

Department of Homeland Security Acquisition Manual



October 2009

FOREWORD

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

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

/s/

Richard K. Gunderson
Acting Chief Procurement Officer

HSAM - RECORD OF NOTICES October 2009 Edition

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Subchapter 3001.1 Purpose, Authority, Issuance

3001.101 Purpose.

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

3001.102 Statement of guiding principles for the Federal Acquisition System

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

3001.103 Authority

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

3001.104 Applicability.

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

3001.105 Issuance.**3001.105-170 Publication of HSAM.**

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

3001.105-270 Arrangement of HSAM.

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

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

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

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

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

3001.105-3 Copies.

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

3001.106 OMB approval under the Paperwork Reduction Act.

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

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

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

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

Subchapter 3001.2 Administration

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

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

Subchapter 3001.3 Agency Acquisition Regulations

3001.301 Policy.

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

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

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

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

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

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

3001.301-70 Amendment of HSAM.

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

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

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

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

(2) *HSAM Notices.*

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

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

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

3001.301-71 Effective date of HSAM Notice.

Unless otherwise stated, the following applies--

- (a) Statements in HSAM Notices that the content is "effective upon receipt," "upon a specified date," or that changes set forth in the document are "to be used upon receipt," mean that any new or revised procedures or forms shall be used when issuing solicitations, contracts, or modifications thereafter; and
- (b) If solicitations are already in process or negotiations complete when the HSAM Notice is received, the new procedures or forms need not be used if it is determined by the Chief of the Contracting Office (COCO) that it would not be in the best interest of the Government.

3001.301-72 HSAM Notice numbering.

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

3001.304 Agency control and compliance procedures.

- (a) DHS's goal is to ensure the HSAR and HSAM are consistent with FAR unless the FAR prescribes otherwise. Due to the leadtime necessary to implement FAR changes, conflict or inconsistency may exist. In those cases, the FAR takes precedence over the HSAR and HSAM.
- (b) *Component acquisition regulations* shall:
 - (1) Be incorporated into the HSAR as a supplemental regulation;
 - (2) Be coordinated in accordance with Component internal procedures (including review by legal counsel) to ensure compliance with [FAR 1.301](#) before submission to the CPO;
 - (3) Be submitted to the CPO for review and approval by a transmittal letter signed by no lower than the HCA at the initial stages of the regulatory process (i.e., before proceeding to the public comment process); include a Paperwork Reduction Act (see HSAM 3001.404(a)(2)) and Regulatory Flexibility Act analysis, as appropriate; and be supported by a justification of need for the regulation;
 - (4) Be integrated within the HSAR with access on the Internet at <http://www.dhs.gov/dhspublic/>; and
 - (5) Pertain only to that Component.
- (c) *Component acquisition procedures* shall:

- (1) Contain no material which duplicates unless necessary for clarity (this is expected to be minimally required), paraphrases, or is inconsistent with the contents of the FAR, HSAR, and this manual;
- (2) Be consistent with the policies and procedures of the FAR, HSAR, this manual, and other Departmental guidance and follow the format, arrangement, and numbering system specified in HSAM 3001.105-270 and HSAM 3001.301-70 to the extent practicable; and
- (3) Be reviewed, as deemed appropriate, in accordance with internal operating procedures and the following:
 - (i) Components shall provide an electronic version of promulgated Component-wide acquisition guidance implementing or supplementing this manual.
 - (ii) The HCA is responsible for ensuring that contracting offices limit their promulgation of acquisition procedures and, if procedures are necessary, to ensure they comply with subparagraphs (1) and (2) above.

Subchapter 3001.4 Deviations from the FAR, HSAR, and HSAM

3001.403 Individual deviations.

- (a) The HCA, without delegation, is authorized to grant individual deviations, except when this authority has been otherwise assigned by regulation (See FAR 1.405 regarding requests for deviations from treaty requirements), statute (e.g., most Cost Accounting Standards (CAS) deviations must be granted by the CAS Board) or this manual. All deviations shall:
 - (1) Be coordinated with legal counsel (include evidence of coordination with the record);
 - (2) Cite the specific part of the FAR, HSAR, or this manual from which a deviation is required;
 - (3) Set forth the nature of the deviation;
 - (4) State the reasons for the action requested; and
 - (5) State the known impact of the deviation.
- (b) A copy of approved individual deviations shall be provided to the CPO within 5 working days of approval.

3001.404 Class deviations.

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

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

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

Subchapter 3001.6 Career Development, Contracting Authority, and Responsibilities

Subchapter 3001.601 General.

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

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

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

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

3001.602 Contracting officers.

3001.602-2 Responsibilities.

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

3001.602-3 Ratification of unauthorized commitments.

(a) *Definitions.*

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

for the ratification of an unauthorized commitment.

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

(b) *Policy.*

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

(c) *Limitations.*

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

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

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

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

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

(D) Whether any benefit was received;

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

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

(G) Status of performance;

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

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

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

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

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

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

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

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

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

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

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

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

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

- (B) A brief description of the commitment, the amount of the action, and a written determination, with supporting documentation, that either the request should not be ratified or that the ratified price is fair and reasonable;
 - (C) The name of the firm or person to whom the commitment was made (if not in the ratification document);
 - (D) The date the commitment was either ratified (if not in the ratification document) or not ratified;
 - (E) A copy of the ratification document as applicable;
 - (F) Evidence of legal counsel concurrence with any ratification that is 10 percent or more of the simplified acquisition threshold; and
 - (G) Any disciplinary action taken or an explanation as to why none was considered necessary.
- (d) *Nonratifiable commitments.* If an unauthorized commitment is disapproved for ratification (nonratifiable), the contracting officer shall promptly notify the individual who made the unauthorized commitment, in writing, stating the reasons for disapproval and recommending the individual obtain legal advice. The contracting officer shall also advise the individual that the nonratifiable commitment will not be paid in accordance with prescribed contracting methods of payment. If the unauthorized commitment involves the Governmentwide commercial purchase card or payment has already been made via the SMART PAY program, the responsible individual may be billed or other reimbursement action taken.

3001.603 Selection, appointment, and termination of appointment.

3001.603-1 General.

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

3001.603-2 Selection.

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

3001.670 Responsibility of other Government personnel.

- (a) Responsibility for the decision of what to buy and when to buy rests mainly with program and certain staff offices. Responsibility for determining how to buy, the conduct of the buying process, and execution of the contract rests with the contracting officer.
- (b) Program personnel, using the contracting process to accomplish their programs, shall

support the contracting officer in ensuring that:

- (1) Advanced Acquisition/Forecasts and Acquisition Plans are completed, as required;
- (2) Requirements are clearly defined and specified;
- (3) Competitive sources are solicited, evaluated, and selected;
- (4) Quality standards are prescribed and met;
- (5) Performance or delivery is timely;
- (6) Prices, estimated costs, and fees are reasonable; and
- (7) Files are documented to substantiate the judgments, decisions, and actions taken.

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

3001.671-1 General.

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

3001.671-2 Selection.

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

3001.671-3 Procedures.

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

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

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

(b) Appointment of ordering officials.

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

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

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

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

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

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

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

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

3001.671-4 Specialized Training.

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

3001.671-5 Temporary Appointment.

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

- (a) Certification lacking. Individuals who previously completed initial training, procurement ethics training and specialized training (if required), but who lack certification, may be temporarily appointed as an Ordering Official without a waiver.
- (b) Training lacking. Individuals unable to complete initial training, procurement ethics training and specialized training (if required) prior to their ordering official appointment may obtain temporary appointments through a waiver. The HCA (or a designee identified in writing) is authorized to issue one-time waivers for temporary appointments of ordering officials prior to completion of procurement ethics training and specialized training (if required) in unusual and compelling circumstances. In addition, the following conditions must be met:
 - (1) The ordering official shall complete the Federal Acquisition Institute (FAI) on-line course “Contracting Orientation” (or equivalent) prior to temporary appointment. The procurement ethics training and specialized training (if required) must be completed within 60 days or the ordering official’s temporary appointment shall be terminated.
 - (2) One-time waivers may not be extended or reissued beyond the initial 60-day period without CPO approval.
- (c) Individual receiving temporary appointments must apply for ordering official certification within 60 days of temporary appointment. If the ordering official does not submit his or her acquisition certification application to the HCA (or a designee identified in writing) within 60 days of temporary appointment, or the application is denied, the temporary appointment shall be terminated.

3001.671-6 Surveillance of ordering officials.

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

- (1) Annually review activities of ordering officials by physical inspection of purchase documents and records to ensure compliance with policies and demonstration of sound judgment.
- (2) Perform an inspection and document specific comments as to whether the ordering official is operating within the scope and limitations of authority delegated.
- (3) Maintain copies of inspection and review findings for three years in the files of ordering officials and of reviewers.
- (4) If it is discovered that an ordering official is not properly performing assigned duties or is failing to take prompt action to correct deficiencies noted in inspections or reviews, the ordering officer's appointment shall be promptly terminated.

CHAPTER 3002 DEFINITION OF WORDS AND TERMS**Subchapter 3002.1 Definitions**
3002.101 Definitions.**3002.1 Definitions.****3002.101 Definitions.**

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

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

“Competitive Sourcing Official” is an inherently governmental agency official responsible for the implementation of the [OMB Circular No. A-76](#) within DHS in accordance with HSAM Chapter 3007.

CHAPTER	3003	IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST
Subchapter	3003.1	Safeguards
	3003.104	Procurement Integrity.
	3003.104-1	Definitions.
	3003.104-3	Statutory and related prohibitions, restrictions, and requirements.
	3003.104-4	Disclosure, protection, and marking of contractor bid or proposal information and source selection information.
	3003.104-5	Disqualification.
	3003.104-7	Violations or possible violations.
	3003.104-570	Information security.
Subchapter	3003.6	Contracts with Government Employees or Organizations, Owned or Controlled by Them
	3003.602	Exceptions.
Subchapter	3003.7	Voiding and Rescinding Contracts
	3003.704	Policy.
	3003.705	Procedures.
Subchapter	3003.8	Limitation on the Payment of Funds to Influence Federal Transactions
	3003.804	Policy.
	3003.806	Processing suspected violations.
Subchapter	3003.9	Whistleblower Protections for Contractor Employees
	3003.905	Procedures for investigating complaints.
	3003.906	Remedies.
	3003.907	Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (the Recovery Act).
	3003.907-2	Policy.
	3003.907-3	Procedures for filing complaints.
	3003.907-6	Remedies and enforcement authority.
Subchapter	3003.10	Contractor Code of Business Ethics and Conduct
	3003.1003	Requirements.

Subchapter 3003.1 Safeguards

3003.104 Procurement integrity.**3003.104-1 Definitions.**

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

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

- (a) The contracting officer is delegated this authority.
- (b) Individuals having access to documents which contain proprietary or source selection information shall:
 - (i) Ensure that the information is marked as required by [FAR 2.101](#) (under the definition for "Source selection information") and [FAR 3.104-4](#);
 - (ii) Use DHS Form 700-14, Cover Page Proprietary Information, to notify the recipient that the information or portions thereof is proprietary information related to the conduct of a Federal agency procurement;
 - (iii) Use DHS Form 700-13, Cover Page Source Selection Information, and comply also with the requirements of [FAR 3.104-4\(c\)](#) with respect to the marking of pages, to notify the recipient that the document contains source selection information;
 - (iv) Ensure that the information is secured and protected both during and after working hours;
 - (v) Ensure interoffice security mailing of the information; and
 - (vi) Ensure strict control over where discussions regarding the information or related acquisition are held.

3003.104-5 Disqualification.

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

3003.104-7 Violations or possible violations.

- (a)(1) The COCO is the reviewing official for processing violations.
- (b)(5) The Head of the Contracting Activity (HCA) shall make the recommendation to the Chief Procurement Officer (CPO).

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

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

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

3003.104-570 Information security.

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

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

3003.602 Exceptions.

The HCA, without redelegation, is delegated this authority.

Subchapter 3003.7 Voiding and Rescinding Contracts

3003.700 Scope of subpart.

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

3003.703 Authority.

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

3003.704 Policy.

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

3003.705 Procedures.

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

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

3003.804 Policy.

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

3003.806 Processing suspected violations.

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

Subchapter 3003.9 Whistleblower Protections for Contractor Employees

3003.905 Procedures for investigating complaints.

The HCA is delegated the responsibilities at [FAR 3.905](#).

3003.906 Remedies.

The HCA is delegated the authorities at [FAR 3.906](#).

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

3003.907-2 Policy.

The HCA is designated as “the head of a Federal agency” for purposes of [FAR 3.907-2](#).

3003.907-3 Procedures for filing complaints.

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

- (i) The Component HCA and Component legal counsel;
- (ii) If the complaint of reprisal applies to additional DHS contracts, the Component HCA responsible for those contracts; and
- (iii) If the complaint of reprisal applies to an order placed under another agency’s contract, the contracting officer for the servicing agency contract.

3003.907-6 Remedies and enforcement authority.

The HCA is delegated the head of agency authorities identified in [FAR 3.907-6](#).

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) COTR or program point of contact;
 - (M) Source of the notification (contractor, payment review, recovery audit, COTR 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.
	3004.804	Closeout of contract files.
	3004.804-1	Closeout by the office administering the contract.
	3004.804-170	Monitoring contract closeouts.
	3004.804-5	Procedures for closing out contract files.
	3004.805	Storage, handling, and disposal of contract files.
	3004.805-70	Storage, handling and disposal of Governmentwide commercial purchase card records.
Subchapter	3004.9	Taxpayer Identification Number Information
	3004.903	Reporting contract information to the IRS.

	3004.904	Reporting payment information to the IRS.
Subchapter	3004.11	Central Contractor Registration
	3004.1102	Policy.
	3004.1103	Procedures.
Subchapter	3004.13	Personal Identity Verification
	3004.1301	Scope of subpart.
Subchapter	3004.15	American recovery and reinvestment Act-Reporting
	3004.1501	Procedures.
Subchapter	3004.70	Review and Approval of Proposed Contract Actions
	3004.7000	Scope.
	3004.7001	Definitions.
	3004.7002	Component internal review and approval procedures.
	3004.7003	Legal reviews.
	3004.7004	Office of the Chief Procurement Officer (OCPO) review and approval.
	3004.7005	Periodic compliance reviews

Subchapter 3004.1 Contract Execution

3004.101 Contracting officer's signature.

3004.101-70 Contract execution in contract writing systems.

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

Subchapter 3004.2 Contract Distribution

3004.202 Agency distribution requirements.

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

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

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

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

3004.203 Taxpayer identification number information (TIN).

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

Subchapter 3004.4 Safeguarding Classified Information Within Industry

3004.403 Responsibilities of contracting officers.

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

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

(2) [DHS MD 11035](#), Industrial Security Program;

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

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

(5) [FAR Subpart 4.4](#).

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

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

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

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

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

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

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

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

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

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

3004.470-1 Responsibilities.

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

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

(b) In addition to incorporating the clauses as required by HSAR 3052.204-71, contracting officers are responsible for ensuring that solicitations, contracts, and orders identify the documentation contractor employees must complete for determining contractor suitability.

3004.470-2 Access to sensitive but unclassified information.

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

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

Subchapter 3004.5 Electronic Commerce in Contracting

3004.502 Policy.

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

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

3004.502-70 Acquisition-Related Systems

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

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

Subchapter 3004.6 Contract Reporting

3004.603 Policy.

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

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

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

3004.604 Responsibilities.

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

- (1) The methods used to review the data;
- (2) Any actions taken to correct data previously submitted; and
- (3) Measures implemented for process improvement, such as training and periodic internal reviews.

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

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

3004.605 Procedures.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3004.606 Reporting Data.

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

3004.670 Acquisition related reporting requirements.

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

Subchapter 3004.8 Government Contract Files.

3004.801 General.

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

3004.804 Closeout of contract files.**3004.804-1 Closeout by the office administering the contract.**

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

3004.804-170 Monitoring contract closeouts.

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

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

(c) *Tracking system.* The COCO must utilize an automated or manual contract closeout tracking information system to identify those contracts which are physically completed and ready for closeout, but have not been administratively closed out and disposed of in accordance with [FAR 4.8](#), HSAR 3004.8, and this subchapter.

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

3004.804-5 Procedures for closing out contract files.

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

3004.805 Storage, handling, and disposal of contract files.

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

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

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

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

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

Subchapter 3004.9 Taxpayer Identification Number Information**3004.903 Reporting contract information to the IRS.**

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

3004.904 Reporting payment information to the IRS.

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

3004.11 Central Contractor Registration**3004.1102 Policy.**

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

3004.1103 Procedures.

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

3004.13—Personal Identity Verification

3004.1301 Policy.

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

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

3004.15 American Recovery and Reinvestment Act-Reporting Requirements

3004.1501 Procedures.

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

Subchapter 3004.70 Review and Approval of Proposed Contract Actions

3004.7000 Scope.

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

(1) Proposed solicitations, contracts, and contract modifications issued and awarded pursuant to Federal Acquisition Regulation (FAR) Parts 12, 13.5, 14 or 15;

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

(3) Proposed solicitations, orders, and modifications to such orders issued and awarded against a multiple award indefinite delivery contract or [FAR Part 13](#) or [Subpart 8.4](#) for BPAs;

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

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

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

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

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

3004.7001 Definitions.

The following definitions are only applicable to HSAM 3004.70:

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

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

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

contracting officer has complied with acquisition statutes, regulations, policies and procedures; has followed sound business practices; and has ensured that the contents of the contract file are in accordance with [FAR 4.803](#).

3004.7002 Component Internal review and approval procedures.

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

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

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

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

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

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

(d) Exceptions: Exceptions to the approval requirements specified above in subparagraph 3004.7002(b) include unilateral modifications that do not require a proposal from or negotiations with the contractor (or from the servicing agency for inter/intra-agency agreements.) For example, approval is not required for modifications

to provide incremental funding, the exercise of options, and those actions listed in HSAM Subchapter 3004.7003(b).

Subchapter 3004.7003 Legal review.

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

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

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

(d) Additional Requirements for Legal Review:

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

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

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

(d) Availability of Legal Counsel Review at any Dollar Value: Some issues may warrant legal review regardless of the dollar value. Contracting officers may request legal review due to the complexity or sensitivity of issues of the acquisition, notwithstanding that the dollar threshold has not been reached. For example, contracting officers should feel free

to request legal assistance and guidance at critical junctures in the acquisition life cycle, such as for: difficult down-select or competitive range determinations, the clearance of acquisition plans for important acquisitions, questions as to the scope of an existing contract, and the issuance of cure notices or show cause letters.

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

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

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

(1) Specific actions requiring approval.

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

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

(b) Information required for OCPO review.

(1) General.

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

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

3004.7005 Periodic compliance reviews.

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

CHAPTER	3005	PUBLIZING CONTRACT ACTIONS
Subchapter	3005.000	Scope
	3005.003	Governmentwide point of entry (GPE).
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Subchapter 3005.000 Scope

Subchapter 3005.003 Governmentwide point of entry (GPE).

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

Subchapter 3005.1 Dissemination of Information

3005.102 Availability of solicitations.

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

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

Subchapter 3005.2 Synopses of Proposed Contract Actions

3005.202 Exceptions.

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

3005.207 Preparation and transmittal of synopses.

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

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

Subchapter 3005.3 Synopses of Contract Awards

3005.301 General.

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

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

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

3005.303 Announcement of contract awards.

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

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

3005.303-70 Congressional notification of contract actions.

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

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

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

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

(d) Announcement and notification procedures.

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

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

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

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

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

(f) Discretionary notification. HCAs are authorized to provide discretionary Congressional notification of special interest contract actions at or below \$1 million, task or delivery orders under indefinite-delivery type contracts using FY 2009 and prior funds, or on any award not otherwise required. Discretionary Congressional notification must be made under the same procedures and timeframe as required Congressional

notification. HCAs or their designated representative must coordinate with the DHS Office of Legislative Affairs prior to submission of DHS Form 2140-01 to the electronic mailbox.

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

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

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

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

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

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

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

Subchapter 3005.4 Release of Information

3005.401 General.

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

3005.403 Requests from Members of Congress.

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

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

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

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

3005.404 Release of long-range acquisition estimates.

3005.404-1 Release procedures.

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

Subchapter 3005.5 Paid Advertisements**3005.502 Authority.**

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

Subchapter 3005.7 Publicizing Requirements under the American Recovery and Reinvestment Act of 2009**3005.701 Scope**

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

3005.770 Interagency Agreements

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

CHAPTER 3006 COMPETITION REQUIREMENTS

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Subchapter 3006.1 Full and Open Competition

3006.102 Use of competitive procedures.

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

Subchapter 3006.3 Other Than Full and Open Competition

3006.302 Circumstances permitting other than full and open competition.

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

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

3006.302-2 Unusual and compelling urgency.

(c)(3) For contract awards to facilitate the response to or recovery from a natural disaster, act of terrorism, or other man-made disaster, that relies on this exception, the period of performance shall be limited to the minimum period necessary to meet the

urgent and compelling requirements of the work to be performed and to enter into another contract for the required goods or services through the use of competitive procedures, but in no event shall exceed 150 days, unless the Head of the Contracting Activity (or higher approval authority if required by [FAR 6.304](#) or DHS procedures) determines that exceptional circumstances apply, approving the justification as set forth in HSAR 3006.304. The limitation on the period of performance applies to contracts awarded in response to, or recovery from:

- (i) a major disaster or emergency declared by the President under Title IV or Title V of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121-5207) (see <http://www.fema.gov/news/disasters.fema#sev2> for a list of declarations);
- (ii) an uncontrolled fire or fire complex, threatening such destruction as would constitute a major disaster, and for which the Federal Emergency Management Agency has approved a fire management assistance declaration in accordance with regulatory criteria at 44 CFR 206.390 (see <http://www.fema.gov/news/disasters.fema#sev2> for a list of declarations); or
- (iii) an incident for which the National Operations Center (NOC), through the National Response Coordination Center (NRCC), coordinates the activation of the appropriate Emergency Support Functions and the Secretary of Homeland Security has designated a Federal Resource Coordinator (FRC) to manage Federal resource support. (see HSAM 3006.303-2(a)(9)(iv)).

3006.303 Justification.

3006.303-1 Requirements.

- (a) Appendix G, DHS Justification and Approval (J&A) Guide for Other than Full and Open Competition, Version 2.0, provides additional requirements and guidance, including a sample format for J&As.

3006.303-2 Content.

- (a)(9)(iv) For a proposed contract subject to the restrictions of HSAM 3006.302-270(c)(3) and where FAR 6.302-2 is cited as the authority, the exceptional circumstances allowing for an award for a period of performance in excess of 150 days.

3006.304 Approval of the justification.

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

- (e) All justification and approvals for other than full and open competition submitted to

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

3006.305 Availability of the justification.

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

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

Subchapter 3006.5 Competition Advocates

3006.501 Requirement.

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

3006.502 Duties and responsibilities.

(b)(2) Competition advocates for the procuring activities shall submit an annual Component report to the Departmental Competition Advocate on or before December 1 for the preceding fiscal year (FY) (e.g., the report for FY08 covering October 1, 2007 through September 30, 2008, is due by December 1, 2008). The Departmental Competition Advocate shall submit a Departmental report to the CPO on an annual basis with a copy to the Administrator, Office of Federal Procurement Policy by January 30th of each year.

3006.570 Competition advocates for the procuring activity.

A listing with point of contact information for the Department Competition Advocate and Procuring Activity Competition Advocates is maintained by the CPO on DHS Open for

Business, and is accessible at:

http://www.dhs.gov/xopnbiz/regulations/gc_1204658767888.shtm.

CHAPTER	3007	ACQUISITION PLANNING
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Subchapter 3007.1 Acquisition Plans

3007.101 Definitions.

"Acquisition Plan" (AP), as used in this chapter, means a document used to fulfill the acquisition planning requirements of FAR Parts 7.105 and 7.107. This includes all acquisitions, including contracts, and task orders or delivery orders under Indefinite Delivery/Indefinite Quantity contracts (for example, Federal Supply Schedule contracts, Government Wide Agency Contracts (GWACs), etc.).

“Acquisition Strategy” is the program manager’s overall plan for satisfying the mission need in the most effective, economical, and timely manner. Acquisition strategies qualify as the acquisition plan for major system acquisitions, and are prepared in writing in accordance with the requirements of [FAR Subpart 7.1](#), HSAM 3007, and as appropriate, [FAR Part 34](#) and DHS Directive [102-01](#), Acquisition.

“Acquisition” also includes intra-agency and interagency acquisitions.

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

“Consolidated Acquisition Plan” means a written acquisition plan that includes more than one contract action, with similar requirements. The plan adequately describes the acquisition strategy, budgeting, technical and other significant considerations for each procurement action. For example, a Component may have several different individual contract actions for identical or similar services/supplies. Combining them into a single acquisition plan eliminates redundant acquisition plan development and review/approval/updated processes. The approval threshold for a consolidated acquisition is determined by the combined value of the separate procurement actions. Consolidated APs are for procurements that are not part of a major system acquisition as defined in DHS Directive [102-01](#), Acquisition.

“Integrated Project/Product Team” means a cross disciplinary team composed of representatives from all appropriate functional disciplines working together to build successful and balanced programs, identify and resolve issues, and make sound and timely decisions based on timely input from the entire team, when appropriate (For further information on IPTs, see Section I.2.1, Integrated Project Team, OMB Circular A-11, Supplement to Part 7 – Capital Programming Guide, accessible at: http://www.whitehouse.gov/omb/circulars_default/.)

“Plan” means an acquisition plan.

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

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

3007.102 Policy.

(b)(1) No synopsis for a solicitation may be released, solicitations issued, or funds transferred within or outside the Department until an acquisition plan or acquisition strategy has been completed and approved. Acquisition strategies must include all program contractual actions including interagency agreements appropriate to the particular Acquisition Decision Event or program phase for which it is being reviewed. The strategy must demonstrate how each contractual action contributes to meeting the program's objectives. In addition, the strategy must document annual funding for contractual action including interagency agreements (IA).

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

(A) For IAs resulting in an assisted acquisition (i.e., where a servicing agency and a requesting agency enter into an IA pursuant to which the servicing agency performs acquisition activities on the requesting agency's behalf, such as awarding a contract, task order, or delivery order), the requesting agency program manager/requisitioner may delegate preparation of an acquisition strategy or plan to the servicing agency program manager, but the requesting agency program manager/requisitioner will provide support and assistance as needed and must approve the AP. Whenever an IA is contemplated, and an acquisition strategy or plans is not required (i.e., for IAs under the Economy Act not resulting in an assisted acquisition, or IAs under statutes other than the Economy Act and not resulting in an assisted acquisition), DHS program managers/requisitioners will prepare an Analysis of Alternatives as described in DHS [Instruction 125-02-001](#), "Instruction Guide on Interagency Agreements." The Analysis of Alternatives describes in detail why an IA is the appropriate vehicle to fulfill a DHS requirement.

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

3007.103 Agency-head responsibilities.

(d) DHS's implementation of [FAR Part 7](#) acquisition planning requirements is as follows:

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

(2) Content Requirements.

(i) For non-major system acquisitions that are valued less than \$10 million, entry of acquisition planning information in the Advance Acquisition Plan Database (www.fido.gov/dhs/aap/) satisfies the written acquisition plan requirement. (See HSAM 3007.172, Advance Acquisition Plans.) Acquisitions with values greater than or equal to \$10 million require a written acquisition plan or strategy that complies with the planning requirements of [FAR Part 7.1](#)

(ii) FAR 34.004 requires that acquisition strategies be developed for major system acquisitions. Accordingly, acquisition strategies qualify as the acquisition plan for major systems. Within DHS, a system is classified as a major system if: (1) its total lifecycle cost is estimated to be equal to or exceed \$300 million; or (2) if the Deputy Secretary has designated a program/project as a major system. (See DHS Directive [102-01](#), Acquisition.) Acquisition strategies must:

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

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

(C) Be in writing; and

(D) Conform with the requirements of [FAR 7.1](#).

(iii) Acquisition planning documents for other than major system programs are termed acquisition plans or consolidated acquisition plans, the thresholds of which are based on total contract or order value (including options). Both types of plans must:

(A) Be tailored to a standalone or consolidated acquisition(s) not associated with a major system program for which an acquisition strategy is, or has been developed;

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

(C) Be in writing; and

(D) Follow the requirements of [FAR 7.1](#) and HSAM 3007.1.

(iv) When the acquisition involves contract bundling, the plan shall also include the acquisition research and analysis requirements of [FAR Part 7.107](#).

(v) When using the DHS EAGLE or FirstSource contracts, streamlined APs are authorized. A sample format is found at the Office of Procurement Operations ESO website: <https://dhsonline.dhs.gov/portal/jhtml/community.jhtml?index=135&community=MGMT&id=2031380003>.

(vi) Appendix H, DHS Acquisition Planning Guide, Version 5.0, provides additional requirements and guidance on preparing written acquisition plans and acquisition strategies.

(3) Acquisition plans are not required for:

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

(ii) Emergency acquisitions (i.e., when the need for the supplies/services is of such an unusual and compelling urgency that the Government would be seriously injured if the supplies/services were not immediately acquired). However, when the authority of FAR [6.302-2](#) is cited as the authority for a noncompetitive award of a contract above the simplified acquisition threshold in excess of 150 days to facilitate the response to or recovery from a natural disaster, act of terrorism, or other man-made disaster in accordance with HSAR 3006.302-270(c)(3), 3006.303-270, and 3006.304-70, the Justification and Approval (J&A) shall describe measures underway or planned to ensure maximum competition as soon as practicable;

(iii) Actions subsequent to the initial submittal of a plan which have already been included as part of an approved plan (e.g., exercise of options). However, this exception does not include subsequent revisions to an original acquisition plan (see HSAM 3007.103-70(a)(5) Other officials' responsibilities);

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

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

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

(h) CPO Review and Approval of Acquisition Plans and Strategies.

(1) Review and Approval.

(i) All acquisition plans and acquisition strategies must be properly coordinated with pertinent functional offices/stakeholders prior to submission to the CPO for review, approval, or concurrence, as appropriate.

(ii) For all acquisition plans (including initial plans and substantive revisions thereto) with a value greater than or equal to \$300 million, all Component HCAs shall submit acquisition plans to the CPO for approval unless program approval in accordance with DHS Directive [102-01](#), Acquisition (or superseding successor DHS Directive 102-01) has

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

(iii) For acquisition strategies (including initial strategies and substantive revisions thereto) with a program life cycle cost greater than or equal to \$300 million, all Component HCAs shall submit acquisition strategies to the CPO for concurrence, unless program coordination, review and approval in accordance with DHS Directive [102-01](#) Acquisition (or superseding successor Directive 102-01) has been delegated to the Component. CPO concurrence will be sought prior to submission to the Acquisition Decision Authority for final approval in accordance with DHS Directive [102-01](#), Acquisition. In those instances where the initial acquisition strategy is valued less than \$300 million (life cycle cost), but a revised acquisition strategy is subsequently prepared that results in a value greater than or equal to \$300 million, the revised strategy must be submitted to the CPO for concurrence.

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

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

(vi) The value of an acquisition plan shall be based on current-year procurement dollars and include the base and all options years contemplated. The value of a major system acquisition is measured in terms of lifecycle cost; in which case, the value of an acquisition strategy is based on current-year to Full Operational Capability, plus 10 years.

(vii) Components shall submit acquisition plans for CPO approval to the Director, Oversight & Strategic Support Division via PROCUREMENT.Support@dhs.gov. All acquisition plans must be signed by the Component HCA as “*Recommended for CPO Approval*”. Submission of the acquisition plan should occur as early as possible in the acquisition cycle but in no event later than 14 days prior to the scheduled release of the related solicitation. No solicitation may be issued without CPO approval unless a waiver has been granted. (See (ix) in this section for guidance regarding obtaining CPO concurrence for acquisition strategies.)

(viii) The HCA may request a waiver from the requirement for CPO approval of the acquisition plan. Any such waiver request shall be submitted by the HCA through the Director, Oversight & Strategic Support Division via PROCUREMENT.Support@dhs.gov. Waiver requests shall contain sufficient detail to clearly demonstrate the basis for the request.

(ix) Components shall submit acquisition strategies for CPO review and concurrence to the Director, Oversight & Strategic Support Division via

PROCUREMENT.Support@dhs.gov. Following CPO concurrence, acquisition strategies shall be submitted to the Acquisition Decision Authority for final approval in accordance with DHS Directive [102-01](#), Acquisition.

3007.103-70 Other officials' responsibilities.

(a) *Acquisition planner/Technical official.* The development of plans, and updates to them, is the responsibility of the acquisition planner (e.g., program manager). The acquisition planner is located within the requiring agency (if outside of DHS) or within the requiring Component (if within DHS). (However, see HSAM 3007.102(b)(1) and (2) regarding acquisition planning roles for inter- and intra-agency agreements.). The acquisition planner is usually a technical official, and is responsible for providing applicable input for the plan (e.g., quality, quantity, delivery requirements). The acquisition planner, among other functions identified in [FAR 7.103](#) and [7.106](#), as appropriate to the acquisition/program, shall:

- (1) Coordinate with an Integrated Project/Product Team comprised of personnel responsible for significant aspects of the plan (e.g., contracting, fiscal, legal, small business, technical, security and logistics, environment/energy/safety, earned value management (EVM), personnel security, information technology (IT), security and enterprise architecture).
 - (2) Provide input to the plan/strategy as necessary;
 - (3) Obtain applicable concurrences, e.g., small business, etc.;
 - (4) Forward the plan through the approval process; and
 - (5) Review and the plan annually, and update as appropriate (see Appendix H, DHS Acquisition Planning Guide, Part I, section 1.7.); and
 - (6) Ensure that at least one qualified contracting officer's technical representative (COTR) is nominated as early as practicable in the acquisition process. For Indefinite Delivery/Indefinite Quantity (IDIQ) contracts, the planner may choose to nominate the COTR at the order level instead of the contract level, in which case a COTR should be appointed to an order before each order is awarded. A COTR need not be nominated for a contract or IDIQ order valued at less than the simplified acquisition threshold.
- (c) *Contracting officer.* The contracting officer, as a member of the Integrated Project/Product Team, is responsible for providing applicable input for the plan (e.g., type of contract to be used, procurement milestones, set-aside considerations). Among his/her acquisition planning duties, the contracting officer is responsible for documenting in the acquisition plan/acquisition strategy, the rationale for the selection of a cost-reimbursement contract type. Provisions of the rationale shall include: (1) an analysis of why a cost-reimbursement contract is appropriate (as compared to a fixed-price contract;

and (2) an assessment regarding the adequacy of Government resources that are necessary to properly plan for, award, and administer cost-reimbursement contracts. In addition, the contracting officer will:

(1) Designate and authorize, in writing, a COTR on contracts and orders, as appropriate. COTRs shall be certified in accordance with the Office of Management and Budget Memorandum entitled *The Federal Acquisition Certification for Contracting Officer Technical Representatives* dated November 26, 2007. For Indefinite Delivery/Indefinite Quantity (IDIQ) contracts, the contracting officer may appoint the COTR at the order level instead of the contract level, in which case a COTR should be appointed to an order before each order is awarded. A COTR need not be appointed for a contract or IDIQ order valued at less than the simplified acquisition threshold.

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

(3) Designate the COTR via a written delegation, outlining the responsibilities associated with effectively managing the contract; the contracting officer should also outline the risks to the Government associated with the particular contract type. Cost-type contracts require additional skills and experience to manage their additional risks to the Government, and this fact shall be considered when designating a COTR on cost contracts.

(d) *Competition Advocate*. The cognizant competition advocate within the Component is responsible for reviewing acquisition plans for procurements with estimated values exceeding \$550,000 (except when the *Public Interest* exception at [FAR 6.302-7](#) is used. Cognizant competition advocates shall review all justifications citing the exception at [FAR 6.302-7](#), regardless of dollar amount.) before they are submitted to the approving official when other than full and open competition procedures are expected to be used, e.g., any of the exceptions at [FAR 6.3](#).

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

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

(2) In which contract requirements are bundled are coordinated with Component, and, as appropriate, DHS small business representatives, and the SBA, and meet the review and approval requirements of HSAM 3007.107 and [FAR 7.104\(d\)\(1\)](#).

(f) *Contracting Officer's Technical Representative (COTR)*. COTR nominees shall have both technical and acquisition skills appropriate for managing the proposed contract types for which they are designated. COTRs shall be nominated as early as practicable in the acquisition process by the acquisition planner, and designated in writing by the contracting officer.

3007.103-71 General procedures.

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

3007.105 Contents of written acquisition plans and strategies.

Agency implementing procedures which include the instructions identified in [FAR 7.105\(a\) and \(b\)](#) are provided in Appendix H, DHS Acquisition Planning Guide, Version 5.0, Part II.

3007.107 Additional requirements for acquisitions involving bundling.

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

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

3007.170 Reserved.

3007.171 Reserved.**3007.172 Advance Acquisition Plans.**

(a) Advance acquisition plans (AAPs) shall be developed for all acquisitions over \$100,000. Where the total contract value of the planned acquisition is equal to or exceeds \$10 million, a formal written acquisition plan must be prepared. For acquisition(s) less than \$10 million, entry of information in the Advanced Acquisition Plan (AAP) Database (ref. <http://www.fido.gov/dhs/aap/>) satisfies the written acquisition plan requirement. Information entered into the AAP system must also be included in the contract file(s) to provide evidence of acquisition planning. All Components shall assign an AAP Coordinator and a Small Business (SB) Coordinator.

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

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

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

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

Subchapter 3007.2 Planning for the Purchase of Supplies in Economic Quantities**3007.204 Responsibilities of contracting officers.**

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

(b) All transmittals shall request a prompt response which is to indicate whether the acquisition should remain as is, be amended, or cancelled. Before continuing with the negotiation or award of the acquisition, the contracting officer shall decide, in

conjunction with the program manager, if continuing outweighs the potential cost saving benefits of delaying the acquisition.

Subchapter 3007.270 Additional Requirements for Acquisitions Involving Strategically Sourced Commodities.

3007.270-1 Scope of subchapter.

The DHS Strategic Sourcing Program Office (SSPO) will collaborate with stakeholders to develop, deploy, and maintain successful sourcing strategies that enhance DHS's acquisition practices and ensure that commodities are acquired in an efficient and effective manner as outlined in DHS SSPO Concept of Operations.

3007.270-2 Definitions.

“Stakeholders” are represented by contracts staff, program managers, and acquisition professionals at every level of the organization.

“Commodity Family Councils” (CFC) are the primary interface between Component organizations and the SSPO. CFCs are aligned with the commodity families and will provide guidance and management support for their respective Commodity Initiative Teams (CIT).

“Commodity Initiative Team” (CIT) are the key structural component for developing and executing sourcing strategies and are composed of cross-agency membership. Once established, a CIT will execute the Strategic Sourcing process resulting in recommendations to be presented to their respective CFCs.

3007.270-3 General requirements.

(a) At the beginning of the fiscal year, initiatives are identified, vetted with senior leadership, and prioritized by the standing CFCs. Agreed upon initiatives are released by the Office of the Chief Procurement Officer (OCPO) to stakeholders for consideration and to solicit participation in the 30-day Preliminary Assessment.

(b) 30-day Preliminary Assessments are executed against selected initiatives. At the conclusion of the 30-day Preliminary Assessment, OCPO distributes the results to all HCAs. HCAs will state their intent to participate with SSPO in a 60-day Business Case Assessment, representing their formal stake in this strategic initiative. If an HCA chooses to not pursue an initiative rationale and justification must be provided to OCPO.

(c) The 60-day Business Assessment represents the collaborative efforts of DHS Components and SSPO under the authority of the cognizant CFC to develop a feasible, Department-wide business strategy. The resulting 60-day assessment provides a commodity specific business case and execution strategy, which is reviewed by the

Director of SSPO and OCPO for mandatory consideration. Initiatives that result from the 60-day Business Assessment comport with program requirements outlined in the DHS Directive [102-01](#), Acquisition, and provide the basis for development of formal acquisition documents.

3007-271 DHS-wide Agency Contracts.

3007.271-1 General requirements.

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

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

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

3007.271-2 Post-award notification.

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

Subchapter 3007.4 Equipment Lease or Purchase

3007.401 Acquisition considerations.

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

Subchapter 3007.5 Inherently Governmental Functions

3007.502 Applicability.

While inherently governmental activities require the exercise of substantial discretion, not every exercise of discretion is evidence that an inherently governmental activity is involved. Rather, the use of discretion must have the effect of committing the Government to a course of action when two or more alternative courses of action exist

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

- (a) Congressional legislative restrictions or authorizations.
- (b) The degree to which official discretion is or would be limited, i.e., whether the agency, private sector or public reimbursable provider's involvement is or would be so extensive that senior management ability to develop and consider options other than those provided by the provider is inappropriately restricted.
- (c) In claims or entitlement adjudication and related services: (i) the finality of any agency, private sector or public reimbursable's action affecting individual claimants or applicants, and whether or not review of the providers action is de novo (i.e., to be effected without the appellate body's being bound by prior legal rulings or factual determinations) on appeal of the decision to an agency official; (ii) the degree to which agency, private sector or public reimbursable activities may involve wide-ranging interpretations of complex, ambiguous case law and other legal authorities, as opposed to being circumscribed by detailed laws, regulations, and procedures; (iii) the degree to which matters for decision by agency, private sector or public reimbursable providers involve recurring fact patterns or unique fact patterns; and (iv) the discretion to determine an appropriate award or penalty.
- (d) The agency, private sector or public reimbursable provider's authority to take action that will significantly and directly affect the life, liberty, or property of individual members of the public, including the likelihood of the provider's need to resort to force in support of a police or judicial function; whether force, especially deadly force, is more likely to be initiated by the provider or by some other person; and the degree to which force may have to be exercised in public or relatively uncontrolled areas. (Note: contracting for guard, convoy security, and plant protection services, armed or unarmed, is not proscribed by these policies.)
- (e) The availability of special agency authorities and the appropriateness of their application to the situation at hand, such as the power to deputize private persons.
- (f) Whether the commercial activity in question is already being performed by private persons, and the circumstances under which it is being performed by them.

3007.503 Policy.

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

CHAPTER 3008 REQUIRED SOURCES OF SUPPLIES AND SERVICES

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

Subchapter 3008.000 Scope of part.

3008.002 Priorities for use of Government supply sources.

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

Subchapter 3008.4 Federal Supply Schedules

3008.405 Ordering procedures for supplies and services.

3008.405-6 Limited sources justification and approval.

(a)(2) When an order for a Federal Supply Schedule (FSS) contains brand name specifications, ordering activities and ordering officials shall coordinate the written justification or documentation with the ordering activity contracting officer for further processing and approval as designed in subparagraph (h) of this subchapter. The ordering activity contracting officer for the action shall ensure the request for quotation (RFQ) is posted with the approved brand name justification or documentation in “e-Buy” as required by [FAR Parts 8.402\(d\) and 8.405-6](#).

(e)(3) 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.

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

Subchapter 3008.8 Acquisition of Printing and Related Supplies

3008.802 Policy.

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

3008.870 Acquisition of DHS employee business cards.

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

Subchapter 3008.11 Leasing of Motor Vehicles

3008.1102 Presolicitation requirements.

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

Subpart 3008.90 Purchase of Motor Vehicles.

3008.9000 General.

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

CHAPTER 3009 CONTRACTOR QUALIFICATIONS

Subchapter 3009.1 Responsible Prospective Contractors

- 3009.104 Standards.
- 3009.104-5 Certification regarding responsibility matters.
- 3009.105 Procedures.
- 3009.105-2 Determinations and documentation.

Subchapter 3009.2 Qualification Requirements

- 3009.202 Policy.
- 3009.204 Responsibilities for establishment of a qualification requirement.
- 3009.206 Acquisitions subject to qualification requirement.
- 3009.206-1 General.

Subchapter 3009.3 First Article Testing and Approval

- 3009.302 General.

Subchapter 3009.4 Debarment, Suspension, and Ineligibility

- 3009.402 Policy.
- 3009.403 Definitions.
- 3009.404 List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
- 3009.405 Effect of listing.
- 3009.405-1 Continuation of current contracts.
- 3009.405-2 Restrictions on subcontracting.
- 3009.406 Debarment.
- 3009.406-1 General.
- 3009.406-3 Procedures.
- 3009.407 Suspension.
- 3009.407-1 General.
- 3009.407-3 Procedures.

Subchapter 3009.5 Organizational and Consultant Conflicts of Interest

- 3009.501 Definitions.
- 3009.503 Waiver.
- 3009.570 Limitations on Lead System Integrators.
- 3009.570-1 Policy.
- 3009.570-2 Procedures.

Subchapter 3009.1 Responsible Prospective Contractors

3009.104 Standards.

3009.104-5 Certification regarding responsibility matters.

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

3009.105 Procedures.

3009.105-2 Determinations and documentation.

(a) The contracting officer shall submit a copy (see DHS Form 700-12, block 7) of a determination of nonresponsibility to the appropriate debarring and suspending official listed at HSAM 3009.403 when the determination is based in whole or in part on the prospective contractor's:

- (1) Lack of a satisfactory performance record under DHS contracts,
- (2) Lack of a satisfactory record of integrity and business ethics, or
- (3) Inability to qualify or ineligibility under applicable laws and regulations.

(c) DHS Form 700-12, Determination of Contractor Responsibility, shall be used to make the determination and document that a contractor is/is not responsible before the award of any contract (e.g., contracts awarded using sealed bidding or negotiations, contracts for construction or A&E services, etc.) except for contract actions using simplified acquisition procedures. For actions using simplified acquisition procedures, use of this form is required when documenting the determination that a firm is not responsible. A responsibility determination is not required when placing orders under indefinite delivery contracts, including orders placed under the GSA Federal Supply Schedule.

Subchapter 3009.2 Qualification Requirements

3009.202 Policy.

(a)(1) The HCA is delegated the authority at [FAR 9.202](#). The cognizant technical office shall prepare and submit a written justification to the contracting officer, who shall coordinate the justification through the Component competition advocate for HCA approval.

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

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

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

3009.204 Responsibilities for establishment of a qualification requirement.

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

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

3009.206 Acquisitions subject to qualification requirements.

3009.206-1 General.

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

Subchapter 3009.3 First Article Testing and Approval

3009.302 General.

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

Subchapter 3009.4 Debarment, Suspension, and Ineligibility

3009.402 Policy.

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

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

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

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

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

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

3009.403 Definitions.

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

"Suspending official" means—

(b) The HCA. The authority of the HCA for suspensions may not be redelegated.

"Unfair trade practices" means—

(3) The HCA is authorized to make the determination at [FAR 9.403\(3\)](#).

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

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

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

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

3009.405 Effect of listing.

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

3009.405-1 Continuation of current contracts.

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

3009.405-2 Restrictions on subcontracting.

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

3009.406 Debarment.

3009.406-1 General.

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

3009.406-3 Procedures.

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

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

the report;

(2) Name and address of the contractor;

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

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

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

(i) The contract number;

(ii) All office identifying numbers or symbols;

(iii) Description of supplies or services;

(iv) The amount;

(v) The percentage of completion;

(vi) The amount paid to the contractor;

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

(viii) The amount due to the contractor; and

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

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

(i) The contractor number(s);

(ii) The amount(s);

(iii) The amounts paid to the contractor;

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

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

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

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

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

(i) Whether to suspend or debar the contractor;

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

(iii) The period of any recommended debarment; and

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

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

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

(ii) Witness statements or affidavits;

(iii) Copies of investigative reports;

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

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

(vi) Any other appropriate exhibits or documents.

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

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

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

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

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

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

- (1) Input data on the decision at www.epls.gov ;
- (2) Chief Procurement Officer (CPO); and
- (3) Component legal counsel.

3009.407 Suspension.

3009.407-1 General.

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

3009.407-3 Procedures.

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

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

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

(d) *Suspending official's decision.*

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

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

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

(ii) CPO; and

(iii) Component legal counsel.

Subchapter 3009.5 Organizational and Consultant Conflicts of Interest

3009.501 Definitions.

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

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

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

(3) “Lead system integrator without system responsibility” means a prime contractor under a contract for the procurement of services, the primary purpose of which is to perform acquisition functions closely associated with inherently governmental functions (see [FAR 7.503\(d\)](#)) with respect to the development or production of a major system.

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

3009.503 Waiver.

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

3009.570 Limitations on Lead System Integrators.**3009.570-1 Policy.**

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

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

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

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

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

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

3009.570-2 Procedures.

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

(b) The offeror may be considered eligible for award of a contractor if it has no direct

financial interest in development or construction of an individual system or element of systems.

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

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

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

CHAPTER 3010 MARKET RESEARCH

Subchapter 3010.001 Policy

3010.001 Policy.

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

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

CHAPTER	3011	DESCRIBING AGENCY NEEDS
Subchapter	3011.1	Selecting and developing requirement documents
	3011.105	Items peculiar to one manufacturer.
Subchapter	3011.2	Using and Maintaining Requirements
	3011.202	Maintenance of standardization documents.
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Subchapter 3011.1 Selecting and developing requirement documents.

3011.105 Items peculiar to one manufacturer.

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

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

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

Subchapter 3011.2 Using and Maintaining Requirements Documents

3011.202 Maintenance of standardization documents.

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

Subchapter 3011.6 Priorities and Allocations

3011.602 General.

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

CHAPTER	3012	ACQUISITION OF COMMERCIAL ITEMS
Subchapter	3012.1	Acquisition of Commercial Items-General
	3012.102	Applicability.
Subchapter	3012.3	Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items
	3012.301	Solicitation provisions and contract clauses for the acquisition of commercial items.
	3012.302	Tailoring of provisions and clauses for the acquisition of commercial items.

Subchapter 3012.1 Acquisition of Commercial Items-General

3012.102 Applicability.

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

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

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

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

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

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

CHAPTER	3013	SIMPLIFIED ACQUISITION PROCEDURES
Subchapter	3013.1	Procedures
	3013.101	General.
	3013.106	Soliciting competition, evaluation of quotations or offerors, award, and documentation.
	3013.106-1	Soliciting competition.
Subchapter	3013.2	Actions At or Below the Micro-Purchase Threshold
	3013.201	General.
Subchapter	3013.3	Simplified Acquisition Methods
	3013.301	Governmentwide commercial purchase card.
	3013.301-70	Acquisitions involving strategically sourced commodities.
	3013.302	Purchase orders.
	3013.302-3	Obtaining contractor acceptance and modifying purchase orders.
	3013.303	Blanket purchase agreements (BPAs).
	3013.303-3	Preparation of BPAs.
	3013.303-370	Modification of a BPA.
	3013.303-6	Review procedures.
	3013.303-670	Review responsibility.
	3013.305	Imprest funds and third party drafts.
	3013.305-2	Agency responsibilities.
	3013.305-3	Conditions for use.
	3013.306	SF44, Purchase Order--Invoice--Voucher.
Subchapter	3013.5	Test Program for Certain Commercial Items
	3013.501	Special documentation requirements.

Subchapter 3013.1 Procedures

3013.101 General.

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

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

3013.106-1 Soliciting competition.

(b) The requirements official for the proposed acquisition shall prepare the supporting documentation for soliciting from a single source. The ordering activity contracting

officer for the action is the approval official for proposed actions exceeding \$25,000 up to the simplified acquisition threshold.

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

Subchapter 3013.2 Actions At or Below the Micro-Purchase Threshold

3013.201 General.

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

Subchapter 3013.3 Simplified Acquisition Methods

3013.301 Government-wide commercial purchase card.

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

3013.301-70 Acquisitions involving strategically sourced commodities.

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

3013.302 Purchase orders.

3013.302-3 Obtaining contractor acceptance and modifying purchase orders.

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

3013.303 Blanket purchase agreements (BPAs).

3013.303-3 Preparation of BPAs.

3013.303-370 Modification of a BPA.

The SF 30 shall be used to modify a BPA.

3013.303-6 Review procedures.

3013.303-670 Review responsibility.

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

3013.305 Imprest funds and third party drafts.

3013.305-2 Agency responsibilities.

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

3013.305-3 Conditions for use.

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

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

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

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

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

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

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

Subchapter 3013.5 Test Program for Certain Commercial Items

3013.501 Special documentation requirements.

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

CHAPTER	3014	SEALED BIDDING
Subchapter	3014.1	Use of Sealed Bidding
	3014.101	Elements of sealed bidding.
	3014.101-70	Independent Government estimates.
Subchapter	3014.2	Solicitation of Bids
	3014.201	Preparation of invitations for bids.
	3014.201-7	Contract clauses.
	3014.202	General rules for solicitation of bids.
	3014.202-4	Bid samples.
	3014.202-5	Descriptive literature.
Subchapter	3014.4	Opening of Bids and Award of Contract
	3014.404	Rejection of bids.
	3014.404-1	Cancellation of invitations after opening.
	3014.407	Mistakes in bids.
	3014.407-3	Other mistakes disclosed before award.

Subchapter 3014.1 Use of Sealed Bidding

3014.101 Elements of sealed bidding.

3014.101-70 Independent Government Cost Estimates.

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

Subchapter 3014.2 Solicitation of Bids

3014.201 Preparation of invitation for bids.

3014.201-7 Contract clauses.

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

3014.202 General rules for solicitation of bids.

3014.202-4 Bid samples.

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

3014.202-5 Descriptive literature.

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

Subchapter 3014.4 Opening of Bids and Award of Contract**3014.404 Rejection of bids.****3014.404-1 Cancellation of invitations after opening.**

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

3014.407 Mistakes in bids.**3014.407-3 Other mistakes disclosed before award.**

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

CHAPTER	3015	CONTRACTING BY NEGOTIATION
Subchapter	3015.2	Solicitation and Receipt of Proposals and Information
	3015.204	Contract format.
	3015.207	Handling proposals and information.
	3015.209	Solicitation provisions and contract clauses.
Subchapter	3015.3	Source Selection
	3015.303	Responsibilities.
	3015.303-70	Responsibilities (Competitive Sourcing).
	3015.304	Evaluation factors and significant subfactors.
	3015.305	Proposal evaluation.
Subchapter	3015.4	Contract Pricing
	3015.400-70	Scope of subpart.
	3015.404	Proposal analysis.
	3015.404-2	Information to support proposal analysis.
	3015.404-4	Profit.
	3015.404-70	Independent Government estimate.
	3015.406	Documentation.
	3015.406-170	Pre negotiation objectives.
	3015.406-370	Documenting the negotiation.
	3015.404-70	Independent Government estimate.
	3015.407	Special cost or pricing areas.
	3015.407-4	Should-cost review.
Subchapter	3015.6	Unsolicited Proposals
	3015.606-70	Agency procedures.

Subchapter 3015.2 Solicitation and Receipt of Proposals and Information.

3015.204 Contract format.

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

3015.207 Handling proposals and information.

(a) Proposals and information received in response to a request for information shall be marked in accordance with HSAM 3003.104-4, as applicable.

3015.209 Solicitation provisions and contract clauses.

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

Subchapter 3015.3 Source Selection**3015.303 Responsibilities.**

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

3015.303-70 Responsibilities (Competitive Sourcing).

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

3015.304 Evaluation factors and significant subfactors.

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

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

3015.305 Proposal evaluation.

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

Subchapter 3015.4 Contract Pricing**3015.400-70 Scope of subpart.**

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

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

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

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

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

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

(ii) Audits of Compliance with Cost Accounting Standards- Audits of Cost Impact of

Cost Accounting Standards (changes in cost accounting practice and/or non-compliances); and

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

3015.404-4 Profit.

(b) *Policy.*

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

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

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

- (A) Architect-engineering contracts;
- (B) Management contracts for operation and/or maintenance of Government facilities;
- (C) Construction contracts;
- (D) Contracts primarily requiring delivery of material supplied by subcontractors;
- (E) Termination settlements;
- (F) Cost-plus-award-fee contracts; and
- (G) Contracts having unusual pricing situations.

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

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

3015.404-70 Independent Government Cost Estimate.

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

(b) The IGCE should reflect how the estimate was derived by delineating such costs as the major labor categories, materials, travel, consultant, computer usage, etc. Any

previous cost experience the Government has had in acquiring the same or similar items also should be provided with the IGCE.

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

- (1) Proposed awards using simplified acquisition procedures under [FAR Part 13](#);
- (2) Administrative modifications such as incremental funding;
- (3) Modifications to exercise fixed-priced options;
- (4) Modifications to resolve cost overruns under cost reimbursement contracts;
- (5) Proposed acquisitions for items that meet the commercial item definition in [FAR Part 2](#); and
- (6) When prices for the supplies or services are set by law or regulation.

3015.406 Documentation.

3015.406-170 Prenegotiation objectives.

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

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

3015.406-370 Documenting the negotiation.

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

3015.407 Special cost or pricing areas.

3015.407-4 Should-cost review.

(b) *Program should-cost review.*

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

(a) Results of the review, including proposed versus recommended hours, tasks, or issues. Discuss each cost element in terms of review method, finding, and proposed or

recommended cost. Do not accumulate the dollar value of individual recommendations into a recommended total price. Indicate team members available to support negotiations;

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

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

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

Subchapter 3015.6 Unsolicited Proposals

3015.606-70 Agency procedures.

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

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

Subchapter 3016.4 Incentive Contracts

3016.401 General.

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

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

(2) Award fee is earned for successful outcomes;

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

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

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

Subchapter 3016.5 Indefinite-Delivery Contracts

3016.501-2 General.

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

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

3016.504 Indefinite-quantity contracts.

(c)(1)(ii)(D)(1) All determinations for any single award task or delivery order contract exceeding \$100 million required under [FAR 16.504\(c\)\(1\)\(ii\)\(D\)\(1\)](#) shall be made by the DHS Chief Procurement Officer. A written determination is required whether the solicitation will be issued competitively or non-competitively. Components shall submit the determination for CPO approval to the Director, Oversight & Strategic Support Division via PROCUREMENT.Support@dhs.gov not later than 14 days *prior* to issuance of the solicitation. The determination must be signed by the Component HCA as “*Recommended for Chief Procurement Officer Approval*”. The determination should be accompanied by such background information as will allow evaluation of the proposed determination, including, without limitation, any related justification and approval for other than full and open competition or separate determination for advisory and assistance services under [FAR 16.504\(c\)\(2\)\(i\)\(A\)-\(C\)](#). Determinations shall be submitted in the format provided at Appendix M. All determinations submitted for CPO approval shall be accompanied by the approved acquisition plan.

(2) The notification to Congress required by [FAR 16.504\(c\)\(1\)\(ii\)\(D\)\(2\)](#) for single award task or delivery order contracts exceeding \$100 million awarded on the basis that it is in the public interest to award the contract to a single source due to exceptional circumstances shall be made by the DHS Chief Procurement Officer. The Component making the award shall provide a draft notice to the OCPO, Director, Oversight & Strategic Support Division via PROCUREMENT.Support@dhs.gov concurrent with submission of the draft CPO determination citing FAR 16.504(c)(1)(ii)(D)(1)(iv).

3016.505 Ordering.

(a) *General.*

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

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

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 technical representative (COTR) in writing and specify the duties to be performed for orders or contracts expected to exceed \$100,000. Appropriate use of sampling for review and monitoring of contractor performance is encouraged.

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

- (A) If the work performed is consistent and conforms with the Statement of Work;
- (B) The appropriateness of the categories of labor used;
- (C) The reasonableness of the number of hours worked, including any approved overtime,
- (D) The reasonableness of materials used; and
- (E) The hours worked against the hours billed for the invoice period.

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

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

3016.602 Labor-hour contracts.

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

3016.603 Letter contracts.

3016.603-2 Application.

(c) Chiefs of the Contracting Offices (COCOs) are authorized to approve a contracting officer's determination of a reasonable price or fee for a letter contract. Extensions to the

definitization of a letter contract must be approved by the COCO. See HSAM 3043.70 for other requirements applicable to letter contracts as undefinitized contract actions.

3016.603-3 Limitations.

COCOs are authorized to approve the use of a letter contract. Letter contracts must contain the appropriate sections of the uniform contract format as discussed [FAR 15.204-1](#) as practicable. Profit or fee under letter contracts must not be paid until after definitization of the letter contract (see HSAR 3052.216-74).

Requests for authority to issue a letter contract include as a minimum:

- (1) The name and address of the proposed contractor;
- (2) The location where the contract is to be performed;
- (3) The contract number, including modification number, if applicable;
- (4) A brief description of the work or services to be performed;
- (5) The amount of the letter contract;
- (6) The performance period or delivery schedule;
- (7) The estimated total amount of the definitive contract;
- (8) The type of definitive contract to be executed (firm-fixed-price, cost-plus-award-fee, etc.);
- (9) A statement that the definitive contract will contain all required clauses or that deviations to the required clauses have been obtained;
- (10) A statement as to the necessity and advantage to the Government of a letter contract and why no other contract type is suitable; and
- (11) A statement as to the competition received pursuant to [FAR 16.603-3\(b\)](#).

CHAPTER	3017	SPECIAL CONTRACTING METHODS
Subchapter	3017.1	Multi-Year Contracting
	3017.105	Policy.
	3017.105-1	Uses.
	3017.106	Procedures.
	3017.106-3	Special procedures applicable to DoD, NASA, and the Coast Guard.
	3017.108	Congressional notification.
Subchapter	3017.2	Options
	3017.204	Contracts.
Subchapter	3017.5	Interagency Acquisitions Under The Economy Act
	3017.500	Scope of subchapter.
	3017.501	Definition.
	3017.502	General.
	3017.503	Determination and findings requirements.

Subchapter 3017.1 Multi-Year Contracting

3017.105 Policy.

3017.105-1 Uses.

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

3017.106 Procedures.

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

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

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

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

3017.108 Congressional notification.

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

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

Subchapter 3017.2 Options

3017.204 Contracts.

(e) Except for task or delivery order contracts awarded by the USCG, DHS COCOs may approve, without redelegation, total contract periods exceeding five years.

Documentation shall include rationale describing circumstances that warrant a period longer than five years and how price risks normally associated with a long performance period are being mitigated.

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

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

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

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

(2) Paragraph (e)(1) of this section—

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

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

(iii) Does not apply to the following:

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

(B) Definite-quantity contracts.

(C) GSA schedule contracts.

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

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

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

Subchapter 3017.5 Interagency Acquisitions Under The Economy Act

3017.500 Scope of subchapter.

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

3017.501 Definition.

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

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

“Assisted acquisition” means interagency acquisitions for which a requesting agency, at its discretion, has determined that it is in the best interest of the Government to seek the acquisition services of a servicing agency in the procurement of supplies or services from the private sector and where the servicing agency awards a contract or order on behalf of the requesting agency.

3017.502 General.

(a) **Policy.** Before transferring funds, pursuant to Economy Act authority, in an inter/intra-agency agreement (IA), the Component shall assure that the IA complies with the requirements in DHS [Directive 125-02](#), “Interagency Agreements”; DHS Instruction 125-02, “Instruction Guide on Interagency Agreements”; and, the Office of Federal Procurement Policy’s “Guide on Interagency Acquisitions.” Review and approvals shall be in accordance with HSAM subchapter 3004.70. Announcement and notification requirements in accordance with HSAM 3005.303 apply to IAs. The inter/intra-agency agreement shall include the announcement/requirements among the terms and conditions of the agreement.

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

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

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

Small Business Act.

3017.503 Determinations and findings requirements.

The determination shall be prepared in the format as shown in DHS Instruction 125-02, *“Instruction Guide on Interagency Agreements.”*

(c) The Head of the Contracting Activity (HCA) is delegated the authority to designate other authorized officials to approve Determinations and Findings (D&Fs); however, only DHS contracting officers may approve D&Fs in support of assisted acquisitions.

CHAPTER 3018 EMERGENCY ACQUISITIONS**Subchapter 3018.1 Available Acquisition Flexibilities**

3018.108 Priorities and allocations.

Subchapter 3018.2 Emergency Acquisition Flexibilities

3018.203 Emergency declaration major disaster declaration.

Subchapter 3018.1 Available Acquisition Flexibilities**3018.108 Priorities and allocations.**

DHS Components should use the Defense Priorities and Allocation System (DPAS) procedures for assignment of ratings as appropriate. (See HSAR Part 3011.602 and HSAM Chapter 3011.602.)

Subchapter 3018.2 Emergency Acquisition Flexibilities**3018.203 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.	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.
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Subchapter	3019.6	Certificates of Competency and Determinations of Responsibility
	3019.602	Procedures.
	3019.602-1	Referral.
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	3019.704	Subcontracting plan requirements.
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	3019.705	Responsibilities of the contracting officer under the subcontracting assistance program.
	3019.705-2	Determining the need for a subcontracting plan.
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Subchapter	3019.8	Contracting with the Small Business Administration (The 8(a) Program)
	3019.800	General.
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	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.

(d)(7) and (8) The Head of the Contracting Activity (HCA) is delegated the authority of the Director Office of Small and Disadvantaged Business Utilization (OSDBU) to assign a small business technical advisor (i.e., small business specialist) to each contracting activity within the agency to which the Small Business Administration (SBA) has assigned an SBA procurement center representative. A copy of the written assignment to the advisor must be provided to the Director, OSDBU.

(d)(9) The cognizant Component small business specialist acting on behalf of the OSDBU must review each procurement request to comply with the requirements of [FAR 19](#).

(e) The HCA must appoint small business specialists in accordance with HSAM 3019.201(d)(7). The specialist must:

- (1) Ensure that all small businesses are given an equal opportunity to compete for DHS acquisitions;
- (2) Assist contracting officers in locating small businesses to participate in DHS acquisitions;
- (3) Assist the Director, OSDBU in carrying out the purpose of the Small Business Act, particularly Sections 8 and 15;
- (4) Cooperate with the SBA representatives in carrying out their assignments and responsibilities as related to DHS acquisitions;
- (5) Seek alternatives to the practice of contract bundling and help mitigate the effects of any necessary and justified contract bundling;
- (6) Participate in the evaluation of prime contractor's small business subcontracting programs;
- (7) Assure that records are maintained and accurate reports prepared concerning small business participation in acquisition programs;
- (8) Act as liaison with appropriate SBA office or representative on connection with set-asides, certificates of competency, size classification, and any other matter concerning the small business programs; and
- (9) Participate in business opportunity, Federal procurement and other Government-industry conferences and meetings as required.

(f)(1) The Director, OSDBU, is the agency designee responsible for making the determination that there is an undue burden on non-Small Disadvantaged Business (SDB)

firms in one of the major industry groups and regions identified by the Department of Commerce. The HCA must notify the OSDBU when it is believed or if it receives public notification of undue burden on the information required by [FAR 19.201\(f\)\(1\)\(i\) through \(iv\)](#). The HCA or designee is encouraged to discuss specific situations of burden with OSDBU prior to submitting a formal notice to the OSDBU.

3019.202 Specific policies.

3019.202-270 Procurement forecast.

(b) Purpose. The purpose of the procurement forecast is to make available to small businesses, those expected contract opportunities that small business concerns, including those owned and controlled by socially and economically disadvantaged individuals, are capable of performing. The forecast is a summary of the advanced acquisition planning process conducted in each Component. The following requirements apply:

(1) Responsibility. The HCA or designee (written delegation required) must ensure the forecast and any updates to it are prepared for those expected contract opportunities valued over \$100,000 which are proposed to result in contracts issued by DHS contracting officers. The forecast data collection and the Advance Acquisition Plan (AAP) are combined and captured in an electronic data system available under <http://www.fido.gov/dhs/aap/> (See HSAM Subchapter 3007.172).

(2) Preparation and approval. The forecast (combined with the AAP) must be completed the year prior to the fiscal year in which the procurement action will be initiated. In addition, the forecast should be updated throughout the fiscal year, as needed. As a minimum, the forecast shall be reviewed and updated semi-annually.

(c) Reporting. DHS OCPO will provide the initial forecast and any updates to it to the Administrator of the SBA and to small businesses as required by Public Law 100-656.

Subchapter 3019.202-271 DHS Small Business Review Form.

(a) Purpose. The DHS Form 700-22, Small Business Review, documents efforts to ensure small business concerns are considered for inclusion in Federal Government acquisitions and that market research is conducted for each open market procurement.

(b) Requirement. In accordance with [FAR 19.202](#), Specific Policies, Components shall use the DHS Form 700-22 to comply with the small business review requirements and to document considerations and recommendations for applicable acquisitions prior to synopsis or solicitation release. This requirement is exclusive of EMALL use. The form shall be used as follows and dollar values include both base and option periods:

(1) Review for small business considerations in all open market actions of \$100,000 or more (see [FAR Part 19](#)) and;

(2) Review for substantial bundling for all procurements of \$2,000,000 or more planned

under open market procurement as well as for pre-existing contract vehicles (e.g., Multiple Award Schedules (MAS), including GSA Federal Supply Schedules (FSS) delivery and task orders, Multi-Agency Contracts (MACs), Governmentwide Acquisition Contract (GWACs), DHS-wide contracts, multiple award contracts, and Blanket Purchase Agreements (BPAs). (See [FAR 7.104\(d\)](#), [FAR 7.107](#) and [FAR 19.202-1](#), and HSAM 3007.107 for bundling considerations and approval requirements.)

(c) Preparation and Approval. The small business specialist (SBS) and the SBA Procurement Center Representative (PCR) respectively shall complete the review process within 2 business days. The completed DHS Form 700-22, Small Business Review, shall be placed in the solicitation file.

Subchapter 3019.5 Set-Asides for Small Business

3019.501 General.

(c) Each DHS proposed acquisition exceeding the simplified acquisition threshold must be reviewed by the cognizant Component small business specialist prior to synopsizing the requirement and the results documented in the file. The requirement must be reviewed for potential inclusion in the socio-economic programs. The Chief of the Contracting Office (COCO) must resolve any disagreement between the specialist and the contracting officer on the determination. Disagreement between the contracting officer and personnel from the Small Business Administration will be resolved in accordance with [FAR 19](#). The COCO must furnish a copy of the determination to the OSD BU.

3019.502 Setting aside acquisitions.

3019.502-3 Partial set-asides.

(a)(5) The COCO is authorized to make the determination.

3019.505 Rejecting Small Business Administration recommendations.

(b) and (d) The COCO is delegated the authority to make the decision and forward the justification for its decision to the agency head.

3019.506 Withdrawing or modifying small business set-asides.

(b) The COCO is responsible for resolution of disagreements between the contracting officer and the Component small business specialist, in coordination with the OSD BU.

Subchapter 3019.6 Certificates of Competency and Determinations of Responsibility

3019.602 Procedures.**3019.602-1 Referral.**

(a)(2) The contracting officer shall forward to the OSDBU, a copy of the notice of nonresponsibility determination sent to SBA.

3019.602-3 Resolving differences between the agency and the Small Business Administration.

When following the procedures under [FAR 19.602-3](#), the contracting officer shall coordinate through the HCA and the OSDBU prior to SBA taking a final action on a Certificate of Competency.

The designated official is the COCO. The COCO shall provide copies of all SBA correspondence to the OSDBU.

Subchapter 3019.7 The Small Business Subcontracting Program**3019.704 Subcontracting plan requirements.****3019.704-70 Reporting requirements.**

Any contractor that meets the statutory requirements at [FAR 19.702](#) shall submit subcontracting accomplishments on the Individual Subcontract Report (ISR) and the Summary Subcontract Report (SSR) by using the web-based Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>.

3019.705 Responsibilities of the contracting officer under the subcontracting assistance program.**3019.705-2 Determining the need for a subcontracting plan.**

A copy of the determination that there are no subcontracting opportunities (see [FAR 19.705-2\(c\)](#)) shall be provided to the Director, OSDBU.

3019.705-470 Reviewing the subcontracting plan.

The individuals responsible for the subcontracting plan review process include the contracting officer (CO), the Component small business specialist (SBS), and the SBA's Procurement Center Representative (PCR). The approval authority for the subcontracting plan is the contracting officer, with the SBS and the SBA PCR providing support in advisory and assistance roles in accordance with [FAR 19.705-4\(d\)\(7\)](#).

(a) The checklist for documenting the review process, Subcontracting Plan Review Checklist, DHS Form 700-23, is mandatory for all DHS Subcontracting Plan reviews.

The SBS assists with the overall review of the contractor's plan by initiating the checklist process, records the plan information in the DHS Subcontracting Plan Review Checklist, DHS Form 700-23 and obtains the PCR's advice or recommendations. The contracting officer approves the subcontracting plan if the contractor has satisfactorily addressed the 11 elements of [FAR 19.704](#) and the subcontracting plan demonstrates a good faith effort in utilizing small businesses as subcontractors. After all signatures have been documented, the form shall be placed in the contract file.

(b) The SBS and SBA PCR review process and recommendations for the subcontracting plan should be completed within 3 working days of receipt of the plan from the contracting officer. The Government's objective is to approve or negotiate subcontracting plans that demonstrate the prime contractor's best efforts to subcontract with small business (SB), HUBZone small business (HUBZone), small disadvantaged business (SDB), women-owned small business (WOSB), veteran-owned small business (VOSB), and service disabled veteran-owned small business (SDVOSB) to the maximum extent practicable.

3019.705-6 Postaward responsibilities of the contracting officer.

A copy of the approved small business subcontracting plan shall be provided to the Director, OSDDBU.

Subchapter 3019.8 Contracting with the Small Business Administration (The 8(A) Program)

3019.800 General.

(b) The current DHS and the SBA Partnership Agreement (PA) is effective through September 30, 2012 and applies to all new DHS acquisitions under the 8(a) Program. The PA amends and in some cases, supersedes certain requirements in FAR 19.8. The PA delegates to DHS HCAs the authority to contract directly with firms under the SBA 8(a) Program, on behalf of the SBA. The HCA may redelegate this authority to Component contracting officers, who must be designated as the "agency contracting officer." The current DHS and SBA PA is Appendix X of this Manual.

3019.804 Evaluation, offering, and acceptance.

3019.804-3 SBA acceptance.

(d)(2) The HCA is delegated this authority.

3019.804-470 Repetitive acquisitions.

Any requirement which has previously been procured through the 8(a) Program, but which is now being proposed for repurchase outside of the 8(a) Program shall be

approved by the Director, OSDDBU, in accordance with Component procedures. The clearance shall be obtained prior to any public notice or solicitation of the requirement.

3019.810 SBA appeals.

The HCA is delegated this authority.

3019.811 Preparing the contracts.

3019.811-1 Sole source.

(a) The contract to be awarded shall be prepared in accordance with the PA according to HSAM 3019.800(b).

3019.812 Contract administration.

(d) The COCO is delegated this authority.

**CHAPTER 3020
(RESERVED)**

**CHAPTER 3021
(RESERVED)**

There is no text implementing or supplementing [FAR Parts 20 and 21](#).

CHAPTER	3022	APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS
Subchapter	3022	Scope
	3022.001	Definition.
Subchapter	3022.1	Basic Labor Policies
	3022.101	Labor relations.
	3022.101-1	General.
	3022.101-170	DHS Procurement Labor Advisor.
	3022.101-3	Reporting labor disputes.
	3022.101-4	Removal of items from contractor's facilities affected by work stoppages.
	3022.103	Overtime.
	3022.103-4	Approvals.
Subchapter	3022.3	Contract Work Hour and Safety Standards Act
	3022.202	Liquidated damages and overtime pay.
Subchapter	3022.4	Labor Standards for Contracts Involving Construction
	3022.404	Davis-Bacon Act wage determinations.
	3022.404-1	Types of wage determinations.
	3022.404-6	Modifications of wage determinations.
	3022.404-10	Posting wage determinations and notice.
	3022.406	Administration and enforcement.
	3022.406-2	Wages, fringe benefits and overtime.
	3022.406-8	Investigations.
	3022.406-9	Withholding from or suspension of contract payments.
	3022.406-13	Semi-Annual enforcement reports.
Subchapter	3022.6	Walsh-Healy Public Contracts Act
	3022.604	Exemptions.
	3022.604-2	Regulatory exemptions.
	3022.608	Procedures.
Subchapter	3022.8	Equal Employment Opportunity
	3022.803	Responsibilities.
	3022.804	Affirmative action programs.
	3022.804-2	Construction.
	3022.8	Procedures.
	3022.807	Exemptions.
Subchapter	3022.10	Service Contract Act of 1965, as amended
	3022.1003	Applicability.

	3022.1003-4	Administrative limitations, variations, tolerances, and exemptions.
	3022.1003-7	Questions concerning applicability of the Act.
	3022.1008	Procedures for obtaining wage determinations.
	3022.1008-1	Obtaining wage determinations.
	3022.1008-2	Section 4(c) successorship with incumbent contractor collective bargaining agreement.
	3022.1013	Review of wage determination.
	3022.1021	Request for hearing.
	3022.1021-70	Additional hearings data.
	3022.1022	Withholding of contract payments.
Subchapter	3022.13	Special Disabled Veterans, Veterans of the Vietnam Era, and Other Eligible Veterans
	3022.1305	Waivers.
	3022.1308	Compliant procedures.
	3022.1310	Solicitation provision and contract clauses.
Subchapter	3022.14	Employment of Workers with Disabilities
	3022.1403	Waivers.
	3022.1406	Compliant procedures.
	3022.1408	Contract 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	3022.90	Local Hire (USCG)
	3022.9000	Policy (USCG).

Subchapter 3022.0 Scope

3022.001 Definition.

For the purpose of DHS, the term "contracting agency," wherever it appears under [FAR Part 22](#), means the Component.

Subchapter 3022.1 Basic Labor Policies

3022.101 Labor relations.

3022.101-1 General.

(e) The Head of the Contracting Activity (HCA) authority under [FAR 22.101-1\(e\)](#) is not redelegable.

3022.101-170 DHS Procurement Labor Advisor.

(a) The Procurement Labor Advisor for DHS is a member of the Acquisition Policy and Legislation Branch, Policy and Acquisition Workforce Division, Office of the Chief Procurement Officer.

(b) Each Component may appoint a labor advisor at the Headquarters level. If one is appointed, the Components shall advise, in writing, the contracting offices under their cognizance of the appointment. The labor advisor is responsible for coordinating and obtaining advice from the DHS Procurement Labor Advisor on contracting matters when deemed appropriate or as may be required by this chapter.

3022.101-3 Reporting labor disputes.

(a) Contracting officers shall report to their labor advisor or the DHS Procurement Labor Advisor if a Component labor advisor does not exist, any potential or actual labor disputes (e.g., strike) that may have a serious impact on the Department's programs. The following information shall be provided to the advisor:

- (1) The contractor's and, if applicable, subcontractor's name, address, contract number, and the contractor's point of contact at the contractor's plant or the place where work is being performed (e.g., construction site);
- (2) The date the strike began or is expected to begin;
- (3) The urgency or critical nature of the affected contract, and whether another source can perform the contract;
- (4) Name, address, and telephone number of the local union and union representative(s);
- (5) An assessment of the strike with regard to settlement of the issues;
- (6) Number of employees affected by the strike; and
- (7) The extent, if any, of participation by a Federal or state mediation agency.

(b) The contracting officer shall advise, as applicable, the cognizant Component labor advisor or DHS Procurement Labor Advisor when the strike is terminated and the work has resumed under the contract.

3022.101-4 Removal of items from contractors' facilities affected by work stoppages.

(a) If the decision is made to remove items or materials from the contractor's/subcontractor's facility, the contracting officer shall follow the below procedures:

(1) Contact the Component's labor advisor or DHS Procurement Labor Advisor and apprise that person of the decision;

(2) Obtain a list of the contracts the contractor has with other Government agencies or DHS Components. If contracts of the agency or Component are or may become involved in the removal of items, advise the applicable contracting office of the decision to remove items and ensure proper coordination of actions; and

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

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

(ii) A full description (i.e., color, weight, dimensions, etc.), quantity, contract/subcontract number, contract line item number, etc.; and

(iii) A decision on whether personnel of the Government or contractor/subcontractors will remove the items from the location, and the mode of transportation and destination, if the delivery terms will not be the same as those in the contract.

(b) If the contractor or subcontractor and union representative grant the request for removal of items and Government personnel will remove the items, extreme care shall be taken to avoid the use or appearance of force and prevent incidents that might detrimentally affect labor-management relations.

(c) If a negative response is received from the contractor, subcontractor, or union representative and the items are still critical, the contracting officer shall seek advice from the Chief of the Contracting Office (COCO) and the DHS Labor Advisor/Coordinator on the next action to be taken. It may also become necessary to seek advice or assistance from the National Office of the Federal Mediation and Conciliation Service, 2100 K Street, N.W., Washington, DC, 20006, or other mediation agency.

3022.103 Overtime.

3022.103-4 Approvals.

(a) An official at one level above the contracting officer is designated to sign the D&F required by [FAR 22.103-4](#). The D&F shall be written, in the format of Appendix N, and placed in the contract file.

(b) Approval of the use and total dollar amount of overtime must be obtained from the Contracting agency approving official designated in (HSAM) 3022.103-4 (a) above prior to including an amount in paragraph (a) of the clause at [FAR 52.222-2](#), Payment for Overtime Premiums.

(f) If, during contract performance, the contracting officer receives a contractor request for overtime exceeding the amount indicated in paragraph (a) of the clause at FAR [52.222-2](#), and determines that the requested overtime should be approved in whole or in part, the contracting officer shall obtain approval from the designated Contracting agency approving official prior to modifying paragraph (a) to include the revised overtime amount.

Subchapter 3022.3 Contract Work Hours and Safety Standards Act

3022.302 Liquidated damages and overtime pay.

(c) The contracting officer is delegated authorities under [FAR 22.302\(c\)\(1\) and \(2\)](#). The contracting officer's recommendation in [FAR 22.302\(c\)\(3\)](#) shall be transmitted to the Secretary of Labor by the HCA.

(d) The contracting officer shall provide instructions to the cognizant finance office. The contractor shall be provided with a written decision on the disposition of funds withheld and the basis for the decision.

Subchapter 3022.4 Labor Standards for Contracts Involving Construction

3022.404 Davis-Bacon Act wage determinations.

3022.404-1 Types of wage determinations.

(a)(2) Wage determinations are available via the Internet at www.wdol.gov.

3022.404-6 Modifications of wage determinations.

(b)(6) The contracting officer is delegated this authority.

3022.404-10 Posting wage determinations and notice.

The contracting officer shall mail a copy of Department of Labor (DOL) Publication WH-1321 along with the executed copy of the contract to the contractor. Copies of the poster may be obtained by writing to the Department of Labor, 200 Constitution Avenue, N.W., Washington, DC, 20210, Attn: Wage and Hour-ESA Forms and Publications, Room S-3028. The poster is also available via the Internet at <http://www.dol.gov/esa/whd/contracts/dbra.htm> (Click on "Davis-Bacon Poster (Government Construction)") or by calling 1-866-4-USA-DOL.

3022.406 Administration and enforcement.**3022.406-2 Wages, fringe benefits, and overtime.**

(b)(2) The contracting officer shall submit the information required by [FAR 22.406-2\(b\)\(2\)](#) to the Administrator, Wage and Hour Division, U.S. Department of Labor, Employment Standards Administration, Washington, DC 20210. The contracting officer shall advise interested parties of DOL's determination within 10 working days after receipt of the determination.

3022.406-8 Investigations.

(d) *Contracting officer's report.* The COCO is authorized to receive from the contracting officer the report of violations regarding labor standards. The contracting officer may use DHS Form 700-19, Summary of Underpayments or a form substantially similar if authorized according to Component procedures, to support the total number of employees cited on SF 1446, Labor Standards Investigation Summary Sheet.

(2)(iv) The report to the Attorney General of the United States shall be coordinated with, and forwarded to the Department of Justice by the DHS Office of the General Counsel.

3022.406-9 Withholding from or suspension of contract payments.

(c) *Disposition of contract payments withheld or suspended.*

(4) *Liquidated damages.* The contracting officer shall provide instructions to the cognizant finance office. The contractor shall be provided with a written decision on the disposition of funds withheld and the basis for the decision.

3022.406-13 Semiannual enforcement reports.

Each Component shall submit the semiannual report by April 25 and October 25 of each calendar year to DOL by email at Helm.Timothy@dol.gov and Dixon.Crystal@dol.gov. The format and instructions for the semiannual report are provided at Appendix O. Negative reports are required to be submitted.

Subchapter 3022.6 Walsh-Healey Public Contracts Act**3022.604 Exemptions.****3022.604-2 Regulatory exemptions.**

(b)(1) The HCA is authorized to request the Secretary of Labor to exempt a specific contract.

3022.608 Procedures.

(a) *Award.* The contracting officer shall mail a copy of DOL Publication WH-1313 along with the executed copy of the contract to the contractor. Copies of the poster may be obtained by writing to the Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210, ATTN: Wage and Hour-ESA Forms and Publications, Room S-3028. The poster is also available via the Internet at <http://www.dol.gov/esa/whd/contracts/pca.htm> (under “Workplace Posters” click on “Service Contract Act/Walsh-Healy Public Contracts Act”) or by calling 1-866-4-USA-DOL.

(b) *Breach of stipulation.* Unless otherwise specified by Component procedures, the contracting officer shall submit written notice of any violations to the applicable DOL region.

Subchapter 3022.8 Equal Employment Opportunity**3022.803 Responsibilities.**

(d) The contracting officer shall obtain the assistance of the Component's legal counsel on matters concerning the applicability of [E.O. 11246](#). If further assistance is required, the matter shall be referred to the nearest [DOL Office of Federal Contracts Compliance Programs \(OFCCP\)](#). (The OFCCP Nationwide Office Directory is accessible via the Internet at: <http://www.dol.gov/esa/ofccp/contacts/ofnation2.htm>.) Questions concerning the implementation of the E.O. in the FAR or DHS guidance shall be referred to the Chief Procurement Officer (CPO).

3022.804 Affirmative action programs.**3022.804-2 Construction.**

(b) The Office of Federal Contract Compliance Program (OFCCP), DOL publishes in the Federal Register goals and timetables for minority and female utilization in the construction industry. This information is listed at <http://www.dol-esa.gov/preaward/>.

3022.805 Procedures.

(a) *Preaward clearances for contracts and subcontracts of \$10 million or more (excluding construction).*

(1) Contracting officers may conduct an initial search of a contractor's compliance records via the Internet at: <http://www.dol-esa.gov/preaward/>.

(6) The contracting officer shall prepare a letter request in substantially the same format as Appendix C, in strict accordance with the instructions, to prevent premature disclosure of the proposed contractor, subcontractor, if any, and the amount of the award. Because

the OFCCP conducts the compliance review at the primary point of production of each contractor and first-tier subcontractor, contracting officers shall request the clearance from the [OFCCP regional office](http://www.dol.gov/esa/ofccp/regional/offices/) which has jurisdiction over the contractor and subcontractor. (A listing of OFCCP regional offices is accessible via the Internet at: <http://www.dol.gov/esa/ofccp/contacts/ofcpkeyp.htm>)

(7) The 15 and 20-day preaward clearance requirement timeframes under [FAR 22.805\(a\)\(7\)](#) shall be included in the acquisition cycle milestone planning.

(8) The HCA authority is not redelegable.

(b) *Furnishing posters.* The contracting officer may order the poster titled "Equal Employment Opportunity is the Law, Discrimination is Prohibited" via telephone by calling 1-866-4-USA-DOL. The poster is also available via the Internet at <http://www.dol.gov/esa/ofccp/regs/compliance/posters/ofccpost.htm>.

3022.807 Exemptions.

(a)(1) The HCA, without redelegation, is authorized to determine for a contract, that national security precludes compliance with all or part of the requirements of [E.O. 11246](#). A justification shall be in substantially the same format as Appendix N.

(c) The justification shall be in substantially the same format as Appendix N. All requests for exemptions shall be submitted via the HCA to the CPO for the Deputy Assistant Secretary's approval.

Subchapter 3022.10 Service Contract Act of 1965, as Amended

3022.1003 Applicability.

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

(a) The contracting officer shall submit requests for limitations, variations, tolerances, and exemptions under [FAR Subpart 22.10](#) to the Wage and Hour Administrator via the Component labor attorney.

3022.1003-7 Questions concerning applicability of the Act.

Contracting officers may request written or oral advice from the Component labor attorney. Any Component requests or questions to the Administrator, Wage and Hour Division shall be submitted in writing with a copy provided to the Director, Acquisition Policy and Legislation Branch, Strategic Initiatives, Office of the Chief Procurement Officer.

3022.1008 Procedures for obtaining wage determinations.

3022.1008-1 Obtaining wage determinations.

(f) Contracting officers should request advice from the Component labor advisor, or if unavailable, the DHS Procurement Labor Advisor.

3022.1008-2 Section 4(c) successorship with incumbent contractor collective bargaining agreement.

(d)(3) Contracting officer should request advice from the Component labor advisor, or if unavailable, the DHS Procurement Labor Advisor.

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

3022.1013 Review of wage determination.

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

3022.1021 Request for hearing.**3022.1021-70 Additional hearings data.**

(a) Contracting officers will forward requests for hearings to the Administrator, Wage and Hour Division, DOL, through their Component labor advisor or labor attorney, with a copy submitted to OCPO via the email address, PROCUREMENT.Support@dhs.gov. In addition to the requirements of [FAR 22.1021\(a\)](#), the request for a variance hearing shall include copies of the relevant wage determination, if issued, collective bargaining agreement, and the e98 that requested the wage determination in question. The statement shall contain an analysis concerning the differences between the collectively bargained rates issued and the rates contained in the following:

- (1) Corresponding Federal wage board rates and surveys (while it is not necessary that the challenged rate be higher than the corresponding Federal rate, this is an important factor);
- (2) Relevant Bureau of Labor Statistics survey data and the comparable Service Contract Act wage determination;
- (3) Other wage data (e.g., rates paid in local hospitals would be appropriate for comparison on contracts for hospital antiseptic services, while rates paid in local schools could be of value in comparison for janitorial or food service workers); and
- (4) Other collectively-bargained wages and benefits.

(b) If the Contracting officer cannot provide all of the information required in paragraph

(a) above with the request for a hearing, the approximate time needed to obtain the data or to develop the information shall be provided. The request shall clearly demonstrate the efforts being made to obtain or develop the information. A statement that data are not available will not be accepted by DOL.

(d) Unless the Administrator, Wage and Hour Division determines that extraordinary circumstances exist, requests for hearings that are not submitted within the timeframes referenced in [FAR 22.1021\(d\)\(1\) and \(2\)](#) will not receive consideration by DOL.

3022.1022 Withholding of contract payments.

Contracting officers will coordinate with the cognizant finance office regarding placement of any withheld funds in an agency-established deposit fund, and, upon order from appropriate parties (see [FAR 22.10](#)), their transfer to DOL for disbursement.

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

3022.1305 Waivers.

(a)(1) For a request for exemption under [FAR 22.1305\(a\)\(1\)](#), the signatory authority is the HCA, without authority to redelegate.

(a)(2) For a request for exemption under [FAR 22.1305\(a\)\(1\)](#), the signatory authority is the CPO.

(b) The HCA, without redelegation, may waive this requirement.

(c) The contracting officer shall prepare a D&F setting forth clear and convincing reasons why an exemption will be necessary. D&Fs shall be in substantially the same format as Appendix N.

3022.1308 Complaint procedures.

The contracting officer shall forward complaints about the administration of the Vietnam Era Veterans Readjustment Assistance Act of 1972, as amended, directly to the DOL's Veterans' Employment and Training Service. (A directory of Veterans' Employment and Training Service Regional and State offices is available by Internet at: <http://www.dol.gov/vets/aboutvets/contacts/main.htm>.) All questions concerning the complaints shall be directed to the appropriate office of the DOL.

3022.1310 Solicitation provision and contract clauses.

(a)(1)(ii) See [HSAM 3022.1305\(b\)](#) for the waiver authority granted to the HCA.

Subchapter 3022.14 Employment of Workers with Disabilities**3022.1403 Waivers.**

- (a)(1) The HCA is delegated this authority.
- (a)(2) The CPO is delegated this authority.
- (b)(1) The HCA is delegated this authority.
- (c) The contracting officer shall prepare a D&F setting forth clear and convincing reasons for the exemption. The D&F shall be in substantially the same format as Appendix N.

3022.1406 Complaint procedures.

When oral complaints are received, contracting officers shall request that the nature of the complaint (e.g., by whom, against whom, the reason, etc.) signed by the plaintiff be submitted in writing directly to the OFCCP. Written complaints received by contracting officers shall be forwarded to the OFCCP by letter.

3022.1408 Contract clause.

- (a)(2) See [HSAM 3022.1403\(a\)\(1\)](#), [\(a\)\(2\)](#) or [\(b\)\(1\)](#) for waiver authorities granted to specific individuals.
- (b) See [HSAM 3022.1403\(a\)\(1\)](#), [\(a\)\(2\)](#) or [\(b\)\(1\)](#) for waiver authorities granted to specific individuals.

3022.15 Prohibition Of Acquisition Of Products Produced By Forced Or Indentured Child Labor**3022.1503 Procedures for acquiring end products on the List of Products Requiring Contractor Certification as to Forced Indentured Child Labor.**

- (e) Contracting officers shall refer the matter for investigation to the DHS, Office of General Counsel.

Subchapter 3022.90 Local Hire (USCG)**3022.9000 Policy (USCG).**

- (a) The Coast Guard HCA is authorized to waive the inclusion of HSAR 3052.222-90, Local Hire (USCG), in contracts for construction or services to be performed in whole or in part in a State that has an unemployment rate in excess of the National average rate of unemployment (as determined by the Secretary of Labor).

(b) Waiver requests shall be submitted to Commandant (CG-85) for processing to the Coast Guard HCA. Any request must describe the acquisition and clearly explain the reasons why it is in the interest of national security or economic efficiency to exclude the Local Hire clause.

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

Subchapter 3023.2 Energy and Water Efficiency and Renewable Energy

- 3023.203 Energy-efficient products.
- 3023.204 Procurement exemptions.
- 3023.205 Energy-savings performance contracts.

Subchapter 3023.4 Use of Recovered Materials and Biobased Products

- 3023.404 Agency affirmative procurement programs.
- 3023.405 Procedures.

Subchapter 3023.7 Contracting for Environmentally Preferable Products and Services

- 3023.703 Policy.
- 3023.705 Electronic products environmental assessment tool (EPEAT).

Subchapter 3023.2 Energy and Water Efficiency and Renewable Energy

3023.203 Energy-efficient products.

(b) In addition to the ENERGY STAR® and Federal Energy Management Program (FEMP) websites, the DHS Affirmative Procurement Plan at Appendix Q, provides the Department's established affirmative program plan and policies for use in acquisition planning, solicitations and contract administration.

3023.204 Procurement exemptions.

DHS and Components shall specify products that are ENERGY STAR® or FEMP labeled/approved products. The authority to make the determination that no ENERGY STAR® or FEMP-designated product is reasonably available that meets the functional requirements of the Department; or no ENERGY STAR® or that no FEMP-designated product is cost effective over the life of the product taking energy cost savings into account, is the DHS Office of Occupational Safety and Environmental Programs. The contracting officer must coordinate the written approval when the purchase of non-ENERGY STAR® or FEMP-designated products meet the exemptions at FAR 23.204 and this paragraph. This approval document must be coordinated through the appropriate DHS Component's Environmental Program Office for technical review. The approved document shall be maintained in the contract file.

3023.205 Energy-savings performance contracts.

(c) DHS and its Components may enter into Energy Savings Performance Contracts (ESPC) under [42 U.S.C. 8287](#), as amended, subject to the requirements of [10 CFR Part](#)

436. The Component contracting officer shall submit the [Department of Energy \(DOE\) schedule and the Measurement & Verification \(M&V\)](#) protocols for any ESPC actions or order to: DHS Energy Program Manager, Office of Occupational Safety and Environmental Programs. The purpose of early notification is to provide DHS Office of Occupational Safety and Environmental Programs the opportunity to provide assistance and guidance to the contracting activity and program officials.

Subchapter 3023.4 Use of Recovered Materials and Biobased Products

3023.404 Agency Affirmative procurement programs.

(a) The DHS's *Affirmative Procurement Plan (APP)* is provided as Appendix Q and must be used by DHS and Components.

3023.405 Procedures.

(a)(1) *Recovered Materials.* Section 6002 of the Resource Conservation and Recovery Act (RCRA) requires the Department to apply purchasing preferences to products containing recovered materials. EPA's Comprehensive Procurement Guideline for Federal agencies at 40 CFR 247, implements the Federal Government's buy-recycled program and designates recovered materials items which Federal agencies must give preference. For items designated in EPA guidelines, procurements must include products composed of the highest percentage of recovered materials practicable. The EPA designated items include:

Paper and paper products	Vehicular products
Construction Products	Transportation products
Park and recreation products	Landscaping products
Non-paper office products	Floor tiles and patio blocks
Shower and restroom dividers/partitions	Reprocessed and consolidated latex paints
Parking stops	Channelizers and delineators
Plastic fencing	Garden and soaker hoses
Lawn and garden edging	Printer ribbons
Plastic envelopes	Pallets

(2) *Biobased products.* The Biobased Products Preference Program sponsored by the United States Department of Agriculture (USDA) is modeled after the EPA Recovered Material Program. The USDA has selected and prioritized items for designation as "preferred" biobased products. The USDA, other Government agencies, private industry groups, and independent manufacturers have evaluated these items against program criteria established collaboratively. See <http://www.biopreferred.gov/DesignationItemList.aspx> for a list of designated biobased preferred products.

(b)(2) When an exemption is used for an EPA-designated item or the procurement of a product containing recovered material does not meet or exceed the EPA recovered

material content guidelines, the contracting officer shall place a written justification in the contract file. The contracting officer's decision and written determination must be based on EPA criteria at <http://www.epa.gov/epaoswer/non-hw/procure/backgrnd.htm> or 40 CFR 247. The contracting officer must coordinate the determination and justification with the DHS Office of Occupational Safety and Environmental Programs or the Component Environmental Program Office before granting an exemption.

Subpart 3023.7 Contracting for Environmentally Preferable Products and Services

3023.703 Policy.

(b)(2) Where applicable, DHS and Components shall purchase WaterSense labeled products and choose irrigation contractors who are certified through a WaterSense labeled program. WaterSense is a voluntary Environmental Protection Agency public-private partnership that identifies and promotes high-performance products and programs that help preserve the nation's water supply. Additional information is available at www.epa.gov/watersense. Products currently included in the WaterSense label program include high efficiency toilets, showerheads, bathroom sink faucets, landscaping irrigation services and weather or sensor based irrigation technologies. The DHS Affirmative Procurement Plan at Appendix Q includes information about currently available products. The www.epa.gov/watersense website is routinely updated with new product information and should be consulted as needed.

3023.705 Electronic products environmental assessment tool (EPEAT).

(c) The authority to grant an exception that no-EPEAT-registered product meets agency requirements is delegated to the contracting officer. The contracting officer must coordinate the requirements or program official's submitted documentation with the DHS Environmental Program Manager, in the DHS Office of Occupational Safety and Environmental Programs or the Component Environmental Program Office before granting an exception. The exception shall be documented and placed in the contract file.

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

There is no text implementing or supplementing [FAR Part 24](#).

CHAPTER	3025	FOREIGN ACQUISITION
Subchapter	3025.0	Scope of Part
	3025.004	Reporting of acquisition of end products manufactured outside the United States.
Subchapter	3025.1	Buy American Act-Supplies
	3025.103	Exceptions.
	3025.104	Nonavailability of articles.
	3025.105	Determining reasonableness of cost.
Subchapter	3025.2	Buy American Act—Construction Materials
	3025.202	Exceptions.
	3025.204	Evaluating offers of foreign construction material.
Subchapter	3025.10	Additional Foreign Acquisition Regulations
	3025.1001	Waiver of right to examination of records.

Subchapter 3025.000 Scope of Part

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

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

(b) Components shall ensure that the information reported in FPDS data field 9H for the procurement of end products accurately reflects the place of manufacture of the end product and the associated exception category. Only those acquisitions that are predominantly for the acquisition of manufactured end products shall be reported. Exception categories are: Use Outside of the U.S; Resale; Commercial Information Technology; Public Interest Determination; Trade Agreements; Domestic Nonavailability; and Unreasonable Cost.

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

- (1) Dollar value of acquisitions of end products predominantly manufactured outside of the United States and its outlying areas;
- (2) Dollar value of acquisitions of end products predominantly manufactured inside the United States;
- (3) Total of paragraphs (1) and (2); and

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

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

Subchapter 3025.1 Buy American Act—Supplies

3025.103 Exceptions.

(a) *Public Interest.* The Head of the Contracting Activity (HCA) is delegated this authority.

(b) *Nonavailability.*

(2)(i) The Chief of the Contracting Office (COCO) is delegated this authority.

(b)(2)(ii) Determinations required shall be submitted to the Chief Procurement Officer (CPO).

3025.104 Nonavailability of articles.

(b) Documentation shall be submitted to the CPO.

3025.105 Determining reasonableness of cost.

(a)(1) The COCO is delegated this authority. Determinations shall be sent to the CPO.

Subchapter 3025.2 Buy American Act—Construction Materials

3025.202 Exceptions.

(a)(1) The HCA is delegated this authority.

3025.204 Evaluating offers of foreign construction material.

(b) The HCA is delegated this authority.

Subchapter 3025.10 Additional Foreign Acquisition Regulations

3025.1001 Waiver of right to examination of records.

(a)(2)(iii) The HCA, without redelegation, is authorized to make the determination.

CHAPTER 3026 OTHER SOCIOECONOMIC PROGRAMS**Subchapter 3026.2 Disaster or Emergency Assistance Activities**

3026.202 Local area preference.

3026.202-2 Evaluation preference.

3026.203 Transition of work.

Subchapter 3026.2 Disaster or Emergency Assistance Activities**26.202 Local area preference.****26.202-2 Evaluation preference.**

DHS Components may establish additional guidance regarding preferences given to local organizations, firms, and individuals when contracting for major disaster or emergency assistance activities when the President has made a declaration under the Robert T. Stafford Disaster Relief Act.

3026.203 Transition of work.

(b) The authority to determine that transitioning work in the performance of response, relief, and reconstruction contracts or activities in effect on the date on which the President declares a major disaster or emergency to local firms is not feasible or practicable is delegated to the Head of the Contracting Activity.

CHAPTER 3027 PATENTS, DATA, AND COPYRIGHTS

Subchapter 3027.2 Patents

- 3027.203 Patent indemnification of Government by contractor.
- 3027.203-6 Clause for Government waiver of indemnity.

Subchapter 3027.3 Patent Rights Under Government Contracts

- 3027.302 Policy.
- 3027.303 Contract clauses.
- 3027.304 Procedures.
- 3027.304-1 General.
- 3027.305 Administration of patent rights clauses.
- 3027.305-4 Conveyance of invention rights acquired by the Government.

Subchapter 3027.2 Patents

3027.203 Patent indemnification of Government by contractor.

3027.203-6 Clause for Government waiver of indemnity.

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

Subchapter 3027.3 Patent Rights Under Government Contracts

3027.302 Policy.

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

3027.303 Contract clauses.

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

3027.304 Procedures.

3027.304-1 General.

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

3027.305 Administration of patent rights clauses.

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

(b) When a contractor discloses an invention under a contract, the contracting officer shall consult with the Component Patent Counsel to determine the proper action to be taken. Components without Patent Counsels should contact the DHS Office of General Counsel, Intellectual Property Attorney.

CHAPTER 3028 BONDS AND INSURANCE

Subchapter 3028.1 Bonds and Other Financial Protections

- 3028.101 Bid guarantees.
- 3028.101-1 Policy on use.
- 3028.105 Other types of bonds.
- 3028.106 Administration.
- 3028.106-2 Substitution of surety bonds.
- 3028.106-6 Furnishing information.

Subchapter 3028.2 Sureties and Other Security for Bonds

- 3028.202 Acceptability of corporate sureties.
- 3028.203 Acceptability of individual sureties.
- 3028.203-7 Exclusion of individual sureties.
- 3028.204 **Alternatives in lieu of corporate or individual sureties.**
- 3028.204-1 United States bonds or notes.

Subchapter 3028.3 Insurance

- 3028.305 Overseas workers' compensation and war-hazard insurance.
- 3028.307-2 Liability.

Subchapter 3028.1 Bonds

3028.101 Bid guarantees.

3028.101-1 Policy on use.

(c) The Head of the Contracting Activity (HCA) is authorized to approve a class waiver.

3028.105 Other types of bonds.

The contracting officer is delegated this authority.

3028.106 Administration.

3028.106-2 Substitution of surety bonds.

(a) The contracting officer is delegated this authority.

3028.106-6 Furnishing information.

(c) The contracting officer is delegated this authority after consultation with legal counsel. The contracting officer is the individual who will furnish to the requestor a certified copy of the payment bond and the contract for which it was given, and

determine the reasonable and appropriate costs the requestor must pay for the preparation of copies.

Subchapter 3028.2 Sureties and Other Security for Bonds

3028.202 Acceptability of corporate sureties.

(d) Department of the Treasury's Listing of Approved Sureties (Department Circular 570) is available at <http://www.fms.treas.gov/c570/index.html>.

3028.203 Acceptability of individual sureties.

(g) Contracting officers, after consultation with the Component legal counsel, shall refer evidence through the HCA to the Office of Inspector General (OIG), or other investigatory organization, with a copy to the Chief Procurement Officer (CPO). The OIG shall provide a report of findings to the Debarring and Suspension official.

3028.203-7 Exclusion of individual sureties.

(a) The HCA is delegated this authority.

(d) Justifications shall be prepared by the contracting officer and forwarded to the Debarring and Suspension official for approval.

3028.204 Alternatives in lieu of corporate or individual sureties.

(a) HCAs shall establish required safeguards to protect against the loss of the security.

3028.204-1 United States bonds or notes.

(b) HCAs shall establish procedures consistent with [Treasury Department Circular No. 154](#) for bonds and notes received by contracting officers located outside of the District of Columbia.

Subchapter 3028.3 Insurance

3028.305 Overseas workers' compensation and war-hazard insurance.

(d) The HCA shall make the recommendation to the Secretary of Labor.

3028.307-2 Liability.

(b)(2) HCAs may establish special circumstances and coverage limits, after consultation with Component legal counsel, when determined to be in the best interest of the Component.

(e) HCAs shall establish, in conjunction with Component legal counsel, appropriate and adequate vessel collision liability and protection and indemnity liability insurance coverage limits.

CHAPTER 3029 TAXES

Subchapter 3029.1 General
3029.101 Resolving tax problems.

Subchapter 3029.3 State and Local Taxes
3029.303 Application of State and local taxes to Government contractors and subcontractors.

Subchapter 3029.1 General**3029.101 Resolving tax problems.**

(a) The agency designated legal counsel is the Component legal counsel. Any recommended changes to DHS policy or procedures concerning taxes resulting from consultation with Component legal counsel, shall be transmitted by the Head of the Contracting Activity (HCA) to the Chief Procurement Officer (CPO).

(1) All problems forwarded to the Component's legal counsel for review and/or resolution shall be accompanied by:

- (i) A copy of the contract, when applicable;
- (ii) A comprehensive statement of the facts, any substantiating documents or correspondence, the legal issues, and recommended course of action, if any; and
- (iii) When applicable, a statement concerning the effect the problem has or will have on existing acquisition policy and procedures, and any recommended changes to them.

Subchapter 3029.3 State and Local Taxes**3029.303 Application of State and local taxes to Government contractors and subcontractors.**

(a) The HCA is delegated authority, without redelegation, to review this designation. The HCA shall coordinate with the Component's legal counsel. The HCA shall provide a copy of the review documentation and designation to the Office of the Chief Procurement Officer (OCPO).

CHAPTER 3030 COST ACCOUNTING STANDARDS ADMINISTRATION**Subchapter 3030.2 CAS Program Requirements**

- 3030.201 Contract requirements.
- 3030.201-5 Waiver.
- 3030.201-7 Cognizant Federal agency responsibilities.
- 3030.202 Disclosure requirements.
- 3030.202-2 Impracticability 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 submission to the Secretary for approval.

(d) Requests for waiver of applicability of CAS under 48 CFR 9903.205-5(e) by the CAS Board shall be submitted to the OCPO through the HCA. OCPO will forward request to the Secretary for signature and subsequent submission to the Cost Accounting Standards Board (CASB).

3030.201-7 Cognizant Federal agency responsibilities.

Contracting officers should not individually administer CAS on a contract-by-contract basis. Accordingly, administration of CAS should be delegated to the cognizant Federal agency responsible for a particular contractor organization or location, which is usually the Federal agency responsible for negotiating indirect cost rates on behalf of the Government. Contracting officers will ensure that coordinated administrative actions provide assurances that individual contractors follow their cost accounting practices consistently under all their CAS-covered contracts and that change in cost accounting practices or CAS noncompliance issues are resolved, equitably, in a uniform overall manner.

3030.202 Disclosure requirements.**3030.202-2 Impracticability 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) 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
	3032.601	Definition.
	3032.614	Interest.
	3032.614-1	Interest charges.
Subchapter	3032.7	Contract Funding
	3032.702	Policy.
	3032.702-70	Procurement requests.
	3032.702-71	Use of private sector financing.
	3032.703-3	Contracts crossing fiscal years.
Subchapter	3032.8	Assignment of Claims.
	3032.802	Conditions.
	3032.803	Policies.

Subchapter	3032.9	Prompt Payment
	3032.903	Responsibilities.
	3032.904	Determining payment due date.
	3032.906	Making payments.
Subchapter	3032.11	Electronic Funds Transfer
	3032.1107-70	Payment Information.
Subchapter	3032.70	Contract Payments
	3032.7000	Scope of subchapter.
	3032.7001	Policy.
	3032.7002	Invoice and voucher review and approval.
	3032.7003	Record of payment.

Subchapter 3032.000 Scope

3032.003 Simplified acquisition procedures financing.

Where appropriate, the Chief of Contracting Office (COCO) may determine that contract financing for commercial items may be provided for purchases made under [FAR Part 13](#). A written determination must be prepared detailing the rationale supporting the decision.

Subchapter 3032.1 Non-Commercial Item Purchase Financing

3032.102 Description of contract financing methods.

(e)(2) Progress payments based on a percentage or stage of completion are authorized only under contracts for construction, alteration, and repair, shipbuilding, and architect-engineering. Contracting officers must ensure that the payments are commensurate with the work and that the work meets the contract requirements. When contracting officers propose to make these types of payments under other contracts, a written Determination & Finding (D&F) in the format provided at Appendix R must be signed by the Head of the Contracting Activity (HCA). The D&F must provide the reasons that progress payments based on costs cannot be possible and why it is feasible to administer progress payments based on a percentage or stage of completion.

3032.113-70 Customary contract financing.

(a) It is DHS's expectation that contracts will be fully funded except as permitted by [FAR 32.703](#).

(b) Financing of contracts and requirements using other than progress payments or performance-based payments requires:

(1) HCA approval and review; and

(2) Legal counsel review and approval for legal sufficiency.

3032.114 Unusual contract financing.

Authority to approve unusual contract financing is delegated to the HCA.

Subchapter 3032.2 Commercial Item Purchase Financing

3032.202-4 Security for Government financing.

(a)(2) The required determination shall be in writing, reviewed by legal counsel, and retained in the contract file.

3032.206 Solicitation provisions and contract clauses.

(g) The HCA is authorized to develop procedures under [FAR 32.206](#).

(g)(2) The HCA is authorized to develop procedures under [FAR 32.206](#).

Subchapter 3032.4 Advance Payments for Non-Commercial Items

3032.402 General.

(c)(1)(iii) The authority to make the determination prescribed in [FAR 32.402\(c\)\(1\)\(iii\)](#) is delegated, without power of re-delegation, to the HCA.

(e)(2) When the contracting officer proposes to provide advance payments to a contractor, the requisitioning office, legal counsel, and finance office shall be consulted prior to approving the D&F. The D&F shall be written in the format of [FAR 32.410](#).

3032.404 Exclusions.

(a)(9) Unless otherwise approved by the Chief Procurement Officer (CPO), no other types of transactions are excluded from the requirements of [FAR 32.4](#).

3032.409 Contracting officer action.

3032.409-1 Recommendation for approval.

After review by counsel, the D&F and the other items shall be forwarded through appropriate office(s) to the approving official (see HSAM 3032.402) for review and approval. Contracting officers shall also discuss the proposed payments with the applicable finance office to ensure compliance with all Department of Treasury regulations governing these payments.

3032.409-2 Recommendation for disapproval.

Contracting officers shall transmit the information required through appropriate office(s) to the approving official under HSAM 3032.402 for approval of the recommendation to disapprove the request for advance payment.

Subchapter 3032.5 Progress Payments Based On Costs**3032.501 General.****3032.501-2 Unusual progress payments.**

(a)(3) The Chief of the Contracting Officer (COCO) is delegated authority to approve the contractor's request for unusual progress payments.

3032.502 Preaward matters.**3032.502-2 Contract finance office clearance.**

Contracting officers shall obtain written approval and coordination from the officials named below before taking any of the following actions:

- (a) From the COCO, to provide a progress payment rate higher than the customary rate (see [FAR 32.501-1](#));
- (b) From the COCO, to deviate from the progress payment terms prescribed in [FAR Part 32](#); and
- (c) When providing progress payments to a contractor--
 - (1) From the COCO (with advice from Component legal counsel), when the contractor's financial condition is in doubt;
 - (2) From the COCO (with advice from Component legal counsel), when the contractor has had an advance payment request or loan guarantee denied for financial reasons (or approved but withdrawn or lapsed) within the previous 12 months; and
 - (3) From the HCA (with advice from Component legal counsel), when the contractor is named in the consolidated list of contractors indebted to the United States (known commonly as the "Hold-up List").

3032.504 Subcontracts under prime contracts providing progress payments.

(c) The contracting officer shall obtain approval from the COCO to authorize contractors to make unusual progress payments to subcontractors. A written D&F is not required; however, if the contractor's request to make unusual progress payments is granted, the

contract file shall be documented to reflect the rationale for the decision.

Subchapter 3032.6 Contract Debts

3032.601 Definition.

Contracting officers shall administer the collection of contract debts and applicable interest in accordance with DHS MD Number 1180.1, Collections and Deposits Processing as implemented by Component procedures, if any. If Component procedures do not exist, contracting officers shall consult with their finance office concerning debt collection.

3032.614 Interest.

3032.614-1 Interest charges.

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

Subchapter 3032.7 Contract Funding

3032.702 Policy.

(c) Additionally, all contracts and requirements using private sector financing shall be approved by the Office of Chief Procurement Officer (OCPO). The HCA shall submit the action, including legal counsel review and approval for legal sufficiency, to the OCPO for approval.

(d) The minimum guaranteed quantity specified under indefinite delivery indefinite quantity contracts must be fully funded (obligated at the time of contract award.)

(e) To avoid violating the Anti-Deficiency Act, fixed-price, labor-hour, and the time portion of time-and-material contracts shall not be incrementally funded. Cost-type contracts and the material portion (including, if appropriate, material handling costs as part of material costs) of time-and-material contracts may be incrementally funded provided such contracts include [FAR Clause 52.232-22](#), Limitation of Funds, as appropriate.

3032.702-70 Procurement requests.

(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) Treasury Account Symbol (TAS).

(1) The DHS Office of the Chief Financial Officer issued guidance to Component Budget Directors and Chief Financial Officers on March 18, 2008 mandating inclusion of the Fiscal Year and Treasury Account Symbol on all Procurement Requests (PR) prior to submission to the contracting office for action. The guidance stipulates that as of April 15, 2008, a PR will not be considered complete unless and until this funding information is included in the PR. Failure to include the Fiscal Year and Treasury Account Symbol on the PR constitutes grounds for the contracting office to reject the PR until such time as the information has been entered.

(2) Treasury Account Symbols were selected as the format for submission in order to be consistent with the Office of Management and Budget (OMB) guidance requiring agencies to migrate to Treasury Account Symbols for agency financial-reporting purposes ([OMB Memorandum M-09-19](#) dated June 1, 2009, Guidance on Data Submissions under the Federal Funding Accountability and Transparency Act). Accordingly, TAS submissions are necessary for [Federal Procurement Data System \(FPDS\)](#) reporting (see [FAR 4.6](#) and HSAM 3004.6) and DHS Congressional Notification requirements (see HSAM 3005.303-70). Specific laws, such as the American Recovery and Reinvestment Act (Recovery Act) require reporting of transactions to include TAS data in accordance with [FAR 4.605](#) and [FAR 4.1501](#) (also see HSAM 3004.1501).

3032.702-71 Use of private sector financing.

All proposed contract actions, including orders under GSA FSS contracts and orders under indefinite delivery contracts, that use private sector financing shall be approved by the Office of Chief Procurement Officer (OCPO). The HCA shall submit the action, including legal counsel review and approval for legal sufficiency, to the OCPO for approvals.

3032.703-3 Contracts crossing fiscal years.

(b) The COCO is authorized to approve the award of contracts, options, or orders under contracts for severable services for a period beginning in one fiscal year and ending in the next, provided the period of the basic contract, option or order does not exceed one year. Documentation of the approval shall be retained in the contract file.

Subchapter 3032.8 Assignment of Claims

3032.802 Conditions.

(e)(1) The contracting officer is the designated recipient of the document.

3032.803 Policies.

(d) By [Memorandum dated October 3, 1995](#), the President delegated the authority to

determine whether to include a no-setoff commitment in any contract, except a contract under which full payment has been made, to the head of the agency. In addition, the memorandum states that the authority could be further delegated. The HCA is authorized, with further authority to redelegate, to determine whether to include a no-setoff commitment in any contract, except a contract where full payment has been made.

Subchapter 3032.9 Prompt Payment

3032.903 Responsibilities.

The Chief Financial Officer (CFO) is delegated the authority to prescribe policies and procedures for prompt payment.

3032.904 Determining payment due dates.

Prior to including a payment clause in a solicitation or contract that will require payments to be made earlier than those specified in the Prompt Payment Act, contracting officers shall consult with their cognizant finance office.

3032.906 Making payments.

(b) The contracting officer is delegated authority to determine whether to make invoice and contract financing payments earlier than 7 days prior to the due dates specified in the contract.

Subchapter 3032.11 Electronic Funds Transfer

3032.1107-70 Payment Information.

DHS has established with the Department of Treasury Regional Financial Center, Kansas City, MO, an electronic communication connection for payments via the Automated Clearinghouse (ACH) (a nationwide electronic payments network). DHS finance offices shall use the information in the [Central Contractor Registration](#) database to make EFT payments to contractors.

Subchapter 3032.70 Contract Payments

3032.7000 Scope of subchapter.

This subchapter prescribes policies and procedures for the submission, review, and approval of payments under contracts and orders as defined under [FAR Part 16](#).

3032.7001 Policy.

It is the policy of DHS to perform an in-depth review of all invoices and vouchers submitted by contractors under contracts; therefore, the COCO must ensure that the requirements of this subchapter are met.

3032.7002 Invoice and voucher review and approval.

(a) Contracting officers are ultimately responsible for the review and approval of each invoice and/or voucher submitted by the contractor. However, the contracting officer may delegate to a representative, the authority to review and approve invoices submitted for payment under fixed-price contracts. The person delegated this authority must provide a copy of the approved invoice and supporting documents to the contracting officer for the contract file. When invoices and vouchers are reviewed, the extent of the review is dependent upon the terms and conditions of the contract. Appropriate use of sampling is encouraged. The following list is representative of the tasks associated with reviewing and approving invoices and vouchers:

- (1) Ensure that the contractor completes and submits the invoice or voucher in accordance with the contract;
- (2) Ensure that the invoice or voucher is "proper" as that term is defined in the contract;
- (3) Ensure that the billed costs are allocable to the contract and allowable in accordance with [FAR Part 31](#) and any other terms and conditions of the contract;
- (4) Ensure that evidence of receipt, inspection, and acceptance of the supplies or services has been received from a Government representative (this may be done electronically);
- (5) Ensure that the contractor's progress under the contract is commensurate with the payment requested (i.e., the unliquidated progress payments do not exceed the fair value of the work to be accomplished on the undelivered portion of the contract); and
- (6) Ensure that the correct amounts are withheld from the invoice or voucher as required by the contract (i.e., progress payment liquidation, percentage of fixed fee, etc.).

(b) Cost-reimbursement contracts.

(1) When cost-reimbursement payments will be made under the contract, the contracting officer shall obtain the recommendation of Government personnel (e.g., technical representatives, quality assurance inspectors, auditors, etc.) concerning payment of the voucher.

(2) The responsibility for reviewing and recommending approval of vouchers may be delegated by the contracting officer to either the COTR or to the Defense Contract Audit Agency. Circumstances that would support delegating the voucher processing to DCAA would include situations where DCAA already audits the contractor. In such cases, it is typically more efficient to use DCAA to process vouchers.

(c) If the contracting officer determines the amount billed is allocable and allowable, he/she shall furnish the designated payment office with written approval of the amount to be paid the contractor. (See Appendix S for a sample format).

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

(1) When processing vouchers for time-and-materials (T&M) or labor-hour contracts, appropriate use of sampling is encouraged for verifying the adequacy of supporting information for the voucher. The responsible Government official should verify:

(i) That the employees meet the qualifications for the labor categories to which they are being billed;

(ii) That the hourly rates for each category on the voucher match the rates specified in the contract for the period being invoiced;

(iii) That the material costs included in the voucher are adequately supported by invoices and/or payment;

(iv) The accuracy of the mathematical calculations contained in the voucher; and

(v) The hours worked against the hours billed for the period.

(2) The responsibility for reviewing and recommending approval of vouchers on T&M and labor-hour contracts may be delegated by the contracting officer to either the COTR or to the Defense Contract Audit Agency (DCAA). Circumstances that would support delegating the voucher processing to DCAA would include situations where DCAA already audits the contractor. In such cases, it is typically more efficient to use DCAA to process vouchers.

3032.7003 Record of payment.

(a) The contracting officer shall establish a record (either hard copy or electronic) of payment file for each contract. The file must provide evidence of the amount paid; any amounts disallowed or withheld, and the rationale for the disallowances or withholdings; balance available for payment under the contract after the invoice or voucher has been paid, and any correspondence to the contractor concerning the payments.

CHAPTER 3033 PROTESTS, DISPUTES, AND APPEALS

Subchapter 3033.1 Protests

3033.102. General.

3033.103 Protests to the agency.

3033.104 Protests to the Government Accountability Office (GAO).

Subchapter 3033.2 Disputes and Appeals

3033.101 Definitions.

3033.203 Applicability.

3033.209 Suspected fraudulent claims.

3033.210 Contracting officer's authority.

3033.212 Contracting officer's duties upon appeal.

3033.215 Contract clause.

Subchapter 3033.1 Protests

3033.102 General.

(b) The contracting officer may make the determination.

3033.103 Protests to the agency.

(d)(4) Procedures shall be developed by each Component. Such procedures must consider the use of Alternative Disputes Resolution (ADR) in all protest actions.

3033.104 Protests to the Government Accountability Office (GAO).

(a) *General procedure.* The Chief of the Contracting Office (COCO) shall prepare and provide to the GAO the required agency report. The agency report shall be coordinated with legal counsel before the report is signed and sent to GAO.

(a)(3)(iv)(B) If the protest is made before an award, the agency report shall contain either a statement regarding any urgency for the acquisition and the extent to which a delay in award may result in significant performance difficulties and/or additional Government expense, or, an estimate of the length of time an award may be delayed without difficulty in performance or significant expense.

(a)(4)(i) The protestor's copy shall be hand-carried or express mailed. (Regular mail delivery will not suffice.)

(b) *Protests before award.* The written finding shall be coordinated with legal counsel. A copy of the signed written finding and the signed written notice to GAO shall be provided to the Chief Procurement Officer (CPO) within 2 working days after documents are sent to GAO. In addition, the applicable Congressional and Public Affairs offices shall be informed of this action in accordance with Component policies and procedures.

Subchapter 3033.2 Disputes and Appeals

3033.201 Definitions.

Agency Board of Contract Appeals (effective January 6, 2007) means the Civilian Board of Contract Appeals (CBCA), and replaces the previous, Department of Transportation Board of Contract Appeals (DOTBCA). The CBCA is the authorized representative of the Secretary of Homeland Security in hearing, considering, and determining all appeals of decisions of contracting officers filed by contractors pursuant to [FAR Subpart 33.2](#).

3033.203 Applicability.

(b)(2) The Head of the Contracting Activity (HCA) shall make the determination that the application of the Contract Disputes Act (CDA) of 1978 to any contract with (1) a foreign government or agency of that government, or (2) an international organization or a subsidiary body of that organization would not be in the public interest. The Transportation Security Administration (TSA) will use the CBCA for CDA matters.

3033.209 Suspected fraudulent claims.

Chiefs of the Contracting Office (COCOs) shall refer these matters to the Office of the Inspector General (OIG) or other appropriate investigative organizations.

3033.210 Contracting officer's authority.

It is the DHS's policy to encourage the use of ADR procedures. A decision to use ADR procedures requires review and approval by legal counsel.

3033.212 Contracting officer's duties upon appeal.

Upon receipt of notice of appeal by a contractor, the contracting officer will notify Component legal counsel, who will appoint an attorney to represent the Government before the CBCA.

3033.213 Contract clause.

When using the clause at FAR 52.233-1, Disputes, with its Alternate I, the contracting officer shall make the determination that continued performance is necessary.

CHAPTER 3034 MAJOR SYSTEMS ACQUISITION

Subchapter 3034.0 General

- 3034.002 Policy.
- 3034.004 Acquisition strategy.

Subchapter 3034.2 Earned Value Management System

- 3034.200 General.
- 3034.201 Policy.
- 3034.202 Integrated Baseline Reviews.
- 3034.204 Procedures.
- 3034.205 Application of EVMS to other than major system acquisition.

3034.0 General

3034.002 Policy.

Refer to HSAM Chapter 3007 and DHS [Directive, 102-01](#), Acquisition, (previously MD Number 1400, Investment Review process) review and approval requirements for major systems acquisitions.

3034.004 Acquisition strategy.

Acquisition strategies qualify as the acquisition plan for major system acquisitions. Acquisition strategies shall be in writing and prepared in accordance with [FAR Subpart 7.1](#), HSAM Appendix H, the DHS Acquisition Planning Guide, and DHS [Directive, 102-01](#), Acquisition, (previously MD Number 1400, Investment Review Process.)

3034.2 Earned Value Management System

3034.200 General.

(a) Authority.

(1) Title V of the Federal Acquisition Streamlining Act of 1994 (FASA) requires agency heads to approve or define the cost, performance, and schedule goals for major acquisitions and achieve, on average, 90% of the cost, performance and schedule goals established.

(2) The Clinger-Cohen Act of 1996 requires the Director of Office of Management and Budget (OMB) to develop, as part of the budget process, a process for analyzing, tracking, and evaluating the risks and results of all major capital investments for information systems for the life of the system.

(3) [OMB Circular No. A-11, Part 7](#), Planning, Budgeting, Acquisition, and Management of Capital Assets and its supplement, Capital Programming Guide, were written to meet

the requirements of FASA and the Clinger Cohen Act. In addition, [OMB Circular No. A-11](#) requires the use of an Earned Value Management System (EVMS) that meets the American National Standards Institute (ANSI)/Electronics Industries Alliance (EIA) Standard - 748 for both Government and contractors.

3034.201 Policy

(a) This subchapter provides the policies and procedures for incorporating an Earned Value Management System (EVMS) in DHS contracts in accordance with [OMB Circular No. A-11](#), Part 7 and DHS Guidance on EVMS. Earned Value Management (EVM) integrates the statement of work, schedule, and cost to create an aggregate picture of performance, which helps ensure that day-to-day decisions on performance for development efforts are consistent with program objectives. EVM can help to identify cost and/or schedule overruns and to provide a forecast of final cost and schedule outcomes.

(1) The policies and procedures set forth in this subchapter apply to all DHS programs. The program manager and contracting officer shall collaborate when incorporating EVMS in acquisitions as described in this subchapter. The contracting officer shall include the EVM requirements on all development contracts with a total contract value over \$20 million regardless of contract type if there is a significant amount of cost, schedule or performance risk associated with the development. In addition, the DHS programs that meet the definitions in (i) or (ii) below shall include EVM in all development contracts regardless of the total contract value.

(i) Major system, as defined in HSAM Appendix H, Part III;

(ii) Major acquisitions or investments. As defined in [OMB Circular No. A-11](#), Part 7, a major acquisition/investment means a system or project requiring special management attention because of its importance to the mission or function of the agency, a component of the agency or another organization; is for financial management and obligates more than \$500,000 annually; has significant program or policy implications; has high executive visibility; has high development, operating, or maintenance costs; or is defined as major by the agency's capital planning and investment control process. For DHS programs, the DHS Chief Financial Officer and Chief Information Officer have implemented this to include Level 1, Level 2, and Level 3 investments, as defined in DHS [Directive 102-01](#), Acquisition, and supplemental instructions.

(iii) EVMS may be used at the discretion of the program manager for contracts on programs meeting the criteria in 3034.201(a)(1) that are valued at less than \$20 million but greater than \$5 million, and on other than major systems acquisition for developmental contracts valued at less than \$20 million but greater than \$5 million. The program manager's decision shall be risk-based. A cost-benefit analysis shall be conducted before deciding to implement EVM in contracts that are valued at less than \$20 million.

(b) DHS will determine the adequacy of the contractor's proposed EVMS plan in accordance with the DHS Earned Value Management System Guidance version in effect at time of award.

(c) The contracting officer shall include a requirement for the prime contractor to report EVM data to the program office in accordance with the DHS Earned Value Management System Guidance version in effect at the time the solicitation is prepared.

3034.202 Integrated Baseline Reviews.

(d)(i) Integrated Baseline Reviews (IBR) are normally conducted after award. The program manager shall conduct the IBR in accordance with the DHS Earned Value Management System Guidance. Post-award IBRs shall be completed within ninety days of contract award.

(ii) If approved by the HCA, IBRs may be conducted before award. Pre-award IBRs are appropriate only when the IBR results are essential for the source selection process and the program has adequate funding to conduct IBRs.

3034.204 Procedures.

(a) When EVMS is included on a contract with a total contract value greater than \$50 million, the DHS program office is responsible for verifying the adequacy of the EVMS plan for contracts in this category and for performing EVMS surveillance. Descriptions of EVM verification and surveillance procedures are described in the Office of Chief Information Officer's (OCIO's) EVM Guidance. If the contractor does not have a verified system at time of contract award, the contractor's EVM plan will be evaluated for approval prior to award.

(b) When EVMS is included on a contract with a total contract value greater than \$20 million but less than \$50 million, the contractor is responsible for verifying the adequacy of the EVMS plan for contracts in these categories, and the Government is responsible for performing surveillance. Descriptions of EVM verification and surveillance procedures are described in the OCIO's EVM Guidance. If the contractor does not have a verified system at time of contract award, the contractor's EVM plan will be evaluated for approval prior to award.

(c) Program managers and contracting officers shall collaborate to identify contracts for which EVMS will apply within programs and projects and to ensure that the following requirements are met:

(1) Adequate budget authority is provided for the conduct of the EVMS review, if required, and the Integrated Baseline Review (IBR);

- (2) EVMS requirements are addressed appropriately in the Statement of Work and Contract Deliverables; using language substantially the same as the language provided in the DHS EVMS Earned Value Management System Guidance; and
- (3) Acquisition planning is accomplished in accordance with [FAR Part 7](#) and HSAM, Subchapter 3007.103 and Appendix H.
- (d) DHS will determine the adequacy of the contractor's proposed EVMS plan in accordance with DHS Earned Value Management Guidance, version in effect at time of award.
- (e) For contracts which contain EVM, the contracting officer shall include the requirement that the prime contractor submit EVM reports in accordance with DHS Earned Value Management Guidance version in effect at time of the solicitation. These reporting requirements shall be included as contract data deliverables in the applicable solicitation and contract.

3034.205 Application of EVMS to other than major systems acquisitions,

- (a) EVMS is mandatory on other than major systems acquisition for developmental contracts greater than \$20 million but less than \$50 million. The contractor is responsible for verifying the adequacy of the EVMS plan for contracts in this category, and the Government is responsible for performing surveillance. Descriptions of EVM verification and surveillance procedures are described in the OCIO's EVM Guidance. If the contractor does not have a verified system at time of contract award, the contractor's EVM plan will be evaluated for approval prior to award.
- (b) EVMS may be used at the discretion of the program manager on other than major systems acquisition for developmental contracts valued at less than \$20 million but greater than \$5 million. The program manager's decision shall be risk-based. A cost-benefit analysis shall be conducted before deciding to implement EVM in low value contracts.

CHAPTER 3035 RESEARCH AND DEVELOPMENT CONTRACTING**Subchapter 3035.0 Scope**

3035.017 Federally Funded Research and Development Centers (FFRDC).

3035.017-2 Establishing or changing an FFRDC.

Subchapter 3035.0 Scope.**3035.017 Federally Funded Research and Development Centers.****3035.017-2 Establishing or changing an FFRDC.**

(j) The Secretary, acting through the Under Secretary for Science and Technology is authorized to establish or change the basic purpose and mission of an FFRDC under [FAR 35.017-2\(j\)](#).

CHAPTER	3036	CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS
Subchapter	3036.2	Special Aspects of Contracting for Construction
	3036.203	Government estimate of construction costs.
	3036.206	Liquidated damages.
	3036.208	Concurrent performance of firm-fixed-price and other types of construction contracts.
	3036.209	Construction contracts with architect-engineer firms.
	3036.212	Preconstruction orientation.
	3036.212-70	Contracting with the National Institute of Building Sciences.
	3036.213	Special procedures for sealed bidding in construction contracting.
	3036.213-2	Presolicitation notices.
	3016.213-70	Report of proposed federal construction.
Subchapter	3036.6	Architect-Engineer Services
	3036.602	Selection of firms for architect-engineer contracts.
	3036.602-1	Selection criteria.
	3036.602-2	Evaluation boards.
	3036.602-3	Evaluation board functions.
	3036.602-4	Selection authority.
	3036.602-5	Short selection process for contracts not to exceed the simplified acquisition threshold.
	3036.603	Collecting data on and appraising firms' qualifications.
	3036.605	Government cost estimate for architect-engineer work.
	3036.606	Negotiations.
	3036.606-70	General.
	3036.609	Contract clauses.
	3036.609-1	Design within funding limitations.

Subchapter 3036.2 Special Aspects of Contracting for Construction

3036.203 Government estimate of construction costs.

(a) The Government estimate must be designated "For Official Use Only" unless the nature of the information therein requires a security classification, in which event it shall be handled in accordance with applicable security regulations. The "For Official Use Only" designation must be removed only when the estimate is made public in accordance with the instructions below.

(b) If the acquisition is by sealed bidding, a sealed copy of the detailed Government estimate must be filed with the bids until bid opening. After the bids are read and

recorded, the "For Official Use Only" designation must be removed and the estimate read and recorded in the same detail as the bids.

(c) If the acquisition is by negotiation, the following procedures apply:

- (1) The overall amount of the Government estimate must not be disclosed prior to award;
- (2) At the time of award, the "For Official Use Only" designation on the Government estimate must be removed; and
- (3) After award, the Government estimate may be revealed, upon request.

3036.206 Liquidated damages.

Liquidated damages provisions are generally appropriate in construction contracts in accordance with the provisions of [FAR 11.500](#).

3036.208 Concurrent performance of firm-fixed-price and other types of construction contracts.

The Chief of the Contracting Office (COCO) is delegated the authority to approve the use of cost-plus-fixed-fee, price-incentive, or other types of contracts with cost variation or cost adjustment features concurrently at the same work site with firm-fixed-price, lump sum, or unit price contracts.

3036.209 Construction contracts with architect-engineer firms.

The Head of the Contracting Activity (HCA) or designee no lower than a Senior Executive Service (SES) or flag officer level may approve the award of a contract for the construction of a project to the firm that designed the project or its subsidiaries or affiliates. COCOs must submit requests to include: (1) the reason(s) why award to the design firm is required; (2) an analysis of the facts involving potential or actual organizational conflicts of interest, including benefits and detriments to the Government and prospective contractor; and (3) measures to be taken to avoid, neutralize, or mitigate conflicts of interest.

3036.212 Preconstruction orientation.

(b) DHS Form 700-11, "Preconstruction Conference Agenda and Checklist," or a similar checklist, must be used as the agenda of, or checklist for, the preconstruction conference.

3036.212-70 Contracting with the National Institute of Building Sciences.

(a) The National Institute of Building Sciences (NIBS) was chartered in 1974 to provide advice to the public and private sectors on issues involving new building technology and the building regulatory process. Public Law 93-383, Housing and Community

Development Act of 1974, specifically authorizes agencies to contract with and accept contracts from the NIBS for specific services where deemed appropriate by the responsible Federal officials involved. NIBS provides assistance or advice on building-related matters by processing:

(1) On-line databases on current developments in building science and technology in areas such as architecture and engineering, products and materials, health and safety, and codes and standards; and

(2) Information pertaining to asbestos in public buildings and lead-based paint poisoning, energy efficiency in offices and industrial buildings, and seismic safety of buildings.

(b) Section 809(g)(3) of Public Law 93-383 expressly authorizes agencies and departments to contract with NIBS. In this regard, the exception to full and open competition at [FAR 6.302-5](#) may be used, if the contracting officer determines this to be an appropriate exception, to award such contracts. However, the exception to full and open competition at [FAR 6.302-1](#) should be used when it is determined that NIBS, because of its unique capabilities and charter, is the only source that will satisfy the requirement.

(c) The synopsis requirements at [FAR 5.2](#) are applicable unless a waiver is granted pursuant to [FAR 5.202\(b\)](#).

3036.213 Special procedures for sealed bidding in construction contracting.

3036.213-2 Presolicitation notices.

(a) The COCO may waive the requirement to send presolicitation notices to prospective bidders on any construction requirement when the proposed contract is expected to equal or exceed the simplified acquisition threshold.

3036.213-70 Report of proposed Federal construction.

(a) [Section 1.4 of the Davis-Bacon Procedural Rules, 29 CFR Part 1, Procedures for Predetermination of Wage Rates](#), requires agencies using wage determinations under the Davis-Bacon Act, among other statutes, to furnish the Administrator, Department of Labor (DOL), a general outline of its proposed construction programs for the coming year indicating the estimated number of projects for which wage determinations will be required, the anticipated types of construction, and the locations of construction.

(b) Components shall include the anticipated types and locations for proposed construction projects in the DHS electronic AAP data system detailed at HSAM Subchapter 3007.172 and available at <http://www.fido.gov/dhs/aap>. The OCPO will consolidate the Component reported data and transmit a collective report to DOL.

Subchapter 3036.6 Architect-Engineer Services**3036.602 Selection of firms for architect-engineer contracts.****3036.602-1 Selection criteria.**

(b) The COCO is authorized to approve the use of design competition. Approval must be obtained prior to soliciting proposals.

3036.602-2 Evaluation boards.

The COCO must establish one or more ad hoc Architect-Engineer (A-E) evaluation boards for each acquisition of A-E services. For A-E acquisitions exceeding the simplified acquisition threshold, the following requirements apply in addition to [FAR 36.602-2](#):

(a) The A-E evaluation board(s) must be composed of the following members:

- (1) One member with experience in acquisition of A-E services (normally the contracting officer or contract specialist/negotiator);
- (2) One or more members with technical experience in the fields of architecture, engineering or construction (normally someone from the organization responsible for establishing the A-E work requirements);
- (3) One member with technical knowledge of the functional (user) requirements of the project; and
- (4) Other special members as are deemed necessary.

(b) A-E board members may be appointed from among highly qualified professional employees of other Government agencies or the private sector who are engaged in the practice of architecture, engineering, construction, or related professions.

3036.602-3 Evaluation board functions.

The HCA retains the authority to direct the functions of the evaluation board.

(a) For A-E acquisitions exceeding the simplified acquisition threshold, the A-E evaluation board must perform the following functions in addition to, or in combination with, those of [FAR 36.602-3](#), and in the sequence indicated:

- (1) Analyze the nature and scope of the project work requirements.
- (2) Develop the evaluation criteria and rating systems to be used in screening firms for the pre-selection list and in the final selection. The screening criteria should be based on

information provided by the Standard Form (SF) 330, Architect-Engineer Qualifications.

(3) Prepare the public announcement (see [FAR 5.205\(d\)](#)) for the project and provide it to the contracting officer for publication.

(4) Screen the SF 330s and any other qualification data received in response to the public announcement of the project and prepare a pre-selection list of the best qualified firms for further consideration. The preselection list must consist of at least three firms.

(5) When appropriate, obtain in writing more specific and detailed qualification, experience and past performance data (see [FAR 36.602-1\(a\)](#)) not provided by the SFs 330 that are needed to evaluate the firms using the established selection criteria. The firms should also be provided with a description of the nature and the scope of work to be accomplished to assist them in their responses. The A-E firms shall be advised not to submit price proposals, design sketches, drawings or design data at the time the qualification and past performance information is submitted.

(6) Conduct interviews with the firms on the preselection list. As part of the interview, the A-E firms shall be given an opportunity to make an oral presentation of their qualifications and experience, proposed project approach and any other relevant data. The program and project manager and other key project personnel and consultants proposed by a firm should participate in the interview.

(7) Whenever it is practical and advantageous, the A-E evaluation board should visit the offices of the A-E firms on the preselection list to inspect their facilities and work environments, to meet members of the proposed project team, and to see both work in progress and additional examples of completed projects.

(8) Review the SF 330s for other experience and qualification data for each firm on the preselection list, and perform a systematic numerical evaluation rating of the firms.

(9) Develop a rank order listing of at least three firms considered most highly qualified to perform the required work, based on the numerical evaluation ratings of the firms on the preselection list.

(10) Prepare a report which shall include in sufficient detail:

(i) The extent of the board's review and evaluation;

(ii) The list described in paragraph (i) of this section;

(iii) Recommendations; and

(iv) Considerations on which the recommendations are based.

(d) The COCO is delegated the authority to receive the report prepared by the evaluation

board.

3036.602-4 Selection authority.

- (a) The COCO is authorized to make the final selection of the most highly qualified firms.
- (b) The recommendations of the evaluation board will normally be approved, unless the report does not adequately support the recommendations. If recommendations are not approved, the A-E evaluation board shall be required to reconvene until an acceptable set of recommendations is agreed upon. The approved report serves as authorization for the contracting officer to commence negotiations with the A-E firm ranked number one by the A-E evaluation board.

3036.602-5 Short selection process for contracts not to exceed the simplified acquisition threshold.

Components are authorized to use either of the short selection processes of [FAR 36.602-5](#).

- (b) *Selection by the chairperson of the board.* The COCO is authorized to review and approve the selection report.

3036.603 Collecting data on and appraising firms' qualifications.

Because it is DHS policy to establish ad hoc evaluation boards instead of a permanent board to select A-E firms, each Component must establish or designate an office or offices to meet the requirements of [FAR 36.603\(a\)](#).

3036.605 Government cost estimate for architect-engineer work.

- (b) Contracting officers may release Government estimates on an as-needed basis.

3036.606 Negotiations.

3036.606-70 General.

The limitation on A-E fees of six percent of the estimated construction cost (see [FAR 15.404-4\(c\)\(4\)\(i\)\(B\)](#)) applies to all services that are an integral part of the production and delivery of plans, designs, drawings and specifications of a construction project. The limitation, however, does not apply to the cost of investigative and other services including but not limited to the following:

- (a) Development of program requirements (scope of work);
- (b) Determination of project feasibility;

- (c) Preparation of drawings of an existing facility, where current drawings are not available;
- (d) Subsurface investigations (soil borings);
- (e) Structural, electrical and mechanical investigations of an existing building, where current information is not available;
- (f) Surveys: topographic, boundary, utility;
- (g) Preparation of models, color renderings, photographs or other presentation materials;
- (h) Travel and per diem for special presentations;
- (i) Supervision and inspection of construction;
- (j) Preparation of operating and maintenance manuals; and
- (k) Master planning.

3036.609 Contract clauses.

3036.609-1 Design within funding limitations.

- (c) The HCA may determine in writing not to include clause [FAR 52.236-22](#), Design within Funding Limitations, in fixed-priced A-E contracts because: (1) cost limitations are secondary to performance consideration and additional project finding can be expected, if necessary, (2) the design is for a standard structure and is not intended for a specific location, or (3) there is little or no design effort involved.

CHAPTER 3037 SERVICE CONTRACTING

Subchapter 3037.1 Service Contracts—General

3037.103	Contracting officer responsibility.
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3037.203	Policy.
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Subchapter 3037.5 Management Oversight of Service Contracts

3037.503	Agency-head responsibilities.
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Subchapter 3037.6 Performance-Based Acquisition

3037.601	General.
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Subchapter 3037.1 Service Contracts-General

Subchapter 3037.103 Contracting officer responsibility.

(a) Ensure that procurement requests for Departmental branding strategies, seals and logos or similar services are consistent with guidance and policy contained in the Management Directive [\(MD\) 0030](#), Use of Department of Homeland Security Seal.

(e) Consistent with [FAR 7.503](#), contracting officers must review all requirements for services to ascertain whether a prohibition on contractor support in drafting congressional testimony, responses and reports (or other prohibitions identified in [FAR 7.503\(c\)\(20\)](#)) should be included within any resultant solicitation, contract or order. For those requirements identified by the contracting officer as requiring such a prohibition: ensure that all solicitations, contracts and orders for services include a prohibition against any form of contractor support in the preparation of congressional testimony, responses and reports (or other prohibitions identified in [FAR 7.503\(c\)\(20\)](#); further, ensure that all interagency agreements that may result in assisted acquisitions contain an identical prohibition with respect to any contracts or orders for services to be awarded by a servicing agency on behalf of DHS.

Subchapter 3037.104 Personal services contracts.

Subchapter 3037.104-70 Personal services contracts.

(b) The Department of Homeland Security was given the Personal Services Contracting (PSC) authority in the Homeland Security Act (HSA) Section 832(1) and (2).

(1) The rate of pay for services rendered by an expert or consultant cannot exceed the daily equivalent of the maximum rate payable for a senior-level position under [5 U.S.C. 3109](#) for PSCs authorized under the Homeland Security Act (HSA) Section 832(1). If the services are determined to be necessary due to urgent homeland security needs under HSA Section 832(2) and justified in a Determination and Findings (D&F), pay limitations do not apply ([See 5 U.S.C. 5376](#)).

(2) The duration of the PSC must conform to one of the following scenarios:

(i) HSA Section 832(1): The duties are of a temporary nature and the consultant will work on a full-time basis for a maximum of 2 years, an initial appointment not to exceed one year and a possible reappointment (option) not to exceed 1 additional year; or, the duties are of an intermittent or part-time nature and the total time will not exceed the 2 year limitation or the cumulative earnings will have a lifetime limit of twice the maximum annual rate payable under the annualized basic pay limitations of [5 U.S.C. 3109](#) and [5 U.S.C. 5376](#).

(ii) HSA Section 832(2): The duties are in response to an urgent homeland security need, will not exceed an initial one year period, but may have a possible reappointment (option) not to exceed one additional year and the pay limitations of [5 U.S.C. 3109](#) are waived.

(3) The following are requirements that must be satisfied to use the authority.

(i) Verify it would not be practicable to obtain such services by other means (See [FAR 37.104](#) for the definition of a PSC).

(ii) Verify that the contract will not involve the following:

- (A) A position requiring Presidential appointment;
- (B) A Senior Executive Service Position;
- (C) Performance of managerial or supervisory work;
- (D) Work currently being performed by your regular employees;
- (E) Filling in for staffing shortages; and
- (F) Providing that individual a career appointment.

(iii) Prepare a determination and findings (D&F) in accordance with [FAR 1.7](#) and include a determination that states the following:

(A) The duties are of a temporary nature and the consultant will work on a full-time basis for a maximum of 2 years, an initial appointment not to exceed one year and a reappointment not to exceed one additional year; or, the duties are of an intermittent nature or part-time nature and the total time will not exceed the 2 year limitation or the

cumulative earnings will have a lifetime limit of twice the maximum annual rate payable under the annualized basic pay limitations of [5 U.S.C. 3109](#) and [5 U.S.C. 5376](#); or, HSA Section 832(2): The duties are in response to an urgent homeland security need, will not exceed an initial one year period, but may have a possible reappointment (option) not to exceed one additional year and the pay limitations of section 3109 are waived.

- (B) DHS personnel with necessary skills are not available;
 - (C) The contract will not fill a staffing shortage;
 - (D) Excepted appointment cannot be obtained;
 - (F) A non-personal services contract is not practicable;
 - (G) If the pay limitation of 5 U.S.C. 3109 is exceeded, the D&F supports the rationale and includes the finding that the services are necessary due to urgent homeland security needs; and
 - (H) Any other determination required by statutes has been made.
- (iv) Coordinate benefits, taxes, personnel ceilings, or conflict of interest matters with the cognizant civilian personnel office.
- (4) Legal Review: Legal review is required for personal services contracts in accordance with [FAR 37.104\(e\)](#).
- (5) Approval: The Chief of the Contracting Office (COCO) shall approve the required D&F unless the personal services contract for experts and consultant services are acquired without regard to the pay limitation of [5 U.S.C. 3109](#) in which case, the Head of the Contracting Activity (HCA) shall approve.
- (6) Additional Considerations: The contract may provide for the same per diem and travel expenses authorized for a Government employee, including actual transportation and per diem in lieu of subsistence for travel between home or place of business and official duty station and only for travel outside the local area in support of the statement of work.
- (7) Reporting Requirements: In accordance with [5 U.S.C. 3109](#), each agency shall report to the Office of Personnel Management on an annual basis with respect to:
- (i) The number of days each expert or consultant employed by the agency during the period was so employed; and
 - (ii) The total amount paid by the agency to each expert and consultant for such work during the period.

(iii) In order to comply with this requirement, each Component shall maintain a record of the above information for inclusion in a consolidated agency report.

3037.106 Funding and term of service contracts.

(b) The Chief of the Contracting Office (COCO) is delegated this authority.

3037.112 Government use of private sector temporaries.

(a) Definitions. The following words and terms are used in and defined for this subsection.

"Critical need" means a sudden or unexpected occurrence; an emergency; a pressing necessity; or an exigency. Such occasions are characterized by additional work or deadlines required by statute, executive order, court order, regulation, or formal directive from the Secretary of Homeland Security or designee. A recurring, cyclical peak workload, by itself, is not a critical need.

"Federal supervisor" means an individual employed by DHS to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment.

"Parental and family responsibilities" means situations such as absence for pregnancy, childbirth, child care, and care for elderly or infirm parents or other dependents.

"Temporaries" means those employees of a temporary help service firm who are supervised and paid by that firm and whom that firm assigns to perform the contract work assignments.

"Temporary help service firm" means a contractor which provides services that are performed by its pool of employees possessing the appropriate work skills for brief or intermittent periods. The firm is the legally responsible employer and maintains that relationship during the time its employees are assigned to the contract. The firm recruits, tests, hires, trains, assigns, pays, provides benefits and leave to, and as necessary, addresses performance problems, disciplines, and terminates its employees. The firm is responsible for payroll deductions and payment of income taxes, social security (FICA), unemployment insurance, and worker's compensation, and any required liability insurance and bonding.

(b) *Policy.* Temporary help services may be acquired for the brief or intermittent use of the skills of private sector temporaries. Acquisition of these services is subject to the following conditions:

(1) The temporary will be performing the work of an employee who will be absent from the position for a temporary period (short-term) because of a personal need including emergency, accident, illness, parental or family responsibilities, or mandatory jury service.

(2) In the judgment of the head of the requesting office, the temporary help is for a critical need which cannot be delayed.

(c) *Exceptions.* Temporary help services cannot be acquired--

(1) To displace a Federal employee;

(2) For the work of managerial or supervisory positions;

(3) For the work of or to fill an Senior Executive Service (SES) employee or position; or

(4) To circumvent the regular recruitment and hiring procedures under the civil service laws for permanent appointment in the competitive civil service.

(5) To circumvent controls on employment levels; or

(6) In lieu of appointing a surplus or displaced Federal employee as required by 5 CFR Part 330, Subpart F (Agency Career Transition Assistance Plan for Displaced Employees) and Subpart G (Interagency Career Transition Assistance Plan for Displaced Employees).

(d) *Certification of need.* The requirements office must submit a Checklist for Private Sector Temporary Personnel, Appendix T, with the procurement request (PR) for temporary help services. The entire checklist must be completed, including the certification of the regulatory requirements by the Chief Human Capital Officer or Component servicing Human Resource Official.

(e) *Acquisition and contract requirements.* The contracting officer shall comply, as applicable, with all of the policy and procedures of the FAR to acquire temporary help services by contract. The following limitations apply:

(1) The contract shall not create or imply an employer-employee relationship between the Government and the contractor's temporary, and the temporary shall not be eligible for civil service employee benefits, including retirement; and

(2) *Time limit on use of temporary help service firm.* The contract shall not require the use of a temporary help service firm in a single situation, as defined at HSAM 3037.112(a), initially for more than 120 workdays. However, if the Government employee's absence or DHS's critical need continues to exist beyond the initial 120 workdays, the temporary help services may be extended up to a maximum limit of 240 workdays.

(3) *Time limit on use of individual employee of a temporary help service firm.* The contract shall not require that a temporary at an office work for more than 120 workdays in a 24-month period. The 24-month period begins on the first day of assignment. However, the temporary may work up to a maximum of 240 workdays if it is determined that using the services of the same individual for the same situation will prevent significant delay.

(f) *Approval for extended services by the Component personnel office.* If the requiring office desires to retain the services of the same temporary help service firm beyond 120 workdays, or needs to use a temporary beyond the 120 workdays, the requiring office must submit information to the Component personnel office for approval. The Component personnel office should receive the notification at least 10 working days before the 120 workday period expires. The information required for submission is:

- (1) A full justification for the extension beyond the 120 workday period;
- (2) The new termination date or number of extra workdays needed;
- (3) The total number of days worked by the current temporary and the reason for using the individual;
- (4) The importance of the work to be done and the impact of delay or interruption; and
- (5) The actions taken to find other solutions, and the availability of external and internal candidates.

(g) *Contract administration.* The office receiving the temporary shall ensure that an employer-employee relationship is not established with the contractor's temporary. However, technical advice, assignment of task, task-related instructions, office orientation, and review of the temporary's work products are necessary to ensure that the temporary performs the requisite services.

3037.112-70 Stenographic reporting services.

- (a) The contracting officer is delegated authority under [5 U.S.C. 3109](#) to procure stenographic services by contract.

3037.113-1 Waiver of cost allowability limitations.

- (a) The Head of the Contracting Activity (HCA) is delegated this authority.

Subchapter 3037.2 Advisory and Assistance Services

3037.203 Policy.

3037.203-70 Services of individual experts and consultants.

(a) The Chief of the Contracting Officer (COCO) is delegated authority under [5 U.S.C. 3109](#) (to procure by contract the temporary or intermittent services of experts or consultants or an organization thereof, if such an acquisition is authorized by an appropriation or other statute).

(b) The rate of pay for services rendered by an expert or consultant is limited and cannot be exceeded unless specifically authorized by the appropriation or other statute which authorizes the acquisition of the services. The rate of pay for services rendered by a consultant to an advisory committee is governed [41 CFR, Subpart 101-6.10](#).

(c) Because the statutes governing the acquisition of and rate of pay for these services are subject to change, the contracting officer must seek the advice of the Component's legal counsel prior to taking action on the procurement request for such services.

3037.203-71 Third party benefits.

When a contract calls for providing technical assistance or advice that will benefit a third party, these services are advisory and assistance in the context of any regulation, statute, or guidance on these services. While these services may ultimately benefit an external or third party such as grantees or the states, the services are being acquired to accomplish the program objectives of DHS.

3037.204 Guidelines for determining availability of personnel.

(a), (b), and (d). The COCO is delegated the authorities at [FAR 37.204](#).

(b)(1) The determination must ensure that the requirements of [FAR 9.5](#) and HSAR 3052.209-70 are met regarding potential organizational and consultant conflicts of interest.

3037.205 Contracting officer responsibilities.

In addition to the requirement of [FAR 37.205](#), the contracting officer must ensure that the requirements of [FAR 9.5](#) and HSAR 3052.209-70 are met regarding potential organizational and consultant conflicts of interest.

Subchapter 3037.5 Management Oversight of Service Contracts

3037.503 Agency-head responsibilities.

(a) and (b) The contracting officer must ensure that requirements for services are clearly defined, appropriate performance standards are developed, and that service contracts are awarded and administered in a manner that will provide the customer its supplies and services timely and within budget.

(c) and (d) The HCA must ensure that procedures are in place for service contracting to ensure that inherently governmental functions are performed by Government personnel and that appropriate strategies and training are initiated for performance-based acquisitions.

Subchapter 3037.6 Performance-Based Acquisition

3037.601 General.

DHS contracting officers should make use of the web-enabled guide entitled “Seven Steps to Performance-Based Acquisition,” currently sponsored by GSA at the following website: http://www.acquisition.gov/comp/seven_steps/home.html.

CHAPTER 3038

FEDERAL SUPPLY SCHEDULE CONTRACTING

(RESERVED)

There is no text implementing or supplementing [FAR Part 38](#).

CHAPTER 3039 ACQUISITION OF INFORMATION RESOURCES

Subchapter 3039.1 General 3039.101 Policy.

Subchapter 3039.2 Electronic and Information Technology 3039.203 Applicability. 3039.204 Exceptions.

Subchapter 3039.1 General

3039.101 Policy.

(b)(1) Department of Homeland Security Management Directives (MDs) that apply to the acquisition of Information Technology (IT) and provide policy and guidance for the information resource management and IT program are:

- (i) MD Number 4200.1, IT Capital Planning and Investment Control (CPIC) and Portfolio Management;
 - (ii) DHS [Directive 102-01](#), Acquisition (previously MD Number 1400, Investment Review Process); and
 - (iii) MD Number 4300.1, Information Technology Systems Security.
 - (iv) MD Number [4010.2](#), Section 508 Program Management Office and Electronic and Information Technology Accessibility; and
 - (v) MD [0007.1](#), Information Technology Integration and Management.
- (2) See HSAM 3004.470 for security requirements for contractor access to unclassified IT resources.

3039.2 Electronic and Information Technology

3039.203 Applicability.

(a)(1) Refer to the current version of DHS MD Number 4010, Section 508 Program Management Office & Electronic and Information Technology Accessibility. This MD applies to the acquisition of Electronic Information Technology (EIT). Exception determinations shall be justified in writing by the requiring official, approved in accordance with Component established procedures and forwarded with the Purchase request to the contracting officer to include in the contract file. See HSAM 3039.204(e) regarding the additional review and approval requirements for the Undue Burden exception.

(2) Contracting offices shall review procurement requests to ensure that documentation required by [MD Number 4010.2](#) is included. Contact the requiring activity to resolve discrepancies.

(3) Additional specific language for identification of applicable exceptions and standards can be obtained in consultation with the DHS Office of Accessible Systems and Technology (OAST) via the DHS Accessibility Help Desk at accessibility@dhs.gov. To implement the Section 508 requirements, requiring and ordering offices shall ensure that statements of work for solicitations of EIT developed, procured, maintained and/or used are in compliance with the “Electronic and Information Technology Accessibility Standards” set forth by the Architectural and Transportation Barriers Compliance Board (also referred to as the “Access Board”) in [36 CFR Part 1194](#). The standards are also set forth in [MD Number 4010.2](#), Appendices A through H. In addition to the FAR requirements for acquisitions to contain specific applicable standards or exceptions delineated, DHS solicitations shall require (where appropriate) that any deliverables produced as a result of a contract of EIT be accompanied by specific Section 508 test results and subject to further evaluation and verification by the Department of Homeland Security prior to final acceptance.

3039.204 Exceptions.

Pursuant to [MD 4010.2](#), VI. A., all National Security and Undue Burden exception determinations shall be forwarded to the DHS Office of Accessible Systems and Technology for review and approval. All other exception requests shall be forwarded to the Component-level Section 508 Coordinator for review and approval.

CHAPTER 3040

(RESERVED)

CHAPTER 3041 ACQUISITION OF UTILITY SERVICES

Subchapter 3041.1 General
3041.103 Statutory and delegated authority.

Subchapter 3041.2 Acquiring Utility Services
3041.201 Policy.

Subchapter 3041.5 Solicitation Provision and Contract Clauses
3041.501 Solicitation provision and contract clauses.

Subchapter 3041.1 General**3041.103 Statutory and delegated authority.**

(c) Requests for individual and class certifications, that allow for delegations of authority from GSA for utility service contracts for periods over one year and not greater than ten years, shall be referred by the Head of the Contracting Activity (HCA) to the Chief Procurement Officer (CPO).

Subchapter 3041.2 Acquiring Utility Services**3041.201 Policy.**

(d)(2)(i) The contracting officer is authorized to enter into a contract pursuant to 42 U.S.C. 8287 (which pertains to the subject of shared energy savings including cogeneration).

(d)(3) The contracting officer is delegated the authority for [FAR 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 Technical Representative (COTR)
	3042.270-1	Policy.
	3042.270-2	COTR Appointment letter.
	3042.270-3	Procedures for issuance of COTR Appointment letters.
Subchapter	3042.3	Contract Administration Office Functions
	3042.302	Contract administration functions.
	3042.302-70	Earned value management.
Subchapter	3042.6	Corporate Administrative Contracting Officer
	3042.602	Assignment and location.
Subchapter	3042.7	Indirect Cost Rates
	3042.703	General.
	3042.703-1	Policy.
	3042.703-2	Certificate of indirect costs.
	3042.705	Final indirect cost rates.
	3042.705-1	Contracting officer determination procedures.
	3042.705-3	Educational institutions.
	3043.708	Quick-closeout procedures.
	3042.708-70	DHS quick-closeout procedures.
Subchapter	3042.8	Disallowance of Costs
	4032.803	Disallowing costs after incurrence.
Subchapter	3042.15	Contractor Performance Information
	3042.1502	Policy.
	3042.1503	Procedures.

Subchapter 3042.002 Interagency agreements.

(c) Memoranda of Understanding (MOU) and Memoranda of Agreement (MOA) for

audit services and contract administration respectively are established between the Department of Homeland Security and the Department of Defense components. (See Appendix U, Contract Audit Services Memorandum of Understanding and Appendix V, Contract Administration Services Memorandum of Agreement with the Defense Contract Management Agency (DCMA)).

Subchapter 3042.1 Contract Audit Services

3042.102 Assignment of contract audit services.

(a) Contracting offices shall follow the procedures under the MOU between DHS and the Defense Contract Audit Agency (DCAA) to order audit services. (See Appendix U, Contract Audit Services Memorandum of Understanding.)

3042.170 Contract audit follow-up.

OCPO shall be responsible for audit follow-up. This follow-up shall occur on a quarterly basis. OCPO shall obtain a listing of all open audits from DCAA. A listing of open audits for which audit reports are older than 90 days shall be provided to the Components. The Components shall provide the status of each audit (e.g., disposition with a copy of the price negotiation memorandum, negotiations in process, etc.) to OCPO within 30 days after the list is provided to the Component. OCPO shall maintain a listing of all open audits older than 90 days and the status of those audits.

Subchapter 3042.2 Contract Administration Services

3042.202 Assignment of contract administration.

(a) Contracting officers shall comply with the procedures in Appendix V, Contract Administration Services Memorandum of Agreement, between DHS and DCMA, when ordering contract administration support services from DCMA.

(c) Delegating additional functions.

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

3042.270 Contracting Officer Technical Representative (COTR).

3042.270-1 Policy.

(a) DHS Management Directive (MD) [Number 0780.1](#), “Contracting Officer’s Technical Representative (COTR) Certification, Appointment and Responsibilities,” provides policy and procedures concerning the selection and training, certification, appointment, and termination of a COTR. DHS MD 0780.1 and any successor DHS COTR directive and instructions apply to all Components.

(b) Technical organizations (requisitioning/program offices) are responsible for ensuring that the individual recommended to the contracting officer for the COTR position possesses training, qualifications and experience commensurate with the duties and responsibilities to be delegated (See HSAM 3032.702-70, regarding submission of procurement requests). Exceptions to COTR nomination submittals are procurements valued under the simplified acquisition threshold, unless the contracting officer determines appointment of a COTR is appropriate.

3042.270-2 COTR Appointment letter.

(a) The DHS COTR Appointment letter in Appendix W, Attachment (1), is provided for use in preparing DHS COTR or Alternate COTR appointment letters and for ensuring format/framework consistency throughout the DHS. Supplements to the required COTR appointment letters framework elements/content must be established with Component written procedures.

(b) Required key elements for DHS COTR Appointment letters are: COTR core responsibilities and functions, exclusions, and authority, ethics and training. DHS required elements (see Appendix W, Attachment (2), Exhibits 1-3) must be addressed in each COTR appointment letter as described below, unless otherwise not applicable or delegated by the contracting officer:

(i) Core COTR responsibilities and functions. For DHS, the five core responsibility elements (performing surveillance/inspections/evaluations, monitoring activities, making recommendations for invoice and payment, managing Government furnished property, and managing contractor employee access to facilities or systems) must be included in each COTR appointment, unless not applicable or delegated by the contracting officer (e.g., contract does not include Government furnished property or security access requirements). The detailed content instructions for each of these five core elements may be expressed, altered or varied through Component's written supplement procedures to the extent the variation is substantially the same in nature. (See Appendix W, Attachment (2), Exhibit 1, for described duties.) Components must also include the COTR 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 COTR unless otherwise limited or prohibited by law or acquisition regulation.

(ii) 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, Attachment (2), Exhibit 2, to establish the required exclusions for their Component's organization.

(iii) Authorities, Ethics, and Training. Components shall establish written procedures identifying their needs and requirements within the categories of authorities, ethics and

training. Components may use the content provided in Appendix W, Attachment (2), Exhibit 3, to establish uniformity within their organization.

3042.270-3 Procedures for issuance of COTR Appointment letters.

(a) Component administrative processing for issuance of COTR appointment letters must comply with [MD 0780.1](#) (or successor directive and instruction) which provides guidance for COTR appointment letters (also see Appendix W, Attachment (1), specifically –

- (i) Acknowledgement and receipt of the appointment letter.
- (ii) Acceptance of COTR appointment letters;
- (iii) Appointment of Alternate COTR letters; and
- (iv) Terminations of COTR Appointment.

(b) Components must ensure where an individual is appointed as a COTR on more than one contract, separate COTR and Alternate COTR appointment letters shall be issued for each contract.

(c) Component procedures must address the COTR Appointment letters distribution requirements unique to the Component needs.

Subchapter 3042.3 Contract Administration Office Functions

3042.302 Contract administration functions.

3042.302-70 Earned value management.

Responsibility for reviewing Earned Value Management System (EVMS) plans and verifying initial and continuing contractor compliance with Government EVMS criteria and conformity with American National Standards Institute/Electronic Industries Alliance (ANSI/EIA) Standard 748, Industry Guidelines for EVMS, is normally delegated to DCMA when EVMS support is required. Refer to HSAM 3034.204 for guidance relating to identification of contracts that require the application of EVMS. The procedures for ordering DCMA services are found in Section 4. “Procedural Arrangements,” of the MOA, which is at Appendix V.

Subchapter 3042.6 Corporate Administrative Contracting Officer

3042.602 Assignment and location.

The Head of the Contracting Activity (HCA) or designee no lower than flag officer or Senior Executive Service (SES) level is delegated this authority.

Subchapter 3042.7 Indirect Cost Rates

3042.703 General.

3042.703-1 Policy.

For forward pricing and billing rates, contracting officers shall utilize the rates in the Forward Pricing Rate Agreement, if one exists. If one does not exist, but there is a Forward Pricing Rate Recommendation, contracting officers should normally use that recommendation as the basis for negotiating the indirect rates. If the contracting officer negotiates rates that differ from those in the Forward Pricing Rate Recommendation, the contract file must include the rationale for negotiating different rates. If there is no Forward Pricing Rate Agreement or Forward Pricing Rate Recommendation, the contracting officer should normally obtain information from DCAA to assist the contracting officer in negotiating the indirect rates. If the contracting officer negotiates rates that differ significantly from the rate information provided by DCAA, the contracting officer must document the rationale for the differences in the contract file. Where DCAA has an audit presence, DHS will use DCAA unless DCAA agrees otherwise.

3042.703-2 Certificate of indirect costs.

(b) *Waiver of certification.* (1) The COCO is delegated this authority.

3042.705 Final indirect cost rates.

3042.705-1 Contracting officer determination procedure.

(a) *Applicability and responsibility.* The contracting officer is responsible for ensuring that the direct and indirect costs paid under cost reimbursement and T&M contracts are allowable.

(b) DHS Procedures: For final indirect rates, DHS relies on the rates established by the cognizant federal agency, if such rates exist. If the rates are audit determined, DHS relies on the indirect cost rates established by DCAA, unless the DHS and DCAA mutually agree that another agency will be the cognizant audit agency.

(1) DCAA performs contract audits on an annual basis (not on a contract by contract basis). Thus, DCAA notifies contracting officers when an annual audit of a contractor's incurred costs is going to be performed that includes their DHS contract. This notification will request DHS acknowledgement that the DHS contract should be included in the annual audit, and a request for reimbursement to DCAA for the DHS applicable share of the audit cost. Unless there are exceptional circumstances, DHS contracting officers shall obtain these annual incurred cost audits. If the contracting officer decides not to obtain the annual audit of the direct or indirect costs, the contracting officer shall document in the contract file as to why the audit was not obtained. In addition, the contracting officer shall notify OCPO, Director, Oversight & Strategic Support Division via PROCUREMENT.Support@dhs.gov of their decision to not obtain the audit. The contract file documentation shall include, as a minimum, a discussion of the reason the audit was not obtained (e.g., small dollar amounts remaining

unaudited or unsettled; low dollar value of the contracts; the necessary audit will not be performed for many years and there is an urgency to close the contract).

(2) A copy of the annual audit reports provided by DCAA shall be maintained in the contract file. These reports shall be used to establish the allowable direct and indirect costs under cost reimbursement and T&M contracts, unless there are final rates negotiated by the cognizant federal agency that differ from those shown in the DCAA report. In such cases, the allowable direct and indirect costs shall be determined based on the rates negotiated by the cognizant federal agency.

(3) To mitigate possible overpayments, the contracting officer shall periodically compare the amounts billed under the contract with the allowable costs shown on the summary sheet. If the amounts billed significantly exceed the allowable costs, the contracting officer shall notify the contractor and request a credit adjustment. If the adjustment is not provided promptly, the contracting officer shall issue a demand for payment to recover the overpayments.

3042.705-3 Educational institutions.

(b) If DHS is the Cognizant Federal Agency for an educational institution for the purpose of negotiating indirect cost rates, the use of predetermined final indirect cost rates must be approved by the COCO.

3042-708 Quick-closeout procedure.

3042.708-70 DHS quick-closeout procedures.

The Contracting Officer may:

(a) Require the contractor to submit the following: (1) the contractor's final indirect cost rate proposal reflecting actual cost experience during the covered period(s), together with supporting cost or pricing data, for each of its fiscal years for which quick-closeout is involved, and (2) a final voucher and a summary of all costs by cost element and for each of its fiscal years for the contract(s) in question.

(b) Notify the cognizant audit activity, either verbally or in writing, identify the contract(s), and request: (1) the contractor's indirect cost history covering a sufficient number of fiscal years to see the trend of claimed, audit questioned, and disallowed costs; and (2) any other information that could impact the decision to use quick-closeout procedures. Indirect cost histories should be requested from the contractor only when the cognizant audit activity is unable to provide the information.

(c) Review the contract(s) for indirect cost rate ceilings and any other contract limitations, as well as the rate history information.

(d) If quick-closeout procedures are appropriate based upon the information obtained

pursuant to paragraphs (a), (b), and (c), the contracting file shall be documented with the findings and rationale.

(e) Final indirect cost rates should be established using one of the following:

(1) Contractor's claimed actual rates adjusted to reflect an appropriate percentage of unallowable costs in prior year claims: or

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

(f) If an agreement is reached with the contractor, obtain a release of all claims and other applicable closing documents (see HSAR 3004.804-570).

Subchapter 3042.8 Disallowance of Costs

3042.803 Disallowing costs after incurrence.

(b) *Auditor receipt of vouchers.*

(3)(ii) When the contractor files a claim for unreimbursed costs under the Disputes clause of the contract, contracting officers shall process the claim in accordance with Component procedures.

Subchapter 3042.15 Contractor Performance Information

3042.1502 Policy.

The HCA shall ensure that contractor performance evaluations are completed to meet the requirements of [FAR Subpart 42.15](#) and reported into the Department of Defense Contractor Performance Assessment Reporting System (CPARS) or other system as designated by the DHS Chief Procurement Officer. 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](#). 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.

3042.1503 Procedures.

(a) Component procedures shall provide that:

(1) 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.

(2) 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, typically including the COTR. COTRs will not be designated as AOs. Evaluations prepared by the COTR will be forwarded to the AO who will be the contracting officer or other official at a level above the COTR.

(3) 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.

(4) 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.

CHAPTER 3043 CONTRACT MODIFICATIONS

Subchapter 3043.3 Change Orders 3043.205 Contract clauses.

Subchapter 3043.70 Undefined Contract Actions 3043.7000 Definitions. 3043.7001 Administration of UCAs. 3042.7002 UCA monitoring system and report.

Subchapter 3043.2 Change Orders

3043.205 Contract clause.

The 30-day period cited in the clauses referenced at [FAR 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 Undefined Contract Actions

3043.7000 Definitions.

"Undefined contract action" (UCA) means the following:

- (1) Change Orders. All modifications/supplemental agreements issued under the "Changes" clause when the price for the change has not been negotiated; and
- (2) Letter Contracts.

3043.7001 Administration of UCAs.

Contracting officers shall negotiate the UCA and issue the definitized contractual document within six months after the UCA has been issued to the contractor.

3043.7002 UCA monitoring system and report.

(a) The Head of the Contracting Activity (HCA) shall ensure that a system is developed and maintained to monitor UCAs. The Chief of the Contracting Office (COCO) shall ensure that progress is made to definitize the UCAs within the six-month period (except see [FAR 16.603-2](#) for additional requirements for letter contracts.) Also, see HSAM 3016.603-2(c) for COCO approval to extend the definitization schedule under letter contracts.

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

CHAPTER 3044 SUBCONTRACTING POLICIES AND PROCEDURES

Subchapter 3044.3 Contractors' Purchasing Systems Reviews
3044.302 Requirements.

Subchapter 3044.3 Contractors' Purchasing Systems Reviews

3044.302 Requirements.

The Chief of the Contracting Office (COCO) is delegated this authority when the contract administration is retained.

CHAPTER	3045	GOVERNMENT PROPERTY
SUBCHAPTER	3045.1	General
	3045.102	Policy.
	3045.103	General.
	3045.105	Contractors' property management system.
Subchapter	3045.3	Authorizing the Use and Rental of Government Property
	3045.302	Contracts with foreign governments or international organizations.
Subchapter	3045.6	Reporting, Redistribution, and Disposal
	3045.602	Reutilization of Government property.
	3045.602-3	Screening.

Subchapter 3045.1 General

3045.102 Policy.

(b) When providing Government property to contractors, contracting officers shall document the file that the requirements of [FAR 45.102\(b\)](#) have been met.

3045.103 General.

3045.103-270 General reporting requirements.

Government property reports shall be required in accordance with [FAR 52.245-1](#) Government Property, and Component procedures. Subparagraph (f)(vi), Reports, of the clause at [FAR 52.245-1](#) requires the contractor to have a process to create and provide reports for various specific purposes, and as directed by the contracting officer. Contracting officers shall apply this authority to the extent necessary to ensure that Government property in the possession of contractors is managed in accordance with the clause.

3045.105 Contractors' property management system compliance.

(a) The contract file shall contain written evidence that the contractor's property management system was analyzed for conformance with contract requirements and shall identify the official/agency that performed the analysis. When DHS is the agency responsible for contract administration at the contractor's plant or installation, and the total value of Government property in the possession of the contractor exceeds \$10 million, the contractor's property management system shall be analyzed periodically to ensure compliance with the terms of the contract.

Subchapter 3045.3 Authorizing the Use and Rental of Government Property

3045.302 Contracts with foreign governments or international organizations.

Contracting officers shall compute rental costs for the use of Government production and research property with foreign governments or international organizations in accordance with [FAR 52.245-9, Use and Charges](#). See also [OMB Circular A-25, User Charges](#) for guidance on the establishment of fees to recover costs.

Subchapter 3045.6 Reporting, Redistribution, and Disposal**3045.602 Reutilization of Government Property.****3045.602-3 Screening.**

Screening shall be in accordance with [FAR 45.602-3](#). The contracting officer shall contact the appropriate Component property office for guidance.

(b) Special screening requirements.

(2) Special test equipment with commercial components. The contracting officer shall contact the appropriate Component property office for guidance.

(3) Printing equipment. To ensure compliance with the regulations of the Joint Committee on Printing, Title 44 U.S.C., contracting officers shall report all excess printing equipment to the DHS Chief Administrative Services. This includes all equipment for use in authorized printing plants and auxiliary equipment (i.e., composing machine, process camera folder, collator, cutter, drill, or other production equipment) for use with duplicators or copying equipment.

CHAPTER	3046	QUALITY ASSURANCE
Subchapter	3046.3	Contract Clauses
	3046.316	Responsibilities for supplies.
Subchapter	3046.4	Government Contract Quality Assurance
	3046.401	General.
Subchapter	3046.6	Material Inspection and Receiving Reports.
	3046.670	Inspection and receiving report.
	3046.671	Acceptance report.
	3046.672	Inspection, Acceptance and Receiving Report.
Subchapter	3046.7	Warranties.
	3046.702	General.
	3046.703	Criteria for use of warranties.
	3046.704	Authority for use of warranties.
	3046.706	Warranty terms and conditions.
	3046.708	Warranties of data.
Subchapter	3046.790	Use of warranties in major systems acquisitions by the United States Coast Guard (USCG)
	3046.790-5	Tailoring warranty terms and conditions (USCG).
	3046.790-6	Warranties on Government-furnished property (USCG).

Subchapter 3046.3 Contract Clauses

3046.316 Responsibility for supplies.

When the contracting officer deems it necessary, [FAR 52.246-16](#), Responsibility for Supplies, may be used in solicitations and contracts when the contract amount is not expected to exceed the simplified acquisition threshold.

Subchapter 3046.4 Government Contract Quality Assurance

3046.401 General.

(f) Inspection shall be documented as prescribed in HSAM 3046.6.

Subpart 3046.6 Material Inspection and Receiving Reports

3046.670 Inspection and receiving report.

(a) Unless otherwise prescribed by Component procedures, a receiving report statement shall be signed by the authorized Government representative to evidence Government

inspection and receipt, except for simplified acquisitions using OF 347. The receiving report shall be completed at the place(s) specified in the contract for performance of Government quality assurance.

(b) For simplified acquisitions using OF 347, or an equivalent authorized Component form, the receiving report section shall be completed for inspection and receipt and signed by the authorized Government representative.

3046.671 Acceptance report.

(a) Unless otherwise prescribed by Component procedures, an acceptance report statement shall be signed by the authorized Government representative to evidence Government acceptance, except for simplified acquisitions using OF 347. The acceptance report shall be completed at the place(s) specified in the contract for Government acceptance.

(b) For simplified acquisitions using OF 347, or an equivalent, authorized Component form, the receiving report section shall be completed for acceptance and signed by the authorized Government representative.

3046.672 Inspection, Acceptance and Receiving Report.

All contract and order files shall contain the following information, in a Component authorized form or format, when OF 347, or an equivalent, has not been used:

Date:

Contract number and latest modification number:

Order number and latest modification number:

Report number, e.g. number each report for a given contract or order in series.

Contractor's Name:

Date items received or date recurring payment due:

Location where items were delivered or contractor's performance:

Statements applicable to the respective signature blocks to the effect that the requirements have been inspected, received, and accepted and meet the terms of the contract except as noted below:

List the requirements that were not accepted and/or the deductions made and state the reason why:

Total amount of deductions related to rejected items:

Signature and printed name of authorized Government representative(s):

Title of authorized Government representative(s):

Date(s) signed:

Components are authorized to use DHS 700-21, Material Inspection and Receiving Report, and Continuation Sheet, or a form substantially similar if authorized in accordance with Component procedures.

Subchapter 3046.7 Warranties

3046.702 General.

The following areas shall also be addressed by all Components in relation to the use of warranties in DHS contracts:

- (a) Planning is an essential step in obtaining an effective warranty and should begin early enough to address warranty requirements during the development of the item. Therefore, consideration of warranty provisions and their impact shall be included within the comprehensive acquisition planning process required by [FAR Part 7](#), HSAR Part 3007, and HSAM Chapter 3007.
- (b) The acquisition cost of a warranty may be included as part of an item's price when cost or pricing data will clearly define cost of the warranty to the Government, or may be set forth as a separate contract line item.
- (c) Each Component shall establish a tracking and enforcement system, as appropriate, to identify items covered, to provide information to Government personnel about enforcing the warranty provisions, and to accumulate data relative to warranty costs.

3046.703 Criteria for use of warranties.

Warranties should be obtained only when they are cost beneficial. To determine whether use of a warranty is cost beneficial, an analysis shall be performed to compare the benefits to be derived from the warranty with its acquisition and administration costs. The analysis should examine the procurement's life cycle costs, both with and without a warranty. Where possible, a comparison should be made with the costs of obtaining and enforcing warranties for similar supplies or services. If a warranty is determined to be appropriate, the contract file shall be documented with the reason for inclusion of a warranty and identify the specific parts, subassemblies, systems or contract line item(s) on which a warranty should apply, and shall address why a warranty is appropriate under the criteria set forth in [FAR 46.703](#).

3046.704 Authority for use of warranties.

Contracting officers are authorized to approve the use of warranties.

3046.706 Warranty terms and conditions.

(a) The contracting officer, in developing the warranty terms and conditions, shall consider the following, and, where appropriate and cost beneficial, shall:

- (1) Identify the affected line item(s) and the applicable specification(s);
- (2) Require that the line item's design and manufacture will conform to: (i) an identified revision of a top-level drawing; and/or (ii) an identified specification or revision thereof;
- (3) Require that the system conform to the specified Government performance requirements;
- (4) Require that all systems and components delivered under the contract will be free from defects in materials and workmanship;
- (5) State that in the event of failure due to nonconformance with specification and/or defects in material and workmanship, the contractor will bear the cost of all work necessary to achieve the specified performance requirements, including repair and/or replacement of all parts;
- (6) Require the timely replacement/repair of warranted items and specify lead times for replacement/repair where possible;
- (7) Identify the specific paragraphs containing Government performance requirements which must be met;
- (8) Ensure that any performance requirements identified as goals or objectives in excess of specification requirements are excluded from the warranty provision;
- (9) Define what constitutes the start of the warranty period (e.g., delivery, acceptance, in-service date), the ending of the warranty (e.g., passing a test or demonstration, or operation without failure for a specified time period), and circumstances requiring an extension of warranty duration (e.g., extending the warranty period as a result of mass defect correction during warranty period);
- (10) Identify what transportation costs will be paid by the contractor in conjunction with warranty coverage;
- (11) Identify any conditions which will not be covered by the warranty, other than the exclusion of combat damage; and

(12) Identify any limitation on the total dollar amount of the contractor's warranty exposure, or agreement to share costs after a certain dollar threshold to avoid unnecessary warranty returns.

(b) Any contract that contains a warranty clause shall contain warranty implementation procedures, including warranty notification content and procedures, and identify the individuals responsible for implementation of warranty provisions. The contract may also permit the contractor's participation in investigation of system failures, providing that the contractor is reimbursed at established rates for fault isolation work, and that the Government receives credit for any payments where equipment failure is covered by warranty provisions.

3046.708 Warranties of data.

Warranties of data shall be used only after consultation with legal counsel.

3046.790 Use of warranties in major systems acquisitions by the United States Coast Guard (USCG)

3046.790-5 Tailoring warranty terms and conditions (USCG).

(a) As the objectives and circumstances vary considerably among major systems acquisition programs, contracting officers shall appropriately tailor the warranty on a case-by-case basis, including remedies, exclusions, limitations and durations, provided the tailoring is consistent with the specific requirements of this subpart and [FAR 46.706](#).

(b) Contracting officers of major systems acquisitions may exclude from the terms of the warranty certain defects for specified supplies (exclusions) and may limit the contractor's liability under the terms of the warranty (limitations), as appropriate, if necessary to derive a cost-effective warranty in light of the technical risk, contractor financial risk, or other program uncertainties.

(c) Contracting officers are encouraged to structure a broader and more comprehensive warranty where such is advantageous. Likewise, the contracting officer may narrow the scope of a warranty when appropriate (e.g., where it would be inequitable to require a warranty of all performance requirements because a contractor had not designed the system).

(d) Contracting officers shall not include in a warranty clause any terms that require the contractor to incur liability for loss, damage, or injury to third parties.

3046.790-6 Warranties on Government-furnished property (USCG).

A contractor for a major systems acquisition shall not be required to provide the warranties specified in HSAR 3046.790-1 on any property furnished to that contractor by the Government except for: (a) defects in installation; and (b) installation or modification

in such a manner that invalidates a warranty provided by the manufacturer of the property.

CHAPTER 3047 TRANSPORTATION

Subchapter 3047.1 General
3047.101 Policies.

Subchapter 3047.2 Contracts for Transportation or for Transportation-Related Services
3047.205 Availability of term contracts and basic ordering agreements for transportation or for transportation-related services.

Subchapter 3047.5 Ocean Transportation by U.S. – Flag Vessels
3047.506 Procedures.

Subchapter 3047.1 General

3047.101 Policies.

(b) Contracting officers shall contact their Component transportation office for assistance and expertise in transportation management.

Subchapter 3047.2 Contracts For Transportation or for Transportation-Related Services

3047.205 Availability of term contracts and basic ordering agreements for transportation or for transportation-related services.

(a) Contracts or basic ordering agreements awarded by DHS contracting officers for transportation or for transportation-related services greater than the simplified acquisition limit require approval one level above the contracting officer.

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

3047.506 Procedures.

(c) Maritime Administration (MARAD) address is: Director, Office of Cargo Preference, U.S. Department of Transportation, Maritime Administration, West Building, Southeast Federal Center, 1200 New Jersey Avenue, SE, Washington, DC 20590.

(d) If no transportation officer is available, the contracting officer shall submit a copy of the rated “on board” bill of lading, for each shipment, no later than 20 days after the vessel’s loading date for exports and 30 days for imports as stated in 46 CFR 381.3. All non-vessel ocean common carrier bills of lading should be accompanied by the underlying carrier’s ocean bill of lading to MARAD. The bill of lading shall contain the following information:

(1) Name of sponsoring Government agency or department;

- (2) Name of vessel;
- (3) Vessel flag of registry;
- (4) Date of loading;
- (5) Port of loading;
- (6) Port of final discharge;
- (7) Commodity description;
- (8) Gross weight in kilos;
- (9) Total ocean freight revenue in U.S. dollars.

CHAPTER 3048 VALUE ENGINEERING

Subchapter 3048.001 Definitions

Subchapter 3048.1 Policies and Procedures

- 3048.102 Policies.
- 3048.103 Processing value engineering change proposals.
- 3048.104 Sharing arrangements.
- 3048.104-3 Sharing collateral savings.

Subchapter 3048.2 Contract clauses.

- 3048.201 Clauses for supply or service contracts.
- 3048.202 Clause for construction contracts.

Subchapter 3048.70 Annual Value Engineering Report

3048.001 Definitions.

For purposes of this manual, the definition at [FAR 48.001](#) also includes:
 "Value engineering" includes technology refreshment and technology enhancement.

Subchapter 3048.1 Policies and Procedures

3048.102 Policies.

(a) The Head of the Contracting Activity (HCA) is authorized to grant exemptions on a case-by-case basis. The CPO is authorized to exempt contracts on a class basis. Submit requests per HSAR 3001.7000(a). Exemptions shall be retained in the contract file.

(b) The Chief Procurement Officer (CPO) is responsible for managing and monitoring value engineering (VE) efforts at DHS (see [OMB Circular A-131](#)).

3048.103 Processing value engineering change proposals.

(a) Component technical personnel are responsible for: conducting a comprehensive review of Value Engineering Change Proposals (VECPs) for technical feasibility, usefulness, and adequacy of the contractor's estimate of cost savings; making a written report; and recommending acceptance or rejection to the contracting officer.

3048.104 Sharing arrangements.

3048.104-3 Sharing collateral savings.

The Chief of the Contracting Officer (COCO) is authorized to make the cost determination at [FAR 48.104-2\(a\)](#).

Subchapter 3048.2 Contract Clauses

3048.201 Clauses for supply or service contracts.

(a) General.

(6) The Head of the Contracting Activity (HCA) is authorized to exempt a contract from the requirements of [FAR Part 48](#) under [FAR 48.201\(a\)\(6\)](#). The CPO is authorized to exempt contract actions on a class basis. Submit requests per HSAR 3001.7000(a). Exemptions will be retained in the contract file.

(e) The COCO is authorized to make the cost determination for an individual contract only at [FAR 48.201\(e\)](#).

3048.202 Clause for construction contracts.

The COCO is authorized to make the cost determination for an individual contract only at [FAR 48.202](#).

3048.70 Annual Value Engineering Report.

Office of Management and Budget (OMB), [Circular A-131](#), Value Engineering, requires that each agency report the Fiscal Year results of using value engineering annually. HCAs are required to submit a report of value engineering results by December 7th each year to the Acquisition Program Management Division (APMD), Office of the Chief Procurement Officer (OCPO), with a copy OCPO, Director, Oversight & Strategic Support Division via PROCUREMENT.Support@DHS.gov. Information for completing the report is available in Circular A-131. HCAs should contact APMD to obtain an Excel file that is suitable for the report. APMD will ensure the consolidated DHS report is forwarded to OMB by December 31. Negative reports are required.

CHAPTER 3049 TERMINATION OF CONTRACTS**Subchapter 3049.1 General Principles**

- | | |
|----------|-----------------------------------|
| 3049.101 | Authorities and responsibilities. |
| 3049.106 | Fraud or other criminal conduct. |
| 3049.111 | Review of proposed settlements. |

Subchapter 3049.1 General Principles**3049.101 Authorities and responsibilities.**

(a) Notice to OCPO. The contracting officer shall provide a copy of any termination notice for any contract or order exceeding \$1 million to the Office of the Chief Procurement Officer (OCPO) simultaneously with the notice to the contractor. The OCPO shall also be provided a copy of any notification or public announcement associated with the termination.

(b) The OCPO notice should be sent to the Director, Oversight & Strategic Support Division via PROCUREMENT.Support@DHS.gov . It must be accompanied by a brief discussion of the contract or order being terminated, the circumstances of the termination and the anticipated impact. The purpose of the notification and accompanying information is to ensure the OCPO is apprised of significant contract terminations.

3049.106 Fraud or other criminal conduct.

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

3049.111 Review of proposed settlements.

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

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 for appropriate coordination with the DHS Office of General Counsel before transmittal to the Secretary. A copy of any Component requests for indemnification shall be transmitted to the Office of the Chief Procurement Officer (OCPO).

CHAPTER 3051

USE OF GOVERNMENT SOURCES BY CONTRACTORS

(RESERVED)

There is no text implementing or supplementing [FAR Part 51](#).

CHAPTER 3052

SOLICITATION PROVISIONS AND CONTRACT CLAUSES

(RESERVED)

There is no text implementing or supplementing [FAR Part 52](#).

CHAPTER	3053	FORMS
Subchapter	3050.1	General.
	3050.101	Requirements for use of forms.
	3050.103	Exceptions.
	3050.105	Computer generation.
Subchapter	3050.2	Prescription of Forms
	3053.203-70	Proprietary information.
	3053.205-71	Source selection information.
	3053.209-70	Determination of prospective contractor Responsibility.
	3053.213-70	Simplified acquisitions.
	3053.215-70	Contracting by negotiations.
	3053.219-70	Small business review.
	3053.219-71	Subcontracting Plan Review Checklist.
	3053.222-70	Summary of underpayments.
	3052.232-70	Contract financing.
	3053.236-70	Construction and architect-engineering contracts.
	3053.246-70	Material inspection and receiving report.

Subchapter 3053.1 General

3053.101 Requirements for use of forms.

Unless the Chief Procurement Officer (CPO) grants an exception or the Component substitutes a form via internal procedures according to HSAM 3053.103(b), the forms prescribed in HSAM Chapter 3053 are required for use by all Components.

3053.103 Exceptions.

(a) Requests for exceptions to forms contained in HSAM Chapter 3053 shall be submitted to the CPO. Each request shall: (1) include the substitute format that will be used in place of the HSAM form; (2) include the Component rationale for the exception; and (3) be submitted by the Head of the Contracting Activity (HCA). The following are not eligible for exceptions:

DHS Form 2140-01, Contract Award Notification;
DHS Form 700-12, Determination of Prospective Contractor Responsibility;
DHS Form 700-22, Small Business Review; and
DHS Form 700-23, Subcontracting Plan Review Checklist.

(b) Components may substitute any of the following HSAM forms if authorized in Component procurement procedures:

DHS Form 700-11, Preconstruction Conference Agenda and Checklist;
DHS Form 700-13, Cover Page Source Selection Information;

DHS Form 700-14, Cover Page Proprietary Information;
DHS Form 700-16, Simplified Acquisition Summary and Continuation Sheet;
DHS Form 700-17, Weighted Guidelines Profit/Fee Objective;
DHS Form 700-18, Contract Facilities Capital and Cost of Money;
DHS Form 700-19, Summary of Underpayments;
DHS Form 700-20, Procurement Requests and Continuation Sheet; and
DHS Form 700-21, Material Inspection and Receiving Report and Continuation Sheet.

3053.105 Computer generation.

(b) Components may computer-generate the forms prescribed in the HSAR and this manual. Computer-generated HSAM forms shall not change the name, content, or sequence of the data elements and shall carry the assigned number (e.g., DHS Form 700-7) and edition date. The HSAM forms are available electronically on DHS Online at <https://dhsonline.dhs.gov/portal/jhtml/general/forms.jhtml>.

Subchapter 3053.2 Prescription of Forms

3053.203-70 Proprietary information.

DHS Form 700-14, Cover Page Proprietary Information, shall be used as specified in HSAM 3003.104-4(b)(ii).

3053.203-71 Source selection information.

DHS Form 700-13, Cover Page Source Selection Information, shall be used as specified in HSAM 3003.104-4(b)(iii).

3053.205-70 Contract award notification.

DHS Form 2140-01, Contract Award Notification, shall be used as specified in HSAM 3005.303(a)(1).

3053.209-70 Responsibility determination.

DHS Form 700-12, Determination of Prospective Contractor Responsibility, shall be used as specified in HSAM 3009.105-2.

3053.213-70 Simplified acquisitions.

DHS Form 700-16, Simplified Acquisition Summary, shall be used as specified in HSAM 3013.101.

3053.215-70 Contracting by negotiation.

The following forms are prescribed for use as specified in HSAM 3015.404-4:

- (a) *DHS Form 700-17, Weighted Guidelines Profit/Fee Objective.*
- (b) *DHS Form 700-18, Contract Facilities Capital and Cost of Money.*

3052.219-70 Small business review.

DHS Form 700-22, Small Business Review, shall be used as specified in HSAM 3019.202-271.

3052.219-71 Subcontracting Plan Review Checklist.

DHS Form 700-23, Subcontracting Plan Review Checklist, shall be used as specified in HSAM 3019.705-470.

3053.222-70 Summary of underpayments.

DHS Form 700-19, Summary of Underpayments Sheet, shall be used as specified in HSAM 3022.406-8(d)).

3053.232-70 Contract financing.

DHS Form 700-20, Procurement Request, and Procurement Request Continuation Sheet shall be used as specified HSAM 3032.702-70.

3053.236-70 Construction and architect-engineer contracts.

DHS Form 700-11, Preconstruction Conference Agenda and Checklist.

3053.246-70 Material inspection and receiving report.

DHS Form 700-21, Material Inspection and Receiving Report, and Material Inspection and Receiving Report - (Continuation Sheet) should be used as specified in HSAM 3046.672.

HEADS OF THE CONTRACTING ACTIVITIES

DHS OPO	Director, Office of Procurement Operations
DHS OSA	Director, Office of Selective Acquisitions
FEMA	Director, Procurement
FLETC	Chief, Procurement Division
TSA	Assistant Administrator for Acquisition
US CBP	Executive Director, Procurement; and Executive Director, SBI Acquisition Office
USCG	Director of Contracting and Procurement (Commandant (CG-91))
US ICE	Director, Office of Acquisition Management
USSS	Chief, Procurement Operations

REPORTING REQUIREMENTS

The following is not an all-inclusive listing of reporting requirements. Other procurement related reports may be required by statute, the FAR, or DHS.

TITLE OF REPORT	REFERENCE	DATE DUE	WHERE
Report of Proposed Federal Construction*	HSAM 3036.213-70 ; 29 CFR 1.4	Annually	OCPO
Semi-annual Labor Enforcement Report	FAR Part 22 ; HSAM 3022.406-13; 29 CFR 5.7(b)	Component submission Semi-annually; April 25 and October 25	Department of Labor
Resource Conservation and Recovery Act Report	HSAM 3023.4000	To Be Determined	To Be Determined
Subcontracting Report for Individual Contracts	FAR 19.7 ; FAR Deviation-DHS 06-03	See the DHS “Small Business Subcontracting Plan (July 2005) (DEVIATION)”	www.esrs.gov
Summary Subcontract Report	FAR 19.7 ; FAR Deviation-DHS 06-03	See the DHS “Small Business Subcontracting Plan (July 2005) (DEVIATION)”	www.esrs.gov
Unfinitized Contract Action (UCA) Report*	HSAM 3043.7002	Upon request from the OCPO	OCPO
Value Engineering Report*	OMB Circular A-131 HSAM 3048.7000	Annually; December 7	OCPO
Report on Federal Support to Universities, Colleges, and Nonprofit Institutions	Section 3(a)(7) of the National Science Foundation (NSF) Act	Annually; O/A May 15	Upon request from NSF
Procurement Forecast Initial and Update	Public Law 100-656; HSAM 3019.202-70	Initial – Annually; Update – Semiannually or as needed	OSDBU
Report of End Products Manufactured Outside the United States	FAR 25.004 and HSAM 3025.004	Annually, October 31	OCPO
Competition Advocate Report	HSAR 3006.502(a); HSAM 3006.502(b)(2)	December 1 for the preceding year	OCPO

For those reports with an (*), if there was no activity for the period being reported, a negative response for the period shall be submitted to the requiring office.

REVIEW AND APPROVAL MATRIX

REVIEW TYPE AND THRESHOLDS			REVIEW AND APPROVAL LEVELS				
			OCPO may require review of any DHS contract actions in accordance with HSAM Subchapter 3004.7004.				
			Contracting Officer	Level above Contracting Officer Approval	Legal Review	Program Office	Other
1	Sealed Bids - Solicitation and Award -	<\$500,000	R/A		D	D	
		>\$500,000	R	R/A	R	D	
2	Negotiated Procurements - Solicitation, Pre-Negotiation, Negotiation & Award	<\$500,000	R/A			D	
		>\$500,000	R	R/A		D	
	Solicitation & Award	>\$500,000			R		
	Pre-Negotiation or Negotiation Memoranda	Any amount			D		
3	Solicitations, Orders, BPAs – Issued and awarded using a SOW, SOO, or PWS, or requiring licenses	<\$500,000	R/A		D	D	
		>\$500,000	R	R/A	R*	D	
4	Solicitations & Orders – Issued and awarded IAW FAR Part 16 for Indefinite-Delivery contracts, or FAR Part 13 or Subpart 8.4 for BPAs	<\$500,000	R/A		D	D	
		>\$500,000	R	R/A	R*	D	
5	Inter/Intra-Agency Agreements	<\$500,000	R/A		D	D	
		>\$500,000	R	R/A	R	D	
		All IAs going to or coming from Non-FAR covered agencies	R	R	R	D	CPO - R/A
6	Letter Contracts - IAW HSAM 3016.603	All	R	R	R	D	COCO – R/A
7	Modifications to the above actions - Items 1-6	<\$500,000	R/A		D	D	
		>\$500,000	R	R/A*	R*	D	
ADDITIONAL REQUIREMENTS FOR LEGAL REVIEW							
8	Private Sector Financing	All					
9	Agreement with Termination or Cancellation Fees	All					
10	Agreement with Indemnification for Contractor	All					

Legend: **R** = Review. **R/A** = Review/Approval. **R*** = Review required, but see exceptions at HSAM 3004.7003(b). **R/A*** = Review and Approval required, but see exceptions at 3004.7002(d). **D** = Discretionary as determined by the Contracting Officer. **CPO** = Chief Procurement Officer. **OCPO** = Office of the Chief Procurement Officer. **COCO** = Chief of the Contracting Office.

CONGRESSIONAL NOTIFICATION REQUIREMENTS (HSAM 3005.303-70)**ACTIONS IN EXCESS OF \$1 MILLION**

ACTION	COVERED	NOT COVERED
New Contracts	New DHS contracts in excess of \$1 million. This includes new indefinite-quantity or requirements type contracts at the maximum ceiling price, letter contracts, and awards to small businesses.	
New Contract Actions through a Servicing Agency (or Servicing Component)	New contract actions being awarded by a Servicing Agency through an assisted acquisition or awarded by another DHS Component. Covered contract actions include new contract awards using FY2008 and later appropriated funds and orders under DHS multiple award contracts using FY2010 or later appropriated funds. DHS Components may choose to complete and submit DHS Form 2140-01 or alternatively, Components may have the Servicing Agency complete the form and make the required submission to the DHS Office of Legislative Affairs electronic mailbox Contracts@dhs.gov .	Execution of an Interagency Agreement with the Servicing Agency. However, resulting contracts issued by the Servicing Agency require Congressional notification IAW coverage indicated.
Contract Modifications	Contract modifications to existing contracts where the modification changes the scope of the contract.	Contract modifications that are determined to be within the scope and under the terms of the existing contract to include those to be issued pursuant to the Changes clause, funding modifications or other administrative occurrences under the terms of an existing contract.
IDIQ Contracts - Orders and Modifications	If the estimated value of an IDIQ contract has been reached, provide notice of subsequent modifications and orders to be placed that are expected to have a face value of more than the contract's threshold. Do not report the same work twice. Orders in excess of \$1 million under DHS multiple award contracts using FY2010 or later appropriated funds require Congressional notification.	Task or delivery orders placed under non-DHS IDIQ-type contracts up to the contract threshold. Order placed under DHS contracts using FY2009 & prior funds. Orders placed under DHS single award IDIQ contracts.
BPAs and Orders under BPAs	Orders under DHS Blanket Purchase Agreements (BPAs) awarded under the Commercial Test Program IAW FAR Subpart 13.5. Congressional notification must be provided for each order.	DHS BPAs established under GSA Schedule contracts IAW FAR 8.405-3, and the orders placed under them. (Note: This exclusion includes orders using FY 2010 funds.) DHS BPAs established under the Commercial Test Program IAW FAR Subpart 13.5.
Actions Subject to Availability of Funds (SAF)	Contract actions awarded/issued subject to availability of funds. Notification is tied to award of the contract, or placement of the order, not to subsequent modification(s) that obligate funds. (Except: Orders under DHS multiple award contracts issued awaiting FY10 Appropriations Act funding require notification upon initial funding with FY10 funds.)	
Small Business Set-Asides	For a small business set-aside under FAR 15.503(a)(2), submit the Congressional notification after the DHS announcement to offerors of its intention to make an award. Submit the Congressional notification the first business day following: (1) the closing date for any challenge or (2) after the resolution of any challenge received, whichever is later. Do not execute the award until five (5) <u>full business days</u> after submission.	
Architect-Engineer Service Contracts	For an Architect-Engineer Service contract being conducted IAW FAR Subpart 36.6, notwithstanding any release of DHS' intention to negotiate a contract with an offeror on the short slate (see FAR 36.607), submit the Congressional notification only after the successful conclusion of negotiations.	

CONTRACT AWARD NOTICE REQUIREMENTS

Each requirement applies independently of the others, i.e., each is distinct and may apply to a given procurement.

Does not apply to actions under the Recovery Act, P. L. 111-5.

Notice	FedBizOpps	DHS Congressional Notice – Appropriations Committees	Public Announcement	Requests From Members Of Congress
Threshold	>\$25,000	>\$1 million	>\$3.5 Million	Upon request
Required By	FAR 5.301	HSAM 3005.303	FAR 5.303 HSAM 3005.303	FAR 5.403, HSAM 3005.403
Format	Synopsis	DHS Form 2140-01	Satisfied by FedBizOpps Synopsis, may issue press releases case-by-case	DHS Form 2140-01
From/To	CO to FedBizOpps	<ul style="list-style-type: none"> CO or official designated by the Component to OLA OLA to Congress 	<ul style="list-style-type: none"> CO to FedBizOpps Press releases to OPA 	<ul style="list-style-type: none"> CO to HCA HCA to OLA& OCPO; FOIA Office & Legal as applicable OLA to Congress, w/copy to OCPO
Time of Submission	No required timeframe	<ul style="list-style-type: none"> 5 full business days before award: CO to OLA 3 full business days before award: OLA to Congress 	Not before 5:00 p.m. Washington, DC time, Date of Award	As requested
Applies To	<ul style="list-style-type: none"> New contract awards Mods for additional supplies or services exceeding \$25,000 (beyond the original scope of the contract) 	<ul style="list-style-type: none"> New contracts (including those awarded by a Servicing Agency or DHS Component) Mods for additional supplies or services exceeding \$1M (beyond the original scope of the contract) Orders under DHS multiple award contracts using FY2010 and later appropriated funds. Orders over the estimated value of an Indefinite-quantity contract Orders under a BPA established under the Commercial Item Test Program <i>Includes awards to small businesses.</i> 	<ul style="list-style-type: none"> New contract awards Mods for additional supplies or services exceeding \$3.5M (beyond the original scope of the contract) Orders over the estimated value of an Indefinite-quantity contract Orders under a BPA established under the Commercial Item Test Program 	Detailed information regarding any particular contract
Exclusions	<ul style="list-style-type: none"> Disclosure would compromise national security Awards resulting from acceptance of an unsolicited research proposal Awards under the Small Business Innovation Development Act Orders placed under Subpart 16.5 Awards for perishable subsistence supplies Awards for utility services, other than telecommunication services, and only one source is available The contract action— <ul style="list-style-type: none"> Is for an amount not greater than the simplified acquisition threshold; Was made through a means where access to the notice of proposed contract action was provided through the GPE; and Permitted the public to respond to the solicitation electronically Awards for the services of an expert to support the Federal Government in any current or anticipated litigation or dispute pursuant to the exception to full and open competition authorized at 6.302-3. 	<ul style="list-style-type: none"> Mods within the scope and under the terms of the existing contract Task or delivery orders placed under IDIQs up to the contract threshold using FY2009 and prior funds Orders under non-DHS IDIQ contracts Orders placed under DHS single award IDIQ contracts DHS BPAs, and orders under them, established under GSA Schedule contracts IAW FAR 8.405 DHS BPAs awarded under the Commercial Item Test Program Contracts using FY2009 funds that involve “substantial risk to human life, health, or safety.” Require notice concurrent with award or immediately thereafter. Execution of IA with a Servicing Agency. 	<p>Same as FedBizOpps and Congressional Notice, plus:</p> <ul style="list-style-type: none"> Contracts placed with the Small Business Administration under Section 8(a) of the Small Business Act Contracts with foreign firms when the place of delivery or performance is outside the United States and its outlying areas Contracts for which synopsis was exempted under 5.202(a)(1). 	None

RECOVERY ACT -- PREAWARD AND AWARD NOTICE REQUIREMENT*Each requirement applies independently of the others, i.e., each is distinct and may apply to a given procurement.*

Notice	FedBizOpps		DHS Congressional Notice – Appropriations Committees	Public Announcement	Requests From Members Of Congress
	Preamward	Award			
Threshold	>\$25,000	>\$25,000	>\$1 million	>\$3.5 Million	Upon request
Required By	FAR 5.704	FAR 5.705	HSAM 3005.303	FAR 5.303 HSAM 3005.303	FAR 5.403, HSAM 3005.403
Format	<ul style="list-style-type: none"> Synopsis – follow instructions at www.fbo.gov Clear & unambiguous narrative description of products or services If the solicitation includes either FAR clause 52.225-11 or 52.225-23, the CO must insert the following notice: “One or more of the items under this acquisition is subject to the World Trade Organization Government Procurement Agreement and Free Trade Agreements.” 	<ul style="list-style-type: none"> Synopsis – follow instructions at www.fbo.gov If value exceeds \$500,000, include a clear & unambiguous narrative description of the products or services At any dollar value, if the action was not both fixed-price and competitive, include in the description the rationale for using other than a fixed-price or competitive approach 	<ul style="list-style-type: none"> DHS Form 2140-01 Block 8, Treasury Account Symbol: Enter “70” and the 4 character account code with no spaces, e.g.: ➤ 700118, 700201, etc 	<ul style="list-style-type: none"> Satisfied by FedBizOpps Synopsis May issue press releases case-by-case 	DHS Form 2140-01
From/To	<ul style="list-style-type: none"> CO to FedBizOpps FedBizOpps to Recovery.gov 	<ul style="list-style-type: none"> CO to FedBizOpps FedBizOpps to Recovery.gov 	<ul style="list-style-type: none"> CO or official designated by the Component to OLA OLA to Congress 	<ul style="list-style-type: none"> CO to FedBizOpps Press releases to OPA 	<ul style="list-style-type: none"> CO to HCA HCA to OLA& OCPO; FOIA Office & legal as applicable OLA to Congress, w/copy to OCPO
Time of Submission	<ul style="list-style-type: none"> FAR 5.203 applies except to notices for informational purposes only 	<ul style="list-style-type: none"> No required timeframe. Promptly after award 	<ul style="list-style-type: none"> 5 <u>full business days</u> before award: CO to OLA 3 <u>full business days</u> before award: OLA to Congress 	<ul style="list-style-type: none"> Not before 5:00 p.m. Washington, DC time, Date of Award 	As requested
Applies To	<ul style="list-style-type: none"> New contract awards Mods for additional supplies or services exceeding \$25,000 Orders under GWACs, MACs, Schedule contracts, other IDIQ contracts, or BPAs. Follow FedBizOpps instructions to note notice is for information purposes only 	<ul style="list-style-type: none"> New contract awards Mods for additional supplies or services exceeding \$25,000 Orders under GWACs, MACs, Schedule contracts, other IDIQ contracts, or BPAs 	<ul style="list-style-type: none"> New contract actions (including those awarded by a Servicing Agency or Component) Mods for additional supplies or services exceeding \$1M (beyond the original scope of the contract) Orders under DHS multiple award contracts using FY2010 and later appropriated funds Orders over the estimated value of an Indefinite-delivery contract Orders under a BPA established under the Commercial Item Test Program <i>Includes awards to small businesses.</i> 	<ul style="list-style-type: none"> New contract awards Mods for additional supplies or services exceeding \$3.5M (beyond the original scope of the contract) Orders over the estimated value of an Indefinite-delivery contract Orders under a BPA established under the Commercial Item Test Program 	Detailed information regarding any particular contract
Exclusions		<ul style="list-style-type: none"> Disclosure would compromise national security Awards resulting from acceptance of an unsolicited research proposal No other exceptions under FAR 5.301(b) apply. 	<ul style="list-style-type: none"> Mods within the scope and under the terms of the existing contract Task or delivery orders placed under IDIQs up to the contract threshold using FY2009 and prior funds Orders under non-DHS IDIQs contracts Orders under DHS single award IDIQs DHS BPAs and orders established under GSA Schedule contracts IAW FAR 8.405 DHS BPAs awarded under the Commercial Item Test Program Contracts using FY2009 funds that involve “substantial risk to human life, health, or safety.” Require notice concurrent with award or immediately thereafter. Execution of an IA with a Servicing Agency. 	<ul style="list-style-type: none"> Same as FedBizOpps and Congressional Notice, plus: Contracts placed with the Small Business Administration under Section 8(a) of the Small Business Act Contracts with foreign firms when the place of delivery or performance is outside the United States and its outlying areas Contracts for which synopsis was exempted under 5.202(a)(1). 	None

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

**Office of the Chief Procurement Officer
Version 2.0
October 2009**

PREFACE

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

- [Do I need a J&A?](#)
- [What is the basis for the justification?](#)
- [What goes in the J&A?](#)
- [Who approves the J&A?](#)
- [What public disclosure rules apply?](#)

The requirement for preparing J&As and for posting certain of them to the Government Point of Entry (GPE) is statutory (see Part 5 of this Guide for specific J&A posting guidelines). The 1984 legislation establishing the J&A issuance requirement is known as the Competition in Contracting Act (CICA). CICA was codified in 10 U.S.C. 2304 and 41 U.S.C. 253 and is implemented by the Federal Acquisition Regulation (FAR) Part 6, as supplemented by the Department of Homeland Security Acquisition Regulation (HSAR) and the Homeland Security Acquisition Manual (HSAM). 10 U.S.C. 2304 and its sections apply to the United States Coast Guard (USCG) only and 41 U.S.C. 253 and its sections apply to the remaining DHS Components.

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

PART 1

WHEN IS A JUSTIFICATION & APPROVAL REQUIRED?

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

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

“Full & open competition” is specifically defined in the statute, as explained in the definition in Part 6 of this Guide. The existence of “competition” does not necessarily mean full and open competition was solicited. If only a limited number of sources are able to compete due to competitive barriers that are inherent in the Government’s requirement, a J&A may be required. Even when full and open competition does not exist, the CO is required to “solicit offers from as many potential sources as is practicable under the circumstances” (FAR 6.301(d)). In addition, the Government may not automatically reject proposals from sources not identified in the J&A. The Government is obligated to consider any proposal received from a responsible source.

These requirements apply to all new contracts and modifications except:

1. Acquisitions made under the simplified acquisition procedures of FAR Part 13 (for those actions, a simpler explanation is allowed);
2. Contracts awarded under procedures expressly authorized by statute (other than those addressed under the authority of 10 U.S.C. 2304(c)(5) and 41 U.S.C. 253(c)(5). So if you are excluding a class or classes of sources in order to conduct a small business set-aside, or an 8(a) acquisition, no written justification or determination is required. A brief explanation should be placed in the contract file;
3. Contract modifications that are within the scope and under the terms of an existing contract (e.g., changes clause actions, exercise of contract options when initially priced and evaluated under full and open competition, etc.); and
4. Orders placed under indefinite-quantity contracts when the contract was awarded under the procedures of FAR Subparts 6.1 or 6.2 and all responsible sources were realistically permitted to compete for the requirements in the contract or when the

contract was awarded under FAR Subpart 6.3 and the contract's J&A adequately covered the requirements specified in the order.

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

PART 2

AUTHORITIES FOR USING OTHER THAN FULL AND OPEN COMPETITION

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

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

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

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

When Appropriate:

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

1. A unique and innovative unsolicited research proposal is received that does not resemble the substance of a pending competitive acquisition (see FAR 6.302-1(a)(2)(i), and FAR Subpart 15.6), or, demonstrates a unique capability of the source to provide the particular research services proposed;
2. A follow-on contract is planned for the continued development or production of a system or highly specialized equipment, when award to any other source would result in substantial duplication of costs (which could not be recovered through competition) or unacceptable delays in fulfilling the agency requirements (see FAR 6.302-1(a)(2)(iii));
3. For DoD, NASA, and USCG - A follow-on contract is planned for the continued provision of highly specialized services, when award to any other source would

result in substantial duplication of costs or unacceptable delays (see FAR 6.302-1(a)(2)(iii)).

4. The existence of limited rights in data, patent rights, copyrights, secret processes, the control of basic raw material, or similar circumstances, make the supplies or services available from only one source (see FAR 6.302-1(b)(2)).
5. When acquiring utility services, circumstances dictate that only one supplier can furnish the service (see FAR 6.302-1(b)(3)).
6. When there is a reasonable basis to conclude that the Government's minimum needs can only be satisfied by unique supplies or services available from only one with unique capabilities (see FAR 6.302-1(b)(1)).
7. An acquisition that uses a brand name description or other purchase description to specify a particular brand name, product, or feature of a product, peculiar to one manufacturer. (Special GPE J&A posting requirements apply when brand name items are acquired. Please see "Key Points for the Justification" and "J&A Posting Requirements" in this section.) However, use of brand name or equal descriptions or other purchase descriptions that permit offerors to propose products other than the specific brand name product do not require J&As (FAR 6.302-1(c)).

Key Points for the Justification:

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

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

The justification must thoroughly describe the unique capabilities or qualifications of the source that form the basis for the justification. In addition, unless exempted by FAR 5.102(a)(5) and 5.202, potential sole source, including brand name descriptions, actions are required to be published at the Government's business opportunities website called

FedBizOpps (FBO) which is the GPE. Within each synopsis, a statement affirming that “all interested sources will be considered” should be included to show the reader that all interested contractors would be afforded an opportunity to demonstrate they can meet the Government’s minimum requirements. If more than one company adequately demonstrates the capability to meet requirements (to the satisfaction of the contracting officer) then the proposed sole source must be canceled and a competitive acquisition conducted.

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

When an acquisition contains a brand name or other purchase description which is used to specify a particular brand name, product, or feature of a product peculiar to one manufacturer, it does not provide for full and open competition no matter how many sources are solicited. If the acquisition contains brand name specifications, the contracting offices shall include the justification or documentation required by FAR 6.302-1(c)(redacted as necessary) with the solicitation publication in the FedBizOpps. Solicitations using this authority must be published in the FedBizOpps per FAR 5.102 and any bids or proposals received must be considered. The Office of Management and Budget (OMB) and OMB Office of Federal Procurement Policy (OFPP) have specifically directed agencies to reinforce the need to maintain vendor neutral contract specifications, as conveyed in OFPP’s April 11, 2005 memorandum to Chief Acquisition Officers, Chief Information Officers, and Senior Procurement Executives on the topic, “Use of Brand Name Specifications. Since then, OFPP has issued additional memoranda related to brand name acquisitions, i.e., April 17, 2006, “Publication of Brand Name Justifications,” and November 28, 2007, “Appropriate Use of Brand Name or Equal Purchase Descriptions.” The OFPP memoranda can be found at:

http://www.whitehouse.gov/omb/procurement_index_memo/. A related OMB memorandum of July 1, 2004, entitled, “Software Acquisition” (Memorandum M-04-16), reminds agencies about their responsibilities when procuring software to support agency operations. OMB Memorandum M-04-16 can be accessed at:

<http://www.whitehouse.gov/omb/memoranda>.

J&A GPE Posting Requirements:

FAR 6.305 requires that J&As for contracts awarded under the authority at FAR 6.302-1 (except for actions solicited under FAR 6.302-1(c) *Application for brand name description*) shall be posted to the GPE at www.fedbizopps.gov within 14 days after contract award. (See Part 5 for further information.) J&As for actions solicited under FAR 6.302-1(c) shall be posted to the GPE at the time of solicitation in accordance with FAR 5.102(a) (6) and FAR 6.302-1(c).

10 U.S.C. 2304(c)(2) or
41 U.S.C. 253(c)(2)

UNUSUAL AND COMPELLING URGENCY

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

DHS and its Components have a special statutory requirement associated with use of this authority. If the contract award facilitates the response to or recovery from a natural disaster, act of terrorism, or other man-made disaster, the contract period of performance should be limited to the minimum period necessary to meet the urgent and compelling requirements of the work to be performed and to enter into another contract for the required goods or services through the use of competitive procedures, but in no event shall exceed 150 days unless exceptional circumstances apply and a justification is approved by the Head of the Contracting Activity or higher approval authority if required by FAR 6.304 or DHS procedures. (See HSAM 3006.302-2(c)(3) for more information.)

When Applicable:

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

Key Points for the Justification:

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

The justification must explain the extent to which competition is limited (one source or multiple sources) and show that competition was obtained to the maximum extent possible given the conditions described in the justification. If the conditions surrounding the acquisition are similar to those cited under exception 1 (i.e., only one responsible source), be sure to detail these competition impediments in the justification to provide additional support for the limitation of competition. Again, market research is critical. Only by a thorough review of the marketplace including commercial items and nondevelopmental items or services, can our assumptions regarding the specified source's unique capabilities be validated. The justification, or an attachment to the justification, must identify all sources that expressed an interest in the requirement, and provide details regarding the evaluation of capabilities of potential sources.

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

J&A GPE Posting Requirement:

FAR 6.305 requires that J&As for contracts awarded under the authority at FAR 6.302-2 shall be posted to the GPE at www.fedbizopps.gov within 30 days after contract award. (See Part 5 of this guide for further information.)

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

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

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

When Applicable:

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

1. Keep vital facilities or suppliers in business or make them available in the event of a national emergency;
2. Train a selected supplier in the furnishing of critical supplies or services; prevent the loss of a supplier's ability and employees' skills; or maintain active engineering, research, or development work;
3. Maintain properly balanced sources of supply for meeting the requirements of acquisition programs in the interest of industrial mobilization (when the quantity required is substantially larger than the quantity that must be awarded in order to meet the objectives of this authority, that portion not required to meet such objectives will be acquired by providing for full and open competition, as appropriate, under this part);
4. Limit competition for current acquisition of selected supplies or services approved for production planning under the Department of Defense Industrial Preparedness Program to planned producers with whom industrial preparedness agreements for those items exist, or limit award to offerors who agree to enter into industrial preparedness agreements;
5. Create or maintain the required domestic capability for production of critical supplies by limiting competition to items manufactured in the United States or its outlying areas; or the United States, its outlying areas, and Canada;

6. Continue in production, contractors that are manufacturing critical items, when there would otherwise be a break in production; or
7. Divide current production requirements among two or more contractors to provide for an adequate industrial mobilization base.

Key Points for the Justification:

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

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

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

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

J&A GPE Posting Requirement:

FAR 6.305 requires that J&As for contracts awarded under the authority at FAR 6.302-3 shall be posted to the GPE at www.fedbizopps.gov within 14 days after contract award. (See Part 5 of this guide for further information.)

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

INTERNATIONAL AGREEMENT

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

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

When Appropriate:

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

1. When the acquisition is to be reimbursed by a foreign country and that country has specified in written direction, such as a Letter of Offer and Acceptance, that the supplies or services be acquired from a particular firm; or
2. When the planned contract is for supplies to be used, or services to be performed, in the sovereign territory of another country and the terms of a treaty or agreement specify or limit the sources to be solicited.

Key Points for the Justification:

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

J&A GPE Posting Requirement:

FAR 6.305 requires that J&As for contracts awarded under the authority at FAR 6.302-4 shall be posted to the GPE at www.fedbizopps.gov within 14 days after contract award. However, the posting requirement does not apply to USCG since it is not required to issue J&As when exercising this authority. (See Part 5 of this guide for further information.)

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

AUTHORIZED OR REQUIRED BY STATUTE

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

1. Qualified Nonprofit Agencies for the Blind or other Severely Disabled awards-41 U.S.C. 46-48c (see FAR Subpart 8.7) awards;
2. Government Printing and Binding awards-44 U.S.C. 501-504, 1121 (see FAR Subpart 8.8);
3. Sole source awards under the 8(a) Program 15 U.S.C. 637 (see FAR Subpart 19.8);

When Applicable:

The authority of 41 U.S.C. 2304(c)(5) may be used to justify other than full and open competition when the statute authorizes, or requires the procurement to be made from a specified source or sources. A J&A is required for an acquisition that does not satisfy one of the conditions listed in (1) through (3) above.

Sole source awards under the HUBZone Act of 1997 (15 U.S.C. 657a) or the Veterans Benefits Act of 2003 (U.S.C. 657f) while authorized by law, must have a J&A per FAR 6.302-5(c)(2)(ii).

Rather than J&As, contracting officers shall issue written determinations when making acquisitions from Federal Prison Industries (UNICOR) -18 U.S.C. 4124 (see FAR Subpart 8.6), and for acquisitions made under the Robert T. Stafford Disaster Relief and Emergency Assistance Act- 42 U.S.C. 5150 (see FAR Subpart 26.2).

NOTE:

FAR 6.302-5(c)(1) **prohibits** the authority at 6.302-5 from being used to justify award of a new contract to a specified non-Federal Government entity unless the associated provision of law *specifically*:

- (i) Identifies the entity involved;
- (ii) Refers to 10 U.S.C. 2304(j) for armed services acquisitions (*this applies to the U.S. Coast Guard only*) or section 303(h) of the Federal Property and

Administrative Services Act of 1949 for civilian agency acquisitions (all other DHS Components); and

(iii) States that award to that entity shall be made in contravention of the merit-based selection procedures in [10 U.S.C. 2304\(j\)](#) or section 303(h) of the Federal Property and Administrative Services Act, as appropriate.

For example, in the case of a congressional earmark or other congressionally directed project, unless the appropriation act or other statute meets each of the content requirements or “tests” identified in (i) through (iii) above, the CICA *Authorized or Required by Statute* exception in 10 U.S.C. 2304 and 41 U.S.C. 253(c)(5) shall *not* be used to justify solicitation and award of a new contract under other than full and open competition. The CICA exception, *Authorized or Required by Statute*, may only be applied when all three of the statutory language requirements are met. If this is not the case, the contracting requirement shall be met through full and open competition.

This limitation only applies to new contracts. It does not apply when work provided for in the contract is a continuation of the work performed by the specified entity under a preceding contract; or to any contract requiring the National Academy of Sciences to investigate, examine, or experiment on any subject of science or art of significance to the agency and to report on those matters to the Congress or any agency of the Federal Government..

J&A GPE Posting Requirement:

FAR 6.305 requires that J&As for contracts awarded under the authority at FAR 6.302-5 shall be posted to the GPE at www.fedbizopps.gov within 14 days after contract award. (See Part 5 of this guide for further information.)

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

NATIONAL SECURITY

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

When Applicable:

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

Key Points for the Justification:

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

The justification must also:

1. Identify how national security would be compromised if the Department's needs were disclosed in the FedBizOpps synopsis and why the synopsis could not be worded in such a manner that national security would not be compromised;
2. Include a statement on why it is critical for vendors to have access to this classified information to prepare their technical and/or cost proposals and the level of security clearance required;
3. Identify the number and value of the contracts that the justification covers; and
4. Follow any DHS/Component policies, procedures and or guidance regarding contractor access to sensitive/classified information.

J&A GPE Posting Requirement:

Subject to FOIA and other statutory protections regarding information, which, if disclosed, may compromise national security, FAR 6.305 requires that J&As for contracts awarded under the authority at FAR 6.302-6 shall be posted to the GPE at www.fedbizopps.gov within 14 days after contract award. (See Part 5 of this guide for further information.)

10 U.S.C. 2304(c)(7)

41 U.S.C. 253(c)(7)

PUBLIC INTEREST

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

When Applicable:

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

Key Points for the Justification:

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

J&A GPE Posting Requirement:

FAR 6.305 requires that J&As for contracts awarded under the authority at FAR 6.302-7 shall be posted to the GPE at www.fedbizopps.gov within 14 days after contract award. (See Part 5 of this guide for further information.)

PART 3

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

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

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

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

1. Agency and Contracting Activity. Identification of the agency and the contracting activity, and specific identification of the document as a Justification for other than full and open competition. Example: The Department of Homeland Security, Office of Procurement Operations, proposes to enter into a contract on a basis other than full and open competition;
2. Nature and/or description of the action being approved. Approval for a sole source, follow-on procurement for supplies, services, maintenance, rework, etc. Example: DHS has a requirement on a sole source basis to upgrade and maintain proprietary software at an estimated cost of \$5,520,000. List the name and address of the proposed contractor(s);
3. Description of Supplies/Services. Describe the supplies or services to be acquired. Provide the estimated total value (including options, if any). Example: The requirement is to provide upgrades and support for XYZ software at a total cost of \$5,520,000. The re-capitalization system software requires upgrades to allow integration of information from BCIS and CBP system with DHS' system. This upgrade will allow DHS to consolidate all the information automatically. The manufacturer is the only one that provides this upgrade and the required support for a smooth transition. (If "Unusual and Compelling Urgency" were cited and the proposed contract action facilitates the response to or recovery from a natural disaster, act of terrorism or other man-made disaster, the period of performance is limited to 150 days unless exceptional circumstances apply. See HSAR 3006.302-2(c)(3));

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

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

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

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

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

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

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

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

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

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

(Remainder of this page left blank intentionally)

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

Contracting Officer*

Date

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

Technical Representative

Date

APPROVAL:

Contracting Officer: Not exceeding \$550K**

Date

And any determination and justification for a contract awarded under FAR 6.302-7, Public Interest, regardless of dollar amount.

Competition Advocate**:

Date

\$550K to not exceeding \$11.5 mil

And any determination and justification for a contract awarded under FAR 6.302-7, Public Interest, regardless of dollar amount.

HCA: \$11.5 mil to not exceeding \$57 mil ***

Date

HCA USCG: \$11.5 mil to not exceeding \$78.5 mil (HCA approval in addition to that of the Component Competition Advocate is not necessary if the Component Competition Advocate meets either of the criteria at FAR 6.304(a)(3)(i) or (ii), *except for* any determination and justification for a contract awarded under FAR 6.302-7, Public Interest, regardless of dollar amount.

CPO (Non-USCG actions): over \$57 mil

Date

CPO (USCG action): over \$78.5 mil

And any determination and justification for a contract awarded under FAR 6.302-7, Public Interest, regardless of dollar amount

NOTES:

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

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

*** For actions of \$11,500,000 but not exceeding \$57,000,000 (\$78,500,000 for the USCG), approval by the Head of the Contracting Activity (HCA) is required in addition to that of the Competition Advocate *unless* the Component Competition Advocate meets either of the criteria at FAR 6.304(a)(3)(i) or (ii).

PART 4

APPROVAL OF J&As

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

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

For actions of \$11,500,000 but not exceeding \$57,000,000 (\$78,500,000 for the USCG), approval by the Head of the Contracting Activity (HCA) will be required in addition to that of the Competition Advocate unless the Component Competition Advocate meets either of the criteria at FAR 6.304(a)(3)(i) or (ii) (i.e., if a member of the armed forces, is a general or flag officer; or, if a civilian, is serving in a position in a grade above GS-15 under the General Schedule (or in a comparable or higher position under another schedule.) However, see NOTES section below.

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

NOTES:

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

Except for actions citing the authority at FAR 6.302-7 (for which class determinations and justifications are prohibited), class justifications shall be approved by the same approval authority as for individual justifications (see HSAM 3006.304(c)).

Contracting officer, Component Competition Advocate, HCA and CPO review and approval are required for any determination and justification for a contract awarded under FAR 6.302-7, Public Interest, regardless of dollar amount

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

All justifications and approvals for other than full and open competition submitted to the OCPO for approval (see FAR 6.304(a) and this part) shall be accompanied by the approved acquisition plan. Any previous J&A for other than full and open competition shall also be submitted.

PART 5

PUBLIC DISCLOSURE OF JUSTIFICATION AND APPROVAL DOCUMENTS

Section 844 of the National Defense Authorization Act for Fiscal Year 2008 amended subsection (c) of 10 U.S.C. 2304 and 41 U.S.C. 253 regarding procurements made under other than full and open competition. The amendment, as implemented in FAR 6.305, requires that for any contract awarded on or after February 17, 2009 that is based upon issuance of a J&A document (for noncompetitive procurement) required under FAR 6.303-1 contracting officers must:

A. Within 14 Days of contract award for all J&As except those in support of FAR 6.302-1(c) *Application for brand name descriptions*, and the exemption to full and open competition at FAR 6.302-2, *Unusual and compelling urgency*: *

(1) Carefully review the J&A document, and, in consultation with appropriate representatives from Office of General Counsel, Privacy Office, Security Office, and Freedom of Information Act Officers, remove any proprietary data and/or information that may compromise national security from the copy of the J&A document that will be posted to *fedbizopps.gov*.

(2) Following screening, convert the J&A to a pdf file, as appropriate, and upload or link the file to a J&A Notice that must be prepared in the GPE at www.fedbizopps.gov in the Opportunities section.

* Applies to justifications exercising exemptions to full and open competition at: FAR:

6.302-1 Only one responsible source and no other supplies or services will satisfy agency requirements (except for actions solicited under FAR 6302-1(c), *Application for brand name descriptions*);;

6.302-3 Industrial mobilization; engineering, developmental, or research capability; or expert services;

6.302-4 International agreement (except for U.S. Coast Guard);

6.302-5 Authorized or required by statute (however, see exceptions on page 6-15 of this guide);

6.302-6 National security; or

6.302-7 Public interest

And to sole source justifications (including brand name) required by FAR 13.501(a)(1), Test Program for Certain Commercial Items.

NOTE: FAR 5.102(a)(6) and 6.302-1(c) require that J&As for brand name requirements be posted to the GPE at the time of solicitation, rather than after award.

B. Within 30 Days of contract award (Applies only to justifications exercising the exemption to full and open competition at FAR 6.302-2 *Unusual and compelling urgency*):

(1) Carefully review the J&A document, and, in consultation with appropriate representatives from Office of General Counsel, Privacy Office, Security Office,

and Freedom of Information Act Office, remove any proprietary data and/or information that may compromise national security from the copy of the justification document that will be posted to *fedbizopps.gov*.

(2) Following screening, convert the J&A to a pdf file, as appropriate, and upload or link the file to a J&A Notice that must be prepared in the GPE at www.fedbizopps.gov in the Opportunities section.

A DHS-wide link providing public access to the J&As posted to www.fedbizopps.gov is accessible at the DHS Open for Business – Opportunities website (see “Public Disclosure” section) at: <http://www.dhs.gov/xopnbiz/opportunities/>.

PART 6

ACRONYMS & DEFINITIONS

ACRONYMS

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

DEFINITIONS

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

Competition Advocate: An individual designated by the Component to serve as an advocate for competition for the procuring activity in accordance with Section 20 of the Office of Federal Procurement Policy Act. The Competition Advocate promotes “full and open competition” and challenges barriers to such competition, and fulfills the duties and responsibilities set forth in FAR Subpart 6.5. A listing with point of contact information for the Department Competition Advocate and Procuring Activity Competition Advocates is maintained by the CPO on DHS Open for Business, and is accessible at: http://www.dhs.gov/xopnbiz/regulations/gc_1204658767888.shtm.

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

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

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

Governmentwide Point of Entry (GPE): The single point where Government business opportunities greater than \$25,000, including synopses of proposed contract actions, solicitations, and associated information can be accessed electronically by the public. The GPE is located at www.fedbizopps.gov.

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

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

Market Research: Approach used to collect and analyze information about capabilities within the market to satisfy agency needs.

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

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

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

DHS Acquisition Planning Guide

**Office of the Chief Procurement Officer
Version 5.0
October 2009**

Purpose

Careful planning is the first step to successful achievement of the Department of Homeland Security's (DHS) mission. Acquisitions are an important means of meeting mission requirements. The purpose of this guide is to provide program managers (PMs) and other acquisition personnel a way to organize and plan acquisitions to meet their portion of the DHS mission. This guide implements Federal Acquisition Regulation (FAR) Subpart 7.1 and Homeland Security Acquisition Manual (HSAM) 3007 and applies to: (1) the development and documentation of acquisition strategies (AStr) for major system acquisition, and (2) acquisition plans (AP) for standalone and consolidated acquisitions other than major system acquisitions.

Policy

In accordance with FAR 7.102(a), all DHS acquisitions shall be planned. Unless an exception applies (see HSAM 3007.103(d)(3)), all DHS acquisitions or, combinations of acquisitions supporting a program that meet the threshold requirements in HSAM 3007.103(h) and DHS Directive 102-01, Acquisition, require a formal written approved AStr (i.e., for major system acquisitions) or AP (i.e., for acquisitions other than those categorized as major systems) before initiating any contractual actions.

Acquisitions include, but are not limited to, contracts, orders against the GSA Federal Supply Schedule or other contract vehicles and basic ordering agreements, memorandum of understanding and memorandum of agreements that transfer funds that will ultimately be applied to a contractual action.

Acquisition planning is also required for interagency agreements (IAA). However, for IAAs resulting in Assisted Acquisition (i.e., where a servicing agency and a requesting agency enter into an IAA pursuant to which the servicing agency performs acquisition activities on the requesting agency's behalf, such as awarding a contract, task order, or delivery order), the requesting agency PM/requisitioner may delegate preparation of an AStr/AP to the servicing agency PM, but the requesting agency PM/requisitioner will provide support and assistance as needed and must approve the AP.

Whenever an IAA is contemplated, and an AStr/AP is not required (i.e., for IAAs under the Economy Act not resulting in an Assisted Acquisition, or IAA's under statutes other than the Economy Act and not resulting in an Assisted Acquisition), DHS PMs/requisitioners will prepare an Analysis of Alternatives, as described in DHS Instruction 125-02-001, Instruction Guide on Interagency Agreements. The Analysis of Alternatives describes in detail why an IAA is the appropriate vehicle to fulfill a DHS requirement.

Part I – Overview of the Acquisition Planning Process for Major System and Non-Major System Acquisitions

1.1 What is Acquisition Planning?

Acquisition planning is the process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan or strategy for fulfilling an agency need in a timely and effective manner, and at reasonable cost. Acquisition strategies and acquisition plans contain the documented results of acquisition planning.

Acquisition planning is required for all acquisitions in order to promote and provide for:

1. The acquisition of commercial items to the maximum extent practicable;
2. Full and open competition or, when full and open competition is not required or possible, to obtain competition to the maximum extent practicable; and
3. Appropriate selection of contract type.

As illustrated in Figure 1 below, acquisition planning applies to all acquisitions – those supporting major system programs, as well as acquisitions not related to major systems.

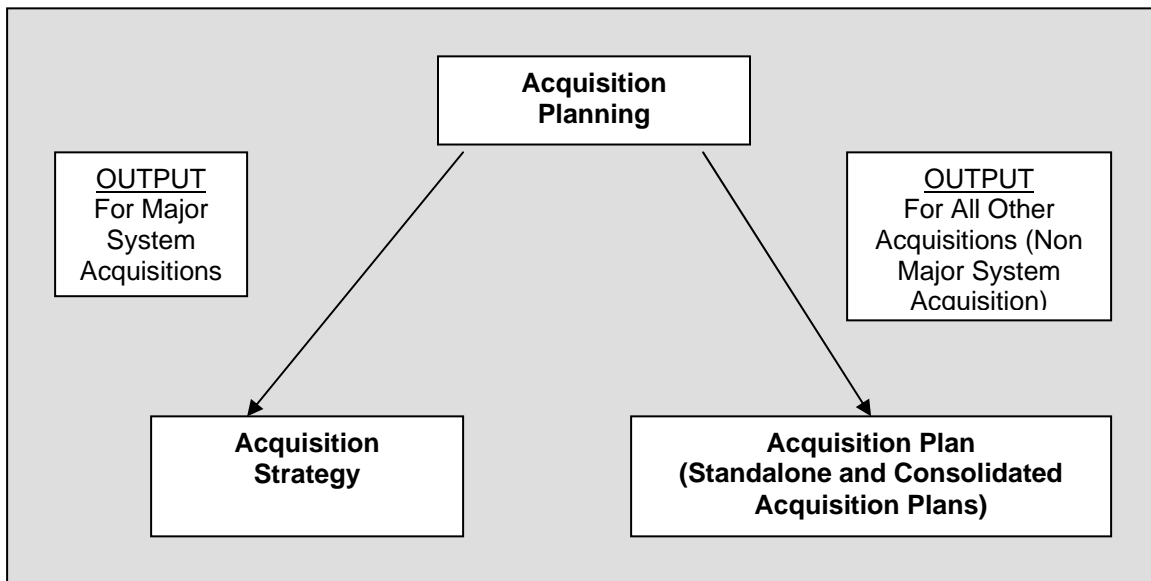


Figure 1. Acquisition Planning - Outputs

A. Major System Acquisition Strategies

FAR 34.004 requires that acquisition strategies be developed for major system acquisitions.

Acquisition strategies must:

1. Be tailored to a particular major acquisition program;
2. Provide the program manager's overall plan for satisfying the mission need in the most effective, economical, and timely manner through one major or a portfolio of multiple acquisitions. (The information provided in acquisition strategies evolves and becomes more detailed as more information becomes available and planning progresses in later program phases.);
3. Be in writing; and
4. Conform to the requirements of FAR 7.1.

Acquisition strategies qualify as the acquisition plan for major system acquisitions (FAR 34.004).

At DHS, the threshold for major system acquisitions is measured in terms of lifecycle cost. Lifecycle cost means the total cost to the Government of acquiring, operating, supporting, and (if applicable) disposing of the items being acquired. (See FAR 7.101.)

At DHS, a system is classified as a major system if:

1. Its total lifecycle cost is estimated to be equal to or exceed \$300 million; or
2. If the Deputy Secretary has designated a program/project as a major system. (See DHS Directive 102-01, Acquisition.

B. Non-Major System Acquisition Plans.

Acquisition planning documents for other than major system programs are termed acquisition plans or consolidated acquisition plans. Both types of plans must:

1. Be tailored to a standalone or consolidated acquisition(s) not associated with a major system program for which an acquisition strategy is, or has been developed;
2. Address the need for the acquisition(s) as well as the technical, business, management, and other significant considerations that will control an acquisition(s).
3. Be in writing; and
4. Follow the requirements of FAR 7.1 and HSAM 3007.1.

Acquisition plan thresholds are based on total contract or order value (including options).

C. Describing the Acquisition Process

Acquisition strategies and acquisition plans document a process for meeting a portion of the DHS mission through one or more acquisitions. Acquisition strategies provide the background necessary to understand a program and how each acquisition will support that program. Acquisition plans describe the need for an acquisition(s) and the major considerations involved.

Acquisition strategies and acquisition plans are the means to discuss the acquisition process and document the decisions made prior to processing each contractual action. Acquisition strategies and acquisition plans also serve as mechanisms to review, approve and document acquisition decisions and create a road map for the implementation of acquisition decisions. Once approved, they provide direction and approval for execution of contractual actions.

1.2 When is an acquisition strategy required?

Acquisition strategies shall be developed for all major system acquisition with a lifecycle cost estimate greater than \$300 million, or less than \$300 million (lifecycle cost) that the Component head has determined:

- Are directed at and critical to fulfilling an agency mission need;
- Entail allocating relatively large resources for the particular Component; and
- Warrant special management attention including specific agency head decisions pursuant to FAR 34.003 and DHS Directive 102-01, Acquisition.

1.3. When is an acquisition plan required?

FAR7.102 (a) and HSAM 3007.102 require planning for all acquisitions. For standalone or consolidated non-major system acquisitions, acquisition planning should start as soon as the need is known.

Where the total contract value of the planned acquisition is equal to or exceeds \$10 million, a formal written acquisition plan must be prepared. For acquisition(s) less than \$10 million, entry of information in the Advanced Acquisition Plan (AAP) Database (ref. <http://www.fido.gov/dhs/aap/>) satisfies the written acquisition plan requirement. Information entered into the AAP system must also be included in the contract file(s) to provide evidence of acquisition planning. Heads of the DHS Contracting Activities (HCAs) may provide supplementary thresholds and requirements for written acquisition plans and/or AAP reporting for acquisitions with estimated dollar values of less than \$10 million.

1.4 Who prepares acquisition strategies and acquisition plans?

In accordance with FAR 7.101 and HSAM 3007.103-70, the acquisition planner is responsible for developing and executing an acquisition strategy or acquisition plan. In general, within DHS, the primary acquisition planner is the program manager (PM) or his or her representative.

In accordance with FAR 7.102(b), a PM will coordinate with members of an Integrated Project (or Product) Team (IPT) comprised of all personnel responsible for significant aspects of the strategy (e.g., contracting, fiscal, legal, small business, technical, security, environmental, privacy, and logistics). Working together, the PM and the IPT prepare the acquisition strategy and are responsible for executing it. An IPT should include, at a minimum:

- Project Manager (PM);
- Contracting Officer (CO);
- Contracting Officer's Technical Representative (COTR); and
- Budget Officer.

Although planning for standalone and/or consolidated non-major acquisitions may not necessitate the formation of an IPT, FAR 7.102 nevertheless requires that acquisition planning integrate the efforts of all personnel responsible for significant aspects of an acquisition. In defining their requirements and planning their acquisition, requisitioners should consult with appropriate representatives from contracting, legal, fiscal, small business, environmental, logistics, privacy, security, and other functions.

Contracting officer participation as an IPT member or member of an acquisition planning team (for non-major acquisitions) is essential, because among his/her acquisition planning duties, the contracting officer is responsible for: (1) designating a COTR as early in the acquisition planning process as possible; (2) documenting in the acquisition plan/acquisition strategy the rationale for the selection of a cost-reimbursement contract type; (3) providing an analysis of why a cost-reimbursement contract is appropriate (as compared to a fixed price contract); and (4) assessing the adequacy of Government resources that are necessary to properly plan for, award, and administer cost-reimbursement contracts. .

As indicated in this Guide's policy section above, acquisition planning is also required for interagency agreements. For IAAs resulting in Assisted Acquisition, the requesting agency PM/requisitioner may delegate preparation of an AStr/AP to the servicing agency PM, but the requesting agency PM/requisitioner remains responsible for providing support and assistance as needed, and must approve the resulting AStr/AP.

Acquisition strategies/acquisition plans are not required for IAAs issued under the Economy Act or other, more specific statutes that do not result in an Assisted Acquisition. Instead, the DHS PM/requisitioner is required to prepare an Analysis of Alternatives, as described in DHS Instruction 125-02-001, Instruction Guide on

Interagency Agreements. The Analysis of Alternatives should describe in detail why an IAA is the appropriate vehicle to fulfill a DHS requirement.

1.5 Can Contractors create, edit or review acquisition plans/acquisition strategies?

Contractors are prohibited from making any authoritative acquisition planning decisions. Services in support of acquisition planning (both for major system and non-major system acquisitions) are not generally considered to be inherently governmental functions (FAR 7.503(d)). However, in order to avoid any potential conflicts of interest, or the appearance thereof as related to the award and administration of future contracts resulting from any acquisition planning activity for which a contractor provides support, appropriate Organizational Conflict of Interest 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 organizational conflict of interest, the contracting officer must contact the Office of General Counsel or Component legal office before undertaking any acquisition planning involving a contractor's participation. For further guidance regarding organizational and consultant conflicts of interest, see FAR 9.5; HSAR 3009.5; and HSAM 3009.5.

1.6 When are acquisition plans and acquisition strategies revised?

The PM or program/requiring office and the contracting officer will review the AP/AStr at least annually. The AStr shall also be reviewed at each Acquisition Decision Event (ADE) milestone. As appropriate, the AP/AStr will be revised following each review to reflect the occurrence or need for a major program change, or other significant change to the approved plan or strategy. A change is significant if the item procured changes, how it is being procured (including method and contract type) changes, major schedule or funding changes. AP/AStr revisions are subject to the same review and signature process as the original document. Revisions may be done with change pages or by complete revision of the AP/AStr. The AP/AStr will receive a revision number. See Part II, Section A, Identification of Acquisition Plan, for tracking revisions.

1.7 Can the acquisition plan or acquisition strategy be tailored or waived?

1. **Tailoring** -The contents of an AP or AStr vary depending on the nature, scope, complexity, circumstances, program level, and phase of the acquisition program lifecycle. APs and AStrs consider all of the topics listed in Part II of this guide, but the contents of each topic will vary and may be tailored. The AStr should reference the applicable program documents and summarize them, where appropriate. The AStr summarizes program approvals and does not substitute for ADE, Joint Requirements Council (JRC), Acquisition Review Board (ARB) or other programmatic decisions.

FAR 7.103 provides significant flexibility in establishing criteria for acquisition plans. The complexity and cost of the acquisition dictates the criteria, thresholds, and level of detail that should be incorporated into written AP's.

2. **Waivers** - The HCA may request a waiver from the requirement for CPO approval of an AP/AStr. Any such waiver request shall be submitted by the HCA through the Director, Procurement Oversight and Support via PROCUREMENT.Support@dhs.gov. Waiver requests shall contain sufficient detail to clearly demonstrate the basis for the request.

Waivers do not constitute authority for any deviation, special condition or clause which might be needed for an acquisition. Neither an approved AP/AStr, nor a waiver of an AP may substitute for any Determination and Findings (D&F), Justification for Other than Full and Open Competition (JOFOC), or deviation from FAR or HSAR requirements.

1.8 Is there a required numbering system for the acquisition strategy or acquisition plan?

Yes. See Part II, Section A, Identification of acquisition plan/strategy.

1.9 Who signs, reviews and approves the acquisition strategy or acquisition plan?

For all acquisition plans (including initial plans and substantive revisions thereto) with a value greater than or equal to \$300 million, all Component HCAs shall submit acquisition plans to the CPO for approval unless program approval in accordance with DHS Directive 102-01 Acquisition (or superseding successor DHS Directive 102-01) has been delegated to the Component. In those instances where the initial acquisition plan is valued less than \$300 million, but a revised acquisition plan is subsequently prepared that results in a value greater than or equal to \$300 million, the revised plan must be submitted to the CPO for approval.

For acquisition strategies (including initial strategies and substantive revisions thereto) with a program life cycle cost greater than or equal to \$300 million, all Component HCAs shall submit AStrs to the CPO for concurrence, unless program coordination, review, and approval in accordance with DHS Directive 102-01 Acquisition (or superseding successor DHS Directive 102-01) has been delegated to the Component. CPO concurrence will be sought prior to submission to the Acquisition Decision Authority for final approval in accordance with DHS Directive 102-01, Acquisition. In those instances where the initial AStr is valued less than \$300 million (life cycle cost), but a revised acquisition strategy is subsequently prepared that results in a value greater than or equal to \$300 million, the revised strategy must be submitted to the CPO for concurrence. Note, an AStr is considered a key acquisition document and must be submitted at all ADEs. .

HCA AP/AStr responsibilities include comprehensive coordination of requirements with appropriate Departmental offices and functions, including obtaining assurances that acquisitions:

1. For information technology, provide assurance that resulting transactions: (i) address protection of privacy in accordance with the Privacy Act (5 U.S.C. 552a) and FAR Part 24 and Subpart 39.105; and (ii) in accordance with FAR 39.101, include the appropriate information technology security policies and requirements, including the use of common security configurations available from the National Institute of Standards and Technology's Internet site at: <http://checklists.nist.gov/>
2. In which contract requirements are bundled, are coordinated with Component and, as appropriate, DHS small business representatives, and the SBA, and meet the review and approval requirements of HSAM 3007.107 and FAR 7.104(d)(1);
3. Exceeding \$550,000 in which other than full and open competition procedures, e.g., six of the seven exceptions at FAR 6.3, are expected to be used, are reviewed and approved by the cognizant competition advocate in accordance with HSAM 3006.304. (This does *not* apply when the exception at FAR 6.302-7, Public Interest, is used. All actions using the *Public Interest* citation, regardless of dollar amount, must be coordinated with the cognizant competition advocate.); and
4. Incorporate scheduling necessary for compliance with contract notification requirements identified in HSAM 3005.303, Announcement of contract awards; and, for asset acquisitions in excess of \$10 million, obtaining prior approval of the DHS Chief Administrative Officer (CAO) through the Component CAO.

Part II – Preparation and Contents of Acquisition Strategies and Acquisition Plans

As required by FAR 7.105, each numbered subsection in Part II must be addressed in every AStr and AP. However, the contents of each subsection may be tailored to the requirement or program, and noted as “not applicable” with a brief explanation, where required. For example, the documentation requirements in Table 1 below specify required sections of this Part II that are applicable to various AStr milestones/phases in accordance with DHS Directive 102-01, Acquisition.

Table 1. Minimum Acquisition Strategy Documentation Requirements by Acquisition Decision Event

	For Acquisition Decision Event (ADE) 1	For Acquisition Decision Event (ADE) 2A	For Acquisition Decision Event (ADE) 2B		For Acquisition Decision Event (ADE) 3
	Validate the Need	Approve the Acquisition(s)	Approve the Acquisition Types		Approve Production, Deployment and Support
	Major System Acquisition: <i>Capital Assets and Services</i>	Major System Acquisition: <i>Capital Assets and Services</i>	<i>Capital Assets</i>	<i>Services</i>	Capital Assets Only
Level of Detail:	Very Strategic	Detailed	Specific Detail		N/A
Acquisition Strategy Content by Phase with Corresponding AP Guide Section in Part II	A 1 A 3 A 4 A 7	A1 - A 4 A 6 - A 8 B 1- 10 B 13 B 14 B 15	A 5 B 3 - B 5 B 7 B 11 - 12 B 15 - B 21		

The contents required for acquisition strategies vary with the particular Acquisition Decision Event (ADE). For example, ADE 1 is very early in the planning process when the basic need or requirement must be approved. Limited information is available.

ADE 2 documentation requirements reflect a phase in a project/program where more detailed and specific information, and more accurate estimates become available as the project/program progresses, thereby producing a more complete, clearer strategy where decisions can be made on the actual acquisition vehicle(s) proposed for use in support of the program/project have been defined and decisions can be made.

Section A. Identification of Acquisition Plan/Acquisition Strategy

Provide the program or acquisition title or name, and the AStr or AP number.

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

The next two digits shall be the fiscal year in which the strategy/plan was or will be approved. The last three digits shall be assigned sequentially, as stated in Component procedures. The plan/strategy date is the date the plan/strategy is approved by the HCA, or CPO, as appropriate (see Question 1.10, above).

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

Indicate if the document is a new strategy/plan or an update. If it is an update, provide the reason for the update and summarize the new information. Revisions to strategies/plans may be tracked using a table such as the sample tracking Table 2.

Table 2. Revision Tracking Template - Sample

Document Version	Date Completed	Reason for Revision
Original	xx/xx/2008	Not applicable
Revision 1	xx/xx/2008	Updated the logistics section of the AP
Revision 2	xx/xx/2008	Made corrections to the acquisition considerations section of the AP

Executive Summary

Provide an executive summary of the program and/or acquisition(s) contained in the AStr or AP, as appropriate. This should include:

- Description of the overall acquisition strategy (see Section A1);
- Description of the acquisition(s) and how it/they relate to a specific project or program;
- Location of the work to be performed;
- Proposed contract type(s);
- Overall period of performance; and
- Total estimated value.

Include written assurance that the acquisition plan / acquisition strategy has been properly coordinated with pertinent functional offices/stakeholders prior to submission to the CPO for approval.

Check the following investment categories:

1. This program is () is not () an IT program covered under OMB Circular A-130, "Management of Federal Information Resources". If so, discuss how the program has met the A-130 requirements;
2. This program is () is not () an Acquisition of Services;
3. This program is () is not () required to have an Exhibit 300. If applicable, indicate that it has been reviewed. If not applicable, provide an explanation as to why it is not applicable.

Define the acquisition scope, business objectives, situational assessment, and include a discussion of potential acquisition alternatives. Also, provide the overall acquisition approach to obtain the defined capabilities in a manner that is in the best interest of the Government. Define an overarching program strategy across procurement, operational (sustainment and support), acquisition, and resource functions. Describe the appropriate types of acquisition alternatives and assess the benefits, disadvantages, and risks of each with an overall recommendation for the program and its projects.

Section A. Acquisition Background and Objectives

A1. Statement of Need

Provide a brief description of the item which is being procured under the contract. A picture, drawing, diagram, or other graphic representation may be included when necessary for adequate description. Summarize the need for this acquisition in terms of the capability gap that this acquisition(s) will fill. The capability gap is the difference between the requiring activity's overall mission, and the portion of that mission it is achieving without the acquisitions covered by this AStr/AP. If the program has an approved Mission Needs Statement (MNS), reference it and summarize the gap here. Also, summarize the technical and contractual history of the program and acquisition(s). Discuss feasible acquisition alternatives (reference the Analysis of Alternatives, if available), the impact of prior acquisitions on those alternatives, and any related in-house efforts associated with the acquisition(s).

A2. Applicable Conditions

State all significant conditions or constraints affecting the acquisition, such as:

1. Requirements for compatibility with existing or future systems or programs; and

2. Any known cost, schedule, and capability or performance constraints.

A3. Cost

State established cost goals for the acquisition and the rationale supporting them, and discuss related cost concepts to be employed, including, as appropriate the following items:

1. *Life-Cycle Costs.* Discuss how life-cycle cost will be considered (ref. DHS Directive 102-01) and the cost model used to develop life-cycle cost estimates. Life-cycle costs includes all costs associated with the research, development, procurement, operation, logistical support and disposal of an individual system, or capability, to include its supporting infrastructure that plans, manages, and executes the system or capability over its full life. These costs also include cost of requirements for common support items incurred because of the system or capability.

NOTE: Not applicable to acquisition of services (see DHS Directive 102-01, Acquisition).

2. *Design-to-Cost.* Describe the design-to-cost objective(s) and underlying assumptions, including the rationale for quantity, learning-curve, and economic adjustment factors. Describe how objectives are to be applied, tracked, and enforced. Indicate specific, related solicitation and contractual requirements to be imposed. Design-to-cost activities are those which are undertaken to meet the cost objectives through explicit design activities. The Cost as an Independent Variable (CAIV) depends on design-to-cost activities to meet the objectives by instilling cost-consciousness into the designers, by stimulating them to challenge requirements, and illuminating their cost progress. CAIV has refocused design-to-cost to consider cost objectives for the total life cycle of the program, including logistics support and to view cost as an independent variable with an understanding it may be necessary to trade-off performance to stay within cost objectives and constraints.

NOTE: Not applicable to acquisition of services or automated information systems.

3. *Application of should-cost.* Describe the application of should-cost analysis to the acquisition also see FAR 15.407-4. The objective of should-cost reviews is to promote both short and long-range improvements in the contractor's economy and efficiency in order to reduce the cost of performance on Government contracts. These reviews evaluate the economy and efficiency of the contractor's existing workforce, methods, materials, facilities, operating systems, and management. The should-cost reviews are accomplished by a multi-functional team of Government contracting, contract administration, pricing, audit, and engineering representatives.

NOTE: Not applicable to acquisition of services or automated information systems.

A4. Capability or Performance

Summarize the required capabilities or performance characteristics of the supplies or the performance standards of the services being acquired and state how they are related to the need. For each acquisition covered under the AStr/AP, describe how such supplies or services will satisfy the need and the required capabilities provided to the Component.

A5. Delivery or Period of Performance Requirements

If information is available, include an Integrated Program Schedule (IPS) showing linkages between contract period of performance and delivery of program capability. Otherwise, state the period of performance for each acquisition, and discuss why that period of performance was chosen.

For any period of performance longer than 5 years, summarize the market research that supports the extended period of performance. For acquisition of services, indicate whether the acquisition will be for a term of performance or a completion date.

Provide reasons for any urgency, if it results in an requirement for concurrent development and production, or if it constitutes justification for not providing for full and open competition. Describe any mandated deadlines or any system integration issues that could affect performance schedules.

A6. Trade offs

Discuss the expected consequences of trade offs among the various cost, capability or performance, and schedule goals. As appropriate, reference the results of the Analysis of Alternatives which is the focus for major tradeoffs, or the Alternatives Analysis which applies to simpler acquisition situations (see DHS Directive 102-01 and DHS Instruction 125-02-001.)

Cost/performance/schedule trade offs should be shaping the requirements and proposed design approaches on a cost-effectiveness basis. Cost-effectiveness assumptions and goals will be modified by affordability considerations as the trade offs start to focus on the cost-effective alternatives that are practical from a budget point-of-view. CAIV should be utilized to make life-cycle affordability decisions. Cost reductions shall be accomplished through the life cycle.

NOTE: Do not discuss aspects of the source selection tradeoff process, as described in FAR 15.101, in this section.

A7. Risks

Discuss program risks, including technical, cost, and schedule risks, and describe what efforts are planned or underway to reduce risk and the consequences of failure to achieve goals. If concurrent development and production is planned, discuss its effects on cost and schedule risks. Program risks may include cost schedule, performance, political and organizational. If there is a risk management plan, cite the plan number and date, and include a brief summary, instead of completing the sample risk Table 3 below.

Table 3. Risk Assessment - Sample

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

If multiple acquisitions are planned, identify the risks to each acquisition and complete the table above for each acquisition.

A8. Acquisition Streamlining

Describe any planned acquisition streamlining initiatives that will result in a more efficient and effective use of resources during the acquisition process. List each item that may be used in each acquisition to streamline the acquisition process, for example:

- Encourage industry participation by hosting Industry Days, using draft solicitations, presolicitation conferences and other means of stimulating interaction with industry;
- Select and tailor only the necessary and cost-effective requirements, such as
 - Limiting the size of proposals to less than 50 pages for Request for Proposals (RFP) and 20 pages for Request for Quotes (RFQs);
 - Using performance-based services acquisition, when applicable
 - Acquiring Commercial-Off-the-Shelf (COTS) products, when applicable.

Section B. Plan of Action

For each contract action, the plan should address the following:

B1. Sources

Using the sample Tables 4 and 5 below, indicate the completed actions to date and the prospective sources of supplies or services that can meet the need.

Table 4: Major Contract Actions Completed to Date Sample

Acquisition Considerations	Major Contract Action #1	Major Contract Action #2	Major Contract Action #3
Action identifier (e.g., contract number, grant number)			
Type of vehicle (e.g., contract, grant, interagency agreement, memorandum of agreement, memorandum of understanding, other transaction)			
Contract type (e.g., Time and Materials, Fixed-Price, etc.)			
Contractor			
Description of supply/service			
Date of award			
Period of performance (start and end date)			
Total value (provide data on basic value and option value(s))			
Quantity of supplies (for other than service contracts)			
Performance based? (Y/N)			
Competitively awarded? (Y/N)			
Awarded to a small business concern? (FAR Part 19) (Y/N)			

Table 5: Planned Contract Actions Sample

Acquisition Considerations	Major Contract Action #1	Major Contract Action #2	Major Contract Action #3
Anticipated type of vehicle (e.g., contract, grant, interagency agreement, other transaction)			
Anticipated contract type			
Description of supply/service to be provided			
Anticipated date of award			
Anticipated period of performance			
Estimated total value of contract/order/other vehicle (\$M)			
Estimated quantity of supplies			
Quantity			
Performance based? (Y/N)			
Competitively awarded? (Y/N)			
Awarded to a small business concern? (FAR Part 19)			

In completing and supplementing the tables, consider required sources of supplies or services (see FAR 8), and sources identifiable through Government-wide databases. Include and document consideration of small business, veteran-owned business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns (see FAR Part 19), and the impact of any bundling that might affect their participation in the acquisition. When the proposed AStr involves bundling, identify the incumbent contractors and contracts affected by the bundling. Address the extent and results of the market research and indicate the impact of the market research findings on the various elements of the plan (see FAR Part 10 and HSAM Chapter 3010 Appendix A *DHS Market Research Guide*).

B2. Competition

Describe how competition will be sought, promoted, and sustained throughout the course of the acquisition. If exclusion of source(s) is proposed, identify the applicable statutory authority permitting exclusion (see FAR 6.202 and FAR 6.203). If full and open competition is not contemplated, cite the authority in FAR 6.302, discuss the basis for the application of that authority, identify the source(s) and discuss why full and open competition cannot be obtained, and whether the requirement has been coordinated with the Component Competition Advocate or DHS Competition Advocate, as appropriate.

When effective subcontract competition is both feasible and desirable, describe how such subcontract competition will be sought, promoted, and sustained throughout the course of the acquisition. Identify any known barriers to increasing subcontract competition and address how to overcome them.

B3. Source-Selection Procedures

Discuss the source selection procedures for the acquisition(s), including the timing for submission and evaluation of proposals, and the relationship of evaluation factors to the attainment of the acquisition objectives (See FAR 15.3).

In addition, provide the following information:

1. The contractual vehicle will include () will not include () Earned Value Management (EVM) as a contract administration tool;
2. If EVM is not required, discuss what methods will be used to measure cost, schedule and performance during the contract term. (See FAR 34.2 Earned Value Management System.)
3. The solicitation () will include () will not include a pre-award Integrated Baseline Review (IBR). If a pre-award IBR will be included, discuss how the IBR will be considered in the source selection decision, and whether offerors will be directly compensated for the costs of participating in a pre-award IBR.

B4. Contract Type Selection

- (1) Discuss the rationale for the selection of a cost reimbursement contract (e.g., why this contract type must be used to meet the particular agency/program need in question; why some portion of the contract cannot be fixed price; or how the contract is structured to facilitate a future award or some portion thereof as fixed prices.
- (2) If a T&M contract is being selected, the AStr/AP shall discuss in this section why it is not possible at the time of placing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any degree of confidence (FAR 16.601 (c)).
- (3) Discuss the Government's additional risks and the burden to manage the additional risks when it selects a contract type other than fixed price (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, discuss (A) how the Government identified the additional risks (e.g., pre-award survey, or past performance data), (B) the nature of the additional risks (e.g., inadequate contractor's accounting system, weakness in the contractor's internal control, non-compliance with Cost Accounting Standards, or lack of or inadequate Earned Value Management System (EVMS)) and (C) how the Government will manage and mitigate the risks; and
- (4) Discuss the Government resources necessary to properly plan for, award, and administer contracts with additional risks to the Government.

B5. Acquisition Considerations

A. For each contract contemplated, discuss and provide rationale for:

- Use of multiyear contracting, options, or other special contracting methods;
- Any special clauses, special solicitation provisions, or FAR deviations required;
- Whether sealed bidding or negotiation will be used and why;
- Whether equipment will be leased or purchased and why; and
- Any other contracting considerations.

NOTE: Discussion/documentation under this section does not satisfy requirements for individual Justifications and Approvals, Determinations and Findings, or other approvals, waivers, or exemptions required under the FAR.

In addition, provide the following information:

1. This is () is not () a performance-based acquisition. For acquisitions for services, FAR 7.105 requires planners to provide the rationale for not structuring the action as performance-based.
2. This effort will () will not () include Personal Identification Information (PII). If applicable, discuss how/whether the PII data will be handled by a contractor and if losses occur, what provisions are to be included in the contract to manage the liability (see FAR 24 and FAR 39.105).
3. This contract vehicle will contain () will not contain () options in accordance with FAR 17.2.
4. This will be () will not be () a multiple award Indefinite Quantity or Indefinite Delivery contract in accordance with FAR 16. If this is a single-award IDIQ contract, provide justification.
5. This contract vehicle will require () will not require () submittal of cost and pricing data. If cost or pricing data will not be required, explain the applicable exemption from submittal of such data. (See FAR 15.4, Contract Pricing)
6. This contract vehicle will require () will not require () cost analysis and/or cost realism to determine a fair and reasonable price (see FAR 15.404). If neither cost analysis or cost realism will be used, explain why.

B. For each order contemplated, discuss:

1. For IT acquisitions, how the capital planning and investment control requirements of 40 U.S.C. 11312 and OMB Circular A-130 will be met (see FAR 7.103(t) and part 39); and
2. Why this action benefits the Government (e.g., when an agency can accomplish its mission more efficiently and effectively; ordering through an indefinite delivery contract facilitates access to small business concerns.)

B6. Budgeting and Funding

Include budget estimates, explain how they were derived, and discuss the schedule for obtaining adequate funds at the time they are required. (See FAR 32.7.) Reference the Life-Cycle Cost Estimate (LCCE) results (see DHS Directive 102-01, Acquisition). Discuss the value of the acquisition in relationship to the lifecycle cost of the program, where available. Indicate whether the contract(s) awarded will be multiyear contracts in accordance with FAR 17.1. Also, indicate whether the contract(s) will be incrementally funded in accordance with FAR 32.7.

List the source(s) of funds for each acquisition, the amount required, as stated in the Independent Government Cost Estimate (IGCE) and the amount budgeted. In the *Under*

or *Overage* row, provide the difference between the amount required and the amount budgeted for the effort. If there is an overage or underage, explain why and how the program will correct the situation. Ref. the sample budgeting and funding Table 6 below..

NOTE: Planners may find information that can be used in this section in the appropriate OMB Exhibit 300, where available.

Table 6. Budgeting and Funding - Sample

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

B7. Product or Service Descriptions

Explain the choice of product or service description types to be used in the acquisition(s), including performance-based acquisition descriptions, commercial items, Commercially Available-Off-the-Shelf (COTS) items.

B8. Priorities, Allocations, and Allotments

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

B9. Contractor versus Government Performance

Address whether any of the acquisitions covered under the AStr/AP are covered by OMB Circular No. A-76, or state that this paragraph is not applicable. (See FAR 7.3.)

B10. Inherently Governmental Functions

Discuss consideration of inherently governmental functions, as detailed in FAR 7.5 Inherently Governmental Functions, and as appropriate, state affirmatively that no inherently governmental functions are or will be performed under the subject contract(s).

B11. Management Information Requirements

Discuss, as appropriate, what management system, e.g., Earned Value Management (EVM), Service Level Agreements (SLA), etc., will be used by the Government to monitor the contractor's effort, to include collection of performance, cost, and schedule data. Components are encouraged to use DCAA EVM services.

B12. Make or Buy

Discuss any consideration given to the contractor's make-or-buy programs. (See FAR 15.407-2.) "Make or buy programs" means that part of the contractor's written plan for a contract identifying those major items to be produced or work efforts to be performed in the prime contractor's facilities, and those to be subcontracted.

B13. Test and Evaluation

To the extent applicable, describe the test program of the contractor and the Government. For a major system acquisition, describe the test program for each major phase. Provide the Test and Evaluation Management Plan (TEMP) number and approval date, as appropriate.

NOTE: Test and evaluation considerations may not apply to such requirements such as those for the acquisition of services, automated information systems, or Commercial-Off-The-Shelf (COTS) type items.

B14. Logistics Considerations

1. Describe the assumptions determining contractor or agency support, both initially and over the life of the acquisition, including consideration of contractor or agency maintenance and servicing and distribution of commercial items.
2. Discuss the reliability, maintainability, and quality assurance requirements, including any planned use of warranties.

3. Discuss the requirements for contractor data (including repurchase data) and data rights, their estimated cost, and the use to be made of the data, if applicable.
4. Discuss any standardization concepts, including the necessity to designate, in accordance with agency procedures, technical equipment as “standard” so that future purchases of the equipment can be made from the same manufacturing source.

B15. Government-Furnished Property (GFP)

Indicate any Government property to be furnished to contractors, and discuss any associated considerations, e.g., providing the rationale to furnish the property is in the Government’s best interest, the overall benefit to the Government significantly outweighs the increased cost of administration, including ultimate property disposal, furnishing the property does not substantially increase the risk to the Government, and why the Government requirements cannot otherwise be met. Ref. the sample GFP Table 7.

Table 7. Government-Furnished Property (GFP) - Sample

Description of Government Property - Include detail required at FAR 45.201(a)	Date/ Event (When to be furnished)	Date/Event (When to be returned)

B16. Government-Furnished Information

Discuss any Government information, such as manuals, drawings, and test data, to be furnished to prospective offerors and contractors. List the information that will be furnished, with both the date it will be provided and date to be returned (if required). If the information will not be returned, indicate "not returned" in that block. Ref. the sample GFI Table 8 below.

Table 8. Government-Furnished Information (GFI) - Sample

Description of Government – Furnished Information	Date/ Event (When to be furnished)	Date/Event (When to be returned)

B17. Environmental and Energy Conservation Objectives

The fundamental environmental policy of the Department of Homeland Security is to protect our natural resources, prevent pollution, reduce waste and strive to exceed the environmental performance goals, objectives and targets established for Federal agencies.

Discuss all applicable environmental and energy conservation objectives associated with the acquisition, the applicability of an environmental assessment or environmental impact statement, the proposed resolution of environmental issues, and any environmentally-related requirements to be included in solicitations and contracts, e.g., whether the acquisition will result in any hazardous material being created or used. If applicable, describe how any hazardous material will be required to be disposed. (See DHS Directive 025-01, *Sustainable Practices for Environmental, Energy, and Transportation Management, and other Environmental Management Directives*, accessible through: <https://dhsonline.dhs.gov/portal/jhtml/general/mdcat.jhtml;jsessionid=DJQ4ULD4MYAPNQFIAACSFFA> .

Review the requirements of FAR Part 23, Environmental, Energy, and Water Sufficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace. Describe how the contract will consider the purchase and use of green products and services to the maximum extent practicable, to include biobased products, recycled content products, water-efficient, energy-efficient, Energy Star®, products with the lowest watt stand-by power, environmentally preferable products, alternative fuels, hybrid and alternative fuel vehicles, non-ozone depleting substances, renewable energy; and Environmental Protection Agency (EPA) designated items containing recovered materials. See Attachment 2 to this DHS Acquisition Planning Guide for specific environmental and energy conservation-related FAR references.

B18. Security Considerations

1. Does the acquisition involve access to classified information? For acquisitions dealing with classified matters, discuss how adequate security will be established, maintained, and monitored.
2. Will sensitive, operational, or critical infrastructure information be disclosed in the acquisition? If so, describe the type of operational or infrastructure information and/or identify the type of sensitive (non-classified) information, e.g., PCII, SSI, etc., requiring protection.
3. Describe whether all, some, or none of the contractor's employees will be required to pass a background investigation, possess a secret level clearance, or possess a top-secret level clearance. List the clauses that will be included in the resulting contractual instrument addressing personnel, data or physical security, as appropriate. For information technology acquisitions, discuss how agency information security requirements will be met.

4. For acquisitions requiring routine contractor physical access to a Federally-controlled facility and/or access to a Federally-controlled information system, discuss how agency requirements for personal identity verification of contractors will be met.
5. Will non-U.S. suppliers be permitted to compete for the acquisition? If not, under what authority are they being excluded? (See FAR 25.)
6. Is all work required to be performed within the United States or its territories?
7. If a non-U.S. supplier performs the contract, how will the program protect sensitive information and facilities from non-U.S. supplier access?

B19. 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. Briefly describe how the Government will ensure that it is receiving, accepting, and paying for products or services provided by a contractor. For Automated Information Systems, this could include the use of an Independent Verification and Validation (IV&V) contractor.

Explain whether a COTR, certified in accordance with OMB Memorandum, *The Federal Acquisition Certification for Contracting Officer Technical Representatives* (November 26, 2007), has been nominated and designated; the appropriateness of their skills and experience to the types of contracts to which they are assigned; and how the COTR will maintain oversight of the technical aspects of the contract, and manage the additional risks associated with cost type contracts, as appropriate.

If this is a cost-type or T&M contract, discuss whether DCAA will be utilized to process vouchers, and if not, the rationale for not using DCAA to perform this function.

B20. Other Considerations and Additional Requirements:

1. *Transition Planning.* This contract vehicle will () will not () contain a line item for "transition in" and or a line item for "transition out". If applicable, define work to be performed during the transition. Discuss the period of performance for each line item and the tasks that will be included, as well as explain pricing and timing of the transition.
2. *Section 505.* This contract vehicle will () will not () purchase printing and writing paper. If applicable, summarize any printing/copying requirements and how they will comply with the standards specified in section 505 of Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition (see FAR 11.303);

3. *Section 508.* This contract vehicle will () will not () purchase electronic and information technology. If applicable, address whether the Electronic and Information Technology Accessibility Standards (see 36 CFR Part 1194) are applicable and explain how these standards are included in requirement planning, as appropriate (see FAR Subpart 39.2).
4. *Standardization.* This contract vehicle will () will not () be procured as part of the Federal Standardization Manual FSPM-0001 (see FAR 11.102). If applicable, ensure that the system will be procured to industry standards or whether the system is compatible with industry standards.
5. *Strategic Sourcing.* This effort is () is not () covered by an existing strategically sourced solution. To determine if a strategically sourced solution exists, refer to the following website:
<https://dhsonline.dhs.gov/portal/jhtml/community.jhtml;jsessionid=J50G1XDTZLNK3QFIAACSFY?community=MGMT&index=48&id=2012980039>
If this requirement is covered by an existing strategically sourced solution and that solution is not being used, then provide rationale.
6. *Department-Wide Contracts.* This contract vehicle will () will not () be procured or does not apply (), as part of a DHS-Wide Contract. If applicable, but a decision has been made that the Department-Wide Contract is not suitable for use for this particular acquisition, explain why.
7. *Open Systems.* The requirements under contract will () will not () be procured using an open system solution. If the acquisition involves software, discuss steps being taken to avoid proprietary standards.
8. *Occupational Safety and Health Considerations.* The contract vehicle will () will not () be procured in accordance with the Occupational Safety and Health Act. Describe the strategy to ensure that occupational safety or health is being managed under the resulting contractual action. If there are no occupational safety, or health considerations, discuss why this paragraph is not applicable.
9. *Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (SAFETY Act).* (Before making the following determination, refer to Attachment 3 to this guide and/or check with the DHS Office of SAFETY Act Implementation.) The contract vehicle will () will not () procure technology that affirmatively or presumptively satisfies the technical criteria necessary to be deemed a qualified anti-terrorism technology (see FAR 50.200). If applicable, discuss how the Government will solicit, procure, and protect such technology.
10. *Foreign Sales Implications.* DHS textile restrictions () apply () do not apply to the subject acquisition(s). If DHS textile restrictions apply, discuss the particular restrictions, and identify the portion of the acquisition(s) to which they apply.

11. *Construction Projects.* For construction projects valued at \$25 million or more, consideration has been given to the potential benefits that may be afforded the Government by requiring the use a Project Labor Agreement (PLA) and the determination has been made to require () not require () a PLA. In making this determination the following factors were taken into consideration: (Discuss all factors considered in making the determination to require/not require the use of a PLA as well as the rationale for the final decision.) (See Office of Management and Budget (OMB) Memo M-09-22 dated July 10, 2009 (http://www.whitehouse.gov/omb/memoranda_default/) and implementing regulations as appropriate for information and guidance.)

B21. Milestones for the Acquisition Cycle

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

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

DHS-Unique Congressional Notification of Award in Accordance with HSAM 3005.303 (5-Day Advance Notice/Actions > \$1M)		
Notification of Award		

B22. Identification of Participants in Acquisition Plan Preparation

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

Name	Title	Organization	Telephone Number	Email
	Program Manager			
	Contracting Officer			
	Budget Officer			
	Small Business Liaison			
	Competition Advocate			
	Commodity Council			
	Security Representative			

Part III – Definitions and Acronym List

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

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

Acquisition Decision Authority means the individual designated in accordance with criteria established by the Department Chief Acquisition Officer to approve entry of an acquisition program into the next phase of the acquisition process. Formerly known as **Milestone Decision Authority** (MDA).

Acquisition Decision Event (ADE) means a predetermined point within the acquisition phases at which the investment will undergo a review prior to commencement of the next phase. Formerly known as **Key Decision Point** (KDP).

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

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

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

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

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

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

- The diversity, size, or specialized nature of the elements of the performance specified;
- The aggregate dollar value of the anticipated award;
- The geographical dispersion of the contract performance sites; or
- Any combination of the above factors. (FAR 2.101)

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

Commercial Item means:

- (1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and—
 - (i) Has been sold, leased, or licensed to the general public; or,
 - (ii) Has been offered for sale, lease, or license to the general public;
- (2) Any item that evolved from an item described in paragraph (1) of this definition through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial

marketplace in time to satisfy the delivery requirements under a Government solicitation;

(3) Any item that would satisfy a criterion expressed in paragraphs (1) or (2) of this definition, but for –

(i) Modifications of a type customarily available in the commercial marketplace; or

(ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements.

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

(4) Any combination of items meeting the requirements of paragraphs (1), (2), (3), or (5) of this definition that are of a type customarily combined and sold in combination to the general public;

(5) Installation services, maintenance services, repair services, training services, and other services if—

(i) Such services are procured for support of an item referred to in paragraph (1), (2), (3), or (4) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and

(ii) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed or specific outcomes to be achieved and under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed or a specific outcome to be achieved. For purposes of these services—

(i) “*Catalog price*” means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and

states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and

(ii) “*Market prices*” means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the Offerors.

(7) Any item, combination of items, or service referred to in paragraphs (1) through (6) of this definition, notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or

(8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments. (FAR 2.101)

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

Consolidated Acquisition Plan means a written AP that includes more than one contract action, with similar requirements. The plan adequately describes the acquisition strategy, budgeting, technical and other significant considerations for each procurement action. For example, a Component may have several different individual contract actions for identical or similar services/supplies. Combining them into a single AP would conserve resources by eliminating redundant AP development and AP review/approval/updated processes. The approval threshold for a consolidated AP is determined by the combined value of the separate procurement actions. Consolidated AP’s are for procurements that are not part of a major system acquisition as defined in DHS Directive 102-01, Acquisition.

Contracting Officer’s Technical Representative (COTR) means an individual designated and authorized in writing by the contracting officer to perform specific technical or administrative functions of the contract. COTRs shall be certified in accordance with the Office of Management and Budget Memorandum entitled *The Federal Acquisition Certification for Contracting Officer Technical Representatives* dated November 26, 2007.

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

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

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

Major system means that combination of elements that will function together to produce the capabilities required to fulfill a mission need. The elements may include hardware, equipment, software, or any combination thereof, but exclude construction or other improvements to real property. A system is a major system if the life cycle cost for the system is estimated to exceed \$300 million, the value of Level I or II acquisitions as described in DHS Directive 102-01, Acquisition, or if the Deputy Secretary has designated it a major system. (FAR 2.101 and HSAR 3002.101)

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

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

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

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

Program (also referred to for purposes of this guide as Acquisition Program) means a directed, funded mission that provides a new, improved, or continuing system or service in response to an approved need. Acquisition programs are divided into levels established to facilitate decentralized decision-making, execution, and compliance with statutory requirements.

Program Manager (PM) means the responsible person who, with significant discretionary authority, is uniquely empowered to make final scope of work, capital investment, and performance acceptability decisions, and who is responsible for accomplishing program objectives or production requirements through the acquisition of in-house, contract or reimbursable support resources, as appropriate. The PM is responsible for management and oversight of the Integrated Product Team. In general,

the program manager is the manager of an acquisition program, but may be a manager of a procurement that does not rise to the level of an acquisition program (e.g., janitorial services, HR services, bulk commodity purchases).

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

Project Labor Agreement (PLA) means a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project and is an agreement described in 29 U.S.C. 158(f).

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

Should-Cost Review evaluates the economy and efficiency of the contractor's existing workforce, methods, materials, equipment, real property, operating systems, and management. The objective of a should-cost review is to promote both short- and long-range improvements in the contractor's economy and efficiency in order to reduce the cost of performance of Government contracts. (See FAR 15.407-4)

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

Acronym List

ADE	Acquisition Decision Event
ARB	Acquisition Review Board
AP	Acquisition Plan
APL	Acquisition Policy and Legislation Branch
AStr	Acquisition Strategy
BPA	Blanket Purchase Agreement
CASO	Chief Asset Supply Officer
CCR	Contractor Central Registration
CFO	Chief Financial Officer
CIO	Chief Information Officer
COTR	Contracting Officer's Technical Representative
CPAF	Cost Plus Award Fee
CPFF	Cost Plus Fixed Fee
CPO	Chief Procurement Officer

DHS	Department of Homeland Security
EAB	Enterprise Architecture Board
EIA	Electronic Industrial Standards
EVM	Earned Value Management
FAR	Federal Acquisition Regulation
FFP	Firm Fixed Price
FSS	Federal Supply Schedule
FTE	Full Time Equivalent Person
GAO	Government Accountability Office
GFI	Government-Furnished Information
GFP	Government-Furnished Property
GSA	General Services Administration
GWAC	Government Wide Acquisition Contract
HCA	Head of the Contracting Activity
HSAM	Department of Homeland Security Acquisition Manual
HSAR	Department of Homeland Security Acquisition Regulations
IAA	Inter/Intra-Agency Agreement
IBR	Integrated Baseline Review
IDIQ	Indefinite Delivery Indefinite Quantity Contract
IGCE	Independent Government Cost Estimate
J&A	Justification for Other Than Full and Open Competition
MAC	Multiple Award Contract
MNS	Mission Need Statement
MRC	Management Review Council
OCPO	Office of the Chief Procurement Officer
OSDBU	Office of Small and Disadvantaged Business Utilization
PALT	Procurement Acquisition Lead Time
PBA	Performance-Based Acquisition
PM	Program Manager
PWS	Performance Work Statement
SBA	Small Business Administration
SOO	Statement of Objectives
SOW	Statement of Work

TEMP	Test and Evaluation Management Plan
T&M	Time and Materials Contract Type
TO	Task Order

Attachment 1**Market Research Basics**

Market research involves the collection and analysis of product or service market information from a variety of sources in order to determine the best approach for acquiring goods and services to satisfy the Government's acquisition needs.

Benefits of market research include:

1. Identification of commercial products and services that meet Government requirements;
2. Identification of competition and Small Business Concerns (including all subcategories) that can meet Government requirements and contribute the realization of cost savings/cost avoidance and achievement of DHS competition and small business program goals; and
3. Fostering and promoting acquisition planning and strategic sourcing for DHS procurements.

Market research policy and procedures are described in FAR 10.001, FAR 10.002 and HSAM Chapter 3010. Guidance for collecting and using market research data is available in the *DHS Market Research Guide*, Appendix 1 to HSAM Chapter 3010.

Attachment 2**Environmental and Energy Conservation**

The Government's policy to acquire supplies and services that promote energy and water efficiency, advance the use of renewable energy products and foster markets for emerging technologies extends to all acquisitions, including those below the simplified acquisition threshold. The following environmental and energy FAR references include:

1. *FAR 4.3* preferences for double-sided printing and copying on recycled paper for all contractor documents;
2. *FAR 7.103(n)* specifying printing and writing paper consistent with the minimum content standards and complying with the policy regarding procurement of products containing recovered materials, environmentally preferable and energy-efficient products and services;
3. *FAR 7.105(b)(16)* requires written acquisition plans to discuss all applicable environmental and energy conservation objectives associated with the acquisition and any environmentally-related requirements to be included in solicitations and contracts;
4. *FAR 11.101(b)* requires documents achieve the maximum practicable: 1) energy efficiency, including using products containing energy-efficient standby power devices and renewable energy technologies; and (2) use of recovered material, other materials that are environmentally preferable, energy- and water-efficient products, and renewable energy technologies;
5. *FAR 11.3* addresses setting requirements for products containing virgin materials and recovered materials. The FAR allows for the acquisition of used, reconditioned, or remanufactured parts. The FAR also defines special requirements for printing and writing paper;
6. *FAR 12.301(e)(3)* allows a contracting officer to use the provisions and clauses contained in Part 23 regarding the use of recovered material when appropriate for the item being acquired;
7. *FAR 13.201(f)* states that environmental procurement requirements apply at or below the micro-purchases threshold, such as acquisitions made with the purchase card;
8. *FAR 23.2* specifies the authorities, policy and requirements for acquiring energy-efficient products;
9. *FAR 23.4* specifies the authorities, policy and requirements for acquiring products with recovered material content;

10. *FAR 23.7* specifies the authorities, policy and requirements for acquiring environmentally preferable products and services;
11. *FAR 23.705* specifically addresses mandatory use of the Electronic Product Environmental Assessment Tool (EPEAT);
12. *FAR 42.302(a)(68)* specifies that that contracting officer must monitor the contractor's compliance with environmental requirements specified in the contract, including the use of environmentally preferable products, energy-efficient products, and materials or delivery of end products with specified recovered material content;
13. *FAR 52.204-4* is the text of the clause requiring documents to be printed or copied double-sided on recycled paper;
14. *FAR 52.211-5* is the text of the clause that requires specification of material composition (virgin material, recovered material, etc.);
15. *FAR 52.223-4* is the text of the clause that requires certification of the minimum recovered material content required in the solicitation;
16. *FAR 52.223-9* is the text of the clause that requires an estimate of percentage of recovered material content for EPA-designated products for contracts exceeding simplified acquisition threshold and specify use of EPA designated item;
17. *FAR 52.223-10* is the text of the clause that requires contractors to establish a program to promote cost-effective waste reduction in all operations and facilities covered by contract; and
18. *FAR 52.223-16* is the text of the clause that requires use of the IEEE 1680 standard (and EPEAT) for the environmental assessment of personal computer products.

Attachment 3**Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (SAFETY Act)**

FAR 50.205-1(a) requires that as part of an acquisition's planning process, requiring activities review requirements to identify potential technologies that prevent, detect, identify, or deter acts of terrorism or limit the harm such acts might cause, and may be appropriate for SAFETY Act protections. SAFETY Act protections are available for a broad variety of technologies, including products, services or software and other forms of intellectual property. Before making a decision about SAFETY Act applicability, consult the DHS Office of SAFETY Act Implementation at <http://www.SAFETY Act.gov>, and consider the following:

- a. SAFETY Act protections encourage greater competition, can result in lower prices through risk mitigation and litigation management, and may make technology available to the Government that would not be sold without SAFETY Act protections.
- b. Potential offerors should be encouraged to seek SAFETY Act protections for their technologies, even in advance of issuance of solicitations.
- c. Use industry outreach, e.g.,
 - i. Requests for Information
 - ii. Draft Requests for proposal
 - iii. Industry conferences
- d. Applying for SAFETY Act protections is the choice of the offeror, and can not be mandated.
- e. A wide variety of technologies are eligible for SAFETY Act protections. Examples include, but are not limited to:
 - i. Security services
 - ii. Screening services
 - iii. Sensors and sensor integration
 - iv. Decision support software
 - v. Crisis management systems
 - vi. Cyber security technologies
- f. Program offices and requiring activities should –
 - i. Identify technical issues early
 - ii. Work closely with customers
 - iii. Work closely with the DHS Office of SAFETY Act Implementation at <http://www.SAFETY Act.gov>

- g. If SAFETY Act applies, discuss how the Government will solicit, procure, and protect such technology.
- h. Allow sufficient processing time for SAFETY Act applications, preferably prior to issuing solicitation.

DHS Market Research Guide

**Office of the Chief Procurement Officer
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PREFACE

Comprehensive market research enhances transparency and competition in acquisition. Market research results comprise a key component of strategic planning; acquisition planning; determining appropriate contract vehicle/type; justifying and approving transactions acquired under other than full and open competition; determining price reasonableness; rights in data and other essential acquisition-related decision making. Federal Acquisition Regulation (FAR) Subpart 10.001 requires agencies to use the results of market research to determine:

- A. If sources capable of satisfying agency requirements exist;
- B. If commercial or non-developmental items suitable to meet the agency's needs are available; could be modified to meet agency requirements; or could meet agency requirements if the requirements were modified to a reasonable extent;
- C. The extent to which commercial items or non-developmental items could be incorporated at the component level;
- D. The practices of firms engaged in producing, distributing, and supporting commercial items, such as a type of contract, terms for warranties, buyer financing, maintenance and packaging, and marking;
- E. The availability of products that maximize the use of recovered materials and opportunities for the promotion of energy conservation and efficiency;
- F. If bundling is necessary and justified; and
- G. Availability of electronic and information technology that meets all or part of the applicable accessibility standards issued by the Architectural and Transportation Barriers Compliance Board.

This guide implements the policies and procedures for conducting market research prescribed in Federal Acquisition Regulation Part 10, and provides additional department-wide guidance to assist Acquisition Teams in determining the most suitable approach to acquiring, distributing, and supporting supplies and services to support the Department's mission. The guide applies to all DHS Offices and Components.

AUTHORITIES

- A. Federal Acquisition Regulation (FAR) (48 CFR):
 - Subpart 2.1 (Definitions)
 - Part 3 (Improper Business Practices and Personal Conflicts of Interest)
 - Part 6 (Competition Requirements)
 - Part 7 (Acquisition Planning)
 - Part 8 (Required Sources of Supplies and Services)
 - Subpart 9.5 (Organizational and Consultant Conflicts of Interest)
 - Part 10 (Market Research)
 - Part 11 (Describing Agency Needs)
 -

AUTHORITIES (Continued)

- Part 12 (Acquisition of Commercial Items)
 - Subpart 15.201 (Exchanges with Industry Before Receipt of Proposals)
 - Section 17.207 (Exercise of Options)
 - Subpart 19.5 (Set-Asides for Small Business)
 - Part 23 (Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace)
 - Part 25 (Subpart 25.1 and 25.2 – Buy American Act and Subpart 25.4 Trade Agreements) and
 - Subpart 50.2 Support Anti-Terrorism by Fostering Effective Technologies Act of 2002 (SAFETY Act)
- B. Federal Acquisition Streamlining Act of 1994 (FASA)
- C. Management Directive 0480.1, Ethics/Standards of Conduct, dated March 1, 2003
- D. Chief Procurement Officer memorandum, Subject: Communications with the Private Sector, dated August 14, 2006
- E. Homeland Security Acquisition Regulation (HSAR), Part 3023, Environment, Energy and Water Efficiency, Renewable Energy Technology, Occupational Safety, and Drug Free Workplace
- F. Homeland Security Acquisition Manual (HSAM), Chapter 3023, Environment, Energy and Water Efficiency, Renewable Energy Technology, Occupational Safety, and Drug Free Workplace, and
- G. Support Anti-Terrorism by Fostering Effective Technologies Act of 2002 (SAFETY Act).

SOURCES

Sources for this guide include: The Defense Logistics Agency, Market Research Handbook (SD-5), January 1, 2008; the Department of Homeland Security Office of Procurement Operations' Procurement Operating Procedure (POP) 203, "Conducting Market Research," (July 23, 2008) and POP 106, "Contacts with Industry," (July 8, 2008); Attachment A – HSAM Chapter 3007, DHS Acquisition Planning Guide.

PART 1

KEY TERMS AND RESPONSIBILITIES

A. KEY TERMS

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

Acquisition Team: Procurement and program office personnel, working in a team environment, with responsibility for various aspects of the procurement process. An Acquisition Team may be composed of some or all members of an Integrated Project or Product Team.

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

Bundling or Bundled Contract: Is the consolidating of two or more requirements for supplies or services, previously provided or performed under separate smaller contracts, orders, into a solicitation for a single contract or order that is likely to be unsuitable for award to a small business due to:

- The diversity, size, or specialized nature of the elements of the performance specified;
- The aggregate dollar value of the anticipated award;
- The geographical dispersion of the contract performance sites; or
- Any combination of the above factors. (FAR 2.101)

Catalog Price: Price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public.

Commercial Item:

(1) Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and—

(i) Has been sold, leased, or licensed to the general public; or,

(ii) Has been offered for sale, lease, or license to the general public;

(2) Any item that evolved from an item described in paragraph (1) of this definition through advances in technology or performance and that is not yet available in the commercial marketplace, but will be available in the commercial marketplace in time to satisfy the delivery requirements under a Government solicitation;

(3) Any item that would satisfy a criterion expressed in paragraphs (1) or (2) of this definition, but for –

(i) Modifications of a type customarily available in the commercial marketplace; or

(ii) Minor modifications of a type not customarily available in the commercial marketplace made to meet Federal Government requirements.

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

(4) Any combination of items meeting the requirements of paragraphs (1), (2), (3), or (5) of this definition that are of a type customarily combined and sold in combination to the general public;

(5) Installation services, maintenance services, repair services, training services, and other services if—

(i) Such services are procured for support of an item referred to in paragraph (1), (2), (3), or (4) of this definition, regardless of whether such services are provided by the same source or at the same time as the item; and

(ii) The source of such services provides similar services contemporaneously to the general public under terms and conditions similar to those offered to the Federal Government;

(6) Services of a type offered and sold competitively in substantial quantities in the commercial marketplace based on established catalog or market prices for specific tasks performed or specific outcomes to be achieved and under standard commercial terms and conditions. This does not include services that are sold based on hourly rates without an established catalog or market price for a specific service performed or a specific outcome to be achieved. For purposes of these services—

(i) “*Catalog price*” means a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or vendor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public; and

(ii) “*Market prices*” means current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the Offerors.

(7) Any item, combination of items, or service referred to in paragraphs (1) through (6) of this definition, notwithstanding the fact that the item, combination of items, or service is transferred between or among separate divisions, subsidiaries, or affiliates of a contractor; or

(8) A nondevelopmental item, if the procuring agency determines the item was developed exclusively at private expense and sold in substantial quantities, on a competitive basis, to multiple State and local governments. (FAR 2.101)

Contracting Officer (CO): An individual who has been authorized specifically, and in writing, to enter into, administer, and/or terminate contracts and make related determinations and findings. Contracting Officers are responsible for ensuring performance of all necessary actions for effective contracting and safeguarding the interest of the United States in its contractual relationships.

Development: The systematic use of scientific and technical knowledge in the design, development, testing or evaluation of a potential new product or service (or of an improvement in an existing product or service) to meet specific performance requirements or objectives. It includes the functions of design engineering, prototyping, and engineering testing. In the context of Independent Research and Development, FAR 31.205-18 provides that development excludes (1) subcontracted technical effort that is for the sole purpose of developing an additional source for an existing product; and (2) development effort for manufacturing or production of materials, systems, processes, methods, equipment, tools, and techniques not intended for sale.

Environmentally Preferable: Products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production,

manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service. (FAR 2.101)

Ethics Officer: Advisor within the DHS Office of the Legal Advisor for Ethics, who provides ethics counseling to DHS employees on the Federal standards of ethical conduct, political activities (Hatch Act), outside employment and activities, and post employment matters. Deputy Ethics Officials are assigned to each DHS Component.

Historically Underutilized Business Zone (HUBZone): A historically underutilized business zone that is an area located within one or more (1) qualified census tracts, (2) qualified non-metropolitan counties, (3) lands within the external boundaries of an Indian reservation. (FAR 2.101)

Historically Underutilized Business Zone (HUBZone) Small Business Concern: An SBA-certified firm that is headquartered in an economically distressed area located in a qualified census tract, non-metropolitan county, or Indian reservation. To meet the requirements for HUBZone participation, a qualified firm must be: small under the size standard corresponding to its primary industry classification; be at least 51% unconditionally and directly owned and controlled by persons who are United States citizens; have its principal office located in a HUBZone; have at least 35% of its employees residing in a HUBZone; and certify that it will attempt to maintain this residence percentage during the performance of any HUBZone contract it receives.

Integrated Project or Product Team (IPT): Cross disciplinary team composed of representatives from all appropriate functional disciplines working together to build successful and balanced programs, identify and resolve issues, and make sound and timely decisions based on timely input from the entire team, when appropriate. An Acquisition Team may be a subset of an IPT.

Market Prices: Current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and that can be substantiated through competition or from sources independent of the offerors.

Market Research: Collection and analysis of product or service market information to determine the best approach for acquiring goods and services to satisfy the Government's acquisition needs. Within the context of market research, acquisitions begin with development of a description of the Government's needs stated in terms sufficient to allow conduct of market research. Market research is then conducted, among other things, to: (1) identify commercial products and services that meet Government requirements; (2) locate and identify Small Business Concerns (including all subcategories) that can meet Government requirements and contribute to DHS achieving its goals; and (3) foster and promote acquisition planning, strategic sourcing, competition, and transparency for all procurements.

Market Research Report: A formal report prepared by the Acquisition Team and approved by the Contracting Officer that details market research findings, the applicability of the findings to meeting the current requirement, and serves as the basis for the acquisition strategy and procurement request package(s).

Non-developmental Item: Any previously developed item of supply used exclusively for governmental purposes by a Federal agency, a State or local government. It also includes any of these items that require only minor modification or modifications of a type customarily available in the commercial marketplace in order to meet the requirements of the procuring department or agency.

Offeror: A vendor or contractor who responds to a solicitation that, if accepted, would bind the contractor to perform the resultant contract.

Organizational Conflict of Interest (OCI): When a person is unable or potentially unable to render impartial assistance or advice to the Government because of other activities or relationships with other persons, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

Program Office: An organization within DHS or its Components that is responsible for managing successful acquisitions to meet essential mission needs; nominating individuals as contracting officer's technical representatives (COTRs) to the contracting officer; ensuring training and certification requirements are met and maintained; and building a solid relationship with the contracting officer in order to communicate COTR concerns and issues.

Recovered Materials: Waste materials and by-products recovered or diverted from solid waste; however, the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

Request for Information (RFI): A request for information used when the Government does not presently intend to award a contract, but needs to obtain price, delivery, and other market information, or capabilities for planning purposes. Responses to these notices are not offers and cannot be accepted by the Government to form a binding contract.

Service-Disabled Veteran-Owned Small Business (SDVOSB): A small business concern not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and the management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

Simplified Acquisition Threshold: \$100,000. However, for acquisitions of supplies or services that, as determined by the head of the agency, are to be used to support a contingency operation or to facilitate defense against or recovery from nuclear, biological, chemical, or radiological attack, the term means: (1) \$250,000 for any contract to be awarded and

performed, or purchase to be made, inside the United States; and (2) \$1 million for any contract to be awarded and performed, or purchase to be made, outside the United States. (See FAR Part 2)

Small Business Set-Aside: An acquisition exclusively or partially reserved for the participation of small business concerns pursuant to the Small Business Act. A set-aside restricts the competition to small business concerns that qualify under the applicable standards. A total set-aside restricts the entire procurement. The four small business categories that can be set-aside are as follows: 8(a), HUBZone, Service Disabled Veteran-Owned Small Business (SDVOSB), and Small Business.

Small Disadvantaged Business Concern (SDBC): A small business concern, certified by the Small Business Administration (SBA) that is at least 51 percent unconditionally owned and controlled by (1) one or more individuals who are both socially and economically disadvantaged individuals, an Indian tribe, an Alaska Native Corporation, a Native Hawaiian Organization, or a Community Development Concern, and meets the other requirements of 13 C.F.R. § 124.1002. The SBA certifies SDBs to make them eligible for special benefits and assistance. Once certified, the firm is indicated as an SDB in the Central Contractor Registration (CCR).

Sources Sought: A synopsis notice to businesses to collect and analyze information about interest and capabilities within the market to satisfy agency needs.

Strategic Sourcing: A collaborative and structured process of critically analyzing an organization's spending and using this information to make business decisions about acquiring and managing commodities and services more effectively and efficiently. This process helps agencies optimize performance, minimize price, increase achievement of socio-economic acquisition goals, evaluate total life cycle management costs, improve vendor access to business opportunities, and otherwise increase the value of each dollar spent.

B. RESPONSIBILITIES

1. **Acquisition Team** shall assist the program office in conducting and documenting the market research necessary to develop the acquisition strategy and pre-award acquisition documentation. An Acquisition Team may be composed of some or all members of an Integrated Project or Product Team.

2. **Contracting officer** shall:

- (a) Provide advice to the program office and Acquisition Team regarding the extent of the research and the level of documentation needed for an acquisition based on factors such as urgency, estimated dollar value, complexity, and past performance.
- (b) Provide advice and support to the Program Office and its Acquisition Team during the conduct and documentation of market research (including market research involving meetings with industry and vendors) to ensure that potential sources of information are explored to the fullest extent practicable.
- (c) Determine if the product or service identified to satisfy the Government's requirement

meets the FAR definition of a Commercial Item.

- (d) Approve the Market Research Report and ensure that appropriate market research documentation is included in the official contract file.

3. DHS Ethics Official/Deputy Ethics Official (Legal Advisor for Ethics in the Office of the General Counsel / Designated DHS/Component Ethics Official) shall:

- (a) Assist DHS and Component employees in implementing and administering the agency's ethics program.
- (b) Provide ethics advice to DHS and Component employees; specifically as they apply to acquisition matters.

4. Legal counsel (Office of General Counsel) shall provide legal oversight and guidance to DHS and Component employees.

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

- (a) Preparing a complete description of program requirements in the context of available goods or services in the marketplace.
- (b) Conducting and coordinating thorough market research utilizing as many techniques as identified in FAR 10.002(b)(2) and this guide, as possible.
- (c) Seeking advice from the Contracting Officer, Small Business Specialist, and, as appropriate, the DHS Strategic Sourcing Program Office to ensure that potential sources of information are explored to the fullest extent practicable, including existing contract vehicles, small businesses, and new entrants to Federal contracting.
- (d) Determining if commercial items or non-developmental items are available that meet the Government's requirement.
- (e) Serving as the primary point of contact in meetings with potential vendors to ascertain additional market research information.
- (f) Ensuring that all vendors contacted understand that the reason they are being contacted is for market research purposes only and that no orders are being placed at that time.
- (g) Requesting vendors to provide their standard publicly and commercially available literature and capability documents in response to market research inquiries.
- (h) Writing the Market Research Report.
- (i) Providing copies of all market research documentation as part of the requisition package.

6. Procurement Personnel/Contract Specialists shall assist Program Office staff in documenting their requirements and serve as part of the Program Office's Acquisition Team in conducting market research.

7. Small Business Specialists shall participate in the acquisition planning processes to help Program Offices identify requirements for small businesses. Participation includes the review of each proposed acquisition exceeding the simplified acquisition threshold for potential inclusion into the socioeconomic program, assisting in identifying alternative strategies that would reduce or minimize acquisition strategies involving substantial bundling, and the coordination of the Procurement Forecast of expected contract opportunities (Advance

Acquisition Plans). All Components shall assign an AAP Coordinator and a Small Business (SB) Coordinator. Contract requirements that are bundled must be coordinated with Component and, as appropriate, DHS Office of Small and Disadvantaged Business and the Small Business Administration, to meet the requirements of HSAM 3007.107 and FAR 7.104(d)(1) and (2).

8. Strategic Sourcing Program Office (SSPO) provides DHS stakeholders economic and performance benefits through collaboration, application of sound analysis, and enterprise planning for acquisition initiatives. Within the DHS governance framework, the SSPO collaborates with stakeholders to develop, deploy, and maintain strategic sourcing strategies that enhance mission performance and optimize commodity management. The SSPO is available to provide support to Acquisition Teams on all department-wide or multi-component contracting initiatives.

PART 2 MARKET RESEARCH POLICY AND PROCEDURES

A. POLICY

1. General.

(a) Market Research: Why?

Timely, comprehensive market research data are critical to making good business decisions throughout the acquisition lifecycle. Market research data are needed to determine the best approach to acquiring, distributing, and supporting agency requirements, and are used in strategic planning, acquisition planning, solicitation development, and contract award and administration.

As a major output, market research provides key information related to available commercial items and services, thereby supporting the Federal Acquisition Streamlining Act of 1994 (FASA) requirement for Federal agencies, to the maximum extent practicable:

- Buy commercial items, commercial services, and non-developmental items to meet agency needs.
- State specifications in terms that enable and encourage vendors to supply commercial and non-developmental items.

Primary guidelines for collecting and using market research data are included in the following parts of the FAR:

- FAR Part 5 (Publicizing Contract Actions) provides information on the issuance of special notices such as Requests for Information, availability of draft solicitations or specifications, etc., that may be disseminated through the Governmentwide Point of Entry (GPE).
- FAR Part 6 (Competition Requirements) highlights the importance of documenting market research efforts/results in justifying open market actions awarded under other than full and open competition.
- FAR 7 (Acquisition Planning) highlights the role of market research in determining the acquisition strategy and developing the Acquisition Plan.
- FAR Part 10 (Market Research) provides the rationale and basic procedures for conducting market research.
- FAR Part 11 (Describing Agency Needs) provides guidance on specifying need using market research and stating requirements in terms of functions to be performed, performance required, or essential physical characteristics.
- FAR Part 12 (Acquisition of Commercial Items) provides guidance on determining whether the Government's requirements can be met by "commercial items," i.e., products or services customarily available in the commercial marketplace or customarily available in the commercial marketplace with modifications.

(b) Market Research: When?

Ideally, market research should start as soon as requirements are forecast, as part of acquisition planning and the development of the Advance Acquisition Plan (if the acquisition is greater than \$100,000).

Prior to initiating market research, the Acquisition Team should seek the Contracting Officer's advice because the Contracting Officer ultimately determines the required extent of market research and the level of documentation required for an acquisition based on factors such as urgency, estimated dollar value, complexity, and past performance (see FAR 10.002(b)(1)). In addition, the Contracting Officer's advice can help the Acquisition Team in setting information gathering parameters that balance information gathering needs and compliance with FAR 10.001(b) which discourages agencies from requesting more than the minimum information necessary from potential sources when conducting market research.

Should the requirement be a department-wide or multiple Component initiative, Acquisition Team consultation with the DHS Strategic Sourcing Program Office early in the planning process is highly encouraged.

(c) Market Research: By Whom?

Market research should use the expertise of all members of an Acquisition Team. Good market research requires the team to understand the technical alternatives that are available, the differences among terms and conditions, the practical aspects of standard commercial practices, and the value each alternative offers the Government. The Contracting Officer provides advice and assistance, and for more complex procurements may lead specific market research initiatives that can only be overseen by a Contracting Officer such as Government-industry conferences and issuing "sources sought" synopses, Requests for Information, and presolicitation notices. Even with these Contracting Officer-led segments, the Acquisition Team remains the *major contributor* to market research activities which, as documented, form a key component of a complete procurement request package prepared and submitted by the Program Office.

2. Market Research Requirements.

The FAR requires agencies to conduct market research before:

- A. Developing new requirements documents for an acquisition;
- B. Soliciting offers for acquisitions:
 - (1) In excess of the simplified acquisition threshold as defined in FAR Subpart 2.101; or
 - (2) Less than the simplified acquisition threshold when adequate information is not available and the circumstances justify its cost (FAR Part 10.001); or
 - (3) That could lead to a bundled contract (15 U.S.C. 644(e)(2)(A)).

The FAR requires an analysis of market research data when implementing specific acquisition strategies (e.g., justifying other than full and open competition (FAR 6.303-2(a)(8); limiting sources in a Federal Supply Schedule acquisition (FAR 8.405-6(a)(2); and determining

reasonable maximum quantities on indefinite delivery, indefinite quantity contracts (FAR 16.504(a)(1)).

The FAR also requires analysis of market research data in the following circumstances:

C. When the Contracting Officer is required to set aside any acquisition greater than \$100,000 for Small Business participation, market research must show that there is a reasonable expectation that (1) offers will be obtained from at least two responsible Small Business concerns offering the products of different small business concerns and (2) award will be made at fair market prices (FAR Subpart 19.502-2(b)).

D. When the Contracting Officer is exercising a contract option, market research must demonstrate that: the option is the most advantageous method of fulfilling the requirement, considering price and other factors; that the Government continues to receive the best price available; and that market stability has been considered. (See FAR 17.207(c)).

E. When the Contracting Officer is required to acquire “environmentally preferable” products and services (including energy- and water-efficient products and services or products that use renewable energy technology), market research data must include products listed in the Energy Star Program, Federal Energy Management Program (FEMP), Electronic Product Environmental Assessment Tool (EPEAT), or other Federal environmentally preferable programs (FAR Part 23; also see HSAR Part 3023 and HSAM Chapter 3023). Attachment A provides information on Federal environmentally preferable programs.

F. When the Contracting Officer is acquiring products or services listed on the FAR priority list for the use of Government supply sources, market research data must reflect consideration of the eight sources of supply (FAR 8.002(a)). (Table 1 on the next page provides a summary of these sources of products and services in order of preference. Attachment A provides the websites associated with the recommended sources.)

The FAR also requires the acquisition of the following products or services from or through specified sources (FAR 8.003). The Acquisition Team should discuss the requirement for these products and services with the Contracting Officer before beginning market research:

- Public utility services (see FAR Subparts 41.1 and 41.2)
- Printing and related supplies (see FAR Subpart 8.8)
- Leased motor vehicles (see FAR Subpart 8.11)
- Helium (see FAR Subpart 8.5)

Table 1 PRIORITY SOURCES OF PRODUCTS AND SERVICES (FAR 8.002)	
Supplies	Services
1. Agency inventories	1. Procurement List maintained by the Committee for purchase from People who are Blind or Severely Disabled (AbilityOne)*
2. Excess from other agencies	2. Mandatory Federal Supply Schedules
3. Federal Prison Industries	3. Optional Use Federal Supply Schedules
4. Procurement List maintained by the Committee for Purchase from People who are Blind or Severely Disabled (AbilityOne)*	4. Federal Prison Industries or Commercial sources (including educational and nonprofit institutions)
5. Wholesale supply sources (such as GSA, DLA, Dept. of Veterans Affairs)	
6. Mandatory Federal Supply Schedules	
7. Optional Use Federal Supply Schedules	
8. Commercial Sources (including educational and nonprofit institutions)	

* Formerly the Javits-Wagener-O'Day (JWOD) Program

G. Further, the FAR, as well as good business practices, requires the conduct of *on-going* market research of the industries that provide products and services that support agency programs. The Acquisition Team should use market research information to:

- (1) Refine a requirement to maximize the benefit of competitive market forces;
- (2) Review a requirement if it is determined that a commercial item may not satisfy the agency's needs to determine if modifying the requirement may meet mission need as well as allow a commercial item to be acquired; and perform trade-off analysis to determine if the modification is in the best interest of the Government;
- (3) Establish the most suitable approach to acquiring, distributing, and supporting products and services from the best available source (including new entrants into Federal contracting);
- (4) Ensure compliance with Government policies, such as socio-economic contracting goals, the Supporting Anti-Terrorism by Fostering Technologies Act of 2002 (SAFETY Act), environmental goals and requirements;
- (5) Support price reasonableness determinations; and
- (6) Avoid potential problems associated with contingences and minimize the risk of doing

business for the Government and the contractor.

H. The Contracting Officer may also require that documented evidence of market research be submitted with acquisition packages whenever Reverse Auction tools, such as FedBid, are used for commercial item procurements.

REMINDER: Prior to initiating market research, the Acquisition Team should seek the Contracting Officer's advice because the Contracting Officer ultimately determines the required extent of market research and the level of documentation required for an acquisition based on factors such as urgency, estimated dollar value, complexity, and past performance (see FAR 10.002(b)(1)).

3. Documenting Market Research Efforts and Results.

Market research efforts and results must be clearly documented and included in the contract file because they form the bases for multiple acquisition decisionmaking documents. (For example, market research findings and results may be used in acquisition documents such as the acquisition plan, acquisition strategy, requirements analysis, analysis of alternatives, justification and approval documents, and even the solicitation.) A Market Research Report should be appropriate to the size and complexity of an acquisition. (See Section B.5, Documenting Requirement-Specific Market Research, and Attachment C of this guide for additional information.)

4. Standards of Conduct.

Throughout the market research process, DHS procurement and Program Office personnel are in contact and discussions with DHS vendors and potential vendors. DHS employees must conduct themselves with impartiality and avoid any conflict of interest. FAR Section 3.104 (Procurement Integrity) provides the restrictions on disclosure of information during the acquisition process (especially critical before the award of a contract).

FAR Part 9.502 specifically notes that “an organizational conflict of interest may result when factors create an actual or potential conflict of interest on an instant contract.” Contracting Officers must avoid or mitigate potential significant conflicts of interest to prevent unfair competitive advantage or the existence of conflicting roles that might impair a vendor's **objectivity**. **There are three categories of Organizational Conflict of Interest (OCI) cases:**

A. “*Unequal access to information*” arises when a company has access to nonpublic information that is relevant/useful in preparing an offer (typically through performance of a contract but also through intentional or inadvertent unauthorized access in the course of otherwise authorized interactions with the procuring or program office) that gives it an unfair advantage in the competition for a later contract.

B. “*Biased ground rules*” refers to situations where a vendor sets the ground rules for a future competition (for example, by writing the specifications that competitors for a contract must meet).

C. *“Impaired objectivity”* occurs when a vendor is asked to perform tasks under a contract that require objectivity, but another role the vendor plays casts doubt on the vendor’s ability to be truly objective. For example, a vendor on a contract performing analysis and assistance in formulating policies that may affect products manufactured by that vendor **or its competitors**. The Contracting Officer and Program Office staff must consider the vendors’ perspective when holding vendor discussions during their market research activities. Please note, if the discussions are not structured or conducted properly, the vendor could very well be precluded from participating in a DHS procurement because the discussions will have created a conflict of interest or the appearance of a conflict of interest that cannot be mitigated. Attachments B and B.1 provide summaries of fundamentals for meeting with vendors and industry representatives. In addition, the DHS Legal Advisor for Ethics, the Ethics Office in the Office of the General Counsel, and Component Ethics Program Points of Contacts are available to provide guidance on ethics (for Component POCs and other information, see the DHS Ethics webpage accessible from the *DHSONline* portal at:

<https://dhsonline.dhs.gov/portal/jhtml/community.jhtml>

B. PROCEDURES

1. Market Research Plan.

(a) General.

To ensure market research is adequate and appropriate to a requirement, a basic market research plan is essential. The Acquisition Team should seek the advice of the Contracting Officer in developing its market research plan. Although, the plan will vary at the Contracting Officer’s discretion based on criteria such as the projected dollar amount, complexity, developmental versus recurring requirement, urgency, it should document the overall research techniques the Acquisition Team will employ, information sources to be used, responsibilities of the team members, decision points in the process, and the timeframe for each task.

(b) Helpful questions in framing market research plan.

The following questions may be helpful in planning market research activities:

- (1) What information is needed to make the decision to buy from the commercial market?
- (2) What are the performance characteristics of the products and services that are valued by the DHS users and how important is each characteristic (include consideration of supportability, reliability, cost, schedule, and performance)?
- (3) If an item needs follow-on support, such as spare parts and repair, what are the characteristics of the follow-on support system? Think total life cycle!
- (4) Is testing required and is third-party testing used?
- (5) What business practices are standard?
- (6) What are the capabilities of the commercial market and how to determine:
 - (i) Availability of products to meet the requirement as is;
 - (ii) Ability of suppliers to modify their products to meet the requirement;

- (iii) Flexibility of users to modify their requirements to allow the purchase of commercial items, commercial services, or non-developmental items.
- (7) Which members of the Acquisition Team will have responsibility for making decisions regarding cost versus performance, capability of commercial items versus satisfaction of the Government's requirement, and other tradeoff decisions, and when?

(c) Market research plan: Suggested content.

The market research plan should provide:

- (1) Brief statement of need or requirement analysis;
- (2) Background information (overview of the characteristics of the marketplace from on-going market research efforts);
- (3) Resources to be reviewed, such as magazine, journals, and Internet websites (as well as search criteria to be used in Internet research);
- (4) Persons to survey or interview:
 - (i) Current and future users (on potential changes to the requirements)
 - (ii) DHS staff associated with current contracts for similar requirements
 - (iii) DHS Components with similar requirements
 - (iv) Federal agencies (or possibly state and local governments) with the same or similar requirement
 - (v) Customers of identified vendors including vendors' past performance on their contracts
 - (vi) Industry experts;
- (5) Incentives and factors to increase competition;
- (6) Potential sources for the item; and
- (7) Description of market research techniques.

2. On-Going Market Research and Requirement-Specific Market Research.

Market research has two interrelated phases:

- On-going market research to understand the market (often called market surveillance); and
- Requirement-specific market research.

On-going market research includes all the activities that the Acquisition Team performs continuously to keep themselves abreast of technology and product developments in their areas of expertise. On-going market research *does not* involve gathering market information to fill a *specific* need.

Requirements-specific market research, which involves more in-depth yet narrowly focused research, is conducted to meet a *specific* need for a product or service to support a *specific* acquisition strategy within a *specific* timeframe.

As indicated in Part 2, Section A.2 of this guide, the FAR requires *both* types of market research.

3. Conducting On-Going Market Research.

On-going market research provides the background information and knowledge needed to develop a general understanding of the products and services available in the market and their characteristics and capabilities. On-going market research also identifies industry leaders, associations, and sources of market data. Regularly reading professional journals for a specific market and maintaining active membership in professional associations are good ways to develop an understanding of an industry. Personal contacts in industry and Federal agencies are another valuable source of information. Also, a variety of companies prepare commercially developed market surveys that provide information on a specific technology or commodity. Attachment A provides a listing of some of the many resources available for use in conducting market research.

4. Conducting Requirement-Specific Market Research.

When a program need is identified, more specific and focused market research is conducted. The market research involves collecting and analyzing information in three areas: technical performance, pricing, and terms and conditions customarily used in the market. The extent of the research that is needed will vary depending on factors such as urgency of need, the estimated dollar value of the acquisition, its complexity, and whether recent and relevant research on similar requirements exists. The Acquisition Team should focus on collecting data to answer the following key questions:

(a) **Whether the Government's requirements can be met by items of a type:**

- Customarily available in the commercial marketplace;
- Customarily available in the commercial marketplace with modifications; or
- Used exclusively for governmental purposes.

(b) **The customary business practices** regarding:

- Modifying or tailoring items to meet customer needs, and the associated costs;
- Use of warranties, buyer financing, discounts, and other terms and conditions; and
- Requirements of any laws and regulations unique to the item being acquired, e.g., SAFETY Act applicability.

(c) **The availability of items that contain recovered materials and items that are energy efficient.**

(d) **The distribution and support capabilities of potential suppliers**, including alternative arrangements and cost estimates.

(e) **The size and status of potential sources** (including small business status and if use of the source is required by FAR Part 8).

The Acquisition Team may use the following sources (as applicable) to gather market research data:

- **Acquisition History** – The Acquisition Team may use the acquisition history of contracts for the same or similar items to aid in determining the type of market information needed for a particular acquisition. When reviewing acquisition history, the Acquisition Team and Contracting Officer should consider how well the product or service met the Government’s needs, the price paid, and the number and quality of proposals that resulted from the solicitation.
- **Existing Vehicles** – To ensure market research effectiveness and efficiency, the Acquisition Team should invest the time necessary to identify whether existing vehicles, e.g., agency indefinite-delivery, indefinite-quantity contracts, Government-wide acquisition contracts (GWACs), or multiple-agency contracts, can meet program requirements. A good source of information on existing vehicles is the Interagency Contract Directory (ICD), a searchable database of GWACs, multi-agency and single agency contracting vehicles, and Federal Supply Schedule contracts which can be used by contracting officers and program managers. The ICD is accessible at: <https://www.contractdirectory.gov/contractdirectory/>. Additionally, the Acquisition Team should contact the DHS Strategic Sourcing Program Office early in the market research process, and access the DHS Enterprise-wide Contract Vehicle Portal at: <https://dhsonline.dhs.gov/portal/jhtml/community.jhtml?index=48&community=MGM T&id=2012980039>

Some questions the Acquisition Team should ask in pursuing possible sources through existing vehicles include:

- Are there any substitutes or alternatives available for the requirement?
 - Where else is this requirement being procured across the Government?
 - Are there any known best practices for this requirement?
 - Is DHS a major stakeholder in this market?
 - What is DHS’s buying power?
- **Recent Market Research** – The Acquisition Team may use the results of recent market research conducted for similar or identical requirements. When considering recent market research the Acquisition Team and Contracting Officer should take into account the pace at which technology and market conditions change. Such changes may undermine the effectiveness of research on current requirements.
- **Knowledgeable Individuals** – Before the development of a solicitation, the Acquisition Team may contact knowledgeable individuals in Government and industry to discuss the market capability. Typical questions to ask of *industry representatives* include:
 - What type of products do you offer that may satisfy this requirement?
 - Have the products been changed? If so, how often?
 - What types of discounts do you offer your customers?
 - What are your warranty terms, if any?
 - Are there additional charges for special packing or packaging?
 - Is a commercial catalog available? Is it available on-line?

- What is your average ordering lead-time?
- Is the product listed on a GSA Schedule? If so, what is the Schedule number?

Typical questions to ask contacts *within the Government*:

- What product(s) do you currently use to meet your requirements?
 - Who are your suppliers/vendors?
 - What quantities do you generally purchase?
 - What is the cost?
 - What is the normal delivery time?
 - Was performance satisfactory? If not, why?
 - Is the product commercial? If not, explain.
 - What type of discounts, if any, does vendor offer?
 - Does the vendor provide a warranty? If a warranted item, what are the terms?
- **Government and Commercial Databases** – The Acquisition Team may review Government and commercial databases to examine market availability and determine specific industry information. Attachment A provides a listing of Federal and commercial databases available to DHS staff.
 - **Tradeshows and Industry Conferences** – Such events often offer demonstrations of new products, services, and technological advances, as well as provide opportunities to meet industry leaders and vendors and learn valuable market information.
 - **Professional/Trade Journals** – These publications assist the Acquisition Team by providing both product descriptions and product evaluations. Attachment A provides a list of some online sources.
 - **Source Lists** – The Acquisition Team may request source lists from other Government agencies, trade associations, or other sources to augment their market research.
 - **Catalogs and Product Literature** – The Acquisition Team may review all available product catalogs, product literature, and capability statements widely available on the Internet and in hard copy from potential vendors. This review will enable the Acquisition Team to compare and determine the capability of commercial manufacturers, distributors, and dealers that may meet the needs of the Government.
 - **DHS Small Business Office-Sponsored Vendor Outreach Sessions** – The DHS Office of Small and Disadvantaged Business Utilization regularly conducts vendor outreach sessions with small business owners and Small Business Specialists from various DHS Components procurement offices. These sessions provide the small business community an opportunity to discuss their capabilities and learn of potential procurement opportunities. Information about these sessions is on the DHS public website at: http://www.dhs.gov/xopnbiz/smallbusiness/editorial_0524.shtm.

- **DHS Small Business Specialist** – Component Small Business Specialists and the DHS Office of Small and Disadvantaged Business Utilization may provide the Acquisition Team with information on meeting DHS small business requirements. Small Business Specialists provide advice to small business owners on procurement opportunities and how to do business with a Component.
- **DHS Office of SAFETY Act Implementation** – FAR 50.205-1(a) requires that as part of the acquisition planning process, programs review requirement to identify potential technologies that prevent, detect, identify, or deter acts of terrorism or limit the harm such acts might cause, and may be appropriate for SAFETY Act protections. SAFETY Act protections are available for a broad variety of technologies, including products, services or software and other forms of intellectual property. Before making a decision about SAFETY Act applicability, consult the DHS Office of SAFETY Act Implementation at <http://www.safetyact.gov>.
- **Federal Contracting Databases** – The Acquisition Team’s Contract Specialist must check potential vendors’ information in the following databases:
 - Central Contractor Registration (CCR). All vendors that do business with the Federal Government are required to register in CCR. (Website: www.ccr.gov).
 - Department of Labor provides Service Contract Act (SCA) and Davis-Bacon Act (DBA) wage determinations information. (Website: www.wdol.gov)
 - Two sources for past performance information:
 - Past Performance Information Retrieval System (PPIRS) provides Governmentwide past performance information on Federal vendors. (Website: www.ppirs.gov)
 - Contractor Performance Assessment Reporting Tool (CPARS), a Department of Defense system also provides past performance information on vendors. (Website: <http://www.cpars.csd.disa.mil/cparsmain.htm>)
 - Excluded Parties List System (EPLS) identifies vendors barred from doing business with the Federal Government. (Website: www.epls.gov)

The Acquisition Team may, *under the direct oversight of the Contracting Officer*, take advantage of the following market research techniques. Contracting Officers routinely publish notices in www.FedBizOpps.gov (Federal Government Procurement website) announcing these events or requests:

- **Industry Conference** chaired by the Contracting Officer and hosted by the Acquisition Team or Program Office to provide industry representatives information about the agency or a specific requirement that the agency is thinking of acquiring (e.g., the DHS Chief Procurement Officer-sponsored annual DHS Industry Day). These conferences

could be for a targeted market such as small businesses or to highlight a specific Program Office requirement.

- **Request for Information (RFI)** published at www.FedBizOpps.gov requesting industry comments to support an acquisition. Agency may provide a questionnaire or draft documents such as a draft Statement of Work or a draft Concept of Operations document for review and comment.
- **RFI published in an Industry or Association Publication** requesting industry comment to provide the Government with insight into market conditions and/or scientific advances regarding a particular acquisition.
- **Sources Sought Notice** published in www.FedBizOpps.gov requesting vendors to identify themselves if they are interested in providing a particular product or service. Vendors responding to the notice usually describe their capabilities, similar projects they have conducted as a prime or subcontractor, central contractor registry information, GSA schedule information, current federal contract work and current socio-economic status of the company as it relates to the North American Industrial Classification System.
- **Presolicitation Conference** to request industry to comment on all or portion of a solicitation (e.g., statement of work, evaluation factors, etc.). Vendors are invited to provide comment in any area including pricing considerations and alternative evaluation criteria. These conferences are often held for complex acquisitions where the Acquisition Team wants industry input before the solicitation is finalized.
- **PreProposal Conference/Activities.**
 - **Prebid/Preproposal Conference** to meet vendors that are interested in submitting a bid/proposal on a solicitation and to provide the Government a venue for answering questions on the requirement. These conferences may be held for a complex requirement with wide-spread industry interest. Because these conferences are time and labor-intensive for both Federal staff and vendors, the Contracting Officer determines the need for scheduling prebid/proposal conferences. (See FAR 14.207 and 15.201)
 - **Site Visits** to Government facilities are often reserved for complex requirements where offerors need to see a facility or unique operational capability to determine if they have the capability to perform the work as the Government envisions.
- **One-on-One Vendor Discussions.** The Contracting Officer may lead one-on-one meetings with knowledgeable individuals in Government and industry. These discussions are prior to the development of a solicitation. FAR 15.201 provides the

Contracting Officer guidance in conducting these meetings. The Contracting Officer must avoid giving a vendor an unfair competitive advantage. All information must be given equally and mutually to all interested parties to avoid the appearance of any improprieties. Because these meetings are resource-intensive for both Federal staff and vendors, the Contracting Officer must determine the need. Attachments B and B.1 provide guidelines for conduct of these discussions.

5. Documenting Requirement-Specific Market Research.

Market Research Reports should be appropriate to the size and complexity of an acquisition and provide, at a minimum, the following information:

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

Attachment C provides a sample Market Research Report template that can be tailored to specific market research needs.

6. Market Research for Developmental Items (R&D or New Technology Development).

FAR Part 12, Acquisition of Commercial Items, implements the Government's preference for acquisition of commercial and/or non-developmental items as required by the Federal Acquisition Streamlining Act of 1994. Market research is required to determine if a commercial or non-developmental item exists to meet a Government requirement. However, in the areas of basic research and development or new technology development such as a prototype, there are often no non-commercial or non-developmental items available.

Although the market research processes for developmental items and commercial and non-developmental items are similar, the following outlines an overall strategy for conducting market research for developmental items:

- (b) **Identify the Government' requirement** in terms of functions to be performed, performance requirements, or essential characteristics;
- (c) **Identify companies, non-profits, universities, and other entities** capable of performing the research and development or developing the technology.
 - (i) Market research for developmental items involves obtaining market, pricing, and other information relevant to the requirement. Although finding this information may, in some cases, appear to be more challenging than for a

commercial or non-developmental item, the same basic market research techniques and references used for a commercial or non-developmental item may be used in locating information for developmental items.

For example, the Acquisition Team may choose to survey the market directly through issuance of an RFI or Sources Sought synopsis. This requires the involvement of the Contracting Officer, so it is important to involve him/her early in the acquisition process.

Surveying the market is of particular importance if the developmental item is considered sufficiently unique to constitute a sole source. A summary of the market research conducted is required as part of any sole source justification and must include a discussion of efforts made to locate additional sources. Positive responses to RFIs or Sources Sought synopses must be evaluated to determine whether a product or service offered meets the requirement.

- (ii) Completing the Market Research Report. Although most of the Market Research Report content will be the same for developmental items as for commercial or non-developmental items, where appropriate, the report should be tailored for developmental items. For example, all references to “commercial” or “commercial item” would not be applicable to a developmental item. If a section of the Market Research Report is not applicable, it should be so identified and supported by a brief explanation.

NOTE: Because market research documentation is incorporated as part of a contract file, the contract file record retention requirements at FAR 4.805 apply to market research documentation.

ATTACHMENT A

RESOURCES FOR MARKET RESEARCH

(Information available to DHS employees to gather market research data)

Websites Available to Research FAR Priorities for Use of Government Supply Sources (FAR 8.002)

Information on:

- Excess agency property can be obtained through Component Personal Property Officials.
 - Excess property from other agencies can be obtained through Component Personal Property Officials, and from GSA's How to Acquire Excess Personal Property website at: http://www.gsa.gov/Portal/gsa/ep/contentView.do?contentType=GSA_OVERVIEW&contentId=20310
 - Federal Prison Industries supplies and services: www.unicor.gov
 - Procurement List of services and supplies maintained by the Committee for Purchase from People who are Blind or Severely Disabled (AbilityOne): <http://www.AbilityOne.gov>
 - Wholesale supply sources through:
 - GSA: www.gsaadvantage.gov
 - Defense Logistics Agency: <http://www.dla.mil/customers.aspx>
 - Department of Veterans Affairs (medical, surgical, and pharmaceutical products available under Federal Supply Schedule): <http://www1.va.gov/oamm/oa/nac/fsss/index.cfm>
 - Mandatory Federal Supply Schedules: www.gsa.gov
 - Optional Use Federal Supply Schedules (GSA Advantage): www.gsa.gov (when using GSA Advantage, use of appropriate Federal Supply Schedule Special Item Number (SIN) is essential)
-

Websites Available to Research Environmentally Preferable Products and Services

Information on:

- Products and services identified by the Environmentally Preferable Purchasing (EPP) Program (including products with recycled or recovered content). Additionally, information on Federal green buying requirements and cost and benefits of purchasing choices can be obtained through the U.S. Environmental Protection Agency website at: www.epa.gov/epp
- Electronic Product Environmental Assessment Tool (EPEAT) is a system to help purchasers in the public and private sectors evaluate, compare and select desktop computers, notebooks and monitors based on their environmental attributes. Access EPEAT at: www.epa.gov/epp/pubs/products/epeat
- Biobased materials (including manufacturing and product information and laboratory results of bio content) can be obtained through the U.S. Department of Agriculture by accessing: <http://www.biopreferred.gov/>
- Energy-efficient products can be accessed at the U.S. Environmental Protection Agency and U.S. Department of Energy ENERGY STAR® Program website at: <http://www.energystar.gov/products> and through the U.S. Department of Energy's Federal Energy Management Program website at: http://www1.eere.energy.gov/femp/procurement/eed_requirements.html

- Water-efficient products can be obtained through the U.S. Environmental Protection Agency at: www.epa.gov/watersense
 - Sustainable design and operations can be accessed through the U.S. Department of Energy at: <http://www1.eere.energy.gov/femp/sustainable/index.html>
 - Alternative fuels and other petroleum reduction options such as advanced vehicles, fuel blends, idle reduction, and fuel economy. Also, transportation-related data and trends related to alternative fuels and vehicles can be obtained through the U.S. Department of Energy at: www.eere.energy.gov/afdc
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Resources Available from the DHS Library

Through its wide variety of resources, the DHS Library can be an outstanding source of support for conducting market research. Resources include access to:

- Federal Library Portals (see the “Federal Library Portals” listing on the DHS Library’s Main Page.)
- Commercial and Federal Databases (simultaneous central search capability and access) (To view a listing of databases, click on “Central Search” in the DHS Library Main Page’s “Databases Available Department-wide” section.) Includes access to ASTM Journals, Business & Industry, Business Source Premier, Consumers Index, ProQuest Telecommunications, Regional Business News.
- Fee-for-service access to a variety of commercial data bases (requires passwords available through the DHS Library). (To view a listing of resources, click on “E-Resource Collections” on the DHS Library’s Main Page.) Includes access to: ASTM International – ASTM Standards, Dun and Bradstreet, InfoTRAC OneFile, HIS (standards).

Visit the DHS Library at:

<https://dhsonline.dhs.gov/portal/jhtml/community.jhtml?index=164&community=MGMT&id=2040680007>

Additional Online Government Databases Available to Contracting Officers, Contract Specialists, and Others

- ACQUISITION CENTRAL (<http://www.acquisition.gov/>) is a major website for the Federal acquisition community and the Government’s business partners. Hosted by the Integrated Acquisition Initiative (IAE), ACQUISITION CENTRAL provides access to shared systems and tools for conducting business. In addition to those identified in Part 2, Section B.4 “Federal Contracting Databases” of this guide, acquisition systems accessible through ACQUISITION CENTRAL include:
 - Federal Business Opportunities (FedBizOpps) – the Governmentwide Point-of-Entry where commercial vendors and Government buyers are invited to post, search, monitor, and retrieve opportunities solicited by the Federal contracting community (also accessible at <https://www.fbo.gov/index?cck=1&au=&ck=>).
 - VETBIZ.gov –The Department of Veterans Affairs Center for Veterans Enterprise Web Portal which includes vendor information pages (also accessible at: <http://www.vetbiz.gov/index1.htm>).

- Bureau of Labor Statistics Consumer Price Index page provides information, updated monthly, regarding consumer price trends (www.bls.gov/cpi).
 - Bureau of Labor Statistics Producer Price Index page provides information regarding trends in selling prices received by domestic producers for their output (www.bls.gov/ppi).
 - Business.gov's Business Data and Statistics site provides a portal with links to a variety of business and economic statistics collected by numerous U.S. Government agencies: <http://www.business.gov/expand/business-data/>
 - U.S. Small Business Administration: www.sba.gov
 - SAFETYAct information is available at: <http://www.safetyact.gov>
 - Defense Logistics Information Service's (DLIS) Federal Logistics Data (FED LOG) Information Center at: <http://www.dlis.dla.mil/fedlog/default.asp> can be used by engineering, technical research, provisioning, procurement/contracting, supply, cataloging, maintenance, distribution, storage, transportation, quality assurance, and disposal personnel to retrieve management, part/reference number, supplier, Commercial and Government Entity (CAGE), freight, Interchangeability and Substitutability (I & S) and characteristics information recorded against National Stock Numbers (NSNs). FED LOG also provides service unique data for additional search capabilities.
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Commercial Online Databases

- ThomasNet (formerly Thomas Registry) provides a variety of information on manufacturers, distributors and service providers: <http://www.thomasnet.com/>
- Online Phone Directories: www.yellowpages.com and www.yellowbook.com

(See also "Resources Available from the DHS Library")

Online Trade Journals

- American Metal Market provides information on the metals industry, including pricing. Accessible at: www.amm.com
 - Platt's Price Report information on oil pricing and trends may be helpful for developing and supporting contract transportation cost estimates: www.platts.com
 - Random Lengths provides information on the woods products industry: www.randomlengths.com
-

Other Market Research Guidance

Although URLs are provided, for best results, use an Internet search engine (such as Google or Yahoo) and search on the following document titles to find the current Internet link.

Document Title:

- Defense Logistics Agency, Market Research: Gathering Information About Commercial Products and Services Handbook (SD-5), January 1, 2008, accessible at: http://www.dsp.dla.mil/app_uil/displaypage.aspx?action=content&accounttype=displayhtml&contentid=81
- Defense Acquisition University, Continuous Learning Module CLC004, Market Research (accessible at: <https://learn.dau.mil/html/clc/Clc.jsp>)
- National Aeronautics and Space Administration, Market research Guide, May 15, 1998 (accessible at: <http://www.hq.nasa.gov/office/procurement/market.html>)
- Office of the Secretary of Defense for Acquisition, Technology and Logistics (Acquisition Initiatives), Commercial Item Handbook, November 2001 (accessible at: <http://www.acq.osd.mil/dpap/Docs/cihandbook.pdf>)
- Rutgers University Libraries's Market Research website (accessible at: http://www.libraries.rutgers.edu/rul/rr_gateway/research_guides/busi/markres.shtml)
- Army Contracting Agency, Market Research Guide, May 2004 (accessible at: http://www.aca.army.mil/docs/Community/aca_mktrsched.doc)
- Air Force Logistics Management Agency, Market Research/Analysis Guide, August 1997 (accessible at: http://www.acqnet.gov/comp/seven_steps/library/AFmarket-research.pdf)

ATTACHMENT B

RULES FOR MEETING WITH INDUSTRY REPRESENTATIVES

(What DHS Program Managers and other DHS staff members need to know before they meet with vendors and industry representatives)

DHS Program Managers and other staff are encouraged to talk with industry representatives of both large and small businesses so that DHS procurements reflect an understanding the commercial marketplace and the business environment of the vendors that support DHS programs. This exchange of information, however, must take place within a framework that treats all vendors (and potential vendors) fairly and impartially. Your Contracting Officer is your best resource in preparing you for a vendor meeting; always inform your Contracting Officer before meeting with a vendor. The following guidelines will help a DHS Program Manager and other DHS staff members to develop a framework and set of sound business practices when meeting with vendors.

THE RULE: After the agency needs are established and the requirements to satisfy those needs are developed, no exchange with industry and potential vendors shall occur without the permission and without the presence of the Contracting Officer. A procurement begins at the point when the agency needs are established and the description of the requirements to satisfy agency need is developed. In meetings with vendors or industry representatives, do not disclose “procurement sensitive” or “source selection sensitive” information; do not disclose the proposal evaluation process or the specifics of an on-going procurement; and do not discuss litigation or pending litigation. *No information shall be released after agency needs are established and the requirements to satisfy those needs are developed, except by the Contracting Officer.*

1 AVOID UNAUTHORIZED COMMITMENTS (i.e., an agreement that is not binding because the Government representative making the agreement lacks the proper authority to enter into that agreement on behalf of the Government). In the case of contracts, only a Contracting Officer can commit the Government. **Good Practice:** End each vendor meeting with the statement: “Nothing discussed in this meeting authorizes you to work, start work, or bill for work. Any understanding on your part to the contrary is a mistake.”

2 TREAT ALL VENDORS AND POTENTIAL VENDORS FAIRLY AND IMPARTIALLY.

3 CONDUCT BUSINESS WITH INTEGRITY, FAIRNESS, AND OPENNESS. Not only must the acquisition process have integrity, but the actions of each DHS employee must reflect integrity, fairness, and openness. Avoid Organizational Conflicts of Interest or even the appearance of a conflict.

4 UNDERSTAND YOUR ETHICS RESPONSIBILITIES. Consult your Contracting Officer or your Ethics Officer in the Office of General Counsel if you have questions or concerns related to ethical conduct or procurement integrity. Guidelines are available on the DHS Ethics Office webpage on DHSONline.

-MORE-

RULES FOR MEETING WITH INDUSTRY REPRESENTATIVES (Continued)

5 BEFORE ACCEPTING A MEETING, NOTIFY YOUR CONTRACTING OFFICER. Your Contracting Officer may provide you with information about the vendor, their current contracts with DHS, or if they are active in proposing to a specific procurement. After agency needs are established and requirements to satisfy those needs are developed, **no** exchange with industry and potential vendors shall occur without the permission and without the presence of the Contracting Officer. (See “The Rule” above.)

6 CONTROL THE MEETING AND ITS AGENDA. Always prepare and follow a meeting agenda. Before the meeting, identify specific information that you want the vendor to address. You may limit the number of attendees and specify the mix of the vendor’s business development and technical staff to attend.

7 EMPHASIZE THAT THE PRIMARY PURPOSE OF THE MEETING IS FOR THE GOVERNMENT TO LEARN ABOUT THE INDUSTRY AND MARKETPLACE. Ask questions and get an understanding of the advantages and issues associated with a particular approach or business practice. Ask the vendor clarifying questions, but avoid expressing opinions or preferences. The meeting should not be the basis for further action, and should not unintentionally solicit a proposal.

8 ALWAYS MAKE THE INFORMATION YOU PROVIDE THE SAME TO ALL VENDORS. Provide a standard information package to all vendors that provides up-to-date and accurate information about the mission and requirements. **Good Practice:** Provide vendors with information that could properly be published on the DHS public website. You should not provide *other-than-public information* without prior written approval of your Contracting Officer and General Counsel.

9 ENSURE IMPARTIALITY. **Do not** render to, or accept preferential treatment from any private party (e.g., VIP visitor treatment for vendors such as Government vehicle rides from the airport, officially hosted free dining. Excellent guidance is available to DHS employees on the DHS OGC Ethics website regarding interaction with vendors: <https://dhsonline.dhs.gov/portal/jhtml/community.jhtml?community=OGC&index=5&id=2001580003> (See in particular: *Ethics & Procurement* and *Encyclopedia of Ethics Failure*.) Also, avoid private discussions about a vendor’s business and its relationship with DHS, except under the circumstances described in Attachment B.1, Guidelines for One-On-One Discussions.

10 DOCUMENT THE RESULTS OF THE MEETING. Documenting the results and findings of the meeting is a critical part of your market research effort. Be sure to record the date; place; and meeting participants, including their company affiliation and contact telephone numbers/emails. Mark this document “Confidential Business Information” and limit its distribution if it contains proprietary data.

ATTACHMENT B.1

GUIDELINES FOR ONE-ON-ONE DISCUSSIONS

*(Guidelines for Contracting Officers when Conducting One-on-One Vendor Discussions
These guidelines only apply to vendor discussions conducted by a Contracting Officer and
Acquisition Team before the Agency finalizes the requirement definition phase of a specific
procurement and before the acquisition strategy is defined.)*

WHO: Knowledgeable individuals in Government and industry led by the Contracting Officer and organized by the Acquisition Team.

WHEN: During the requirements definition phase of an acquisition; before the release of a solicitation. After the release of the solicitation, the Contracting Officer must be the single focal point of any exchange with potential offerors.

WHY: “The purpose of exchanging information is to improve the understanding of the Government requirements and industry capabilities, thereby allowing potential offerors to judge whether or how they can satisfy the Government’s requirements” (FAR Part 15.201(b)). These sessions help develop acquisition strategies and solicitations that will ultimately provide the best opportunity for the program to meet its performance objectives. Federal participants gain an understanding of the current state of the marketplace, including commercial/Government best practices, industry capabilities, innovative delivery approaches, commercial market service levels, performance strategies and measures, and associated risks, and costs. These sessions may provide an opportunity for the Acquisition Team to explore new concepts of operations, methodologies, and business practices to meet the current need.

LIMITATIONS: Contracting Officer may discuss general information about the agency mission needs and future requirements. The Contracting Officer must avoid giving a vendor an unfair competitive advantage. All information must be given equally (and as nearly as possible, at the same time) to all interested parties to avoid the appearance of any improprieties. Ensure that no source selection or proprietary data is disclosed, including any potential vendor’s confidential business strategy.

GUIDELINES FOR ONE-ON-ONE MEETINGS WITH VENDORS

FAR 15.201 provides the Contracting Officer guidance in conducting these meetings.

- Develop a brief overview of the size, scope, and complexity of the program (such as a Concept of Operations or a general Statement of Need/Description of the Problem).
- Identify industry leaders. Analyze the industry and determine which vendors (and appropriate point of contact within the company) you need to contact for your market research needs. Document your rationale. There is no requirement to include every interested vendor in one-on-one meetings. At a minimum, a “representative” vendor from each of the various market segments providing the services.
- Develop a standard agenda and control the meeting by focusing on the agenda. Limit the meeting to a specific timeframe.

-MORE-

GUIDELINES FOR ONE-ON-ONE DISCUSSIONS

(Continued)

- Contact the vendor and explain what you are doing, give a brief overview of the size, scope, and complexity of the program, and indicate you will follow up with a letter.
- Send a letter requesting a meeting:
 - Provide a brief synopsis of the problem you are trying to solve.
 - Advise that the purpose of the meeting is to conduct market research needed to develop an acquisition strategy for a mission requirement.
 - Indicate that the vendor's standing in the marketplace is the reason it was selected to participate in the sessions.
 - In keeping with operational focus of the market research, request that the participants primarily be technical managers and operational staff from both their Government and commercial divisions.
 - Encourage the vendor to illustrate its discussions with samples and examples of best practices that they use on other Federal contracts or that they believe are pertinent to the requirement.
- Assign one Federal participant the role of meeting moderator to act as the meeting facilitator.
- Develop a script and set of questions for the Federal staff to use during the meeting. A script ensures that the sessions are conducted in a fair and consistent way. This practice ensures that all vendors hear the same message and that the meeting moderator conveys all the necessary information.
- Emphasize that the sessions are not in any way "evaluative" in nature, and they do not constitute a pre-proposal conference.
- Encourage communication between the Government participants and the vendor. Ask questions about the information presented. Explore the advantages and disadvantages of the approaches presented.
- Document each meeting immediately after it is held.
- Analyze the results of the meetings; identify lessons learned, trends, and performance measurement approaches. Prepare a Market Research Report that captures the analysis and conclusions. Consider transcribing the sessions to capture the information, but analyze and summarize the information into the report.
- Determine how the acquisition strategy should be affected based on the market research.

Additional Resource

Seven Steps to Performance-Based Acquisition

http://www.acqnet.gov/comp/seven_steps/index.html

ATTACHMENT C

MARKET RESEARCH REPORT TEMPLATE

A Market Research Report documents market research in a manner appropriate to the size, complexity, and urgency of an acquisition. In consultation with the Contracting Officer, the following template can be tailored to a requirement's market research needs. Use only those sections applicable to your requirement. If a section is not applicable, it should be so identified and supported by a brief explanation.

I. Authority

Market research is required in accordance with:

- FAR 7.102, Acquisition Planning Policy.
- FAR 10.001, Market Research Policy

II. Background Information

Describe the background of the procurement and circumstances/events leading up to the requirement. Include:

- Program Office
- Other stakeholders
- Program Office Point of Contact
- Type of acquisition (service or supply)
- Expected dollar value of requirement
- Acquisition Team members, if applicable:

Name	Title	Office	Telephone	E-mail Address

- Time frame in which the market research was conducted

III. Initial Requirements (as identified by the Program Office)

- Describe the Government's requirement in terms of:
 - Functions to be performed
 - Performance required and/or
 - Essential physical characteristics
- Discuss any cost effectiveness issues associated with the requirements:
 - Any potential cost drivers? (e.g., additional costs from some other activity that may influence the cost of the requirement)
 - Any cost/performance tradeoffs? (e.g., an analysis of the value added relating to costs and performance levels)
- Describe schedule requirements, e.g., performance periods and/or delivery due dates
- Identify DHS Acquisition Plan including AAP number, when plan was published to the public, if part of the DHS Forecast of Small Business Opportunities.

IV. Participants in Market Research

Describe the involvement of the individual Acquisition Team members and any other participants in the market research effort. (The titles listed in the table below are examples.)

Name	Title	Office	Telephone	E-Mail Address	Role in Market Research
	Program Official				
	Contracting Officer				
	Contract Specialist				
	Small Business Specialist				
	Strategic Sourcing Specialist				

V. Market Research Techniques and Sources

Describe techniques and sources used during market research. The following table may help structure and summarize the techniques used in the market research effort.

Check if part of research	Sources Used in Market Research	Details of Research/Comments
	DHS Advance Acquisition Plan reviewed	
	Acquisition history reviewed	
	Other recent market research reviewed	
	Interviewed knowledgeable individuals in industry	
	Interviewed knowledgeable individuals in Government	
	Government databases reviewed	
	Commercial databases reviewed	
	Participated/Attended Tradeshows and Industry Conferences	
	Professional Journals reviewed	
	Source Lists of DHS and Other Government agencies reviewed	
	Catalog and Product Literature reviewed	
	Participated in DHS Small Business Vendor Outreach Sessions	
	Reviewed requirements with Small Business Specialist	
	Reviewed existing DHS-wide and Multi-Component Contract Vehicles with DHS Strategic Sourcing Program Office and/or on DHS Enterprise-wide Contract Vehicle Portal	
	Other:	
	Other	

Check if part of research	Sources Used in Market Research	Details of Research/Comments
	Priority Sources Reviewed	
	Supplies: Agency inventories	
	Supplies: Excess from other agencies	
	Supplies: Federal Prison Industries at www.unicor.gov	
	Supplies: Procurement List maintained by the Committee for Purchase from People who are Blind or Severely Disabled (AbilityOne) (formerly Javits-Wagner-O'Day (JWOD) Program at: http://www.AbilityOne.gov	
	Supplies: Wholesale supply sources (e.g., GSA)	
	Supplies: Mandatory Federal Supply Schedules accessible through: www.gsa.gov	
	Supplies: Optional Use Federal Supply Schedules (access GSA Advantage) at www.gsa.gov	
	Supplies: Commercial sources (includes educational and non-profit institutions)	
	Services: Procurement List maintained by the Committee for Purchase from People who are Blind or Severely Disabled (AbilityOne) (formerly Javits-Wagner-O'Day (JWOD) Program at: http://www.AbilityOne.gov	
	Services: Mandatory Federal Supply Schedules	
	Services: Optional Use Federal Supply Schedules	
	Services: Federal Prison Industries	
	Mandatory sources reviewed (per FAR Part 8) if applicable for: <ul style="list-style-type: none"> ➤ Public utility services ➤ Printing and related supplies ➤ Leased motor vehicles ➤ Helium 	
	Services: Commercial sources (includes educational and non-profit institutions)	
	Other:	
	References/Sources Checked	
	Existing intra-/inter-agency contract vehicles, e.g. Interagency Contract Directory at: https://www.contractdirectory.gov/contractdirectory/ and DHS's Enterprise-wide Contract Vehicle Portal at: https://dhsonline.dhs.gov/portal/jhtml/community.jhtml?index=48&community=MGMT&id=2012980039	
	Central Contractor Registration (CCR) at: www.ccr.gov	
	Department of Labor Service Contract Act (SCA) and Davis-Bacon Act (DBA) wage determination information at: www.wdol.gov	
	Past Performance Information Retrieval System (PPIRS) at: www.ppirs.gov or Contractor Performance Assessment Reporting System (CPARS) at http://www.cpars.csd.disa.mil/cparsmain.htm	
	Excluded Parties List System (EPLS) at www.epls.gov	
	Other:	
	Contracting Officer-led Activities	
	Industry Conferences	
	Sources Sought Notices: Requests for Information (RFI)	
	Sources Sought Notices: RFI published in and Industry or Association Publication	
	Sources Sought Notices: FedBizOpps at www.fedbizopps.gov	
	Presolicitation Conferences	
	Preproposal Conference	
	Site Visits	
	One-on-one Vendor Discussions	
	Other:	
	Other:	

VI. Identify Product/Services and Sources Able to Meet the Requirement

- Identify or describe:

- Product/Service, include any brand name product information
- Product/Service characteristics and/or capabilities
- Company information (e.g., name, POCs, address, telephone number, e-mail address, website)
- Company characteristics, past performance, and business category.

Business Category	Name of Potential Source(s)/Other POC Information
Large business	
Small business	
Small/disadvantaged business	
Section 8(a) business	
Woman-owned business	
HUBZone Small Business	
Veteran Owned Small Business	
Service Disabled Veteran Owned Small Business	

- If sole source, describe efforts to locate additional sources

VII. Description of the Commercial Marketplace

- Describe marketplace
- Assess Government's leverage in marketplace, e.g., describe the Government's negotiation strengths and/or weaknesses in the market
- Describe nature of other market participants, e.g., other governments (foreign, state/local), commercial firms, etc., and discuss how other buyers for the same product or service may affect your purchase
- Identify availability of commercial or non-developmental items that satisfy requirements (value or shortcomings of each) and sub-components

VIII. Prevalent Business Practices

- Identify standard/customary terms and conditions and industry business practices (include information on payment, freight delivery, acceptance, and warranties)
- Describe generally accepted business practices that differ from standard Government practices
- Discuss if contract financing is applicable. If so, ensure compliance with FAR 32.202-3, Conducting Market Research About Financing Terms
- Discuss any laws and regulations unique to the requirement

IX. Pricing and Market Issues

- Identify price sources (e.g., market price, catalog, GSA, etc.), price ranges, and price variations.
- Describe market trends for product or service, e.g., technical, business, and pricing.
- Describe how the application of cost or pricing market information collected from market research will be used in the development of the Independent Government Cost Estimate for the requirement.

X. Other Considerations

- Identify other considerations gathered from market research, e.g., opportunities to “unbundle” requirements to enable more contracts or subcontracts to small, small disadvantaged and other socio-economic procurement categories

- Discuss qualify factors, including such issues as past performance, references, product testing or evaluation, customer satisfaction, warranties, and quality problems
- Describe consideration of environmentally preferable products and services (EPPS). Include discussion of energy efficiency standards of market products, if applicable.
- Describe SAFETY Act applicability?
- Discuss Buy American Act applicability.
- Discuss Trade Agreements Act applicability.

XI. Market Analysis Summary

- Summarize the market research techniques and resources used in the market research.
 - Identify:
 - Products/Services available
 - If Commercial/Non-Developmental/Developmental Product/Service
 - Sources (companies, etc.)
 - Types of Businesses (large, small, etc.)
 - Pricing
 - Summarize:
 - Market conditions (commercial marketplace)
 - Customary commercial practices
 - Other considerations
- Provide market research conclusions and recommendations
- Document the decision and rationale to satisfy the agency's need with a commercial item/service, if market research so warrants
- Document the decision and rationale if the agency's need cannot be satisfied with a commercial item/service
- Provide supporting documents, as appropriate

The following table provides a checklist for Market Analysis Summary information.

Yes	No	Market Analysis Summary
		Are there products/services and sources capable of satisfying the Government's requirements?
		Are commercial items available to meet requirements?
		Are commercial items available that could be modified to meet requirements?
		Are commercial items available that could meet requirements if the requirements are modified to a reasonable extent?
		Are available items used exclusively for Governmental purposes?
		If commercial items are not available, are non-developmental items available to meet requirements?
		If commercial items are not available, are non-developmental items available that could be modified to meet requirements?
		If commercial items are not available, are non-developmental items available that could be modified to meet requirements if the requirements are modified to a reasonable extent?
		Could commercial items or non-developmental items be incorporated at the component level?
		Provided: Customary industry terms and conditions including warranties, buyer financing, discounts.
		Provided: Requirements of any laws and regulations unique to the item being acquired.
		Provided: Extent of competitive environment.
		Provided: Environmental considerations and concerns.
		Provided: SAFETY Act consideration/applicability.
		Provided: Distribution and support capabilities of potential vendors, including alternative arrangements and cost estimates.
		Provided: Size and status of potential sources (including small business status and if use of source is required by FAR Part 8).
		Provided: Identify available commercial items and describe the respective merits and shortcomings of each.

		Provided: Description of any market conditions that may be time sensitive or changes in supply or demand, technology, laws, and supplier costs, etc.
		Provided: Identification of potential sources. Description of capabilities of individual vendors, pricing information; delivery schedules, and standard terms and conditions, such as incentives and warranties.
		Provided: Any market surveys developed by industry or other Federal agencies.
		Provided: Pricing issues, price ranges, and price variations.
		Provided: Description of industry/market trends – technical/pricing/business, etc.
		Provided: Buy American Act Consideration.
		Provided: Trade Agreements Act Consideration.
		Provided: Other: Specify.
		Provided: Other: Specify.

STRUCTURED APPROACH FOR PROFIT OR FEE OBJECTIVE

INTRODUCTORY REMARKS.

When using the DHS Form 700-17, Weighted Guidelines Profit/Fee Objective, the contracting officer must categorize the acquisition as a manufacturing, research and development (R&D) or a services effort. To determine to which category a particular acquisition belongs, the contracting officer must rely on the nature of the work to be performed. When acquisitions involving R&D and services require a significant amount of facilities for efficient contract performance (as determined by the contracting officer), the manufacturing weighted guidelines method may be appropriate. Similarly, certain contracts for the manufacture of small quantities of high technology supplies and equipment may not require a significant amount of facilities. In these cases, an R&D classification may be appropriate.

In determining profit or fee, the tax posture of the business entity is certainly recognized. A fair and reasonable management fee to a non-profit organization with a tax-exempt status is considerably lower than a profit/fee to a commercial enterprise with a taxable status.

Non-Profit Organizations.

The following applies to non-profit organizations:

1. As used in this subchapter, non-profit organizations are defined as those business entities organized and operated exclusively for charitable, scientific, or educational purposes; of which no part of the net earnings accrue to the benefit of any private shareholder or individual; of which no substantial part of the activities include carrying on propaganda, or otherwise, on behalf of any candidate for public office; and which are exempt from Federal income taxation under Section 501 of the Internal Revenue Code.
2. When the Weighted Guidelines Method for arriving at a profit/fee position is used for non-profit organizations, the contracting officer must make the following adjustments:
 - a. The weight ranges for "Cost risk" (Item 14 on the DHS Form 700-17) must be replaced with -1 to 0.
 - b. The Total Profit/Fee Objective (Item 20 on the DHS Form 700-17) must be reduced by up to 1% for manufacturing type efforts and up to 3% for R&D or Services type efforts.

Commercial Organizations.

For the purposes of this subchapter, HS utilizes the description from [FAR 31.103](#) to describe commercial organizations.

I. CONTRACTOR EFFORT.

This factor takes into account what resources are necessary and what the contractor must do to meet the contract performance requirements. Evaluation of this factor and the assignment of weights on the DHS Form 700-17 requires analyzing the cost content of the proposed contract in the following areas:

A. Material acquisition (e.g., subcontracted items, purchased parts, and other material).

1. Consider the managerial and technical efforts necessary for the prime contractor to administer subcontracts and select subcontractors, including efforts to break out subcontracts from sole sources through the introduction of competition.
2. Consider whether the contractor's purchasing program makes a substantial contribution to the performance of a contract through the use of subcontracting programs involving many sources; new complex components, systems, or subsystems; and close surveillance by the prime contractor.

B. Direct labor (e.g., engineering, service, manufacturing, and other labor).

1. Analysis of the various items of cost must include evaluation of the comparative quality and level of the engineering talents, manufacturing and service skills, and experience to be employed. In evaluating labor for the purpose of assigning profit weights, consideration must be given to the amount of notable scientific talent, unusual or scarce engineering talent needed, in contrast to journeyman engineering effort or supporting personnel. Higher weights are normally assigned to engineering, professional, or highly technical skill levels and lower weights to semiprofessional or other skill levels.
2. The variety of engineering, manufacturing and other types of labor skills required and the contractor's manpower resources for meeting these requirements must be considered.

C. Overhead and general management (general and administrative (G&A)).

When analyzing overhead and G&A, consider the makeup of these expenses and how much they contribute to contract performance. If the contractor proposes a single indirect cost rate, the contracting officer must breakout the composite rate or contact the auditor to determine what is in the overhead and G&A expense pools. This information will assist in determining the appropriate weights for overhead and G&A on the DHS Form 700-17.

D. Other costs.

Include all other direct costs associated with contractor performance under this item. This includes airfare, lodging, computer support, etc. The assignment of a weight on the DHS Form 700-17 for this factor must be based on the nature of these costs and how much

they contribute to contract performance.

II. CONTRACTOR RISK.

The degree of cost risk assumed by the contractor should influence the amount of profit/fee anticipated. Consider the following when determining a weight for cost risk:

A. Contract type.

The degree of cost risk is related to the selection of contract type. For example, if a portion of the risk has been shifted to the Government through cost-reimbursement, or other risk reducing measures, the weight assigned to this factor should be less than acquisitions where the contractor assumes most or all of the risk. This is particularly evident when using time-and-material and labor-hour contracts priced on a time and material basis. These contract types must be considered to be cost-plus-fixed-fee contracts for the purpose of establishing a profit weight in the evaluation of the contractor's assumption of cost risk.

B. Subcontracting program.

The contractor's subcontracting program may have a significant impact on the contractor's acceptance of risk under a particular contract type. Analysis is necessary to determine if real cost risk has been transferred to a subcontractor. If this is the case, the contract cost risk weight assigned may be below the range that would normally be assigned.

C. Definitization.

For procurement actions that involve definitization of a letter contract, unpriced change orders, etc., where partial performance has occurred, evaluate the effect on total contract cost risk. If it is determined that the total amount of cost risk has been effectively reduced as a result of the partial performance, a lower weight may be appropriate. In addition, evaluate the type of work performed (e.g., complexity) and the type of work remaining to ensure an equitable weight assignment.

III. FACILITIES INVESTMENT.

DHS Form 700-18, Contract Facilities Capital and Cost of Money or a form substantially similar if authorized according to Component procedures, is used to determine the capital employed and cost of money amounts to be entered on the DHS Form 700-17, Weighted Guidelines.

A. Utilization.

To evaluate how facilities contribute to the profit objective requires knowledge of the level of facilities utilization needed for contract performance, the source and financing of

the required facilities, and the overall cost effectiveness of the facilities offered. Contractors furnishing their own facilities that significantly contribute (as determined by the contracting officer) to lower total contract costs generally receive additional profit/fee. Conversely, contractors that rely on the Government to provide or finance needed facilities normally receive a correspondingly lower profit/fee. The following factors should also be considered:

1. The productivity improvements resulting from the facilities capital investment including the economic value of the facilities capital (e.g., physical age, undepreciated value, idleness, and expected contribution to future Government needs).
2. The degree to which the capital investment has direct, identifiable, and exceptional benefits to the Government, such as: new investments in state-of-the-art technology which reduce acquisition cost or yield other tangible benefits such as improved product quality or accelerated deliveries, or investment in new equipment for R&D applications.

B. New Investment.

To assist in evaluating *new* investment, the contracting officer should request the contractor to submit reasonable evidence that the new facilities investment will result in benefits to the Government.

IV. SPECIAL FACTORS.

A. Productivity.

The purpose of this factor is to recognize a prospective contractor's investment in modern cost-reducing facilities and other improvements in efficiency. This factor is applied when the acquisition is a follow-on manufacturing effort, actual cost data are available to establish a baseline, and changes in item configuration are not large enough to invalidate price comparability. The dollar amount inserted under the measurement base on the DHS Form 700-17 is based on the estimated cost reduction that can be attributed to productivity gains.

B. Independent development.

The purpose of this factor is to recognize independent research and development on the part of the prospective contractor pertaining to the end item being procured. To determine the appropriate weight to assign this factor on the DHS Form 700-17, it is important to evaluate whether the development cost was recovered directly or indirectly from Government sources. This factor is applied when the item is important to the advancement of the DHS mission and the prospective contractor demonstrates initiative in determining the need and application of the developed item.

C. Other.

1. *Socioeconomic programs.* This factor covers a number of special circumstances or

particular acquisitions. It relates to the prospective contractor's participation in Federal socioeconomic programs. In addition to providing a reward for an unusual initiative in supporting Government socioeconomic programs, failure or unwillingness on the part of the prospective contractor to support these programs should be viewed as evidence of poor performance for the purpose of establishing this profit/fee objective factor.

2. *Performance.* The purpose of this factor is to evaluate the prospective contractor's past and present performance in such areas as: product quality, meeting specifications and contract schedules (including the administrative aspects of performance), efficiency in cost control (including the need for and reasonableness of costs incurred) especially under cost reimbursement contracts, accuracy and reliability of previous cost estimates, timely processing of changes, standards of good workmanship, history for reasonable and cooperative behavior and commitment to customer satisfaction, and the prospective contractor's business-like concern for the interest of the customer.

HSAM Section 3015.606-70 – Agency procedures.

DHS PROCESS STEPS FOR RECEIVING, REVIEWING, EVALUATING, AND TIMELY DISPOSAL OF UNSOLICITED PROPOSALS (Note: This flowchart must be used in conjunction with FAR 15.6 and HSAR 3015.6)	Phase 1	Phase 2	Phase 3	Phase 4	Phase 5
	Receipt	Initial Review	Evaluation	Decision	Action
AGENCY PROCEDURES	<p>>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.</p> <p>>Unsolicited Proposals must be protected as they often contain sensitive information and/or trade secrets.</p>	<p>>The POC must complete initial review; however, POC may obtain assistance from identified cross-functional team members.</p> <p><u>>If POC determines that submission is not an Unsolicited Proposal, Phase 2 is final phase of process.</u></p>	<p>>POC and appropriate cross-functional team members must complete Comprehensive Evaluation.</p>	<p>>Based on evaluation results, which typically include input from the Program Office, POC and team members make a recommendation to the responsible Contracting Officer.</p> <p>>When the recommendation is to proceed with contract negotiations, Phase 5 is needed.</p>	<p>>Contracting Officer, with other members of the DHS negotiation team, conducts contract negotiations as needed.</p> <p>>Contracting Officer ensures compliance with all applicable procurement laws and regulations.</p>
OUTCOMES/GOALS	Establish Milestones & Identify Team	Complete Initial Review within 7 calendar days	Complete Comprehensive Evaluation within 60 calendar days	Process (Accept) or Reject Unsolicited Proposal	Negotiate & Award Contract
TASK (TYPICAL)	<p>>POC establishes milestones and identifies appropriate team members.</p> <p>>If Unsolicited Proposal is received by other DHS official, it must be immediately forwarded to designated POC.</p>	<p>>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.</p>	<p>>If additional information is needed from the Offeror, only the POC may contact the Offeror and make the request.</p>	<p>>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.</p>	<p>>Responsible Program Office must ensure funds are committed and provide approved requisition to Contracting Officer.</p>
FAR & HSAR Citations	FAR 15.604 & 15.606, HSAR 3015.606 & 3015.606-1	FAR 15.605 & 15.606, HSAR 3015.606-1	FAR 15.4, 15.606-2 & 15.607, HSAR 3015.606-2	FAR 15.606-2 & 15.607, HSAR 3015.606-2	FAR 15.402, 15.606-2 & 15.607, & HSAR 3015.606-2

Determination for *(Insert Component Name)* to Award A Task or Delivery Order Contract for *(brief description)* to a Single Source

This determination is made pursuant to FAR 16.504(c)(1)(ii)(D)(1) and specifically relies upon *[Provide those FAR citation or citations that apply to this request (e.g., 16.504(c)(1)(ii)(D)(1)(i), (ii), (iii) and/or (iv)).]*

The total value of all actions covered by this determination is estimated to be \$_____.

Describe the action being approved. Provide enough details, facts or reasoning essential to support the determination. The determination document must address all of the below listed points related to the applicable exception(s).

16.504(c)(1)(ii)(D)(1)(i), So integrally related only a single source can reasonably perform the work. If the determination is based on this exception, you must:

- Explain why only a single source can reasonably perform the work;*
- Explain the consequences if more than one source is considered for each expected order under the contract and why that is unacceptable;*
- If firm-fixed prices will not be established under the basic contract, explain why not and why the prices must be established in each individual order (T&M or Labor Hour orders are not FFP). Identify any portions of the contract that will be fixed priced; and*
- Explain how each order under the contract will be priced; i.e., what type of orders will be issued (FFP, L/H, T&M, etc.) and how the prices of the orders will be determined to be fair and reasonable.*

16.504(c)(1)(ii)(D)(1)(ii), Firm fixed prices established in the basic contract, not in each order. If the determination is based on this exception, you must:

- Explain why the prices are considered to be firm fixed price (T&M or Labor Hour orders are not FFP);*
- State that fixed prices will be established in the basic contract and explain how (fixed rates per hour, day, job, etc.);*
- State that the contract will provide for a price that is not subject to any adjustment on the basis of the contractor's cost experience in performing the contract. (See FAR 16.202-1)*
- Explain if there will or will not be any line items that will be priced under individual orders and explain why you believe the determination can be approved despite not qualifying under the plain reading of this statutory exception; and*
- Explain why it is more advantageous to price items in the basic contract rather than competing each order.*

16.504(c)(1)(ii)(D)(1)(iii), Only one source is qualified and capable of performing at a reasonable price. If the determination is based on this exception, you must:

- *Explain why only one source is capable of performing at a reasonable price;*
- *Explain the consequences if more than one source is considered for each expected order under the contract;*
- *If firm-fixed prices will not be established under the basic contract, explain why not and why the prices must be established in each individual order (T&M or Labor Hour orders are not FFP). Also, identify any portions of the contract that will be fixed priced; and*
- *Explain how each order under the contract will be priced; i.e., what types of orders will be issued (FFP, L/H, T&M, etc.) and how the prices of the orders will be determined to be fair and reasonable.*

16.504(c)(1)(ii)(D)(1)(iv), *Necessary in the public interest due to exceptional circumstances. If the determination is based on this exception, you must:*

- *Explain what the exceptional circumstances are and why it is in the public's interest to make a single award;*
- *Explain why there is no acceptable alternative to deal with the exceptional circumstance;*
- *If firm-fixed prices will not be established under the basic contract, explain why not and why the prices must be established in each individual order (T&M or Labor Hour orders are not FFP). Also, identify any portions of the contract that will be fixed priced; and*
- *Explain how each order under the contract will be priced; i.e., what types of orders will be issued (FFP, L/H, T&M, etc.) and how the prices of the orders will be determined to be fair and reasonable.*

Additionally, regardless of which exception is cited, explain why making a single award is in the best interest of the Government and how making multiple awards would impact the organization. If it is argued that the organization would incur significant costs and/or create unnecessary delays by making multiple awards, fully explain why this is so and whether earlier or better advance procurement planning could be used in the future to mitigate such delays and costs.

I hereby determine that this procurement meets the requirements at FAR 16.504(c)(1)(ii)(D) in that it meets the condition(s) of *[Insert one or more of the four FAR citations at 16.504(c)(1)(ii)(D)(1)(i) – (iv) that apply to this request. If more than one citation is applicable, include each.]*, and, if necessary, will be made the subject of the Congressional notice required by 16.504(c)(1)(ii)(D)(2).

Recommended for Chief Procurement Officer Approval

(Name)

Head of Contracting Activity

Date

By my making this determination in accordance with FAR 16.504(c)(1)(ii)(D), (*Insert Component Name*) is authorized under 41 U.S.C. 253h(d)(3) to acquire (*Insert number or description of the procurement*) via a single award task or delivery order contract.

(Name)

Chief Procurement Officer

Date

DETERMINATION AND FINDINGS

Authority to use a *(specify Time and Materials, or Labor Hour)* contract

FINDINGS

1. The *(specify Component and contracting office within the Component)* of the Department of Homeland Security proposes to contract for *(describe the supplies and/or services being procured and identify program/project, if applicable)*.
2. The estimated amount of the contract is \$_____.
3. *(Explain why no other type of contract is suitable for procuring the supplies or services of the kind or quantity required without using the proposed type of contract.)*

DETERMINATION

On the basis of the above findings, I hereby determine that no other type of contract other than a *(specify a Time and Materials or Labor Hour contract)* is suitable for this procurement.

Date

Signature of Approving Official

DETERMINATION AND FINDINGS

Authority to
{indicate what is being waived, exempted, granted, etc.}

FINDINGS

1. *{Identify the contracting office, Component, and agency (i.e., DHS), what is being acquired, and the intended use of the product or service.}*
2. *{Include, as applicable or appropriate, the information required by [\(FAR 1.704.\)](#)}*

DETERMINATION

As {insert the title of the approving official that shall sign this document}, I hereby determine that {state the determination made (e.g., the contract is essential to the national security, one or more of the terms of a clause is waived, overtime is essential to meet delivery or performance schedules, etc.).}

Date: {Signature of the official making the determination and the date of the determination}

SEMI-ANNUAL LABOR COMPLIANCE REPORT

The following semi-annual report (Davis-Bacon and Related Acts and Contract Work Hours and Safety Standards Act) by *{insert Component's name}* is submitted as required by 29 CFR, Part 5.7(b), and All Agency Memorandum #189, dated February 5, 1998.

1. Period covered:
2. Number of prime contracts awarded:
3. Total dollar amount of prime contracts awarded:
4. Number of contractors against whom complaints were received:
5. Number of investigations completed:
6. Number of contractors found in violation:
7. Amount of back wages found due:
 - a. Davis-Bacon Act: (prevailing wage violations)
 - b. Contract Work Hours and Safety Standards Act (CWHSSA): (overtime violations)
8. Amount of back wages paid:
 - a. Davis-Bacon Act:
 - b. CWHSSA:
9. Total number of employees paid wage restitution under the Davis-Bacon and related Acts and/or CWHSSA:
10. Amount of liquidated damages assessed under CWHSSA:
 - Federal Agency:
 - Responsible Official:
 - Title:
 - Address and Phone No:
 - E-mail Address (if available):

DHS INSTRUCTIONS FOR COMPLETING THE SEMIANNUAL LABOR COMPLIANCE REPORT

1. Enter the beginning and ending dates of the period covered by the semiannual report.
2. Enter the number of prime contracts which are subject to the Davis-Bacon Act (or any of the related statutes listed in 29 CFR Part 5), awarded by the Component and/or (where applicable) its operating and management contractors. Include federally assisted contracts subject to these Acts.
3. To the extent available, enter the total dollar amount of the contracts.
4. Enter the total number of contractors (including subcontractors) against whom complaints were received by your Component.
5. Enter the total number of investigations completed by your Component.
6. Enter the number of contractors (including subcontractors) found in violation as a result of the investigations reported in item 5 above. Do not count a contractor or subcontractor more than once in a single investigation because of a violation of more than one Act, or because more than one contract is included in the investigation.
7. Enter the total amount of back wages due employees of the contractors/subcontractors reported in item 6 above, showing under (a) the amount found due because of violations of the Davis-Bacon and Related Acts; and (b) the amount of back wages found due because of violations of the Contract Work Hours and Safety Standards Act.
8. Enter the amount of back wages paid showing under (a) the back wages paid due to violations of the Davis-Bacon and Related Acts; and (b) the back wages paid due to violations of the Contract Work Hours and Safety Standards Act.
9. Enter the number of employees paid wage restitution (i.e., back wages) under the Davis-Bacon and related Acts and/or the Contract Work Hours and Safety Standards Act. This figure is the unduplicated count; that is, an employee paid wage restitution as a result of an investigation shall be counted only once, regardless of the fact that the employee may have been paid wage restitution under the Davis-Bacon and Related Acts and also paid wage restitution under the Contract Work Hours and Safety Standards Act.
10. Enter the total amount of liquidated damages assessed as a result of violations of the Contract Work Hours and Safety Standards Act, including any such amounts assessed by your Component as a result of investigations made by DOL.

Department of Labor
Office of Federal Contract Compliance Program

{Insert the address of the appropriate [OFCCP regional office](#)}

This letter, or portions thereof, contains PROPRIETARY OR SOURCE SELECTION INFORMATION related to the conduct of a Federal agency procurement, the disclosure of which is restricted by Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423). The unauthorized disclosure of such information may subject both the discloser and recipient of the information to contractual, civil and/or criminal penalties as provided by law.

An Equal Employment Opportunity preaward clearance is requested on *{insert the name, address, and telephone number of the prospective contractor}*

{Insert all other applicable information required by [FAR 22.805\(a\)\(5\)](#). The amount of the proposed contract(s) and subcontract(s), if any, shall not be disclosed. In lieu thereof, insert "\$10 million or more" as the estimated amount of the prime contract and first-tier subcontract(s).}

It is requested that verbal clearance and a written confirmation be provided as soon as possible to *{insert the name, title, and telephone number of the point of contact in the contracting office}*.

*{Insert name, title, and
signature of authorized
contracting person}*

Note: The first paragraph of the above letter is primarily for full and open competition acquisitions. The paragraph may be deleted or modified when requesting a preaward clearance for other than full and open competition acquisitions. Written pre-award clearances ARE NOT required if the contractor is listed on the Pre-Award Contractor Registry located at <http://www.dol-esa.gov/preaward/> .

DEPARTMENT OF HOMELAND SECURITY AFFIRMATIVE PROCUREMENT PLAN (APP)

I. General.

A. Introduction.

Green Procurement is defined as the purchase of environmentally preferable products and services in accordance with federally mandated green purchasing preference programs. It is the Department of Homeland Security (DHS) policy to strive towards achieving 100 percent compliance with mandatory Federal green procurement requirements in all acquisition transactions.

The DHS Affirmative Procurement Program (APP) is an umbrella program that includes the following preference programs: Recovered Materials, Energy and Water Efficient Products, Alternative Fuels and Fuel Efficiency, Sustainable Buildings, Biobased Products, Non-Ozone Depleting Substances and Environmentally Preferred products. The intent of the program is to stimulate a market for new products within the procurement preference programs, conserve energy, preserve natural resources and reduce greenhouse gases, waste and the purchase and use of toxic materials.

This APP implements the policy and guidance in Executive Order (EO) 13423 *Strengthening Federal Environmental, Energy, and Transportation Management* (signed January 26, 2007). The Federal Government has made significant progress in improving environmental and energy performance through a series of EOs, Memoranda of Understanding, and other guidance. Executive Order 13423 builds on existing Federal programs and success by integrating and updating prior practices and requirements into a cohesive, strategic approach to further ensure enhanced performance and compliance with statutory and other legal requirements. *Instructions For Implementing EO 13423, “Strengthening Federal Environmental, Energy, and Transportation Management”*, issued March 29, 2007, provides additional implementation guidance for this EO.

Green purchasing is an important environmental stewardship, required by EO 13423 and in many cases provides products, which outperform their conventional counterparts. Green purchasing can provide many benefits to help the DHS mission become more effective. Informed purchasing decisions can significantly influence the environmental performance of the Department. Thus, the type of materials purchased can impact disposal costs, air emissions, water and energy use. Wise planning can help manage these impacts.

Since green purchasing requirements apply to all purchases of products and services, it is very important that DHS plans to maximize the benefits of the APP through its compliance to meet EO 13423 requirements.

B. Purpose.

EO13423, *Strengthening Federal Environmental, Energy and Transportation Management* and its Implementing Instructions direct Federal agencies to implement sustainable practices for energy efficiency, renewable energy, water consumption, acquisition of green products, pollution prevention, waste prevention and recycling, diversion of solid waste, sustainable buildings, fleet management, and electronics stewardship. This DHS APP policy is issued to fulfill the requirements of EO 13423, EO 13423 Implementing Instructions, DHS Directive 025-01 Sustainable Practices for Environmental, Energy and Transportation Management and other regulatory requirements concerning the acquisition, use, and disposition of green products and services.

The purpose of the DHS APP is to give preference to acquisition of the following types of products over like products lacking the preferable attribute. The items in the list are not in any order of preference, although recycled content products on EPA's list take preference over biobased products on United States Department of Agriculture's (USDA) list as established by Farm Security and Rural Investment Act (FSRIA) and implemented at FAR 23405(c):

- (1) Alternative fuel vehicles and alternative fuels required by the Energy Policy Act of 2005 at http://www.eere.energy.gov/femp/about/fleet_requirements.html.
- (2) Biobased products designated by the U.S. Department of Agriculture in the BioPreferred program. Biobased products are those designated by the USDA pursuant to FSRIA, 7 USC 8102. USDA maintains a home page with the list of designated items at: <http://www.biopreferred.gov/DesignationItems.aspx>.
- (3) Energy from renewable sources required by the Energy Policy Act of 2005 at <http://www.eere.energy.gov/>.
- (4) Energy Star® products identified by DOE and EPA at <http://energystar.gov>, as well as FEMP-designated energy-efficient products at http://www1.eere.energy.gov/femp/program/equip_procurement.html.
- (5) Environmentally preferable products and services, including Electronic Product Environmental Assessment Tool (EPEAT) registered electronic products. A website has been established to identify environmentally preferable electronic equipment at: <http://www.epeat.net>. At this time, EPEAT-registered products are limited to computer desktops, laptops, and monitors however standards for printers, scanners and plotters may be released in FY 2009. EPA's website explaining this initiative at: <http://www.epa.gov/opptintr/epp/>.
- (6) Non-ozone depleting substances, as identified in EPA's Significant New Alternatives Program at <http://www.epa.gov/ozone/snap/index.html>.
- (7) Products with low or no toxic or hazardous constituents, consistent with section VIII. A of the implementing instructions for EO 13423. Each agency is tasked by the Implementing Instructions to develop goals and a list of toxic chemicals, hazardous

substances and other pollutants by January 24, 2008. Information on this is available at <http://www.epa.gov/ecotox>. Specific DHS information is available in the Sustainable Practices Guidance Manual. [DHS Reading Room]

(8) Recycled content products designated in EPA's Comprehensive Procurement Guidelines (CPG) at <http://www.epa.gov/cpg/>.

(9) Water-efficient products, including those meeting EPA's Water-Sense standards <http://www.epa.gov/watersense/>. EPA has already introduced some water efficient technology advancements but has others in process. More information is available at their website.

C. Authority. The following documents establish the requirements for the DHS APP:

(1) Federal Laws:

Resource Conservation and Recovery Act (RCRA), Section 6002
<http://www.epa.gov/rcraonline>.

Section 9002 of the Farm Security and Rural Investment Act of 2002 (The Farm Bill) <http://www.ofee.gov/whats/archive/bbfarm.asp>.

Energy Policy Act of 2005 http://www.epa.gov/oust/fedlaws/publ_109-058.pdf.

Public Law 110-140, "Energy Independence and Security Act of 2007" (EISA)

(2) Executive Orders:

Executive Order 13423, *Strengthening Federal Environmental, Energy, and Transportation Management* http://ofee.gov/eo/EO_13423.pdf.

Instructions for Implementing Executive Order 13423
http://www.ofee.gov/eo/eo13423_instructions.pdf.

[EO 13221](#), *Energy-Efficient Standby Power Devices*, 31 July 2001

(3) DHS Directives and Manuals:

Management Directive 5110 *Environmental Compliance* (6/7/2004);

Directive 025-01 Sustainable Practices for Environmental, Energy and Transportation Management (9/29/2008); and

Homeland Security Acquisition Manual (HSAM)(version December 2006).

(4) Other:

EPA Comprehensive Procurement Guidelines (CPG) <http://www.ea.gov/cpg>.

Office of Federal Procurement Policy (OFPP), Policy Letter 92-4,
<http://www.acqnet.gov/Library/OFPP/PolicyLetters/Letters/PL92-4.html>.

D. Applicability. The requirement to purchase green products and services and biobased products applies to all acquisition and contracting mechanisms used by the Department of Homeland Security and Components including contracts for services, purchases made with Government purchase cards, and purchases below the micro-purchase threshold.

E. Policy.

DHS developed this comprehensive APP which shall be implemented by all Departmental program offices, components, operation offices, sites, facilities, and applicable contractors. All DHS elements must take steps to carry out this APP for all purchases, including services provided by vendors, in which an EPA-designated item is required and the item will be purchased domestically (i.e., within the United States or its possessions).

It is the policy of the Federal Government to develop and implement green purchasing policies and affirmative procurement programs in order to conserve resources, be good stewards of the environment, and reduce our negative impact on the environment. DHS policy is 100 percent compliant with all mandatory APP elements in all acquisition transactions. DHS shall purchase green products and services to the maximum extent practicable, to purchase biobased products to the maximum extent practicable, and to include green purchasing requirements in all contracts for services to the maximum extent practicable. Green products and services include recycled content products; water-efficient, energy-efficient, Energy Star® and those products with the lowest watt stand-by power; environmentally preferable products; alternative fuels; hybrid and alternative fuel vehicles; non-ozone depleting substances; renewable energy; and Environmental Protection Agency (EPA) designated items containing recovered materials. Biobased products include USDA designated biobased products. Component acquisition policies and programs shall promote, and where appropriate, mandate the purchase and use of green products and services and biobased products.

When formulating requirements, DHS requiring and contracting offices are to employ acquisition strategies that maximize the utilization of environmentally preferable products and services (EPA guidance for utilizing environmentally preferable products and services is found at <http://www.ofee.gov/>); maximize the utilization of energy-efficient products; eliminate or reduce the generation of hazardous waste and the need for special handling, storage, treatment, and disposal; promote use of nonhazardous and recovered materials; realize life-cycle cost savings; promote cost-effective waste reduction when creating plans, drawings, etc., authorizing material substitutions, extensions of shelf-life, and process improvements; and consider the use of biobased products. Organizational Elements must establish programs that support the DHS APP.

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

II. Green Purchasing Requirements.

A. Recovered Materials:

(1) EPA has written regulations to implement the Resource Conservation and Recovery Act (RCRA) and [EO 13423](#). The [“Comprehensive Procurement Guideline,” \(CPG\)](#), is a list of products that can be made with recovered materials, are technologically and economically feasible to produce, and will conserve raw materials and reduce the solid waste stream. The CPG list is the result of scientific analysis followed by a formal EPA rulemaking process, which is a recurring activity.

(2) The first CPG list was issued in 1995, and the list continues to grow as EPA issues subsequent CPGs. EPA also issues guidance for buying recovered material products in their “Recovered Materials Advisory Notices” (RMANs). The RMANs mandatory recovered material content ranges for CPG products based on current information about commercially available products. RMAN levels are updated by EPA as marketplace conditions change. The EPA recommended minimum content standards are set forth in the Recovered Materials Advisory Notice (RMAN) published in the [Federal Register](#) and updates are found on the [EPA RMAN list](#). A list of the EPA designated items and EPA’s RMAN guideline for the minimum recovered material content standards is available from the EPA website.

(3) The products that are covered by the CPG include but are not limited to paper and paper products, non-paper office products, vehicular fleet maintenance products, construction products, landscaping products, traffic control products, park and recreation products, and other miscellaneous products. Recovered material product requirements apply to all CPG item acquisitions made with Federal dollars, no matter what purchasing mechanism is used or how they are paid for. Purchase card buys, all types of contracts, and in-house projects that include CPG items must all comply with EPA requirements. Recovered material products are available from many Government and commercial sources.

(4) EPA’s procurement guidelines only apply to an agency whose total annual purchases (for each designated item) equals \$10,000 or more, or when the procuring agency purchased \$10,000 or more of the item (or of a functionally equivalent item) during the preceding year. This \$10,000 threshold includes micro-purchases. Thus, because the procurement requirements identified in EPA’s guidelines apply to DHS as a whole, all Component program offices, operations offices, sites, and applicable contractors shall be responsible for implementing the procurement requirement outlined in both this document and EPA’s guidelines. Agencies and supply centers are required to report purchases made from non-Governmental (commercial) sources. Annual survey forms will be furnished to Component procurement offices by DHS, Office of the Chief

Procurement Officer. Accordingly, when submitting agency annual reports under RCRA, Component's shall report all purchases of items covered in this document and the percentage of recovered material required to be reported by FAR clause 52.223-9 to DHS, Office of the Chief Procurement Officer. Individual Component statistics will be combined into one DHS response to the Office of the Federal Environmental Executive and the Office of Federal Procurement Policy.

(5) Components shall supplement the Departmental APP with appropriate policy and procedures outlining specific guidelines for implementing the Departmental APP in their activities. The scope and magnitude of the policy and procedures shall be commensurate with the procurement activity associated with green products and services and biobased products.

(6) It is DHS policy to procure 100 percent of EPA-designated products with recovered material, unless the item cannot be acquired competitively within a reasonable time frame; meet appropriate performance standards; or procured at a reasonable price. This policy includes the purchase of items at or below the micro purchase level. However, *tracking micro purchases of EPA-designated items is not required* as an exemption (as specified at [FAR 23.405](#)) from establishing an APP will not be requested by DHS.

(7) Components shall supplement the Departmental APP with appropriate policy and procedures outlining specific guidelines for implementing the Departmental APP in their activities. The scope and magnitude of the policy and procedures shall be commensurate with the procurement activity associated with green products and services and biobased products.

(8) Special requirements apply when procuring certain items. These are:

DHS requires 100 percent of purchases of printing and writing paper to meet or exceed one of the following minimum content standards: For high-speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white woven envelopes, writing and office paper, book paper, cotton fiber paper, and cover stock, the minimum content standard must be no less than 30 percent post consumer materials;

Virgin material or supplies composed of or manufactured using virgin material cannot be required unless compelled by law or regulation or unless virgin material is vital for safety or meeting performance requirements of the contract.

B. Energy Efficient Products:

(1) Energy and water conserving product purchases are mandatory elements of the DHS APP. [EO 13423](#) states that each agency shall improve energy efficiency through the reduction of energy intensity. The goal is to reduce energy demand by 3 percent annually

through the end of fiscal year 2015, or 30 percent by the end of FY 2015, relative to a FY 2003 baseline year.

(2) Required Actions:

Purchases of off-the-shelf energy-consuming products or contracts for services or construction will include provisions of energy-consuming products. DHS and Components shall specify products that are ENERGY STAR® or Federal Energy Management Program (FEMP) labeled/approved products or justify, in writing to the DHS [Office of Occupational Safety and Environmental Programs](#), that no ENERGY STAR® or FEMP designated product is reasonably available that meets the function requirements or that the non ENERGY STAR® or FEMP designated product(s) are more cost-effective over the life of the product taking energy cost savings into account.

Contract officers shall ensure that the FAR clause at 52.223-15, Energy Efficiency in Energy-Consuming Products is inserted in solicitations and contracts when energy-consuming products will be delivered, acquired by the contractor for use in performing services at a federally controlled facility, furnished by the contractor for use by the Government or specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.

(3) Locating products and services:

Energy Star® products identified by DOE and EPA at <http://energystar.gov>, as well as FEMP-designated energy-efficient products at http://www1.eere.energy.gov/femp/program/equip_procurement.html.

Energy-saving products can be found in Federal supply sources including the [GSA Environmental Products and Services Guide](#), [GSA Advantage!](#) (look for the Energy Star symbol and the EE symbol) and the [DoD EMALL](#). Energy saving products are also available from commercial sources. To choose energy efficient products, look for the Energy Star first. If an [Energy Star product](#) is not available cost effectively, choose the most efficient product possible from [FEMP's Energy-Efficient Products list](#). Both programs use the same criteria, with Energy Star rated products attaining the highest level of performance. To identify products that meet the Federal low standby power requirements, consult FEMP's online database of electronic products.

C. Energy-savings performance contracts:

(1) Energy-savings performance contracts are mandatory elements of the DHS APP. Energy Savings Performance Contracts (ESPC), Utility Energy Savings Contracts (UESC), and green power purchases are managed by the [AFCESA Mechanical/Electrical Engineering Division](#).

(2) Required Actions. DHS and Components may enter into ESPC under [42U.S.C. 8287](#), as amended, subject to the requirements of [10 CFR Part 436](#). The procedures for notification to the DHS, Office of Occupational Safety and Environmental Programs are established at HSAM 3023.205(c).

D. Energy efficiency in energy-consuming products:

(1) [EO 13423](#) states that each agency shall improve energy efficiency through the reduction of energy intensity. The goal is to reduce energy demand by 3 percent annually through the end of fiscal year 2015, or 30 percent by the end of FY 2015, relative to a FY 2003 baseline year.

(2) DHS and Components will reduce energy use and purchase energy-efficient products. The FEMP and the Energy Star program guide these efforts. EnergyStar® products meet FEMP standards for low standby power. DHS and Components are required to buy products that comply with Federal energy efficiency requirements, and to design and operate buildings to minimize energy and water consumption in accordance with EO 13423.

(3) When acquiring energy-consuming products, DHS and Components shall acquire products that meet the requirements of EO 13221 and EO 13423 and its implementing instructions for low standby power devices.

(4) Required Actions:

Purchases of off-the-shelf energy-consuming products or contracts for services or construction will include provisions of energy-consuming products. DHS and Components shall specify products that are Energy Star® or FEMP labeled/approved products or justify, in writing to the Office of Occupational Safety and Environmental Programs, that no Energy Star® or FEMP designated product is reasonably available that meets the function requirements or that the non Energy Star® or FEMP designated product(s) are more cost-effective over the life of the product taking energy cost savings into account.

Contract officers shall ensure that the FAR clause at 52.223–15, Energy Efficiency in Energy-Consuming Products is inserted in solicitations and contracts when energy-consuming products will be delivered, acquired by the contractor for use in performing services at a federally controlled facility, furnished by the contractor for use by the Government or specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.

(5) Energy Star® products identified by DOE and EPA at <http://energystar.gov>, as well as FEMP-designated energy-efficient products at http://www1.eere.energy.gov/femp/program/equip_procurement.html.

E. Electronic Product Environmental Assessment Tool (EPEAT):

(1) As required by EO 13423, DHS and Components must ensure that at least 95 percent electronic product purchases are EPEAT-registered electronic products, unless there is no EPEAT standard for such products and strive to purchase EPEAT products rated silver unless there is no standard for such products.

(2) DHS and Components are exempt from EPEAT purchase requirements if the dollar value of exceptions granted will not exceed 5 percent of the total dollar value of electronic products acquired by the purchaser, for which EPEAT-registered products are available, no EPEAT-registered product meets agency requirements or the EPEAT-registered product will not be cost effective over the life of the product.

(3) EPEAT is a system in which manufacturers declare their products' conformance to a comprehensive set of environmental criteria in 8 environmental performance categories. The operation of EPEAT and the environmental criteria are contained in a public standard IEEE 1680. For more information about IEEE 1680 and the environmental criteria go to <http://www.ieee.org/portal/site> or <http://www.epeat.net/>. EPEAT is a required specification for [Federal purchasers](#) and is increasingly used by state and local government purchasers and private sector IT managers to 'green' their electronics purchasing.

(4) Required Actions:

Procurement Offices shall incorporate FAR clauses for environmental and energy considerations, including the EPEAT Waste Reduction Program, in all solicitations and contracts for contractor operation of Government-owned or leased facilities and all solicitations and contracts for support services at Contractor operated Government-owned facilities.

Unless an exception has been approved in accordance with FAR 23.705(c), insert the FAR clause at 52.223-16, IEEE Assessment of Personal Computer Products, in all solicitations and contracts for personal computer products, services that require furnishing of personal computer products for use by the Government or Contractor operation of Government-owned facilities.

Procurement offices will strive to purchase or lease products that are rated at the EPEAT Silver level or higher.

Contracts for leased IT equipment shall incorporate adequate language that at the end of the lease period, the equipment is reused, donated, sold, or recycled using environmentally sound management practices.

(5) Purchasers are encouraged to use the following contract language to ensure the products they buy meet the EPEAT standard:

All desktops, laptops, and computer monitors provided under this contract are required to have achieved Bronze registration or higher under the Electronic Products Environmental Assessment Tool (EPEAT) and should strive for Silver registration. EPEAT is a procurement tool designed to help large volume purchasers evaluate, compare, and select desktop computers, laptops, and monitors based upon their environmental attributes as specified in the consensus-based IEEE Standard for the Environmental Assessment of Personal Computer Products (1680). The registration criteria and a list of all registered equipment are provided at <http://www.epeat.net>.

(6) A website has been established to identify environmentally preferable electronic equipment at: <http://www.epeat.net>. Presently product criteria for EPEAT is limited to computer desktops, laptops, and monitors, but will be expanded as criteria standards are expected for other electronic devices. Environmentally preferable products and services, however, are much broader than just electronic products. EPA's website explaining this initiative at: <http://www.epa.gov/opptintr/epp/>.

F. Water Efficient Products:

(1) In accordance with [EO 13423](#), beginning in FY 2008, all Agencies shall reduce water consumption by 2 percent annually through the end of FY 2015 or 16 percent by the end of FY 2015. Water conservation requirements apply to all building construction and renovation projects.

(2) In order to reach this goal, DHS and Components will purchase water efficient products. The EPA WaterSense label program guides this effort. WaterSense is a voluntary Environmental Protection Agency public-private partnership that identifies and promotes high-performance products and programs that help preserve the nation's water supply.

(3) Where applicable, DHS and its Components shall purchase WaterSense labeled products and choose irrigation contractors who are certified through a WaterSense labeled program. Products currently included in the WaterSense label program include high efficiency toilets, showerheads, bathroom sink faucets, landscaping irrigation services and weather or sensor based irrigation technologies.

(4) Water-efficient products, including those meeting EPA's Water-Sense standards <http://www.epa.gov/watersense/>. EPA has already introduced some water efficient technology advancements but has others in process, and routinely provides updated information at the EPA WaterSense website.

G. Alternative Fuels and Fuel Efficiency:

(1) The Energy Policy Act (EPACT), Public Law 102-486, addresses all aspects of energy supply and demand, including energy efficiency, alternative fuels and renewable energy. Title III of EPACT states that of the total number of vehicles acquired by a

Federal fleet after 1999, 75% shall be Alternate Fuel Vehicles (AFVs). It also requires Federal agencies to arrange for refueling of AFVs at commercial fueling facilities that offer alternative fuels for sale. Accordingly, DHS and Components must acquire AFVs (with the exception of military tactical, law enforcement, and emergency vehicles), alternative fuels for those vehicles, and fuel-efficient petroleum-powered passenger cars and light trucks. Other requirements in EO 13423 include:

Reducing the fleet consumption of petroleum products by 2 percent annually through the end of FY 2015.

Increase non-petroleum based fuel consumption by 10 percent annually.

Use Plug-In Hybrid (PIH) vehicles when PIH vehicles are commercially available at a reasonably comparable, on the basis of life-cycle cost, to non-PIH vehicles.

(2) The following web site will assist in finding additional information about AFVs, alternative fuels, and fuel efficient vehicles:

The GSA Vehicle Leasing Program offers AFVs as part of their service [[GSA Guidance](#)].

DOE's Clean Cities Program web site has an Alternative Fueling Stations Locator [[Alt Fuel Locator](#)].

Defense Energy Support Center (DESC) supplies Federal agencies with alternative fuels, including biodiesel (B20) and ethanol (E85). DESC's [Logistics Tutorial](#) explains the acquisition process.

The Fuel Economy Guide and other tools for finding fuel-efficient, environmentally preferable vehicles are available on the [EPA/Department of Energy \(DOE\) Fuel Economy web site](#). Users can find and compare cars by gas mileage, greenhouse gas emissions, air pollution ratings, and safety information. The site also provides information regarding gas mileage tips, gas prices, advanced technology, and the importance of fuel economy.

H. Biobased or BioPreferred Products:

(1) The Biobased Products Preference Program is sponsored by the USDA. It is modeled after the EPA Recovered Material Program. FAR 52.223-1, Biobased Product Certification, is a solicitation provision containing a certification for offerors to certify that they will furnish products meeting the USDA biobased content specifications for the products being delivered. FAR 52.223-2, Affirmative Procurement of Biobased Products Under Service and Construction Contracts, is a clause to be used in service and construction contracts which may involve the use of biobased products, e.g., use of a biobased roof coating in a construction or service contract. The biobased program does

not require a second certification following delivery as does the EPA recovered materials program (see FAR 52-223-9).

(2) The USDA has selected and prioritized items for designation as "preferred" biobased products. The USDA, other Government agencies, private industry groups, and independent manufacturers have evaluated these items against program criteria established collaboratively. Please go to <http://www.biopreferred.gov/DesignationItemList.aspx> for a list of designated biobased preferred products.

(3) Biobased items include office products; printing products; transportation fleet maintenance products; construction products; and janitorial and landscaping products.

(4) There will be some overlap between the CPG list for recycled-content purchasing and the USDA list for biobased item purchasing. Procurements that are subject to the CPG do not have to satisfy the biobased product requirements, if the two sets of requirements are inconsistent. However, this does not mean that CPG requirements must automatically be followed in place of biobased purchasing. Purchasers should look at the benefits and costs of both types of products, and select the one that provides the best value overall.

(5) DHS and Components must give preference to the purchase the BioPreferred items on USDA's [Biobased products list](http://www.biobased.oce.usda.gov/fb4p/DesignationItemsList.aspx) (<http://www.biobased.oce.usda.gov/fb4p/DesignationItemsList.aspx>).

(6) Biobased products can be found by visiting the following web sites:

The Department of Energy Biomass Program develops technology for conversion of biomass (plant-derived material) into fuels, chemicals, materials and power in order to reduce dependence on foreign oil. Biomass uses include ethanol, biodiesel, biomass power and industrial process energy.
(<http://www.1.eere.energy.gov/biomass/>)

The United Soybean Board web site offers a Products Guide that lists consumer and industrial products. (<http://www.unitedsoybean.org/>)

National Corn Growers Association web site has a database of information on availability of corn-based products for industrial and consumer use.
(<http://www.ncga.com>)

The GSA Environmental Products and Services Guide include a biobased product category. ([GSA Guidelines](#))

I. Environmentally Preferable Products (EPP):

(1) Purchase environmentally preferable products and services. Environmentally preferable means products or services that have a lesser or reduced effect on human

health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service. DHS will endeavor to purchase any products and services that are more environmentally friendly than what we routinely purchase, but are not already covered by one of the mandatory programs described above.

(2) The following web sites will help consumers find environmentally preferable products:

Database of Environmental Information for Products and Services: EPA offers an extensive, searchable database of product-specific information (e.g., environmental standards and guidelines or contract language) developed by Government programs, both domestic and international, as well as third parties.

[GSA Advantage!](#) (Look for the tree symbol)

[GSA Environmental Products Overview](#)

[DLA Environmental Catalogs](#)

[OIKOS Green Building Source](#)

[Guide to Resource Efficient Building Elements](#)

III. Affirmative Procurement Preference Program.

A. When formulating requirements, DHS requiring and contracting offices are to employ acquisition strategies that maximize the utilization of environmentally preferable products and services (EPA guidance for utilizing environmentally preferable products and services is found at <http://www.ofee.gov/>); maximize the utilization of energy-efficient products; eliminate or reduce the generation of hazardous waste and the need for special handling, storage, treatment, and disposal; promote use of nonhazardous and recovered materials; realize life-cycle cost savings; promote cost-effective waste reduction when creating plans, drawings, etc., authorizing material substitutions, extensions of shelf-life, and process improvements; and consider the use of biobased products. Components must establish programs that support the DHS APP.

B. [EPA Designated Items](#). EPA designates certain items which must meet the standard for recovered material content. An official list of these is found at 40 CFR 247.10-247.17. A list of these items is also located on the EPA website.

C. [Future EPA Designated Items](#). This APP will be modified, as necessary; to incorporate future [EPA designated items](#) and minimum content standards.

D. APP [Materials Determination Form](#). In making the determinations required by FAR Part 23 and delegated in HSAM 3023, DHS program offices shall use the format or substantially the same format as shown in Attachment 1. This form must be signed by the cognizant requirement's or program official, forwarded to the contracting office with the procurement request and maintained in the contract file. In developing plans, drawings, work statements, specifications, or other product descriptions, program offices shall consider the following factors: elimination of virgin material requirements, use of recovered materials, reuse of products, life-cycle cost, recyclability, use of environmentally preferable products, waste prevention (including toxicity reduction or elimination), and ultimate disposal, as appropriate. These factors should be used in acquisition planning for all procurements and in the evaluation and award of contracts (i.e., the bidder most able to cost-effectively satisfy the recovered material content specifications as well as the performance/design specifications outlined in the solicitation document).

E. [Request for Waiver](#). To request a waiver from the purchase of [EPA designated item](#) containing other than recovered materials, an electronic product other than an EPEAT-registered product, and biobased preferred products when such products are available, requirements or program offices and contracting officers shall use the format or substantially the same format as shown in Attachment 2. The contracting officer is designated as the approval official for these exemptions. This approval document must be coordinated through the appropriate DHS Component's Environmental Program Office for technical review. The approved document shall be maintained in the contract file.

F. Federal Sources of Recycled and Environmental Products. Thousands of recycled and environmental products are available to procuring agencies through established Federal supply sources, and new items are continuously being added. Federal sources of EPA-designated items and other recycled and environmental products include the General Services Administration (GSA) Federal Supply Service (FSS), Government Printing Office (GPO) and the Defense General Supply Center (DGSC). GSA FSS publishes various documents to assist in identifying and requisitioning recycled and environmental products. These documents are available on the [GSA website](#) and are available through Centralized Mailing List Service (CMLS), P.O. Box 6477, Fort Worth, TX 76115, and phone number: (817) 334-5215, fax number (817) 334-5227.

G. Other Recycled and Environmentally Preferable Products. EPA's guidelines may not reflect those procured products or services most often used by DHS. Procurement originators are encouraged to request, procure, and use other products containing recovered materials in addition to those specified in this APP. At the discretion of the

Component, items other than EPA designated items for which recovered material content must be specified may be adopted.

H. Life-Cycle Cost Analysis. [OFPP Policy Letter 92-4](#) required Federal agencies to use life-cycle cost analysis, wherever feasible and appropriate, to assist in selecting products and services. At this time, life-cycle cost information for [EPA designated items](#) is not available. Until such information is developed for Federal agency's use, Components shall rely on minimum content standards of preference standards in [EPA's guidelines \(RMAN\)](#).

IV. Recovered Materials Promotion Program.

A. DHS preference for recovered materials shall be incorporated into all applicable solicitations. This shall be accomplished by including explicit recovered material preference standards for EPA-designated items in appropriate solicitations for bids, statements of work, and during contract negotiations.

B. Each DHS procuring office shall promote the DHS APP within its operation. The promotional program shall include at least the following:

- (1) Procuring offices shall include in their FedBizOpps announcements a statement of the recycling and recovery requirements of the solicitation, if applicable;
- (2) Contracting officers should seek from the marketplace and annotate their sources/bidders lists with information on vendors offering recovered products and services;
- (3) Contracting officers should encourage each contractor under a value engineering program to look for savings opportunities which could be proposed; and
- (4) Contracting officers shall promote the fact that they are seeking to buy recovered materials at pre-bid and pre-proposal conferences, where applicable.

V. Procedures for Vendor Estimation and Certification.

A. Estimation. DHS's minimum content standards for [EPA designated items](#) shall be specified in the statement of work. Vendors responding to solicitations for [EPA designated items](#) must meet the minimum content standards; therefore a separate estimate from the vendor regarding the percentage of recovered materials in the product is not required unless the product exceed the minimum content standards specified.

B. Certification. Vendors/offerors are responsible for: (1) providing written certification to the contracting officer that their products meet minimum content standards, (2) maintaining copies of certification documents, and (3) producing copies of the written certification upon request.

(See [FAR 23.406](#) for solicitation provisions and contract clauses.)

C. Verification. Heads of the Contracting Activity shall periodically review vendor certification documents as part of their review and monitoring processes. Such review shall enable DHS's Environmental Executive to verify DHS's compliance with [Executive Order 13423](#).

D. Exclusions. Federal supply sources such as GSA, GPO, and DGSC have established their own estimation, certification, and verification procedures for EPA-designated items. Therefore, there is no requirement to conduct independent estimation, certification, and verification procedures.

VI. Annual Review and Reporting.

A. Federal agencies are required, on an annual basis, to review the effectiveness of its affirmative procurement program and provide reports to the Federal Environmental Executive and to OFPP.

B. OFPP has devised a standard format for use in reporting affirmative procurement program effectiveness. The report shall be transmitted to the Office of the Chief Procurement Officer for consolidation into a Departmental response, which has historically been due in December of each year. However, since the reporting format and due date of the report has changed over the years, The Office of the Chief Procurement Officer will provide each Component an updated reporting format, if necessary, and the response date in writing in sufficient time for the Components to respond in a timely manner.

VII. Waste Prevention.

[Executive Order 13423](#) requires Federal agencies to implement waste prevention techniques, such as electronic transfer and double-sided copying, so that annual expenditures for recycled printing and writing paper do not exceed current annual budgets for paper products as measured by average annual expenditures. To this end, it is DHS policy that a contractor submitting paper documents relating to an acquisition, should, if possible, submit those documents printed/copies double-sided on recycled paper (see [FAR 4.303](#) and [52.204-4](#)).

DEFINITIONS

The following definitions are intended for use in this APP only.

Affirmative Procurement Program (APP) - a program assuring Guideline items composed of recovered materials will be purchased to the maximum extent practicable, consistent with Federal law and procurement regulations. [[RCRA, Section 6002](#)]

Biobased Product - a commercial or industrial product (other than food or feed) that utilizes biological products or renewable domestic agricultural (plant, animal, and marine) or forestry materials. [[USDA Guidelines](#)]

Case-by-Case Procurement - open competition for contract awards among products made of virgin and recovered materials with preference being given to the latter (vice identifying minimum content standards required). [[RCRA, Section 6002](#)]

Certification - provided by offerors/bidders/vendors, it is written documentation certifying the percentage of recovered materials contained in products or to be used in the performance of the contract is at least the amount required by applicable specifications or other contractual requirements. Certification on multi-component or multi-material products should verify the percentage of post consumer waste and recycled material contained in the major constituents of the product. [[EPA Guidelines](#)]

Cost-Effective Procurement Preference Program - a procurement program favoring more environmentally-sound or energy-efficient products and services than other competing products and services, where price and other factors are equal. [[OFPP Policy Letter 92-4](#)]

Designated Item - an available EPA guideline item or category of items, made with recovered material, advancing the purpose of RCRA when purchased. [[RCRA, Section 6002](#)]

Energy-efficient product – a product in the upper 25 percent of efficiency for all similar products or, if there are applicable Federal appliance or equipment efficiency standards, a product that is at least 10 percent more efficient than the minimum Federal standard

Environmentally Preferable - "Environmentally preferable" means products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service. [[EPA Guidelines](#)]

Environmentally-Sound - a product or service less damaging to the environment when used, maintained, and disposed of in comparison to a competing product or service. [[OFPP Policy Letter 92-4](#)]

Estimation - quantitative determination made by vendors of the total percentage of recovered material contained in offered products. Estimations should be based on historical or actual percentages of recovered materials in products sold in substantial quantities to the general public or on other factual basis. EPA recommends procuring agencies maintain records of these documents for three years by product type, quantity purchased, and price paid. [[EPA Guidelines](#)]

Life Cycle Cost - the amortized annual cost of a product, including capital costs, installation costs, operating costs, maintenance costs, and disposal costs discounted over the lifetime of the product. [[EPA Guidelines](#)]

Life Cycle Assessment - the comprehensive examination of a product's environmental and economic aspects and potential impacts throughout its lifetime, including raw material extraction, transportation, manufacturing, use, and disposal. [[EPA Guidelines](#)]

Minimum Content Standard - the minimum recovered material content specifications set to assure the recovered material content required is the maximum available without jeopardizing the intended item use or violating the limitations of the minimum content standards set forth by EPA's guidelines. [[RCRA, Section 6002](#)]

Performance Specification - a specification stating the desired product operation or function but not specifying its construction materials. [[EPA Guidelines](#)]

Pollution Prevention - "source reduction" as defined in the [Pollution Prevention Act](#) of 1990 (42 U.S.C. 13102), and other practices that reduce or eliminate the creation of pollutants through: (a) increased efficiency in the use of raw materials, energy, water, or other resources; or (b) protection of natural resources by conservation.

Post Consumer Material - a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. "Postconsumer material" is a part of the broader category of "recovered material." [[EPA Guidelines](#)]

Post consumer Waste - a material or product, discarded for disposal after passing through the hands of a final user, having served its intended purpose. Post consumer waste is part of the broader category "recycled material." [[OFPP Policy Letter 92-4](#) and 49 CFR 247.101(e)]

Practicable - capable of performing in accordance with applicable specifications, available at a reasonable price and within a reasonable period of time, and while a satisfactory level of competition with other products is being maintained. [[EPA Guidelines](#)]

Preference - when two products or services are equal in performance characteristics and price, the Government, in making purchasing decisions, will favor the more environmentally-sound or energy-efficient product. [[OFPP Policy Letter 92-4](#)]

Preference Standard - the highest practicable minimum content standards for products. When minimum content is impractical to calculate, preference is for the presence of a recovered material or an environmentally-preferable trait (i.e., retread tires).

Procurement Guidelines - regulations issued by EPA pursuant to section 6002 of RCRA: (1) identifying items produced (or can be produced) with recovered materials and where procurement of such items will advance the objectives of RCRA; and (2)

providing recommended practices for the procurement of such items. [[RCRA, Section 6002](#)]

Procuring Agency - any Federal or State agency, or agency of a state's political subdivision using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract. [[EPA Guidelines](#)]

Recovered Materials - waste materials and by-products that have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process (42 U.S.C. 6903 (19)). [[EPA Guidelines](#)]

Recyclability - the ability of a product or material to be recovered from, or otherwise diverted from, the solid waste stream for the purpose of recycling. [[EPA Guidelines](#)]

Recycled Material - a material utilized in place of raw or virgin material in product manufacturing consisting of materials derived from post consumer waste, industrial scrap, material derived from agricultural wastes, and other items, all of which can be used in new product manufacture. [[EPA Guidelines](#) and [OFPP Policy Letter 92-4](#)]

Recycling - the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of new products other than fuel for producing heat or power by combustion. [[EPA Guidelines](#)]

Solid Waste - garbage, refuse, sludge, and other discarded solid materials, including those from industrial, commercial, and agricultural operations, and from community activities. This *excludes* solids or dissolved materials in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial waste water effluents, dissolved materials in irrigation return flow, etc. [[EPA Guidelines](#)]

Specification - a clear and accurate description of the technical requirements for materials, products, or services including the minimum requirement for materials' quality and construction and any equipment necessary for an acceptable product. In general, specifications are in the form of written descriptions, drawings, prints, commercial designations, industry standards, and other descriptive references. [[EPA Guidelines](#)]

Unreasonable Price - when recycled product cost is greater compared to virgin material cost.

(Unreasonable price is not a factor when minimum content standards are specified in the statement of work/procurement request, because price estimates will only be obtained from vendors who can supply products meeting recovered material content requirements.)

Verification - procedures used by procuring agencies to confirm both vendor estimates and certifications of the percentages of recovered material contained in the products supplies to them or to be used in the performance of a contract. [[EPA Guidelines](#)]

Waste Prevention - any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials. [[EPA Guidelines](#)]

Waste Reduction - preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products. [[EPA Guidelines](#)]

Attachment 1**AFFIRMATIVE PROCUREMENT PROGRAM MATERIALS
DETERMINATION FORM**

Instructions: This form is to be completed by the procurement originator where the items or deliverables subject to DHS's Affirmative Procurement Program (APP) are being procured from vendors. This form is not required for items requisitioned from established Federal supply sources.

1. The procurement originator (requirements or program official) lists the designated item(s) which apply to the procurement request, signs and dates the bottom of the form, and provides to the contracting office with the procurement request.
2. The completed form becomes part of the official contracting office contract file.

Procurement Request No:

The Statement of Work/Specifications covering this procurement request is subject to the DHS APP, HSAM Chapter 3023, Appendix A. The items being procured are:

I hereby certify that the Statement of Work/Specifications for the requisition of materials/services listed above complies with applicable DHS preference standards.

Procurement Originator's Signature

Date

Attachment 2**REQUEST FOR WAIVER
AFFIRMATIVE PROCUREMENT PROGRAM ITEM(S)**

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

A. This form is to be completed by the procurement originator (program official) and Contracting officer, as appropriate, when items subject to DHS's APP are not procured.

B. The procurement originator and Contracting Officer checks the appropriate justification(s), provides a written explanation, and signs and dates the form.

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

Procurement Request No: _____

1. To be completed by Procurement (Requirements or Program Office) Originator:

Products meeting DHS's preference standards for the following designated items:

were not obtained because:

_____ Items do not meet all reasonable performance specifications.

_____ Items are not available within a reasonable period of time.

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

Procurement Originator's Signature

Date

2. To be completed by the Contracting Officer:

Products meeting DHS's preference standards for the following designated items:

were not obtained because:

_____ Use of minimum content standards would result in inadequate competition.

_____ Products meeting the preference standards would require paying a price premium.

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

Remanufactured or recycled toner cartridges for use in laser printers, photocopies, facsimile machines, or micrographic printers were not obtained because:

Contracting Officer's Signature

Date

DETERMINATION AND FINDINGS

Authority to Make Progress Payments

FINDINGS

1. The *(identify the Component and the contracting office)* of the Department of Homeland Security proposes to contract for *(describe the supplies and/or services being procured and identify the program/project, if applicable)*.
2. *(Indicate the type of contract proposed and the estimated amount of the contract.)*

DETERMINATION

On the basis of the above findings, I hereby determine that *(explain why progress payments based on costs cannot be practically used and why it will be feasible to administer progress payments based on a percentage or stage of completion basis)*.

(Signature of the Head of the Contracting Activity (HCA))

ACTION: Payment under (*Enter the DHS number assigned to the contractual instrument*)

From: (*Enter the name and title of the individual authorized to sign this portion of the memorandum - e.g., contracting officer, specialist/administrator, etc.*)

To: (*Enter the name of the person to whom the memorandum is being sent - e.g., contracting officer's representative, inspector, etc.*)

The attached invoice/voucher was submitted by the contractor for payment under the subject contract. Please review this document and provide, as appropriate, your recommendation or acceptance by endorsement below.

(*Signature of individual authorized to sign*)

Attachment (*Enter the invoice or voucher number and the amount*)

FIRST ENDORSEMENT

From: (*Enter the name and title of the individual authorized to sign this portion of the memorandum - e.g., Contracting Officer's representative, inspector, etc.*)

To: (*Enter name of the person to whom the memorandum is being sent - e.g., contracting officer, specialist/administrator, etc.*)

I have reviewed the attachment(s) and the following applies (*check one*):

(a) Cost-reimbursement contract. I recommend ___ approval ___ disapproval. The costs incurred ___ are ___ are not reasonable or allocable for the reasons indicated on the attachment.

(b) Fixed-price contract. I recommend ___ approval ___ disapproval.

(1) The supplies or services were accepted on _____ OR

(2) The supplies or services ___ are not acceptable for the reasons indicated on the attachment.

(c) Progress Payment. I recommend ___ approval ___ disapproval for the reasons indicated on the attachment.

(*Signature of individual authorized to sign*)

Attachment

SECOND ENDORSEMENT

From: *(Enter name of the Contracting Officer)*

To: *(Enter name of the Finance Officer)*

The attached Invoice/Voucher No. *(Insert number and amount)* is approved for payment in the amount of *(Insert amount)*. After this payment, the balance remaining available for payment under this contract is *(Insert amount)*. Please contact me if this balance does not agree with your payment record.

(Signature of Contracting Officer)

Attachment

CHECKLIST FOR PRIVATE SECTOR TEMPORARY PERSONNEL**PART I**

(Must be completed by the Requesting Office)

1. The services of private sector temporaries are needed for the following reason (*Note: The Office of Personnel Management regulation authorizes the use of private sector temporaries only in the short-term situations described below. Please check the situation which exists in your office or work unit*):

a. { ____ } An employee (*DO NOT insert employee's name*) currently filling the position of (*insert the title, series, and grade of the employee*)

_____ is absent from this position for a temporary period (short-term) because of a personal need including emergency, accident, illness, parental or family responsibilities, or mandatory jury service, but not including vacations or other circumstances that are not shown to be compelling in the judgment of the requesting office.

b. { ____ } I have determined that work must be carried out for a temporary period cannot be delayed because of a critical need. The critical need is:

2. We will need these services starting on _____ and ending on _____. (*Note: If the required services are for other than full-time continuing, also show the total number of days _____ and/or total number of hours _____ the services will be needed.*) Also, this need cannot be met with current employees within the time available, by the date, and for the duration of time the help is needed. (*Note: Length of time for using a private sector temporary must not exceed 120 work days in a 24-month period. If an appropriate need still exists at the end of the 120 work days, the temporary may work up to a maximum of 240 workdays provided it has been determined that using the services of the same individual for the same situation will prevent significant delay.*)

3. A full description of the needed work is as follows or is attached (*Note: Do not use the Government employee's position description since it is too general for the purpose of describing the work to be performed by the temporary*):

4. The person must have the following knowledge, skills and abilities in order to work:

5. The person may be required to use the following equipment (*List the equipment that will be used, showing the make and model of personal computer, word processor, mail sorter, etc.*)

6. If a specific personal computer program is required, show the name.

7. Describe the work environment by stating the type of setting in which the temporary

will be working (e.g., general office, front office, typing, information desk, mailroom, warehouse, etc.).

8. List any physical endurance, such as a significant amount of walking (e.g., mail clerk), bending and lifting (e.g., warehousing), standing (e.g., clerk-photocopying), etc. that the work will require.

9. List any other special conditions of the work (e.g., security clearance requirements).

10. List administrative information, such as address and location of the workplace including building and room number; the daily working hours and lunchtime; the name, address, room number, and telephone number of the person to whom the temporary should report on the first day of work. For example:

U.S. Department of Homeland Security
(Insert Component's name)
Washington, DC

Temporary Worker Should Report to: _____
in Room: _____

11. I certify that the statements under #1 through #10 are correct to the best of my knowledge, and the temporary or use of these temporary services:

- (a) _____ Will not displace a Federal employee;
- (b) _____ Is not for the work of managerial or supervisory positions;
- (c) _____ Will not be for the work of or to fill an SES employee or position;
- (d) _____ Does not circumvent the regular recruitment and hiring procedures under the civil service laws for permanent appointment in the competitive civil service;
- (e) _____ Will not circumvent controls on employment levels; and
- (f) _____ Will not be used in lieu of appointing a surplus or displaced Federal employee as required by 5 CFR Part 330, Subpart F (Agency Career Transition Assistance Plan for Displaced Employees) and Subpart G (Interagency Career Transition Assistance Plan for Displaced Employees).

(Signature)

(Title of Office Official)

(Date)

CHECKLIST FOR PRIVATE SECTOR TEMPORARY PERSONNEL**PART II**

(Must be completed by the Chief, Human Capital Personnel Officer or Component servicing Personnel official)

1. I have reviewed Part I to ensure compliance with regulatory requirements and to ensure that the information is sufficient to contract with the private sector. I certify the following:

(a) That the need ___ can ___ cannot be met through the direct appointment of temporary employees within the time available, by the date, and for the duration of time the work is needed;

(b) That there ___ are (see attachment) ___ are no qualified candidates on the applicant supply file or on the reemployment priority list; and

(c) That there ___ are (see attachment) ___ are no qualified disabled veterans with a compensable service-connected disability of 30 percent or more under 5 U.S.C. 3112, who are immediately available for temporary appointment of the duration required.

(Signature)

(Title of Chief, Human Capital Office or Component's servicing Personnel Official)

(Date)

MEMORANDUM OF UNDERSTANDING**Between
Defense Contract Audit Agency
and
Department of Homeland Security****1. PURPOSE**

This memorandum sets forth an understanding of contract audit coverage and related audit services which the Defense Contract Audit Agency (DCAA) will provide to the Department of Homeland Security (DHS) and its organizational elements (OE), hereafter referred to as “the customer”. Questions concerning provisions or implementation of this agreement will be coordinated between the Office of the Assistant Director, Operations, for DCAA and the DHS Office of the Chief Procurement Officer (OCPO). Names, phone numbers, and addresses of applicable contact points can be found in Annex I of this agreement.

2. DEFINITIONS

a. The term “abnormal travel” as used in this Memorandum of Understanding (MOU) is defined as travel which is outside the geographical area of responsibility normally serviced by a particular Field Audit Office (FAO).

b. The term “cognizant audit agency” as used in this MOU is defined as the agency with the sole responsibility, authority, or control to perform all Federal contract audits at a specific company or non-profit entity. DCAA cognizance is determined by one of the following:

(1) OMB has assigned responsibility to the Department of Defense (DoD); therefore, DCAA is the cognizant audit agency.

(2) DoD has the predominant financial interest based on contract activity; therefore, DCAA is the cognizant audit agency.

(3) The agency with the predominant financial interest and DCAA have agreed that DCAA will be the cognizant audit agency.

Once DCAA is determined to be the cognizant audit agency, the responsible audit office within DCAA is determined based on the level of audit activity and geography. If the audit activity is significant, DCAA will establish a Resident Audit Office. Otherwise, the responsible audit office is determined based on the geographical location of the contractor.

c. The term “postaward audit” as used in this MOU is defined as an audit that is performed to determine that a contractor has submitted accurate, complete, and

current cost or pricing data when negotiating a contract or other pricing action with the Government. These audits are sometimes called “defective pricing” audits.

e. The term “Contracting Official,” as used in this MOU, includes contracting officers at all DHS organizational elements, whether the warrant is issued within DHS or is a carryover from the contracting official’s legacy agency.

3. INTERAGENCY FUNDING AND BILLING RESPONSIBILITIES

a. Audit services will be provided by DCAA on a reimbursable basis. Reimbursement will be based on billable audit hours at the prevailing interagency billing rate. Abnormal travel and per diem expenses required to accomplish audits are not included in the standard hourly rate and are subject to separate billing. DCAA will obtain customer approval prior to the incurrence of abnormal travel expenses.

b. Funding will be accomplished each fiscal year in separate interagency funding documents to be executed between the Office of Assistant Director, Resources, for DCAA and the DHS organizational elements.

c. When requested by the DHS OCPO and/or a DHS organizational element, DCAA will provide its best estimate of rates and hours for use in outyear projections. These estimates will be updated on a recurring basis whenever a significant change becomes known (such as a billing rate change announced by the Department of Defense).

4. DCAA RESPONSIBILITIES

a. The criteria in the DCAA Contract Audit Manual (DCAAM 7640.1) will be used to determine the following:

(1) The locations where contract audit coverage will be maintained by DCAA.

(2) Audit cognizance.

(3) Compliance with Generally Accepted Government Auditing Standards (GAGAS). DCAA will conform to GAGAS in determining the scope of audit, including the manner and the level of effort necessary to provide complete audit coverage at a contractor location. Under GAGAS the approach to contract auditing is to audit contractor systems and pursue corrective action as necessary to provide a basis for maximum reliance and to minimize the extent of contract testing necessary. Therefore, it must be understood that contract audits include DCAA evaluations of internal controls and examinations of contractor accounting and financial management systems.

b. At contractor locations where DCAA has audit cognizance, DCAA will respond to specific requests from the customer or their designee for contract audit coverage as follows:

(1) Forward Pricing Audits. DCAA will respond to all customer requests for audit of specific price proposals. This includes audits of specific proposal elements or agreed upon procedures (e.g., rate audits only). It is understood that adequate proposal audit coverage may require the DCAA auditor at the prime contractor location to request assistance from a DCAA office at a subcontractor location. In such cases, the detail supporting the DCAA bill will show each participating DCAA office separately. Requests for audits will normally be limited to those that exceed the current dollar threshold of the applicable procurement regulations. However, in special situations, the customer may request audits of lesser amounts. Available labor and overhead information will also be provided where appropriate.

(2) Audit of Incurred Cost Claims.

(a) DCAA audits incurred cost claims by evaluating contractor systems, and uses statistical sampling techniques in order to address all auditable dollars at a contractor location for an entire Fiscal Year, or years. This approach is the most efficient method of evaluating incurred cost claims at a contractor location. DCAA does not audit incurred cost claims on a contract by contract basis, and will not audit an incurred cost claim for only part of a year. Therefore, requests for audits of selected contracts or portions of a year at a contractor location will not be accommodated. However, DCAA does take specific contract provisions into account in audit planning and performance. Therefore, the customer should make DCAA aware of specific issues to be covered in the audit.

(b) DCAA will audit incurred cost claims at all contractor locations where DCAA is cognizant and auditable dollars have been identified. DCAA bills these types of audits based on the relationship of an agency's cost audited to the total cost audited. DCAA will provide the customer or their designee with an incurred cost audit report at the conclusion of the audit. Estimates for billable hours for incurred cost audits (identified as DCAA self-initiated effort) will be separately identified in a letter to the agency notifying them of the DCAA estimate. It must be understood that once the self-initiated budget is established, it cannot be reduced by the customer to cover unplanned demand effort. If the customer desires an audit of an incurred cost claim at a contractor where DCAA is not cognizant, the customer will issue a request for audit in accordance with paragraph 5a of this agreement. DCAA will process such requests in accordance with paragraph 4c of this agreement. When DCAA agrees to process such requests, the cost of these audits will be charged against the budget for demand audits identified in the DCAA estimate.

(3) Other Incurred Cost Audits.

(a) Other incurred cost audits are defined as audits of incurred cost not related to the contractor's annual incurred cost claim. Such audits would include, but are not limited to, the following types of audits: Final Price Submissions, Provisional Billing Rate Audits, Terminations, Equitable Adjustment Claims, Hardship Claims, Escalation Claims, Progress Payments, Financial Capability Audits, and Other Special Audits necessary to protect the Government's interests. If DCAA believes that

one of the above type audits is necessary based on conditions or information coming to its attention, the customer will be notified.

(b) DCAA will respond to all customer requests for other incurred cost audits at locations where DCAA is cognizant.

(4) Cost Reimbursement Voucher Processing. DCAA will process vouchers in accordance with Annex II of this agreement.

(5) Contract Closeout. Subject to the status of applicable incurred cost audits, DCAA will issue a contract audit closing statement upon request. DCAA bills for the direct effort required to reconcile the contractor's final claim to amounts previously audited and prepares a closing statement. If there are years for which the contract has not been audited due to the customer declination to issue audit requests, DCAA may choose to conduct the additional work necessary to perform the closeout effort, or may decline the request.

(6) Postaward Audits. DCAA will perform postaward audits for all contracts identified by the customer in accordance with paragraph 5d of this agreement. In addition, DCAA will provide the DHS OCPO with a recommended list of contracts for postaward audits by July 31 of each year.

(7) Financial Advisory Services. Includes full and part-time non-audit services such as source selection board assistance, commercial pricing, and market research.

(8) Other. Includes investigative support, negotiation assistance, and contracts appeals. A complete listing of reimbursable DCAA activities is available upon request.

c. At a contractor location where DCAA is requested to perform an audit, but has never had an audit presence, or has not audited at that contractor location for the past several years, DCAA will try to accommodate the customer's audit request. Such decisions are made on a case-by-case basis when there is sufficient information to show that it would be in the best interest of the Government for DCAA to do the audit.

d. DCAA will provide estimates of billable time and starting and completion dates for the audit upon request. These estimates are only to be used for planning purposes; actual hours and timeframes incurred may differ. DCAA cannot agree to perform an individual audit within a preapproved budget but will make every effort to stay within the budget. DCAA will obtain customer approval prior to incurring expenses in excess of the preapproved budget, and will provide explanations of significant differences between estimated time and actual time billed on an assignment. After receipt of a request from the customer, the assignment will be set up and completed in accordance with established procedures.

e. DCAA field offices will solicit input from the customer or their designee during the budget formulation process for succeeding year audits, to assure that customer concerns are addressed in planning. The budget process normally takes place in August of each year.

f. Headquarters, DCAA, will promptly transmit to the DHS Inspector General reports of suspected contractor fraud or other wrongdoing whether disclosed by outside sources or detected through performance of the contract audit function. If the DHS OIG initiates an investigation, and audit support is requested by that agency through the Department of Justice, the benefiting Government agencies will be billed their pro rata share of the audit support.

g. DCAA field offices will promptly send a copy of the audit report to whomever is designated in the request. In addition, copies of the following types of audit reports will be provided to the OCPO Director of Acquisition Oversight:

- (1) Contractor Internal Control System Reviews (accounting system reviews, estimating system reviews, compensation reviews, etc.);
- (2) Audits of Compliance with Cost Accounting Standards;
- (3) Audits of Cost Impact of Cost Accounting Standards (changes in cost accounting practice and/or noncompliances); and
- (4) Defective Pricing Audits (Reviews for Compliance with the Truth in Negotiation Act)

h. Upon request by DHS OCPO, DHS Inspector General, or a DHS organizational component, DCAA will make available audit working papers relating to a customer's contract. The requestor will review such work papers at the applicable DCAA office and can make copies of any work papers deemed appropriate. DCAA will retain the original work papers in DCAA files.

i. Third-party requests (e.g., media, FOIA, non-participating agencies, Congress, etc.) received by DCAA for access to resultant audit reports and underlying work papers will be coordinated with the DHS OCPO and the DHS affected organizational component(s).

5. CUSTOMER RESPONSIBILITIES

a. DHS organizational elements will address requests for audits directly to the cognizant DCAA field office. Initial contacts may be made by telephone with a written confirmation to follow. At a minimum, the following items will either be included with the request or addressed in the request:

- (1) A copy of the contractor's submission to be audited should be submitted along with the audit request. This submission should be prepared in

accordance with Federal Acquisition Regulations (FAR) and/or other applicable agency requirements. DCAA will work with the customer, if requested, to assist in defining an adequate submission.

(2) Billing reference numbers, if required by the customer, will be in the audit request. If no reference numbers are in the request, DCAA will assume they are not required.

(3) Audit report distribution requirements will be in each audit request; otherwise, distribution will be handled in accordance with paragraph 4g.

b. Contracts to be covered by audits shall include an access to records clause and a clause incorporating the cost principles set out in the FAR or other applicable agency guidelines.

c. The customer agrees to pay for incurred cost audit coverage at all locations where DCAA is the cognizant auditor and customer contract costs are part of the total auditable cost.

d. By August 15, prior to the beginning of the fiscal year, the customer will provide the Office of Assistant Director, Operations, DCAA, with a listing of all contract pricing actions for which the customer wants DCAA to perform a postaward audit in the next Fiscal Year. The listing will provide the contract number (and modification number if appropriate), contract value, type of contract, and name and location of the contractor. This listing will constitute specific authority by the customer for DCAA to perform, and bill for, postaward audits.

e. The DHS OCPO is responsible for follow-up on the contracting officer's implementation of DCAA audit recommendations, as required by OMB Circular A-50. As part of the audit-follow up process, for each audit report that is received, the Contracting Officer shall provide the cognizant DCAA office a copy of the price negotiation memorandum promptly after contract award. This memorandum should clearly address resolution of the audit findings. If the contractor for which the audit was provided is not the awardee, the contracting officer shall notify DCAA in writing of this fact. The price negotiation memorandum and/or the notification serves as the basis for DCAA disposition of the audit findings. Within 30 days after the end of each quarter (quarters ending March 31, June 30, September 30, and December 31), DCAA shall provide the DHS OCPO a listing of all open reports of audits conducted at the request of DHS (open reports are those audit reports for which DCAA has not dispositioned the findings).

f. The customer is responsible for review of program results to determine if the goals and objectives of organizations, programs, activities, or functions established by laws or regulations are attained, as required by applicable General Accounting Office (GAO) audit standards

g. When the customer becomes aware of any internal or external reviews, including reviews by the customer, GAO, investigative agencies, etc., which may impact on the audit services furnished by DCAA, the customer will notify and will coordinate in advance with the local DCAA office affected by the review. If several DCAA offices will be affected by the review, the customer can coordinate in advance with the Office of the Assistant Director, Operations, DCAA. In this regard, to the extent the customer has control, appropriate sections of draft reports which result from such reviews will be provided to permit comment on those matters involving DCAA.

h. The customer will use only DCAA audit services to perform all contract audit functions at locations where DCAA is the cognizant auditor to preclude dual or split audit cognizance, unless DCAA acknowledges that it cannot provide the assistance required because: it concerns matters beyond the proper role of DCAA, it would result in undue delays or inefficiencies in the accomplishment of customer objectives, or it is not in the best interest of the Government.

6. DURATION

This MOU may be terminated by any party at any time by issuance of a written notice 60 days in advance of the intended termination date.

7. ANNEXES

a. The following Annexes are enclosed and considered an integral part of this agreement:

ANNEX I	CUSTOMER CONTACT POINTS FOR MEMORANDUM OF UNDERSTANDING
ANNEX II	COST REIMBURSEMENT VOUCHER PROCESSING PROCEDURES

b. Further Annexes to this MOU may be negotiated by the responsible agencies' executives and will be treated as an integral part of this agreement.

DEPARTMENT OF HOMELAND SECURITY

SIGNED
Thomas W. Essig
Chief Procurement Officer

03/26/2008
Date

DEFENSE CONTRACT AUDIT AGENCY (SERVICE PROVIDER)

SIGNED
Joseph J. Garcia
Assistant Director, Operations

03/27/2008
Date

ANNEX I

**CUSTOMER CONTACT POINTS FOR MEMORANDUM OF
UNDERSTANDING**

**Between
Defense Contract Audit Agency
and
Department of Homeland Security**

1. PURPOSE

This annex identifies the names, titles, addresses, and phone numbers of the appropriate contact points for DCAA and the DHS OCPO as discussed in the Memorandum of Understanding (MOU). It is recognized that individuals and organizations change periodically. It is intended that this annex be updated as necessary without changing the content of the MOU. Updates to this annex will be coordinated between the Office of the Assistant Director, Operations, for DCAA, and the DHS OCPO.

2. CUSTOMER CONTACT POINTS

The following individual should be contacted for questions concerning provisions or implementation of the MOU:

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

Washington, DC 20528
(202) 447-5300

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

3. DCAA CONTACT POINTS

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

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

Patty Williams
Program Manager, Workload Analysis Div.

(703) 767-2256

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

4. PROCEDURES REGARDING REQUESTS FOR AUDIT SERVICES

a. Annual Financial Agreement. Each DHS organizational element that anticipates utilizing contract audit services from DCAA shall complete an Annual Financial Agreement with DCAA. DCAA will provide the annual financial agreements for each of the organizational elements. The agreement shall define the amount of annual effort for a fiscal year period between each organizational element and DCAA. The original annual financial agreements should be returned to DCAA prior to September 30.

b. Funding Documents. Each organizational element shall submit an approved funding document prior to the start of the fiscal year audit effort to DCAA. The organizational element shall use funding documents, Inter-agency Agreements and Inter-Agency Agreement Orders to request audit services.

c. Audit Requests. The DHS organizational element shall send the official audit request to the cognizant DCAA branch offices. Audit request acknowledgement letters shall be sent to the organizational element identifying requested audit services.

d. Audit Reports. Completed DCAA audit reports will be sent to the requesting organizational element. In addition, copies of the types of audit reports listed in paragraph 4g of the MOU will be provided to the OCPO Director of Acquisition Oversight:

5. PROBLEM RESOLUTION PROCEDURES REGARDING AUDIT SERVICES.

In the event the customer is not satisfied with the content of a DCAA audit report, generally, the quickest method of resolving this is for the customer to discuss their concerns with the Field Audit Office (FAO) Manager of the DCAA office providing the service. If the parties do not receive satisfactory resolution to their concerns at this level, the parties should contact the Regional Audit Manager responsible for the applicable field office. If a satisfactory resolution is still not received, or if the parties want to discuss a problem with someone at DCAA Headquarters, they should contract the Workload Analysis Division (OWD), Operations, DCAA Headquarters, to voice their concerns. This division will identify the appropriate individuals required to achieve resolution and advise senior level agency management of significant agency problems.

DEPARTMENT OF HOMELAND SECURITY

SIGNED
Thomas W. Essig
Chief Procurement Officer

03/26/2008
Date

DEFENSE CONTRACT AUDIT AGENCY (SERVICE PROVIDER)

SIGNED
Joseph J. Garcia
Assistant Director, Operations

03/27/2008
Date

ANNEX II**COST REIMBURSEMENT VOUCHER PROCESSING PROCEDURES**

**Between
Defense Contract Audit Agency
and
Department of Homeland Security**

1. PURPOSE

This annex sets forth the procedures by which the Defense Contract Audit Agency (DCAA) will provide cost reimbursement voucher processing to the Department of Homeland Security.

2. REQUIREMENTS

DCAA must perform and bill for incurred cost audits at the contractor location in accordance with paragraph 4b(2) of the MOU in order to be involved in processing vouchers.

3. PROCEDURES

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

U.S. Department of Homeland Security

U.S. Department of Defense
Defense Contract Audit
Agency

SIGNED

Thomas W. Essig
Chief Procurement Officer
Operations

SIGNED

NAME Joseph J. Garcia
TITLE Assistant Director,

03/26/2008 DATE

03/27/2008 DATE

**Memorandum of Agreement (MOA) Between
The Defense Contract Management Agency (DCMA) and the
Department Of Homeland Security (DHS)
for Reimbursement for Contract Administration
Services (CAS) Provided in Support of DHS Contracts**

Agreement Number: DCMA-DHS-03-0001, Amendment # 02

1. Purpose

The purpose of this amendment is to:

(a) Update Appendix 1, DHS Components and DCMA Points of Contact, and Appendix 2, Billing Procedures, which contained outdated information.

(b) Establish a new appendix to this agreement to incorporate a statement of work for performance of Earned Value Management (EVM) contract administration services. Appendix 3, Administration of Earned Value Management Requirements, prescribes the EVM contract administration services that DCMA will perform when requested by DHS contracting officers.

(c) Add a new paragraph to cover communications regarding oversight audits on DHS contracts administered by DCMA, and another paragraph to address obtaining contract audit services from the Defense Contract Audit Agency.

2. AUTHORITY

This agreement is executed according to the Economy Act, 31 U.S.C. 1535 and 1536, as implemented by the Federal Acquisition Regulation (FAR) Subpart 17.5, FAR Part 42, and the Department of Defense Instruction (DoDI) 4000.19, Interservice and Intragovernmental Support.

3. SCOPE OF AMENDMENT

(a) Wherever within this agreement the term “organizational element” or “OE” appears, it is changed to “Component.”

(b) Appendices 1 and 2 as changed by Amendment 1 are replaced with the attached Appendices 1 and 2. Amendment 1 is hereby rescinded.

(c) Appendix 3, Administration of Earned Value Management Requirements, is added to this MOA. The statement of work in Appendix 3 may be cited by DHS contracting officers when issuing LODs or Interagency Agreements for performance of EVM contract administration services.

(d) Paragraph (3), SCOPE, in the basic MOA executed on April 25, 2003, is replaced with the following paragraph:

“(3) SCOPE

This overarching MOA establishes a communication and support network between the listed parties for DCMA to provide CAS for the DHS. By mutual agreement, DCMA will provide delegated contract administration services according to FAR Part 42, Subpart 42.302, Contract Administration Functions, FAR Part 34, Subpart 34.2, Earned Value Management System, and Appendix 3 to this MOA, Earned Value Management Contract Administration Services, on existing and future contracts, Other Transactions, or grants falling under the purview of the DHS. The support provided by DCMA will be further delineated under separate Letters of Delegation (LODs) or Inter Agency Agreements (IAAs) between the DHS Components and DCMA. The points of contact for DHS Components and for DCMA are identified in Appendix 1.”

(e) Section (4), PROCEDURAL ARRANGEMENTS, in the basic MOA executed on April 25, 2003 is replaced with the following Section (4).

“4. PROCEDURAL ARRANGEMENTS

(a) A LOD signed by the DHS Component contracting officer shall be used to specifically request contract administration services, as defined under FAR Subpart 42.2, or as described on Appendix 3 to this MOA, from a particular DCMA CMO for administration.

(b) The separate LODs between individual DHS Components and DCMA establishing CAS shall include orders in the form typically used by the particular DHS Component for interdepartmental funding transfers, i.e., Military Interdepartmental Purchase Request, IAAs, etc. These orders shall comply with FAR 17.504, Ordering Procedures, and will be signed by a DHS Component contracting officer.

(c) DHS Components shall execute, in writing, the determination required by FAR Subpart 17.5, as supplemented by the DHS Component. This determination shall remain part of the requesting Component’s contract file.

(d) Each order shall provide a specific term of performance, the maximum number of hours to be expended during that term, and a maximum funding limitation applicable to that term. Each order shall reference the DCMA/DHS Component LOD number and also identify the DHS Component accounting data for resulting billings. As required by FAR 17.504, a funds citation shall be placed on each order. The funds cited shall equal the maximum funding limitation cited on the order. Each order shall contain the requesting Component’s finance office and the POC for that office, including the mailing address where reimbursement billings should be sent for payment.

(e) Orders issued under this agreement shall be forwarded directly to the appropriate DCMA CMO in accordance with the Federal Directory of Contract

Administration Services (CAS) Components with a copy to the DCMA Headquarters POC as listed in Appendix 1. The web address for the Federal Directory of CAS Components is <http://home.dcmamil/CASBOOK/casbook.htm>. If multiple CMOs are covered under one LOD, orders pertaining to that LOD shall be submitted to DCMA Headquarters for disposition. The DCMA CMO will notify the originating Component that the order has been accepted.

(f) DHS Components shall advise DCMA, in a timely manner, of anticipated changes in support requirements. DCMA shall advise DHS Components, in a timely manner, of changes in DCMA capability or resources which may have a significant impact on the support to be provided to DHS Components. If a proposed LOD requires a substantial increase in Full Time Equivalents or Permanent Change of Station costs, the DHS Component shall coordinate with DCMA Headquarters prior to issuing the LOD.

(g) DCMA will promptly advise the DHS program office of any audit, survey or investigation by the Government Accountability Office or a departmental or agency inspector general, that will include in its scope a DHS contract or program for which DCMA is performing CAS.

(h) When contract audit services are required in conjunction with contract administration services ordered under this MOA, the audit services will be obtained in accordance with the Memorandum of Understanding among the Defense Contract Audit Agency, the Department of Homeland Security, and the DHS Office of Inspector General.”

(f) Section 5, BASIS FOR REIMBURSEMENT, in the basic MOA is revised to indicate that for FY2007 the DCMA CAS hourly rate is \$98.40.

(g) DHS and DCMA intend to further amend this MOA by June 1, 2007 to:

(1) Incorporate a protocol for the delegation of EVMS compliance and surveillance services to DCMA;

(2) Establish a period of commitment by DHS, during which DHS contracts requiring EVMS compliance and surveillance that meet parameters prescribed in the protocol will be delegated to DCMA;

(3) Incorporate an estimate of the minimum amount of EVM CAS funding that will be ordered under this MOA during the period of commitment.

(h) All other terms and conditions of Agreement Number DCMA-DHS-03-0001 remain unchanged.

Attachments

APPROVAL/DATE:

<u>SIGNED</u>	<u>17 April 2007</u>
Elaine C. Duke	Date
Chief Procurement Officer	
Department of Homeland Security	

<u>SIGNED</u>	<u>12 April 2007</u>
Rebecca L. Davies, Executive Director	Date
Contract Operations and Customer Relations	
Defense Contract Management Agency	

Appendices

1. DHS Component and DCMA Points of Contact
2. Billing Procedures
3. Earned Value Management

APPENDIX 1

DHS COMPONENTS & DCMA POINTS OF CONTACT

DHS Headquarters, Office of Chief Procurement Officer

Mr. Timothy J. Frank
Department of Homeland Security
Office of the Chief Procurement Officer
245 Murray Lane, SW, Building 41
Washington D.C. 20528
(202) 447-5252
Tim.Frank@dhs.gov

DHS Headquarters, Office of Procurement Operations

Ms. Kathleen S. Farrell
Department of Homeland Security
Office of Procurement Operations
245 Murray Lane, SW, Building 41
Washington, D.C. 20528
(202) 447-5576
Kathy.Farrell@dhs.gov

Coast Guard

Ms. Desyria Short
U.S. Coast Guard Headquarters
Acquisition Policy and Oversight (G-APO)
Policy and E-Business
2100 2nd St SW
Washington DC 20593
Phone: (202) 372-3685 Fax: (202) 372-3949
Email: Desyria.a.short@uscg.dhs.gov

Secret Service

Ms. Kelly Curtin
Secret Service Communications Center (PRO)
P. O. Box 6500
Springfield, VA 22150
(202) 406-6809
Kelly.Curtin@ussd.dhs.gov

U. S. Customs and Border Protection

Ms. Sandra Jackson
U.S. Customs and Border Protection
Procurement Directorate, Procurement Programs Division
1300 Pennsylvania Ave NW, Suite 1310
Washington, DC 20229
Phone: (202) 344-2592 Fax: (202) 344-1190
Email: Sandra.jackson@dhs.gov

Federal Law Enforcement Training Center

Ms. Beverly Nesmith
FLETC
PRO, Building 93
1131 Chapel Crossing Road
Glynco, GA 31524
Phone: (912) 267-2243
Email: Beverly.nesmith@dhs.gov

Immigration and Customs Enforcement

Mr. Thomas Sides
Immigration and Customs Enforcement
425 Eye Street, NW, Room 2208
Washington, DC 20536
Phone: (202) 514-4441 Fax: (202) 305-3038
Email: thomas.sides@dhs.gov

Transportation Security Administration (TSA)

Ms. Deb Becher
TSA Headquarters, West Tower, Room W2-208S (TSA-25)
700 South 12th Street
Arlington, VA 22202
Phone: (571) 227-3060 Fax: (571) 227-3219
Email: deb.becher@dhs.gov

Federal Emergency Management Agency

Ms. Joyce Ard
Federal Emergency Management Agency
Patriot Plaza Room 203
500 C Street, SW
Washington, DC 20472
Phone: (202) 646-3213, Fax: (202) 646-4348
Email: joyce.ard@dhs.gov

Defense Contract Management Agency

Headquarters POC:

Mr. Robert Hunter
Defense Contract Management Agency
6350 Walker Lane
Alexandria, VA 22310
Phone: (703) 428-0456
Email: Bob.Hunter@dcma.mil

Financial Program Analyst:

Ms. Val Brown
Defense Contract Management Agency
6350 Walker Lane
Alexandria, VA 22310
Phone: (703) 428-1330
Email: Val.Brown@dcma.mil

APPENDIX 2

BILLING PROCEDURES

a. Under the provisions of 31 CFR 208, and The Debt Collection Improvement Act of 1996, federal payments are to be made electronically through the Intragovernmental Payment and Collection (IPAC) System. If the DHS Component/agency has not established procedures for IPAC transactions with DFAS Columbus, please contact Ms. Vicki Cooley, Financial Specialist, DFAS-ADFL at (614) 693-1122 or e-mail her at the following address: Vicki.Cooley@dfas.mil. In order to prepare an IPAC Trading Partnership Agreement with DFAS Columbus, provide the following information: DHS Component /Agency name; Component /Agency location code (ALC); name/title/telephone number of the authorized signer; and name/title/telephone number and fax number of the billing point of contact.

b. Until such time as IPAC procedures have been established between the Department of Homeland Security and DFAS-Columbus Center (DCMA's accounting service provider), mail check payment(s) within 30 days of the date of the invoice to:

DFAS-Columbus Center
DFAS-CO-FPDD
P.O. Box 182267
Columbus, OH 43218-2267

c. Include a copy of the request for payment (SF 1080) with the check. In order for DFAS to post the payment properly, the check must reference the specific DCMA bill number (from SF 1080) being paid and include DCMA's appropriation line in the memo line: e.g., 9770100 7203 001 033181 YSB701. Failure to provide this information on the check could cause undue delays or errors in posting to the proper account.

d. In accordance with the Economy Act (31 U.S.C.1535) and federal financial management regulations, bills rendered shall not be subject to audit in advance of payment.

e. Billing statements shall contain, at a minimum: (1) the DHS Component for which the services were provided; (2) the requesting Component's IAO number; (3) the period of performance covered by the bill; (4) the number of hours billed; (5) the hourly rate billed; (6) an explanation of any other billed costs such as "abnormal travel"; (7) the contract number; and (8) the name of the contractor.

f. In the event that a bill is unclear or in dispute, contact the cognizant billing office. If the matter relates to DFAS provided billing support or collections, contact the DFAS Columbus Center at DFAS-ADFOJ, Attention: Kevin McCune, P.O. Box 369018, Columbus, OH 43236-9018. Mr. McCune can be reached at (614) 693-7526 or email: kevin.mccune@dfas.mil. To expedite a resolution, please provide a full and complete explanation of the matter. If the matter still remains unresolved, return the contested bill to DCMA Headquarters, Attention: DCMA-FBFL, 6350 Walker Lane, Suite 300, Alexandria, VA 22310-3241. Provide a complete explanation of the reasons for contesting the bill.

g. DEPARTMENT OF HOMELAND SECURITY BILLING ADDRESSES

The following individuals should be contacted for billing questions on the MOA:

DHS Headquarters, Office of the Secretary, and Directorate of Management

Mr. Christopher Fredericks
Financial Operations Manager, Departmental Operations
US Department of Homeland Security
Washington, DC 20528-0200
(202) 447-5168
Facsimile: (202) 447-5891
Chris.fredericks@dhs.gov
Invoice inquiries: DOB-Invoice@dhs.gov

Domestic Nuclear Detection Office

Mr. Gerald Backen
Deputy Chief of Staff, Chief Financial Officer
Domestic Nuclear Detection Office
Washington, DC 20005
(202) 254-7020
Gerald.Backen@dhs.gov

Preparedness Directorate

Mr. Ajay Pillai
Budget Analyst
Preparedness Directorate
US Department of Homeland Security
Washington, DC 20528
(202) 447-5636
Facsimile: (202) 447-5626
Ajay.Pillai@dhs.gov

US-VISIT

Ms. Ginger Wilson
US-VISIT
Department of Homeland Security
1616 N. Ft. Meyer Dr.
Arlington, VA 22209
(202) 298-5207
Email: Ginger.Wilson@dhs.gov

Science and Technology Directorate

Ms. Deborah DeVault
R&D Business Specialist
Strategy, Policy and Budget office
Science and Technology Directorate
Department of Homeland Security
1120 Vermont Ave., Room 5-115
(202) 254-5685
(202) 254-6163
Email: Deborah.DeVault@dhs.gov
Invoicing address: ST.invoicing@dhs.gov

US Coast Guard

Mr. Stephen H. Johnson
USCG Finance Center
1430A Kristina Way
Chesapeake, VA 23326
Phone: (757) 523-6764
Email: Stephen.H.Johnson@uscg.mil

U. S. Customs and Border Protection

Mr. Mark Voll
U. S. Customs and Border Protection
National Finance Center
Commercial Accounts Section
P.O. Box 68908
Indianapolis, IN 46278
Phone: (317) 614-4538 Fax: (317) 298-1038
Email: mark.voll@dhs.gov

Federal Emergency Management Agency (FEMA)

Ms. Joyce Ard
Federal Emergency Management Agency
Patriot Plaza Room 203
500 C Street, SW
Washington, DC 20472
Phone: (202) 646-3213, Fax: (202) 646-4348
Email: joyce.ard@dhs.gov

Federal Law Enforcement Training Center (FLETC)

Ms Julie Martin
Finance Division
Bldg 93
Glynco, GA 31524
Phone: (912) 267-2400
Email: Julie.martin@dhs.gov

Immigration and Customs Enforcement

ICE, Dallas Finance Center
P.O. Box 561547
Dallas, Texas 75356-1547

Routine inquiries: Customer Service, 214-915-6016

Non-routine inquiries about vendor invoices:

Mr. David Yonce
Branch Chief for Commercial Payments
Phone: 214-915-6176
David.Yonce@dhs.gov

Non-routine inquiries about IPAC transactions:

Mr. Marc Marin
Branch Chief for Financial Services
Phone: 214-915-6113
Marc.Marin@dhs.gov

Secret Service

Ms. Mary Arcie
Secret Service Communications Center
Financial Management Division
P.O. Box 6500
Springfield, VA 22150

Transportation Security Administration (TSA)

Ms. Deb Becher
TSA Headquarters, West Tower, Room W2-208S (TSA-25)
700 South 12th Street
Arlington, VA 22202
Phone: (571) 227-3060 Fax: (571) 227-3219
Email: deb.becher@dhs.gov

APPENDIX 3

EARNED VALUE MANAGEMENT (EVM) CONTRACT MANAGEMENT SERVICES

I. Background

The Office of Management and Budget (OMB) OMB Circular A-11 requires the use of an Earned Value Management Systems (EVMS) that meet the American National Standards Institute (ANSI)/Electronics Industries Alliance (EIA) Standard – 748 - A for both Government and contractors (referred to as the EVMS ANSI Standard). Further, the Department of Homeland Security (DHS) requires, through the *Homeland Security Acquisition Manual* (HSAM) and the *DHS Earned Value Management Guidance*, that major investment programs, major systems, and their associated contracts use Earned Value Management (EVM) as a tool for effective monitoring and program management. DHS recognizes that the Department of Defense (DOD) has designated the Defense Contract Management Agency (DCMA) as the Executive Agency for EVM, and that DCMA has the knowledge and expertise to support DHS with EVM services.

II. Purpose

The purpose of this Appendix is to provide a Statement of Work (SOW) for obtaining DCMA EVM services related to: 1) initial EVMS compliance reviews and acceptance determinations, 2) surveillance reviews of ongoing compliance with the EVMS ANSI Standard, 3) review for cause evaluations, and 4) subject matter expertise. These services will help to ensure that contractors' EVMS provide accurate information to enable Program Managers, Contracting Officers, Component leadership, and DHS Headquarters to manage their investment programs effectively.

III. General Procedures for Reviews

General procedures for EVM verification reviews to ensure initial and ongoing compliance with the EVMS ANSI Standard include:

1. Assess for initial acceptance the contractor's EVMS compliance with the EVMS ANSI Standard, in accordance with the *DHS Earned Value Management Guidance* and the *DOD Earned Value Management Implementation Guide* (DOD EVMIG); and make the acceptance determination of whether the contractor has an EVMS ANSI compliant system or not.
2. Conduct ongoing surveillance to evaluate changes to a contractor's accepted EVMS to ensure adherence with the EVMS ANSI Standard. Test system application through interviews with Control Account Manager (CAM), Program Manager, and project controls personnel and perform data traces on DHS contracts and subcontracts.
3. Identify corrective actions when the contractor's system either does not meet contractual requirements, the application of the system is inconsistent with the EVMS ANSI Standard; or the system is not providing realistic performance data. Issue a Corrective Action Request (CAR) in these instances, to include a severity level rating of 1 through 4, summarized below:
 - a. CAR Level 1:
 - i. Written request that occurs when a contractual non-compliance requires no special management attention to correct. The CAR may be directed to working level personnel, and documented and resolved at that level.
 - ii. Corrective actions need to be reported by the contractor to the Program Manager, and tracked with estimated closure dates.
 - b. CAR Level 2:
 - i. Written request that occurs for corrective action for contractual non-compliances that are systemic in nature and could adversely affect cost, schedule, or performance if not corrected. Level 2 CAR should be directed to the contractor's management level

- responsible for the process, with a copy to the Program Manager and the Component Contracting Officer.
- ii. A formal CAR corrective action plan must be submitted from the contractor for concurrence from the Program Manager, with acceptance granted by DCMA to resolve identified deficiencies. DCMA and the Program Manager would work together in overseeing the contractor's adherence to the plan.
- c. CAR Level 3:
- i. Written request that calls attention to serious contractual non-compliance, and recommends remedies such as reductions of progress payments, cost allowances, cure notices, show cause letters, or business management systems disapprovals.
 - ii. A formal CAR corrective action plan must be submitted from the contractor for concurrence from the Program Manager, with acceptance granted by DCMA to resolve identified deficiencies. DCMA and the Program Manager would work together in overseeing the contractor's adherence to the plan.
 - iii. The CAR should be addressed to the contractor's top level management.
 - iv. Because of the seriousness of the Level 3 CAR, copies will be provided to the DHS Executive Agent for EVM and CPO, along with the Program Manager and the Component Contracting Officer. All parties listed above will be notified before the Level 3 CAR is written.
 - v. Closure of the Level 3 CAR, and letters notifying the contractor of the closure action should be sent to all those addressed/copied in the original CAR.
- d. CAR Level 4:
- i. Written request documenting contractual non-compliance and recommends remedies such as suspension of progress payments or product acceptance activities, termination for default, and suspension or debarment, in accordance with applicable Federal Acquisition Regulation (FAR) policies and procedures.
 - ii. A formal CAR corrective action plan must be submitted from the contractor for concurrence from the Program Manager, with acceptance granted by DCMA to resolve identified deficiencies. DCMA and the Program Manager would work together in overseeing the contractor's adherence to the plan.
 - iii. Level 4 should be addressed to the contractor's top level management. In addition the Component Contracting Officer and Contracting Officer's supervisor should sign the CAR.
 - iv. Because of the seriousness of the Level 4 CAR, copies will be provided to the DHS Executive Agent for EVM and CPO, along with the Program Manager and the Component Contracting Officer. All parties listed above will be notified before the Level 4 CAR is written.
 - v. Closure of the Level 4 CAR, and letters notifying the contractor of the closure action should be sent to all those addressed/copied in the original CAR.
- 4. Track and report on the resolution of CARs as part of ongoing surveillance through the corrective action plan developed between the contractor and the Program Manager.
 - 5. Conduct a Review for Cause when appropriate. This would occur when systemic problems with the system are observed that then warrant a full review. A Review for Cause may also be initiated by requests from leadership.
 - 6. Inform the DHS Executive Agent for EVM of the status of work ordered under this MOA.

IV. SCOPE AND APPLICABILITY

This Appendix applies to DHS contracts with an EVMS requirement, including subcontracted efforts, for which the DHS Component Contracting Officer has issued a letter of delegation or **inter-agency** agreement, in accordance with paragraphs 3. *Scope*, and 4. *Procedural Arrangements*, of the basic MOA, as amended.

V. ROLES AND RESPONSIBILITIES

DHS Office of the Chief Procurement Officer (DHS CPO). DHS CPO will:

1. Serve as the point of contact for any MOA-level issues.
2. Review and act upon, in conjunction with the Program Manager, Component Contracting Officer, and DHS Executive Agent for EVM, CARs level 3 and 4 as described in item 4 of Section III: General Procedures for Reviews.

DHS Executive Agent for EVM. DHS Executive Agent for EVM will:

1. Provide DHS EVMS regulations, policy, and guidance, as appropriate.
2. Provide consultation and assistance on EVMS issues as necessary.
3. Resolve technical issues that may arise between DCMA and DHS Investment Program Managers.
4. Review and act upon, in conjunction with the Program Manager, Component Contracting Officer, and as appropriate the DHS CPO, compliance acceptance reports, ongoing surveillance reports and recommendations, and CARs level 3 and 4 as described in item 4 of section III: General Procedures for Reviews.

DHS Component Contracting Officer. DHS Component Contracting Officer will:

1. Issue Letters of Delegation (LOD) and Inter-Agency Agreements (IAA) to order EVMS services in accordance with the procedures in paragraph 4., *Procedural Arrangements*, of the basic MOA,
2. Administer the LODs and IAAs.
3. Review and act upon, in conjunction with the Program Manager, and as appropriate the DHS Executive Agent for EVM and CPO, compliance acceptance reports, ongoing surveillance reports and recommendations, and CARs level 1 – 4 as described in item 4 of section III: General Procedures for Reviews.
4. Provide documentation to the DHS Executive Agent for EVM regarding letters of agreement or other documentation that recognize that contractors have already accepted EVMS by another Cognizant Federal Agency (CFA).
5. Consult with the DHS Executive Agent for EVM prior to issuing any correspondence regarding EVMS system acceptance for those instances where contractors claim their systems have been accepted by another CFA.

DHS Component Investment Program Manager. DHS Component Investment Program Manager will:

1. Ensure that the contracting package submitted to the Contracting Officer includes the EVMS reporting requirements that are required by DHS policy.
2. Provide funding for desired EVM services requested from DCMA.
3. Develop a project plan in conjunction with DCMA to implement the EVMS review(s).
4. Provide background documents needed by DCMA to carry out their surveillance tasking.
5. Provide access to information and locations needed by DCMA to conduct initial compliance and ongoing surveillance reviews.
6. Provide personnel to participate in reviews as part of a Joint Surveillance Team with DCMA.
7. Review and act upon, in conjunction with the Component Contracting Officer, and as appropriate the DHS Executive Agent for EVM and CPO, compliance acceptance reports, ongoing surveillance reports and recommendations, and CARs level 1-4 as described in item 4 of section III: General Procedures for Reviews.

Defense Contract Management Agency (DCMA). The Defense Contract Management Agency will:

General Services

1. Provide a single focal point in matters relating to EVM services described in this SOW.

Initial EVMS Compliance Reviews and Acceptance Determination

1. Conduct the Preliminary Assessment Visit (PAV) to establish expectations and timelines for the initial compliance review.
2. Assess for initial acceptance the contractor's EVMS compliance with the EVMS ANSI Standard, in accordance with the *DHS Earned Value Management Guidance* and the *DOD Earned Value Management Implementation Guide* (DOD EVMIG).
3. Provide the appropriate parties as described in this SOW with documentation supporting its recommendation of acceptance of the contractor's EVMS as being compliant with EVMS ANSI Standard. Documentation supporting the recommendation of acceptance may be a letter, report, or other document, such as a Letter of Agreement signed by both the government and the contractor.
4. Provide adjudication of findings to resolve issues identified and decisions made from the initial compliance review and acceptance determination.

Surveillance Reviews of Ongoing Compliance with the EVMS ANSI Standard

1. Perform ongoing surveillance of contractors EVMS to ensure adherence to the EVMS ANSI Standard.
2. Document how contractor's EVMS processes differ from the EVMS ANSI Standard, and identify the possible impact (positive and negative) to the cost, schedule, and technical performance of the contract through CARs.
3. Evaluate and monitor the contractor's CAR plans to resolve problems.
4. Employ surveillance techniques that minimize disruption to the contractor's workforce and duplication of efforts performed by other government agencies.
5. Provide adjudication of findings to resolve issues identified and decisions made as a result of ongoing surveillance activities.

Review for Cause

1. Conduct a review for cause to determine if a contractor with an accepted EVMS should have the acceptance revoked. This involves a full review of contractor compliance with all 32 guidelines of the EVMS ANSI Standard.
2. Provide DHS with documentation supporting its recommendation for the acceptance determination (i.e., continue acceptance or revoke acceptance).
3. Provide adjudication of findings to resolve issues identified and decisions made concerning the acceptance determination.

Subject Matter Expertise

1. Provide subject matter expertise to advise on issues related to contract administration and EVMS.

VIII. EXPECTED WORK PRODUCTS

1. DCMA will prepare monthly project status reports for the Component Contracting Officer, who will then distribute them to the Program Manager and other appropriate parties. Status reports will summarize the results of activities, including reviews underway and their status, findings, actions taken, and expected dates of resolution. Status reports will also provide summary statistics of the status of contractors' management control systems based on data collected from reviews.
2. DCMA will prepare a written report within 30 working days of completion of a PAV that describes the results of the review, identified discrepancies, and recommendations for system improvement. The report will include the DCMA's assessment of the contractor's readiness for the initial compliance review. The report will be provided to the DHS Executive Agent for EVM and the Component Contracting Officer for

distribution to the Program Manager and other appropriate parties for evaluation and discussion with the contractor.

3. DCMA will prepare a written report within 30 working days after completion of an initial compliance review and provide it to the Component Contracting Officer, with copies to the Program Manager and DHS Executive Agent for EVMS.
4. DCMA will prepare a written report on a periodic basis summarizing the status of ongoing surveillance reviews and provide it to the Component Contracting Officer, with copies to the Program Manager and DHS Executive Agent for EVM. The written report shall summarize progress against the contractor's CAR plan to resolve material discrepancies identified during the prior verification reviews.

If CARs are written, DCMA will provide copies to the Component Contracting Officer and Program Manager for CARs Level 1 and 2, and to those parties and the DHS Executive Agent for EVM and CPO for CARs Level 3 and 4, along with accompanying correspondence.

Agency/Component letterhead

Subj: Appointment as a Contracting Officer's Technical Representative (COTR)

From: *(Insert name of Contracting Officer)*

To: *(Insert name of prospective COTR)*

You are hereby appointed as the Contracting Officer's Technical Representative (COTR) under Contract No. *(Insert number)* with the *(Insert the name(s) of the contractor(s))* for *(Describe the supplies, services, or construction being purchased)*. As the COTR, your primary duty is to monitor *(Insert the contractor's name)* performance to ensure that all of the technical requirements under the contract are met by the delivery date or within the period of performance, and at the price or within the estimated cost stipulated in the contract. The duties or authorities in this letter are not delegable; therefore, you must advise the Contracting Officer, *(Insert name of Contracting Officer)* or the Contract Administrator/Specialist *(Insert name of Contract Administrator/Specialist)* immediately when you are unable to perform these duties.

Scope of Authority (insert section if authorized by Component procedures).

As COTR, you are authorized....

COTR Responsibilities and Duties (See Appendix C, Attachment 2 for required elements).

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).

Exclusions (See Appendix W, Attachment 2 for required elements).

As COTR you shall not:

FAR and DHS Authorities/Directives, Government Ethics and Training.

The FAR and the Department of Homeland Security requires strict compliance with established standards of conduct and conflict of interest rules. *In addition to the FAR, HSAR and DHS Directives for ethics, training and financial disclosure, Component procedures should address and include additional related Contracting Officer's instructions to the COTR. See also Exhibit 3, Federal Acquisition Regulation (FAR), DHS Directives and Government Ethics, and Training.*

Contract file content and maintenance.

Instruction for contract file content is in accordance with Component and Contracting Officer's instructions.

If you have any questions or problems, please contact the Contract Specialist, [insert name of Contract Specialist], at [insert full telephone number including area code].

Appointment Effective and Termination Dates.

Your appointment as the COTR 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 Contracting Officer's Technical Representative (COTR) under Contract No. *(Insert contract number)* as outlined in your letter to me dated *(insert date of Contracting Officer's letter)*.

_____	_____	_____
Name and title of Contracting Officer Technical Representative (COTR)	Signature of Contracting Officer's Technical Representative (COTR)	Effective Date

Attachments:

OGE 450, Confidential Financial Disclosure Report (if applicable)

Copy to:

Payment Office

Contractor

Other Offices (as appropriate)

Exhibit 1: COTR/Alternate COTR Core Responsibilities and Functions.
(See HSAM 3042.270-2(b)(i), COTR Appointment letter.)

Required functions	Examples for describing COTR delegated duties
Performing surveillance/inspections and acceptance.	Perform on-site surveillance in accordance with the surveillance plan. Document surveillance activities and provide a copy of documentation to the contracting officer. Review technical proficiency and compliance against the technical provisions of the contract, and verify the performance of work by the contractor.
	Perform surveillance of the performance under the business agreement and conduct inspections necessary to assure performance and compliance with the terms and conditions of the agreement.
	Assure prompt review of draft reports and approval of final reports to contractor to assist with meeting the specified completion date of the contract, and assuring prompt inspection and acceptance, or rejection of deliverable.
	Notify the Contractor of deficiencies observed during surveillance. Record and report to the contracting officer all incidents of faulty or nonconforming work, delays, or problems which may disrupt or hinder future performance.
Monitoring activities, cost (see HSAM 3016.601, 3032.7000, and 3042.1500), providing input to contractor performance evaluations and notifications to the contracting officer (see examples):	Components HCAs are responsible for contractor performance evaluations procedures and policies (see HSAM 3042.1500) for ensuring that Contractor Performance Evaluations (interim and final) are included in the PPIRS through agency automated system (CPS or CPARS). The CO's identification and requested assistance from the COTR for input into the contractor evaluations can be efficiently assigned via the appointment COTR 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. (See HSAM 3016.601 and 3032.7000.)	Report any discrepancies in payment vouchers to the contracting officer. Provide documentation to support the representation.
	Evaluate progress payment requests based on costs incurred and actual work accomplished.

	Certify invoices to the contracting officer for payment, using the _____ electronic invoicing system (if Component systems provide this functionality).
	Reviewing contractor invoices for accuracy of work completed in accordance with contract requirements and certifying acceptance or rejection.
	Review the Contractor's invoices/vouchers for reasonableness and applicability to the contract and recommend to the contracting officer approval, conditional approval, or disapproval for payment. The review must be completed within five days after receipt of the invoice or voucher. If you cannot meet the required review time, advise the contracting officer or contract specialist so that action can be taken to ensure Government compliance with the Prompt Payment Act, thereby avoiding the payment of interest penalties to the Contractor.
	Review the contractors invoices/vouchers to ensure that they accurately reflect the work completed in accordance with the requirements of the contract, and certify acceptance of the delivered items. Submit certified invoices/vouchers to the Dallas Finance Center and copies to the contracting officer in a timely manner.
	See HSAM 3016.601 and 3032.7000 requirements for processing payment for cost reimbursement & time-and-material and labor hour contracts.
Managing Government Furnished Property (used when Government property is specified in the contract).	You are not authorized to provide any Government-owned (or leased) equipment or supplies or use of Government space to the Contractor, other than those specifically identified in the business agreement and authorized by the contracting officer.
	If applicable, ensure Government Furnished Property is made available in a timely manner.
	Request the contracting officer authorize Government furnished property and, when requested by the contracting officer, provide disposition advice on Government-furnished property or contractor-acquired property.
Managing contractor employee access and security through established application process for cards, badges or credentials (when security requirements are specified in the contract).	Serves as a federal sponsor for contractor, by assisting with the agency Security process, to include handling, as appropriate, the Contractor Suitability worksheet for contractor requiring a DHSPIVcard, notification of results of the contractor access submissions and communication of contractor and employee's changes in status.

Exhibit 2: Non-Delegable Functions and Exclusions.
(See HSAM 3042.270-2(ii), COTR Appointment letter)

Suggested characteristics of contracting officer non-delegable functions. Component procedures may include variations substantially the same as the following:
Contracting officers may <u>not delegate</u> to the COTR the following authorities or activities:
To make or give the appearance of being able to make commitments, modifications, or other actions which would commit the Government to a change in price, performance, quality, quantity or the delivery schedule.
To provide guidance to the contractor, either orally or in writing, which might be interpreted as a change in the scope or terms of the contract.
To change or modify any of the terms and conditions, or statement of work of a contract, business agreements, or transaction.
To approve items of cost not specifically authorized or increase dollar limits for the contract or business agreement.
To take any action with respect to termination, except to notify the contracting officer that action maybe necessary and to assist with the process as requested.
To engage in conduct prejudicial to the Government.
To sign contracts or contract modifications.
To solicit proposals.
To direct a contractor (oral or written) to begin work prior to contract award date or notice to proceed, or to stop work.
To participate in negotiations with a contractor outside the presence of a contracting officer.
To render a decision on any dispute or question of fact under the Disputes clause of the contract.
To interfere with the contractor's management by supervising contractor employees or otherwise directing their work efforts.
To specify limitations and include the admonition that the COTR may be personally liable for unauthorized commitments.
To make any agreement with the Contractor relating to the expenditure of Government funds.

Exhibit 3:
Federal Acquisition Regulation (FAR), DHS Directives and
Government Ethics, and Training
 (See HSAM 3042.270-2(b)(iii), COTR Appointment letter)

Required	Suggested examples
FAR, Ethics and DHS Directives	<p>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)).</p> <p>When applicable, submission of disclosure reports, such as the OGE 450, Confidential Financial Disclosure Report, via the appropriate confidential report system.</p> <p>Use of authority for appointment letter is “Pursuant to the Federal Acquisition Regulation (FAR), the Homeland Security Acquisition Regulation (HSAR), you are appointed the COTR or Alternate COTR.”</p>
Training	Adherence to DHS Annual Skills Currency to maintain COTR 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: <i>“The responsibilities and exclusions set forth in this document are not intended to be all encompassing. As a COTR, 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 COTR or firm involved, disciplinary actions, and other measures, depending on the extent of the offense.”</i>

PARTNERSHIP AGREEMENT
Between
The U.S. Small Business Administration
And
The U.S. Department of Homeland Security

Sections 7(j) and 8(a) of the Small Business Act (the Act) (15 U.S.C. §§ 636 (j) and 637(a)) authorize the U. S. Small Business Administration (SBA) to establish a business development program, which is known as the 8(a) Business Development (BD) Program. The 8(a) BD program promotes the development of small business concerns owned and controlled by socially and economically disadvantaged individuals so that such concerns can compete in the mainstream of the American economy. (15 U.S.C. § 631(f)(2)). Small business development is accomplished by providing various forms of management, technical, financial and procurement assistance. Additionally, pursuant to section 8(a) of the Act, SBA is authorized to enter into all types of contracts with other Federal agencies and to subcontract the performance of these contracts to qualified Participants in the 8(a) BD Program.

I. PURPOSE

The purpose of this Partnership Agreement (PA) between SBA and the U.S. Department of Homeland Security is to delegate SBA's contract execution functions to the U.S. Department of Homeland Security per the requirements of 13 C.F.R. § 124.501. The PA sets forth the delegation of authority and establishes the basic procedures for expediting the award of 8(a) contract requirements. This PA replaces all terms and conditions of any previously executed Memorandum of Understanding (MOU) or PA with the U.S. Department of Homeland Security or subordinate agencies on the issue of expediting the award of requirements pursuant to Section 8(a) of the Act.

Failure to sign this PA will require the U.S. Department of Homeland Security to utilize the prescribed processes to contract with the SBA as stated in the Federal Acquisition Regulation (FAR) Subpart 19.8.

II. OBJECTIVES

- A. To delineate the responsibilities as they relate to the oversight, monitoring and compliance with procurement laws and regulations governing 8(a) contracts between SBA and the U.S. Department of Homeland Security;
- B. To establish the procedures for offer and acceptance between SBA and the U.S. Department of Homeland Security;
- C. To establish that SBA will respond to an offering letter within five (5) working days if the contract is valued at more than the simplified acquisition threshold and within two days of receipt if the contract is valued at or below the simplified acquisition thresholds. See 13 C.F.R. § 124.503(a)(3);

- D. To emphasize that although SBA delegates the authority to sign contracts on its behalf, it remains the prime contractor on all 8(a) contracts awards, modifications, options and purchase orders, and must receive copies of all contracts and subsequent modifications;
- E. To eliminate SBA's review of contracts and purchase orders executed under the authority of this PA; and
- F. To establish uniform policies and procedures regarding application of contracts and purchase orders to the 8(a) contracting

III. SCOPE

The PA provides for the award of contracts, modifications, options and purchase orders under the provisions of Section 8(a) of the Act as implemented by the FAR Subpart 19.8 and SBA's 8(a) BD program regulations found at 13 C.F.R. §124, (Subpart A).

The PA encompasses all competitive and non-competitive acquisitions of requirements offered by the U.S. Department of Homeland Security contracting offices and accepted by SBA for the 8(a) BD program.

The PA applies to all SBA offices and all the U.S. Department of Homeland Security contracting offices, as defined in FAR § 2.101 and deemed appropriate by the head of the agency, as defined in FAR § 2.101, for the U.S. Department of Homeland Security.

IV. RESPONSIBILITIES

A. SBA's Responsibilities.

SBA

1. delegates to the U.S. Department of Homeland Security for re-delegation to all warranted the U.S. Department of Homeland Security contracting officers, its authority under section 8(a)(1)(A) of the Act to enter into 8(a) prime contracts, and its authority under section 8(a)(1)(B) of the Act to arrange for the performance of such procurement contracts by eligible 8(a) Participants. In accordance with 13 C.F.R. §124.501(a), SBA delegates its 8(a) contract execution function. SBA remains the prime contractor on all 8(a) contracts and the 8(a) Participant remains the SBA's subcontractor;
2. will implement its responsibilities under this PA through uniform procedures for use by all SBA offices;

3. will provide training for the U.S. Department of Homeland Security contracting officers and small business specialists, on the SBA's 8(a) BD program and various aspects of the PA
 4. shall review the U.S. Department of Homeland Security'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 agrees to an extension of time.
 - ii. Absent a notification of rejection within five (5) working days of receipt of the offer, acceptance may be assumed on the sixth (6th) working day unless an extension has been requested and accepted.
 - iii. Acceptance shall include a size verification and determination with respect to all elements of eligibility (i.e., determinations of adverse impact, North American Industry Classification System (NAICS) code appropriateness and program eligibility). See citations found at 13 C.F.R. §124.504(c);
- (b) Competitive Acquisitions.
- i. SBA will issue an acceptance letter or rejection letter within five (5) working days of receipt of an offering letter, unless the District Office requests and the procuring activity agree to an extension of time.
 - ii. Where SBA does not respond with a notification of rejection within five (5) working days of receipt of the offer, the procuring activity may seek SBA's acceptance through the Associate Administrator, Office of Business Development (AA/BD). If the procuring activity does not receive a reply from the AA/BD within five (5) working days of the AA/BD's receipt of the offer, the procuring activity may assume acceptance on the sixth (6th) working day.
 - iii. Within five (5) working days after a request from the contracting officer, SBA shall issue an eligibility determination for the apparent successful offer, as prescribed by SBA's regulations at 13 C.F.R. §124.507(b).
- (c) Acquisitions Valued at or Below the Simplified Acquisition Threshold.

- i. No offering or acceptance letter is required for requirements valued at or below the simplified acquisition threshold, in accordance with the delegation of authority.
 - ii. SBA will review the program eligibility of the 8(a) Participant within two (2) working days after a request from the contracting officer.
 - iii. Absent a notification that the selected 8(a) Participant is ineligible for the award within two (2) working days, the procuring agency may assume the 8(a) Participant is eligible and proceed with award, as prescribed by SBA's regulations at 13 C.F.R. 124.503(a)(4)(i).
 - iv. The procuring agency must notify SBA of these 8(a) awards under this authority. See 13 C.F.R. § 124.503(a)(4)(ii).
- 5. shall review and approve all proposed joint venture agreements involving 8(a) Participants before 8(a) contract award;
- 6. may provide 8(a) Participants with contract negotiation assistance or direct them to appropriate resources where they can obtain technical assistance in contract negotiations when requested by either the 8(a) Participant or The U.S. Department of Homeland Security contracting officer;
- 7. shall retain its appeal authority in accordance with FAR § 19.810;
- 8. shall retain the right to perform on-site agency reviews to ensure contract compliance;
- 9. may identify a requirement for an 8(a) Participant for a possible award. SBA will submit capability statements to the appropriate procuring activities for the purpose of matching requirements consistent with the 8(a) Participant's capability;
- 10. shall retain the responsibility for ensuring that 8(a) Participants comply with all applicable provisions relating to continuing eligibility for 8(a) BD Program participation per 13 C.F.R. § 124.112.
- 11. shall select an appropriate 8(a) Participant when The U.S. Department of Homeland Security submits an open offering letter for a sole source requirement; and

B. Responsibilities of the U.S. Department of Homeland Security

The U.S. Department of Homeland Security

1. shall receive and retain SBA's delegation of contract execution and review functions by reporting all 8(a) contract awards, modifications, options and purchase orders to SBA until such time as the agreement expires or is terminated;
2. shall adhere to all provisions of contractual assistance identified in 13 C.F.R. §§ 124.501 through 124.520; as well as the applicable provisions of FAR Subpart 19.8;
3. shall determine which requirements are suitable for offering to the 8(a) BD program in accordance with FAR, Subpart 19.8, and, where appropriate, identify in conjunction with the appropriate SBA servicing office, 8(a) Participants capable of performing these requirements;
4. shall retain responsibility for compliance with the limitations on subcontracting requirement and all applicable provisions of FAR § 52.219-14 and any the U.S. Department of Homeland Security regulations;
5. shall include provisions in all contract awards, modifications, options and purchase orders awarded or issued under the 8(a) BD Program that require Program Participants to comply with the Subcontracting Limitations, and shall conduct and document an assessment at the time of contract award of the Participant's ability to comply with the Subcontracting Limitations.
6. shall provide a copy of any signed contract, as defined in FAR § 2.101, including modifications, options and purchase orders executed under this PA to the SBA servicing district office within 15 working days of the date of award;
7. shall inform contracting officers and other warranted officials and their equivalents who are awarding 8(a) contracts of their responsibilities concerning this agreement;
8. shall ensure that contracting officers and other warranted officials and their equivalents obtain training on their obligations under this PA and the subcontracting limitations of FAR § 52.219-14 and 13 C.F.R. §§ 124.510 and 125.6.
9. shall include monitoring and oversight provisions for all contract awards, modifications, options and purchase orders to ensure that all contracts comply with the performance requirements (Limitations on Subcontracting) of FAR § 52.219-14 and 13 C.F.R. § 124.510 and § 125.6;

10. shall request an eligibility determination from SBA's district office responsible for servicing the selected 8(a) Participant when an 8(a) Participant has been identified on all acquisitions valued at or below the simplified acquisition threshold prior to issuance of the purchase order;
11. shall submit the offering letter for sole source requirements exceeding the simplified acquisition threshold to SBA's district office responsible for servicing the selected 8(a) Participant, when an 8(a) Participant has been identified. See FAR 19.804-2;
12. shall submit an open offering letter for sole source requirements to the SBA district office that services the geographical area where The U.S. Department of Homeland Security' contracting activity is located, when The U.S. Department of Homeland Security has not identified a specific 8(a) Participant for a requirement. See FAR 19.804-2;
13. shall submit the offering letter for competitive 8(a) requirements to the SBA district office that services the geographical area where the U.S. Department of Homeland Security' contracting activity is located.
Exceptions: the offering letters for construction work will be sent to the SBA district office located in the geographical area where the work will be performed, or, in the case of construction contracts to be performed overseas, the offering letter shall be submitted to SBA's Headquarters. See FAR 19.804-2;
14. shall request an eligibility determination prior to final award in all 8(a) competitive acquisitions;
15. shall ensure that all contracts awarded pursuant to this PA contain provisions that require:
 - (a) SBA's approval of novation agreements submitted by the 8(a) Participant; and
 - (b) advance notice to SBA (as the prime contractor) prior to issuance of a final notice terminating the contract in whole or in part;
16. shall ensure that all NAICS codes for all 8(a) contracts are applied in accordance with FAR § 19.102;
17. shall add language to every contract stating that, even though SBA may not be identified in section A of the contract, it is still the prime contractor on the contract;

18. shall provide all proposed 8(a) joint ventures to SBA for approval before 8(a) contract(s) award; and
19. cannot use contracts that have not been offered to and accepted by SBA into the 8(a) BD program as credit toward the U.S. Department of Homeland Security' 8(a) negotiated goals.
20. A Contracting Officer shall notify SBA in writing of their request to release a requirement from the 8(a) BD Program. The written notification should be sent to the cognizant SBA district office serving the geographical area in which the procuring agency is located. The Contracting Officer shall include the reason(s) for the request, the procurement history of the requirement, the incumbent name, the assigned NAICS Code and the Statement of Work. The final decision rests with the AA/BD.
21. shall provide SBA with access to all non-classified information in contract files so that SBA can perform on-site agency reviews to ensure that procuring agencies are complying with the terms and conditions of this agreement.

V. CONTRACT EXECUTION

The U.S. Department of Homeland Security's contracting officer may make direct award of a contract to the 8(a) Participant, but only after the requirement has been offered to and accepted by SBA. Acquisitions valued at or below the simplified acquisition threshold, as defined in FAR § 2.101, and per 13 C.F.R. §124.503(a)(4)(ii), require no offer or acceptance letter; however, (a) a program eligibility determination of the selected 8(a) Participant from SBA is required; and (b) the procuring activity must notify SBA of all 8(a) awards made under this authority, per 13 C.F.R. §124.503(a)(4)(ii). Contract execution shall be on the appropriate form as specified in FAR or by the U.S. Department of Homeland Security regulation. The "Issued by" block shall identify the awarding The U.S. Department of Homeland Security's office. The SBA district office for the 8(a) Participant shall be identified in the award document. The 8(a) Participant's name and address shall be listed as the contractor. The U.S. Department of Homeland Security's contracting activities are responsible for issuing procurement instrument identification numbers. SBA will not issue subcontract numbers.

VI. TERM

This PA will take effect as soon as SBA and the U.S. Department of Homeland Security has signed it. It will remain in effect until September 30, 2012.

VII. AMENDMENT

This PA may be amended, in writing, at any time by mutual agreement of the parties.

VIII. TERMINATION

Either SBA or the U.S. Department of Homeland Security may terminate this PA upon 30 calendar days advance written notice to the other party.

IX. CONDITIONS

- A. Contracts that have not been offered to and accepted by SBA into the 8(a) BD program cannot be used for the U.S. Department of Homeland Security's 8(a) negotiated goals.
- B. SBA reserves the right to suspend or rescind the authority of this PA with the U.S. Department of Homeland Security for failure to submit copies to SBA of award and modification documents within 15 working days of award, failure to adequately monitor 8(a) contract compliance requirements, or if The U.S. Department of Homeland Security otherwise fails to follow the terms of this PA.
- C. SBA has the right to conduct periodic compliance on-site agency reviews of the files of all contracts awarded pursuant to Section 8(a) authority and this Agreement. The delegated authority may be rescinded when on-site agency review findings indicate a pattern failure to comply with 8(a) program regulations that govern award and administration of such contracts.

X. ADMINISTRATION**For The U.S. Department of Homeland Security:**

Richard K. Gunderson
Acting Chief Procurement Officer
7th & D Street, SW
Room 3110
245 Murray Lane, SW, Bldg. 410
Washington, DC 20528
202-447-5300
202-447-5310

For SBA:

Sheila D. Thomas
Director, Office of Program Review
Office of Business Development
409 3rd Street, SW, 8th Floor
Washington, DC 20416
(202) 205-6613
(202) 481-5567 (fax)

XI. ACCEPTANCE


Authorized by and on behalf of their respective agencies, the undersigned parties hereby accept the terms and conditions of this agreement.


For:

The U.S. Department of Homeland Security

 21 AUG 09
Richard K. Gunderson Date
Acting Chief Procurement Officer
Office of the Chief Procurement Officer

For:

SBA  9/1/09 Date
Joseph G. Jordan
Associate Administrator for
Government Contracting and
Business Development

 9/3/09 Date
Mina A. Wales (A)
Director
Office of Strategic Alliances