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 constraint officer is necessary if the auditor's review disclosed no exceptions.

**DEPARTMENT OF HOMELAND SECURITY**

[SIGNED] 10/30/2015
William J. Thoreen Date
Executive Director, Oversight and Strategic Support

**DEFENSE CONTRACT AUDIT AGENCY (SERVICE PROVIDER)**

[SIGNED] 10/6/2015
Thomas J. Peters Date
Assistant Director, Operations

# APPENDIX V
# DETERMINATION AND FINDINGS[1] – AUTHORITY TO ENTER INTO AN INTERAGENCY ACQUISITION UNDER THE ECONOMY ACT

Based on the following determination and findings, and according to the authority of the Economy Act, 31 U.S.C. § 1535, as implemented in Subpart 17.5 of the Federal Acquisition Regulation (FAR), the requesting agency, [insert DHS Component name], intends to enter into an interagency agreement with the servicing agency, [insert the name of the other federal agency].

## FINDINGS

1. [For an assisted acquisition] The requesting agency needs [enter name of servicing agency] to provide [describe the supply and/or service]. The servicing agency will provide the required [supplies or service] by providing acquisition assistance to [Component name]. The total cost of the interagency acquisition is estimated to be [insert the estimated amount for the supply or service]. The servicing agency cost for providing acquisition assistance is estimated at $_____. [If a multi-year agreement, the estimated dollar amount should be shown for each fiscal year, along with the aggregate total. Information may also be inserted into a table as shown in the example below.]

| Year | Estimated Cost of the Planned Contract | Servicing Agency's cost for providing Acquisition Assistance | Total Cost |
|---|---|---|---|
| 1 | $ | $ | |
| 2 | $ | $ | |
| 3 | $ | $ | |

2. [For a direct acquisition] The requesting agency needs [describe the supply and/or service]. [Enter name of the servicing agency] has an existing contract that meets the need of [enter Component name]. The total cost for the supplies or services is [insert the estimated amount for the needed supply or service]. The cost associated with placing an order against the servicing agency's contract is $_____. [If this is a multi-year agreement, the estimated dollar amount should be shown for each fiscal year, along with the aggregate total. Information may also be inserted into a table as shown in the example below.].

[1] A D&F is required for Economy Act transactions.

| Year | Estimated Cost of the Order | Servicing Agency's Cost/Fee for Placing an Order under its Contract | Total Cost |
|---|---|---|---|
| 1 | $ | $ | |
| 2 | $ | $ | |
| 3 | $ | $ | |

3. [State the justification/rationale that the (describe the supplies or services) cannot be obtained as conveniently or economically by contracting directly with a private source.]

4. Nothing in this requirement conflicts with the authority of the servicing agency.

5. [Check one box] The following circumstance applies to this interagency acquisition:

   ☐ The acquisition will appropriately be made under an existing contract of the servicing agency, entered into before placement of the order, to meet the requirement of the servicing agency for the same or similar supplies or services.

   ☐ The servicing agency has capabilities or expertise to enter into a contract, order, or contact modification for such supplies or services which is not available within the requesting agency.

   ☐ The servicing agency is specifically authorized by law or regulation to purchase such supplies or services on behalf of other agencies.

6. [State the justification/rationale that it is in the best interest of the Government to issue an interagency acquisition.]

7. For assisted acquisitions, the DHS contracting officer shall furnish a copy of the D&F to the servicing agency with the interagency agreement.

**DETERMINATION**

Based on the above findings, I hereby determine that it is in the best interest of the Government for DHS to enter into an interagency [enter direct or assisted, as applicable] acquisition with the [enter name of servicing agency].

Signed:

| | |
|---|---|
| Signature of Program Manager/Requirements Official | Date |
| Signature of Contracting Officer | Date |
| Signature of Authority One Level above the Contracting Officer when over $500,000[2] | Date |
| Signature of the DHS Chief Procurement Officer/Senior Procurement Executive, if the servicing agency is not covered by the FAR[3] | Date |

[2] See HSAM 3017.502-2(c)(2)

[3] See FAR 17.502-2(c)(2)

# APPENDIX W
# CONTRACTING OFFICER'S REPRESENTATIVE (COR) NOMINATION AND APPOINTMENT CORRESPONDENCE

## *Agency Letterhead*

**COR Nomination Letter**

**Subject:** **Nomination of Contracting Officer's Representative**

**To:** **(Insert name of contracting officer)**

**From:** **(*Insert name of Supervisor/Program Office*)**

I hereby nominate (*insert name, series and grade*) for appointment as (*indicate primary or alternate*) Contracting Officer's Representative (COR) for (*describe requirement and include contract/requirement name/number (if available)*). This request is based on the individual's qualifications as described below and the technical and administrative requirements of the anticipated contract, which will require a COR certified at Level (*indicate appropriate level of certification—either Level II or III*).

a. **Federal Acquisition Certification for CORs** (*Include highest certification level attained (only Levels II or III are recognized), date certified, and attach a copy of the certificate. In addition to the certification requirements specified in http://dhsconnect.dhs.gov/org/comp/mgmt/cpo/paw/Pages/COTRCertification.aspx confirm the prospective COR is on track to attain 40 hours in their current two-year certification anniversary cycle and list currency hours attained. If not current, they will have to achieve 40 hours of currency and be recertified before they may be nominated and appointed. State that COR was confirmed registered in FAITAS*).

b. **Training qualifications*:*** (*List or attach course titles and dates completed, only for initial COR training and COR continuous learning within the last two years. Ensure that one hour of procurement ethics training has been completed within the past year.)*

c. **Technical qualifications/experience*:*** (*List offices, dates and types of work performed or contracts administered, and description of relevant experience.*) Attaching a resume is one example/format that may be used when documenting technical qualifications/experience.

d. **COR contact information to include:** *Supervisor email and phone number, COR email, phone number, physical location and mailing address.*

e. **Other information as appropriate*:*** (*Confirm the COR has been informed of the requirements necessary to maintain his/her certification. List all other contracts and dates awarded to which the COR is currently or was previously assigned. Indicate which assignments are no longer current.)*

Based on this nomination, I recognize and acknowledge the primary duties of the COR is to assist the Contracting Officer with monitoring, documentation and evaluating contractor performance of supplies or services delivered within the specified period of performance.

**Another very important duty and critical function of the COR is the timely input of contractor performance (when applicable) into the Contractor Performance Assessment Reporting System (CPARS), as specified in Homeland Security Acquisition Manual (HSAM) subchapter 3042.1502**. Furthermore, it is understood that DHS leadership considers the duties of a COR vital to the overall success of the Agency in accomplishing its mission. Consistent with this guidance and HSAM 3042.270-1, each appointed COR shall receive an annual performance appraisal documenting how well the COR functions are performed. The annual performance appraisal will specifically address the five core responsibilities described in HSAM 3042.270-3(b)(1):

a. Performing surveillance/inspections/acceptance,
b. Monitoring activities including providing input to contractor performance evaluations,
c. Making recommendations for invoice and payment,
d. Managing Government-furnished property, and
e. Managing contractor employee access to facilities or systems.

Additionally, as the COR supervisor, I will ensure that the COR has adequate time and resources to perform the COR duties.

| _____ | _____ | _____ |
|---|---|---|
| **Name of Supervisor** | **Signature of Supervisor** | **Date** |

**Copy to:**
COR
Program Office

## *Agency/Component letterhead*

### COR Appointment Letter

**Subject: Appointment as a Contracting Officer's Representative (COR)**

**From:** ***(Insert name of Contracting Officer)***

**To:** ***(Insert name of prospective COR)***

You are hereby appointed as the Contracting Officer's Representative (COR) under (*Insert contract number*) with *(Insert the name(s) of the contractor(s))* for *(Describe the supplies, services, or construction being purchased)*. The Contracting Officer will rely on you as a technical expert to provide advice regarding the quality and timeliness of the work performed. As the COR, your primary duties include assisting the Contracting Officer with monitoring the prime contractor's performance; ensuring that all technical requirements under the contract are met; timely delivery of products or services 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: (*fill-in)*

**COR Responsibilities and Duties (See Appendix W, Exhibit 1 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, Exhibit 2 for requirements).**

As COR you shall not: (*fill-in)*

**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. Also see Exhibit 3, Federal Acquisition Regulation (FAR), DHS Directives and Government Ethics, and Training.

**Federal Acquisition Certification Requirements.**

Based on the technical and administrative characteristics of this contract, I have determined that the COR must possess a Federal Acquisition Certification (FAC) for CORs Level *(insert appropriate level).* Your appointment as COR is based on the training, experience, certification, and other qualifications cited in your nomination letter. It is your responsibility to maintain your certification and/or qualifications for COR on this contract, including completing continuous learning points. If you fail to maintain your FAC COR certification at this level, DHS is prohibited by law from paying you for performing COR functions.

**Contract file content and maintenance.**

Instruction for contract file content is in accordance with Component and Contracting Officer's instructions.

If you have any questions or problems, please contact the Contract Specialist, [insert name of Contract Specialist], at [insert full telephone number including area code].

---

**Appointment Effective and Termination Dates.**

Your appointment as the COR under the above numbered contract is terminated upon receipt of a written notice of termination from the appointing Contracting Officer, the Contracting Officer's successor, or a higher level of authority.

| _____ | _____ | _____ |
|---|---|---|
| **Name of Contracting Officer** | **Signature of Contracting Officer** | **Date** |

**Acknowledgement Receipt and Acceptance of Appointment.**

Please acknowledge receipt and acceptance of this appointment by signing and returning the attached acknowledgement section to the Contracting Officer or contract administrator/specialist.

I understand and accept my assignment as the COR under *(Insert contract /requirement name/number (if available)* as outlined in your letter to me dated (*insert date of Contracting Officer's letter*).

| _____ | _____ | _____ |
|---|---|---|
| **Name and Title of Contracting Officer's Representative (COR)** | **Signature of Contracting Officer's Representative (COR)** | **Date** |

***Copy to:***
Supervisor
Contractor
Payment office (as appropriate)
Other Offices (as appropriate)

## Exhibit 1: COR/Alternate COR Core Responsibilities and Functions.

(See HSAM 3042.270-3(b), 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 using 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). |

| Required functions | Examples for describing COR delegated duties |
|---|---|
| | Reviewing contractor invoices for accuracy of work completed in accordance with contract requirements and certifying acceptance or rejection. |
| | Review the Contractor's invoices/vouchers for reasonableness and applicability to the contract and recommend to the contracting officer approval, conditional approval, or disapproval for payment. The review must be completed within five days after receipt of the invoice or voucher. If you cannot meet the required review time, advise the contracting officer or contract specialist so that action can be taken to ensure Government compliance with the Prompt Payment Act, thereby avoiding the payment of interest penalties to the Contractor. |
| | Review the contactors invoices/vouchers to ensure that they accurately reflect the work completed in accordance with the requirements of the contract, and certify acceptance of the delivered items. Submit certified invoices/vouchers to the Dallas Finance Center and copies to the contracting officer in a timely manner. |
| | See HSAM 3016.601 and 3032.7000 requirements for processing payment for cost reimbursement & time-and-material and labor hour contracts. |
| Managing Government-furnished property (used when Government property is specified in the contract). | You are not authorized to provide any Government-owned (or leased) equipment or supplies or use of Government space to the Contractor, other than those specifically identified in the business agreement and authorized by the contracting officer. |
| | If applicable, ensure Government-furnished property is made available in a timely manner. |
| | Request the contracting officer authorize Government-furnished property and, when requested by the contracting officer, provide disposition advice on Government-furnished property or contractor-acquired property. |
| Managing contractor employee access and security through established application process for cards, badges or credentials (when security requirements are specified in the contract). | Serves as a Federal sponsor for contractor, by assisting with the agency Security process, to include handling, as appropriate, the Contractor Suitability worksheet for contractor requiring a DHS PIV card, notification of results of the contractor access submissions, ensuring the return of the DHSPIV card, and communication of contractor and employee's changes in status. |
| Perform oversight of inherently Governmental and critical functions. See HSAM 3007.5 and DHS Guide on Inherently Governmental and Critical Functions regarding specific requirements | Perform on-going reviews of the functions performed by contractors, especially ways in which work is performed, and the manner in which Government personnel are managing services acquisitions. Reviews should focus on functions that are closely associated with inherently governmental functions and critical functions. In addition, monitor contracts to ensure that the relationships between Government personnel and contractors have not evolved into unauthorized personal services or inherently governmental functions. Also, provide information to the CO so the CO can document the contract file to reflect the results of the on-going review. |

**Exhibit 2: Non-Delegable Functions and Exclusions.**
(See HSAM 3042.270-3(b)(2), 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 may be 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 3042.270-3(b)(3), 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."* |

# APPENDIX X
# 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 Code of Federal Regulations 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) contract awards, modifications, options and purchase orders, and must receive copies of all contracts and subsequent modifications;

E. To establish uniform policies and procedures regarding application of contracts and purchase orders to the 8(a) contracting process;

F. To monitor the U.S. Department of Homeland Security's fulfillment all requirements outlined in the PA quarterly;

G. To suspend or rescind the delegation of this PA if the **U.S. Department of Homeland Security** has violated any terms and condition of the PA.

## 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 **U.S. Department of Homeland Security**'s 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's** 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 agree 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, **except** for provision of FAR § 19.808-1 for 8(a) sole-source procurements that exceed $20 million.

      iii. For procurement over $20 million, if the **U.S. Department of Homeland Security** has not received an acceptance or rejection letter from the District Office on the 6th working day, the **U.S. Department of Homeland Security** must seek SBA's acceptance through the Associate Administrator, Office of Business Development (AA/BD).

      iv. Acceptance shall include a size verification and determination with respect to all elements of eligibility (i.e., determination of adverse impact, North American Industry Classification System (NAICS) code appropriateness and program eligibility). See citations 13 C.F.R. § 124.503(b), 124.504(c) and 124.112.

   (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. Absent 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. See citation 13 C.F.R. §124.503(5).

iii. Acceptance shall include a size verification and determination with respect to all elements of eligibility (i.e., determination of adverse impact, North American Industry Classification System (NAICS) code appropriateness and program eligibility). See citations 13 C.F.R. §124.503(b), 124.504(c) and 124.112.

iv. Within five (5) working days after a request from the contracting officer, SBA shall issue an eligibility determination for the apparent successful offer of the competition as prescribed by SBA's regulations at 13 C.F.R. §124.507(b).

(c) Acquisitions Valued at or Below the Simplified Acquisition Procedures Threshold. (SAP).

i. No offering or acceptance letter is required for requirements valued at or below the simplified acquisition threshold in accordance with the delegation 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).

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.

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 is amended or 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 of 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 to an 8(a) firm under the provisions of this PA to the SBA servicing district office within 15 working days of the date of award; See citation 13 C.F.R § 124.512(b);

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 report all 8(a) awards in the Federal Procurement Data System - Next Generation (FPDS-NG);

13. shall ensure that for a procurement over $20 million, if the **U.S. Department of Homeland Security** has not received an acceptance or rejection letter from the District Office on the 6th working day, the **U.S. Department of Homeland Security** must seek SBA's acceptance through the Associate Administrator, Office of Business Development (AA/BD);

14. shall ensure that the **U.S. Department of Homeland Security's** contracting officers execute a Justification and Approval (J&A) when awarding a sole-source contract for over $20 million and approved by the appropriate agency official. All J&A's and related information must be made public after award. See FAR § 6.303 and 19.808;

15. Each justification for a sole-source 8(a) contract over $20 million shall include the following information:

    (a) A description of the needs of the agency concerned for the matters covered by the contract.

    (b) A specification of the statutory provision providing the exception from the requirement to use competitive procedures in entering into the contract (see FAR § 19.805-1).

(c) A determination that the use of a sole-source contract is in the best interest of the agency concerned.

(d) A determination that the anticipated cost of the contract will be fair and reasonable.

(e) Such other matters as the head of the agency concerned shall specify for purposes of this section.

16. 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's** 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;

17. 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's** 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;

18. shall request an eligibility determination prior to final award in all 8(a) competitive acquisitions;

19. 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;

20. shall ensure that all NAICS codes for all 8(a) contracts are applied in accordance with FAR § 19.102;

21. shall adhere to all limitation on sub-contracting provisions of FAR § 19.811-3;

22. 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;

23. shall provide all proposed 8(a) joint ventures to SBA for approval before 8(a) contract(s) award;

24. awarded contracts to 8(a) firms outside the 8(a) authority will continue to be counted toward SDB negotiated goals;

25. 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; and

26. 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 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/ TERMINATION

This PA is effective on the date of SBA's signature. This PA does not have an expiration date; however, it can be suspended based on violation of the PA terms and conditions. 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.

## VII. AMENDMENT

This PA may be amended, in writing, at any time by mutual agreement of the parties.

## VIII. CONDITIONS

A. Contracts awarded to 8(a) firms outside the 8(a) authority will continue to be counted toward SDB negotiated goals.

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 contract awards, modifications, options and purchase orders 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.

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 update the Federal Procurement Data System - Next Generation (FPDS-NG) so that SBA can adequately measure and gauge the 8(a) contracts being awarded using the guidelines outlined in the PA, which will be conducted by the SBA quarterly.

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 of failure to comply with 8(a) program regulations that govern award and administration of such contracts.

D. Where a procurement is awarded as an 8(a) contract, its follow-on or renewable acquisition must remain in the 8(a) BD program unless SBA agrees to release it. If the **U.S. Department of Homeland Security** would like to fulfill a follow-on or renewable acquisition outside of the 8(a) BD program, it must make a written request to and receive the concurrence of the AA/BD to do so. SBA's release for non-8(a) competition will be in accordance with 13 C.F.R § 124.504. SBA will process the written request within 10 business days of receipt by the AA/BD.

## IX. ADDITIONS/CHANGES

1. This PA will take effect on the date of SBA's signature. This PA does not have an expiration date.

2. SBA shall provide monitoring and oversight of all 8(a) contracts awarded to ensure that the servicing district office is receiving a copy of each contract, modifications, options and purchase orders executed under this PA. This process will be conducted quarterly by data utilization of the Federal Procurement Data System - Next Generation (FPDS-NG).

3. The contracting officer shall justify the use of a sole-source contract for $20 million or more in writing in accordance with FAR § 6.303 and 19.808;

4. For procurement over $20 million, if no acceptance or rejection letter has been provided by the District Office on the 6th working day the **U.S. Department of**

**Homeland Security** will contact the Associate Administrator for Business Development.

5. **U.S. Department of Homeland Security** shall adhere to all limitation on sub-contracting provisions of FAR § 19.811-3.

## X. ADMINISTRATION

**For the U.S. Department of Homeland Security :**

Daniel L. Clever
Deputy Chief Procurement Officer
GSA Regional Office Building
7th and D Street, SW
Washington, DC 20528
(202) 447-5300
Daniel.clever@hq.dhs.gov

**For SBA**:

Sharon Gurley
Director, Office of Program Review
Office of Business Development
409 3rd Street, SW, 8th Floor
Washington, DC 20416
(202) 205-7084
(202) 481-5539 (fax)
Sharon.Gurley@sba.gov

## 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**

_____
Date

Daniel L. Clever
Deputy Chief Procurement Officer

For:

**SBA**

| | |
|---|---|
| _____ Date | _____ Date |
| A. John Shoraka<br>Associate Administrator for<br>Government Contracting and<br>Business Development | Mina A. Wales<br>Director<br>Office of Strategic Alliances |

# 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))*

# APPENDIX Z DEPARTMENT OF HOMELAND SECURITY ACQUISITION PLAN TEMPLATE

**Submitted by**:

_____
Name Date
Program Official (or official title)
(DHS Component and Organization)

_____
Name Date
Contracting Officer
(DHS Component and Organization)

**Concurrence**:

_____
Name Date
Small Business Specialist
(DHS Component and Organization)

_____
Name Date
Chief Information Officer
(DHS Component and Organization)

**Approval:**

_____
Name Date
Head of the Contracting Activity, or designee
(DHS Component and Organization)

**OR**

_____
Name Date
DHS Chief Information Officer
(DHS Component and Organization)
**(Signature required when the requirement includes the purchase of information technology and if the AP is being approved by the CPO.)**

**AND**

_____
Chief Procurement Officer, or designee Date
Office of the Chief Procurement Officer

## Acquisition Background and Objectives

### 1) Description of Need

(a) Provide a description of the requirement. Summarize the required capabilities or performance characteristics of the supplies or the performance standards of the services. This discussion should also detail whether the requirement includes the purchase of information technology (IT) products, services, equipment, or commercial-off-the-shelf (COTS) software. This includes instances when IT capabilities or IT resources will be used to provide the requisite services (e.g., background investigation services, human resources support services, grants processing, etc.)

(b) State all significant conditions or constraints affecting the procurement.

(c) DHS Acquisition Programs:

(1) Is this procurement part of a Major or Non-major Capital Asset Acquisition Program (Level 1, 2, or 3) as defined in DHS Instruction 102-01-001, Acquisition Management Instruction? ☐ Yes ☐ No

(2) Is this procurement part of a Major Services Acquisition Program (Level 1 or 2) as defined in DHS Instruction 102-01-001, Acquisition Management Instruction? ☐ Yes ☐ No

(3) If "Yes", to either question 1 or 2, identify the name of the Program and Program Level (Level 1, 2 or 3). [ ]

### 2) Procurement History

(a) Provide a short narrative discussing the overall procurement history for this requirement. For example, explain any varying strategies, if any, in the past.

(b) Address items 1 through 10 below. Charts or graphics can be used to illustrate this information, and it can also be submitted as an appendix.

(1) Previous contract(s);

(2) Contractor name;

(3) Contract type;

(4) Contract value;

(5) Period of performance;

(6) Place of performance;

(7) Whether procurement was competitive or non-competitive;

(8) For competitive procurements, identify the extent competed;

(9) Whether the procurement was set-aside, and if so, what type; and

(10) Any protests filed against the solicitation or award.

(c) Address 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(t).

**3) Acquisition Planning Forecast System**

Provide the Acquisition Planning Forecast System (APFS) record number for the requirement or rationale if there is none.

**4) Contract Value/Independent Government Cost Estimate**

Provide the total estimated value including all options.

**5) Delivery or Period of Performance Requirements**

Describe the performance period and describe the basis for establishing delivery or performance-period requirements (see FAR 11.4). If there is a gap in service from the current contract until the new award, discuss how the gap will be addressed.

**6) Acquisition Streamlining**

Select from the following any planned acquisition streamlining initiatives that will result in a more efficient and effective use of resources during the acquisition process:

(a) ☐ Encouraging industry participation by hosting Industry Days, using draft solicitations, presolicitation conferences, pre-proposal conferences, due diligence and other means of stimulating interaction with industry.
3

(b) ☐ Acquiring Commercial-Off-the-Shelf (COTS) products, when applicable. State the timeframe for identifying which of those specifications and standards, originally provided for guidance only, shall become necessary.

(c) ☐ Using innovative evaluation techniques.

**7) Procurement Risks**

Discuss technical, cost, and schedule risks and describe what efforts are planned or underway to reduce those risks.

**Plan of Action**

**8) Sources**

(a) Address the extent and results of the market research and indicate how it impacts this procurement.

(b) Strategic Sourcing Contract Vehicles/Best in Class Vehicles (BIC).

(1) ☐ Yes ☐ No This acquisition is to establish a new strategic sourcing contract vehicle. (See HSAM 3007 regarding establishing Department-wide contract vehicles.)

(2) ☐ Yes ☐ No This acquisition is a re-compete or follow-on to an existing strategic sourcing contract vehicle. (See HSAM 3007.271 regarding establishing Department-wide contract vehicles.)

(3) ☐ Yes ☐ No This acquisition will be a task/delivery order against an existing strategic sourcing contract vehicle/BIC. Identify vehicle: [ ]

(4) ☐ Yes ☐ N/A This requirement is covered by an existing strategic sourcing/Best in Class (BIC) contract vehicle Identify vehicle: [ ] However, the vehicle will not be used for the following reason (provide rationale): [ ] (Attach a copy of the approved waiver or exception. If no waiver or exception has been obtained, provide an explanation. See Directive 060-01/HSAM 3017 regarding the use of strategic sourcing vehicles and associated exceptions and waivers).

(c) Discuss consideration of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns (see FAR 19). If small businesses are not being considered provide a brief explanation based on the market research conducted. Discuss whether the procurement strategy was coordinated with the Component Small Business Specialist and/or the Office of Small and Disadvantaged Business Utilization (OSDBU). If the strategy was coordinated with OSDBU, discuss whether the strategy, described in the AP, reflects the discussion regarding small business concerns.

(d) Consider the impact of any consolidation or bundling that might affect participation of small businesses in the acquisition (see FAR 7.107) (15 U.S.C. 644(e) and 15 U.S.C. 657q). When the proposed acquisition strategy involves bundling, identify the incumbent contractors and contracts affected by the bundling.

**9) Competition**

(a) Describe how competition will be sought, promoted, and sustained. If full and open competition is not contemplated, cite the appropriate authority at FAR 6.302, 8.405-6 or 16.505(b) as applicable; and discuss the basis for the application of that authority, and identify the proposed contractor(s).

(b) If applicable, discuss whether the resulting contract will be a bridge contract or if a separate bridge contract is required to support the competition and transition.

(c) Discuss whether the requirement has been coordinated with the Procurement Activity Advocate for Competition (PAAC) or DHS Advocate for Competition, as appropriate.

(d) When effective subcontract competition is both feasible and desirable, describe how such subcontract competition will be sought, promoted, and sustained. Identify any known barriers to increasing subcontract competition and address how to overcome them.

**10) Contract Type Selection**

☐ Firm Fixed-Price (FFP)
☐ Cost Reimbursement
☐ Time and Materials
☐ Labor Hour
☐ Other:

(a) For FFP actions discuss why this is the appropriate contract type.

(b) If this is a hybrid type containing both FFP and other than firm-fixed price (OTFFP) contract types discuss what portion of the work is OTFFP.

(c) For OTFFP actions discuss items (c)(1) through (c)(6):

(1) Explain why the use of an OTFFP contract (e.g., cost reimbursement, time and materials, labor hour) is appropriate;

(2) Provide the rationale that details the particular facts and circumstances (e.g., complexity of the requirements, uncertain duration of the work, contractor's technical capability and financial responsibility, or adequacy of the contractor's accounting system), and associated reasoning essential to support the contract type selection;

(3) Provide an assessment regarding the adequacy of Government resources that are necessary to properly plan for, award, and administer other than firm-fixed-price contracts;

(4) Discuss the actions planned to minimize the use of OTFFP contracts on future acquisitions for the same requirement and to transition to firm-fixed-price contracts to the maximum extent practicable;

(5) If applicable, discuss why a level-of-effort, price redetermination, or fee provision was included; and

(6) Discuss the Government's additional risks and the burden to manage the contract type selected (*e.g.*, when a cost-reimbursement contract is selected, the Government incurs

additional cost risks, and the Government has the additional burden of managing the contractor's costs). For such instances, acquisition personnel shall discuss –

- How the Government identified the additional risks (*e.g.*, pre-award survey, or past performance information);
- The nature of the additional risks (*e.g.*, inadequate contractor's accounting system, weaknesses in contractor's internal control, non-compliance with Cost Accounting Standards, or lack of or inadequate earned value management system); and
- How the Government will manage and mitigate the risks.

**11) Source Selection Procedures**

(a) Discuss the source-selection procedures for the acquisition(s), including the timing, proposed evaluation factors and evaluation of proposals.

(b) Describe any innovative evaluation techniques being used. Has there been discussions with the Procurement Innovation Lab (PIL) on this requirement?

(c) If using lowest price technically acceptable (LPTA) or other unique evaluation scheme provide a description and rationale for its use.

**12) Acquisition Considerations**

For each contract contemplated, discuss and provide rationale, where applicable for:

(a) Use of multiyear contracting, options, or other special contracting methods (see FAR 17);

(b) Any special clauses, special solicitation provisions, or FAR/HSAR deviations (see FAR 1.4);

(c) If applicable, discuss the status of HSAM Appendix G Checklist for Sensitive Information. Has it been completed and coordinated with the cognizant SMEs? Are the cyber hygiene special clauses applicable to this acquisition?

(d) Whether equipment will be acquired by lease or purchase and why (see FAR 7.4);

(e) Provide rationale if a performance-based acquisition will not be used or if a performance-based acquisition for services is contemplated on other than a firm-fixed-price basis (see FAR 37.102(a), FAR 16.103(d), and FAR 16.505(a)(3)).

**13) Information Technology Considerations**

(a) Section 508: Does this procurement include the purchase of Electronic and Information Technology (EIT) products, services, equipment, or commercial-off-the-shelf (COTS)

software? If yes, address whether the EIT Accessibility Standards (see 36 C.F.R. § 1194.1 & Apps. A, C & D and DHS Instruction 139-05-001 Managing the Accessible Systems and Technology Program) are applicable and explain how these standards are included in requirement planning, as appropriate (see FAR 39.2 and HSAM 3039.2).

(b) For information technology acquisitions, discuss whether the appropriate Component and/or Headquarter CIO coordination and approvals have occurred (See HSAM 3039.170(b)). If not, discuss how the applicable agency information security requirements will be met.

(c) For information technology acquisitions using Internet Protocol, discuss whether the requirements documents include the Internet Protocol compliance requirements specified in 11.002(g) or a waiver of these requirements has been granted by the agency's Chief Information Officer.

**14) Inherently Governmental Functions**

Address the consideration given to FAR 7.5 inherently governmental functions and if an Inherently Governmental and Critical Functions Analysis or Inherently Governmental and Critical Functions Product Service Code Exemption Memo, as applicable, will be completed prior to the issuance of the solicitation.

**15) Government-Furnished Property**

Indicate any Government property to be furnished to contractors, and discuss any associated considerations, such as its availability or the schedule for its acquisition (see 45.102). Charts or graphics can be used to illustrate this information.

**16) Government-Furnished Information**

Discuss any Government information, such as manuals, drawings, and test data, to be provided to prospective offerors and contractors. Indicate which information that requires additional controls to monitor access and distribution (e.g., technical specifications, maps, building designs, schedules, etc.), as determined by the agency, is to be posted via the enhanced controls of the GPE at https://www.fbo.gov (see FAR 5.102(a)). Charts or graphics can be used to illustrate this information.

**17) Security Considerations**

For acquisitions dealing with classified matters, discuss how adequate security will be established, maintained, and monitored (see FAR 4.4 and Policy Directive 4300 B DHS National Security Systems).

**18) Buy American Considerations**

(a) Will foreign end products or services (i.e., non-domestic/U.S.-made end products or non-U.S. services) be permitted to be offered? If yes, identify the applicable exception to the

Buy American statute from FAR 25.103 or FAR 25.202 or indicate that the acquisition is covered by a trade agreement.

(b) For actions where an exception to the Buy American statute is applicable and a written determination is required, has the determination been submitted for review and approval by the Chief Procurement Officer (See HSAM 3025.103 and HSAM 3025.202)?

**19) Contract Administration**

Describe how the contract will be administered. In contracts for services, include how inspection and acceptance corresponding to the work statement's performance criteria will be enforced.

**20) Other Considerations:**

Address other considerations, as applicable to the procurement, such as environmental considerations etc.

**21) 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 timeframe, such as AP Approval plus 30 days.

*Acquisition Cycle – Sample*

| Event | Date Completed or Due Date | Person Responsible |
|---|---|---|
| IPT Formed | | Program Manager |
| Market Research Completed | | Program Manager |
| Program Approvals Obtained | | |
| AP Approved | | |
| SOO/SOW/PWS/Specifications Finalized | | |
| PR with Funding Provided to the Contracting Officer | | |
| J&A and/or D&F Approval | | |
| Issuance of Synopsis | | Contracting Officer |
| Solicitation Package Complete | | |
| Solicitation Package Reviewed by OGC | | |
| Solicitation Released | | |
| Proposals/Quotes Received | | |
| Evaluators Trained | | |
| Evaluation of Proposals Complete | | |
| Source Selection Complete | | |
| Negotiations | | |

| | | |
|---|---|---|
| Post Selection Documentation Complete | | |
| Contract Preparation, Review and Clearance | | |
| Department of Labor Equal Employment Opportunity Clearance | | |
| Contract Award | | |
| 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 | | |

## 22) Identification of Participants in AP 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, Small Business Specialist and security representative. Approval and signature lines should be placed at the beginning of the AP document, as appropriate.

*AP Preparation Participants – Sample*

| Name | Title | Organization | Telephone Number | Email |
|---|---|---|---|---|
| | Program Manager | | | |
| | Contracting Officer | | | |
| | Contract Specialist | | | |
| | Small Business Specialist | | | |
| | Advocate for Competition | | | |
| | Personnel Security Representative | | | |
| | Chief Information Officer Representative, as applicable | | | |

**APPENDIX AA**
**DEBRIEFING GUIDE**

# DEPARTMENT OF HOMELAND SECURITY

# DEBRIEFING GUIDE

**OFFICE OF THE CHIEF PROCUREMENT OFFICER**
**December 2011**
**Version 2.0**

## Table of Contents

I. Introduction ..... 4

II. Scope ..... 5

III. Sources ..... 6

IV. Purpose ..... 6

V. Debriefings and Explanations of the Basis of the Award Comparison ..... 7

VI. Preaward and Postaward Debriefings ..... 7

VII. DHS Policy ..... 8

1. Notice and Time Issues ..... 8
2. Method and Location ..... 9
3. Oral Debriefing Unique Requirements ..... 9
   - A. Location ..... 9
   - B. Government Personnel ..... 10
   - C. Offeror Personnel ..... 10
   - D. Preparation ..... 11

VIII. Oral and Written Debriefing Format ..... 11

1. Required information ..... 11
2. Introduction and Objective ..... 12
3. Ground Rules ..... 12
4. Source Selection Process ..... 12
5. Evaluation Factors ..... 12
6. Overall Rating and Ranking of the Proposal (POSTAWARD ONLY) ..... 12
7. Specific Evaluation Results ..... 12
8. Rationale for Award Decision (POSTAWARD ONLY) ..... 13
9. Award Information (POSTAWARD ONLY) ..... 13
10. Prohibited Information in Debriefings ..... 13

11. Questions ..... 14
12. Assessment ..... 14
13. Conclusion ..... 14

IX. Oral or Written Explanation of the Basis of Award Format ..... 14
Attachment F contains a sample oral and written explanation of award format. ..... 14
1. Introduction ..... 14
2. Required information ..... 15
3. Source Documentation ..... 15
4. Evaluation and Selection Process ..... 15
5. Proposal Assessment ..... 16
6. Process Assessment ..... 16
7. Conclusion ..... 16
8. Prohibited Information in Explanations of Award ..... 16
X. Documentation of the Debriefing or Explanation of the Basis of the Award ..... 17
Attachment A - Tips for a Debriefing or Explanation of the Basis of Award ..... 18
Other Useful Tips for a Debriefing ..... 20
Attachment B - Sample Notice of a Right to a Debriefing ..... 22
Attachment C - Sample Opening Statement for Debriefings ..... 24
Attachment D - Sample Debriefing Memorandum ..... 25
Attachment E - Sample Questions That May be Used for "Dry Run" Debriefing ..... 26
Attachment F - Oral and Written Explanation of Award Format ..... 30

## 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 exceeding the threshold specified at FAR 16.505(b)(1)(iv), 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 below the threshold specified at FAR 16.505(b)(1)(iv).**

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.

# APPENDIX AB
# DEMAND FOR PAYMENT LETTER TEMPLATE

## TEMPLATE FOR A DEMAND FOR PAYMENT LETTER TO A DHS CONTRACTOR.


| TITLE | DESCRIPTION | PAGE |
|---|---|---|
| INTRODUCTION | | AB-1 |
| INSTRUCTIONS | | AB-1 |
| TEMPLATE #1 | Use template #1 if you determine that the debt arises from the contract and the contract requires payment of interest ONLY in the **Interest clause**, FAR 52.232-17 or 52.212-4(i)(6). | AB-2 |
| TEMPLATE #2 | **Defective Pricing Debt** with debt required by a Defective Pricing clause. Use template #2 if you determine that the contract debt is a arises from a submission of defective cost or pricing data. | AB-4 |
| TEMPLATE #3 | **Cost Accounting Standards (CAS) Debt**. Use template #3 if you determine that the contract debt is as a result of operation of a CAS clause. | AB-7 |
| TEMPLATE #4 | Contract debt arises from a clause that requires payment of **interest beginning at the date of overpayment** (vs. beginning at date of demand for payment) OTHER THAN Defective Pricing or CAS. | AB-9 |
| TEMPLATE #5 | **Other Debt, with no interest payments** required by the contract. Use template #5 only if you determine that the contract DOES NOT include a clause that requires the contractor to pay interest on debts under the contract, such as the interest clause at FAR 52.232-17 or 52.212-4(i). | AB-12 |


**INTRODUCTION:**

This HSAM Appendix provides templates for various types of demand for payment letters to be sent to a contractor who owes money to the government as a result of a debt that has arisen under a DHS contract or order. Demands for payment of a contract debt are governed by FAR 32.6.

**INSTRUCTIONS:**

When you prepare a demand for payment letter, you should select the template that best fits the type of debt for which you are seeking payment. The difference between the various templates is due to differences in contract clauses regarding payment of interest by the contractor for different

types of debts that can occur. For example, contract clauses governing some contract debts, such as a Defective Pricing debt, require a contractor to repay any overpayments PLUS interest on the overpayment amounts beginning at the date(s) of overpayment. Some other types of debts are governed by a contract clause that only requires payment of interest beginning 30 days after issuance of a demand for payment. Other types of debts are not governed by any contract clause that addresses payment of interest on the debt; interest payments under these debts are governed by law and DHS financial management procedures.

The five sample templates provided for your use in this HSAM Appendix give a starting place for preparation of your demand for payment letter. Each must be customized to fit your situation. You should select the template that best fits your situation and prepare your letter to match the facts of your situation and the requirements of the FAR and other governing regulations or laws.

# Demand For Payment Letter - Template #1

## Contract debt with interest required ONLY by Interest clause, FAR 52.232-17 or 52.212-4(i)(6).

INSTRUCTIONS FOR USE OF TEMPLATE #1.

1. Use template #1 if you determine that the debt arises from the contract and the contract requires payment of interest ONLY in the Interest clause, FAR 52.232-17 or 52.212-4(i)(6).
2. Modify template #1 to insert appropriate amounts to describe the debt.
3. Modify Template #1 to delete paragraphs that do not apply to your situation per instructions within the template.

Company Representative's Name
Company Name
Company Address
City, State, Zip Code

Dear _____ *(company representative's name)*

This letter is to inform you that _____ *(insert company name)* is indebted to the United States Government in the amount of $XX,XXX.XX) on Contract No. XXXXXX-XX-X-XXXX and that payment in full is due not later than 30 days after the date of this notification.

Please remit a check in the amount of $_____ payable to the payment office that is identified in your contract, annotated with the contract number and accompanied by a copy of this demand for payment.

This debt resulted from *(fully describe the basis of debt).*

The amount due is comprised of—

| | |
|---|---|
| Principal Amount of Debt | $ |
| Interest (if there are previously accrued amounts) | $ |
| Penalty (if applicable | $ |
| Total Debt owed | $ |

*(If the lines of accounting against which the debt is due are readily available, the letter should include the following. See FAR 32.604(b)(2) for specific instructions. DELETE THE PARAGRAPH IF YOU CANNOT FILL OUT THE DISTRIBUTION OF THE DEBT.)*

The following is a distribution of the debt by lines of accounting:

| | |
|---|---|
| AAAAAAAAA | $ |
| BBBBBBBBB | $ |
| CCCCCCCCC | $ |

*(If the lines of accounting are not readily available, instead of the above paragraph and chart, the letter should include the below statement. Also see FAR 32.604(b)(2)(iv) for specific instructions. DELETE THE PARAGRAPH IF YOU FILLED OUT THE ABOVE TABLE.)*

The distribution of the debt by lines of accounting will be provided in a separate letter by _____ *(insert date by which the lines of accounting will be provided).*

Any amounts not paid within 30 days from the date of this demand for payment will bear interest. Interest shall be computed from the date of the demand for payment until repayment by the contractor. The interest rate shall be the interest rate established by the Secretary of the Treasury, as provided in 41 U.S.C. 7109, 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 authority of 31 U.S.C. 3727 or 41 U.S.C. 6305, 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.

1. Use template #2 if you determine that the contract debt arises from a submission of defective cost or pricing data.
2. Modify template #2 to insert appropriate amounts to describe the debt.
3. 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 authority of 31 U.S.C. 3727 or 41 U.S.C. 6305, 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 authority of 31 U.S.C. 3727 or 41 U.S.C. 6305, 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 authority of 31 U.S.C. 3727 or 41 U.S.C. 6305, 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. Also see 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 authority of 31 U.S.C. 3727 and 41 U.S.C. 6305, 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

# APPENDIX AC
# TEMPLATE FOR REPORT OF PLANNED CONSTRUCTION REQUIREMENTS

***Report must be submitted as an Excel document***

***Report each FY's data on a separate worksheet in the Excel workbook***

**Department of Homeland Security**
**Report of Proposed Federal Construction**
**Procedures for Predetermination of Wages (29 CFR 1.4)**

**FY ___ - Report Period October 1, ____ to September 30, ____**

| Project Title, NAICS Code or Identification Number* | Construction Type (building, residential, highway, or heavy construction project) | Location of Construction (City, State and County/Federal District of Columbia/U.S. Territory) | Projected Construction Amount | Projected Project Start Date (If known) | Projected Project Completion Date (If known) | Wage Determination Assigned |
|---|---|---|---|---|---|---|
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

*Identify each project for which a Davis Bacon Wage Determination is required.

# APPENDIX AD
# TEMPLATE FOR NOTICE OF PENDING TERMINATION

**Template: Notice of Pending Termination**

(This template shall be used to support a termination notice as required in HSAM 3049.101(a)) This template shall be used for all anticipated terminations for default or cause including terminations under FAR Part 12, of contracts or orders with an undelivered balance (see definition below) exceeding $1 million.

---

## MEMORANDUM TO THE FILE

Subject: PENDING TERMINATION PURSUANT TO HSAM 3049.101(a)

As required by Homeland Security Acquisition Manual (HSAM) 3049.101(a), the contracting officer shall provide a copy of all termination notices, including terminations under FAR Part 12, for anticipated terminations for default or cause of contracts or orders with an undelivered balance exceeding $1 million to the OCPO at least five business days ***prior*** to issuing the notice to the contractor. An undelivered balance is the total dollar value of products and/or services that remains to be delivered to the Government, excluding unexercised options, when the contracting officer determines that the contract should be terminated. The following is a synopsis of the pertinent information related to this termination for *(insert either default or cause)*:

| | |
|---|---|
| Component: | *Self explanatory* |
| Contracting Officer: | *Name, phone number, email* |
| Contract/Order Number: | *Self explanatory* |
| Contractor: | *Full name of contractor as listed on award document and contractor size (small, large)* |
| Description of Requirement: | *Short description of requirement* |
| Total Value of Contract: | *Total value including options* |
| Type of Contract: | *Multiple award; firm-fixed-price (FFP); cost-plus-fixed-fee (CPFF); etc.* |
| Period of Performance: | *Total performance period (base and options)* |
| Type of Termination: | *Default or cause, full or partial* |
| Estimated Termination Cost: | *If available* |
| Proposed Termination Date: | *Date the contracting officer intends to issue the Notice of Termination to the contractor* |
| Reason for Termination: | *Short synopsis of rationale for termination* |

### A. Background:

In this section, provide a brief chronology of the events leading to the anticipated termination action, including the specific failure of the contractor and the excuses for the failure. For example, if a small business contract is being terminated, discuss the coordination with the Office of Small and Disadvantaged Business Utilization. Similarly, if a contract is being terminated for default or cause, discuss the factors in determining whether to terminate a contract

for default or cause. Include a statement that the termination has been coordinated with the Component's Head of Contracting Activity and Component legal counsel or the Office of the Chief Counsel, as applicable. All referrals for terminations for default or cause shall be made to the Office of the Inspector General (OIG). The contracting officer shall document the file with the reason(s) for referring the contractor for suspension and debarment.

**B. Potential Impact**:

Any potential impact to the Department, Component, or program execution (e.g., financial, programmatic, schedule, etc.) should be identified here. Highlight any issues that may rise to the Chief Procurement Officer's attention as a result of the termination. Discuss the availability of the supplies or services from other sources, the urgency of the need for the supplies or services, and the period of time required to obtain them from other sources as compared to the delivery time that could be obtained from the contractor considered for termination (see FAR 49.402-3(f)).

**C. Contracting Officer's Intended Action:**

I certify that I have reviewed the subject contract and find, to the best of my knowledge and judgment, that the contract was properly awarded and is a valid contract, that the contractor failed to deliver items in accordance with the contract terms, and that it is in the best interests of the Government that the contract be terminated for (*default or cause, full or partial*).

_____ _____

**Contracting Officer's Signature** **Date**

Attachment: Contractor's Notice of Termination from the Contracting Officer