

GPO Contract Terms

Solicitation Provisions, Supplemental Specifications, and Contract Clauses

Prospective suppliers should carefully read this publication as the applicable terms within become an integral part of contracts with the U.S. Government Publishing Office. This copy should be retained for reference.

GPO Publication 310.2

Effective December 1, 1987 (Rev. 01-18)



U.S. GOVERNMENT PUBLISHING OFFICE

732 North Capitol Street, NW

Washington, DC 20401-0001

Keeping America Informed | OFFICIAL | DIGITAL | SECURE

www.gpo.gov | facebook.com/USGPO | twitter.com/usgpo

TABLE OF CONTENTS

SOLICITATION PROVISIONS

1.	Definition of words and terms	1
2.	Preparation of bids	1
3.	Information furnished to bidders	1
4.	Amendments to solicitations	1
5.	Submission of bids (except quotes)	1
6.	Submission of Quotes	2
7.	Facsimile bids	2
8.	Late submissions, modifications, and withdrawals of bids	2
9.	Late submissions, modifications, and withdrawals of proposals (or quotations as applicable)	3
10.	False statements in bids	4
11.	Postponement of sealed bid opening (invitation for bid)	4
12.	Discounts	4
13.	Contract award—sealed bid (invitation for bid)	5
14.	Contract award—competitive negotiation (request for quotations/Request for proposals)	5
15.	Certification of independent price determination	5
16.	Government furnished property	6
17.	Utilization of small, small disadvantaged, and women-owned small business concerns	6
18.	Service of protest	7
19.	Recovered materials program	7

REPRESENTATIONS, CERTIFICATIONS, BID ACCEPTANCE

R-1.	Small business concern	8
R-2.	Small disadvantaged business concern	8
R-3.	Women-owned small business concern	8
C-1.	Covenant against contingent fees	8
C-2.	Buy American certification	8
C-3.	Clean air and water	8
C-4.	Certificate of independent price determination	9
C-5.	Certification regarding responsibility matters	9
C-6.	Certification of nonsegregated facilities	11
C-7.	Notice to prospective subcontractors of requirements for certification of nonsegregated facilities	11
	Bid acceptance period	11
	Referenced documents	11

SUPPLEMENTAL SPECIFICATIONS

General

1.	Ink	12
2.	Quality	12
3.	Packing	12
4.	Labeling and marking	14
5.	Deliveries	14
6.	Shipping instructions	14
7.	Drayage and special charges	15
8.	Palletizing	15
9.	Imprints, unless otherwise specified	16
10.	Reproduction media	16
11.	Certificate of conformance	16
12.	Changes on multipart sets	16
13.	Timework/System timework	17
14.	Departmental random copies (blue label)	17

Proofs

15.	General requirements	17
16.	Author's alterations	17
17.	Proofing procedures	18
	Design for Type III pallet	19

CONTRACT CLAUSES

1.	Contractual responsibility	20
2.	Order of precedence	20
3.	Workday	20
4.	Changes	20
5.	Disputes	20
6.	Subcontracts	21
7.	Government furnished property (GFP)	22
8.	Use of Government furnished property	22
9.	Risk of loss	22
10.	Return of Government property	22
11.	Quantity variations	23
12.	Notice of compliance with schedules	23
13.	Failure to ship/deliver full quantities	24
14.	Inspection and tests	25
15.	Warranty	26
16.	Notice and assistance regarding patent and copyright infringement	28
17.	Patent indemnity	28
18.	Reproduction of printing prohibited	28
19.	Termination for convenience of the Government	28
20.	Default	31

21.	Actual damages	32
22.	Liquidated damages	32
23.	Delay in deliveries	33
24.	Payments on purchase order	33
25.	Partial payment	34
26.	Payment for accelerated delivery	34
27.	Federal, State and local taxes	34
28.	Payments made by GPO	35
29.	Assignment of claims	37
30.	Convict labor	37
31.	Contract Work Hours and Safety Standard Act—overtime compensation	37
32.	Walsh-Healey Public Contracts Act	38
33.	Equal opportunity	38
34.	Nondiscrimination because of age	40
35.	Equal opportunity for workers with disabilities	40
36.	Equal opportunity for veterans	41
37.	Buy American Act	44
38.	Advertising of award prohibited	45
39.	Maintenance of Records on Recovered Materials in paper products	45
40.	Examination of records	45
41.	Audit and records—sealed bidding	45
42.	Price reduction for defective cost or pricing data—modifications—sealed bidding	46
43.	Audit and records—Negotiation	47
44.	Gratuities	48
45.	Covenant against contingent fees	48
46.	Contract cost principles and procedures	49
47.	Joint Ventures	49
48.	Protest after award	49
49.	Anti-kickback procedures	50
50.	Bankruptcy	51
51.	Cancellation, rescission, and recovery of funds for illegal or improper activity	51
52.	Price or fee adjustment for illegal or improper activity	51
53.	Restrictions on subcontractor sales to the Government	52

SOLICITATION PROVISIONS

1. Definition of Words and Terms

As used throughout this publication, the following terms shall have the meanings set forth in this section, unless the context in which they are used clearly requires a different meaning or the exception is specified.

“Bid” – for the purpose of simplicity, the term Bid will be used throughout to refer to responses for solicitations of all types and shall be understood to apply to Bids, Proposals, and Quotations equally, unless an exception is specifically stated.

“Bidder” – the term Bidder will be used throughout to refer to the individual or firm responding to the solicitation request.

“Quotation” – a response to a request for quotations. A quotation is not an offer and cannot be accepted by the Government to form a binding contract. Rather, the Government places an order in response to the quotation provided by the contractor. The order is an offer by the Government to the contractor to buy certain supplies or services upon specified terms and conditions. A contract is then established when the contractor accepts the Government’s offer.

“Offer” – a response to a solicitation, if properly accepted, would bind the offeror to perform the resultant contract. Under sealed bid procedures, an offer is called a “bid” and under negotiated procedures a “proposal”.

2. Preparation of Bids

- (a) Bidders are expected to examine the specifications and all instructions. Failure to do so is at the bidder’s risk.
- (b) Each bidder shall furnish the information required by solicitation. The bid must be signed by a duly authorized official of the firm, otherwise it will not be considered. Erasures or other changes shall be initialed by the person signing the bid. Bids signed by an agent shall be accompanied by evidence of that authority from an official of the firm, unless such evidence has previously been furnished to the Government Publishing Office (GPO).
- (c) Bidders shall include all items of cost for production and normal waste, spoilage, etc., in their bids.
- (d) In case of discrepancy between a unit price and extended price, the unit price will be presumed to be correct, subject however to correction to the

same extent and in the same manner as any other mistake.

3. Information Furnished to Bidders.

Any information given to a prospective bidder concerning a solicitation will be furnished to all prospective bidders as an amendment to the solicitation, if such information is necessary to bidders in submitting bids, or if the lack of such information would be prejudicial to other prospective bidders. Oral explanations or instructions given before the opening of bids will not be binding.

4. Amendments to Solicitations.

- (a) If a solicitation is amended, then all terms and conditions which are not modified remain unchanged.
- (b) Bidders and offerors shall acknowledge receipt of any amendment material to a solicitation by
 - (1) signing and returning the amendment,
 - (2) identifying the amendment number and date in the space provided for this purpose in Section 4 of the contract,
 - (3) letter, or facsimile. The Government must receive the acknowledgment by the time specified for opening of bids or receipt of offers.

5. Submission of Bids (Except Quotes).

- (a) Bids and modifications to Bids shall be submitted in sealed envelopes or packages or by facsimile and,
 - (1) addressed to the office specified in the solicitation, and
 - (2) showing the time specified for receipt, the solicitation number, and the name and address of the bidder.
- (b) Bidders using commercial carrier services shall ensure that the bids addressed and marked on the outermost envelope or wrapper as prescribed in subparagraphs (a)(1) and (2) of this provision when delivered to the office specified in the solicitation.
- (c) Bidders are invited to be present at the opening of bids.
- (d) Bids that reject any of the representations, certifications, terms, conditions, or provisions of the solicitation, may be excluded from consideration.

6. Submission of Quotes.

- (a) Quotes and quote modifications shall be submitted via GPO Contractor Connection at <https://contractorconnect.gpo.gov> unless otherwise specified in the RFQ.
- (b) Facsimile quotes will only be allowed when authorized by the RFQ or the Contracting Officer, and must be signed by a duly authorized official of the firm, otherwise it will not be considered.
- (c) Quotes that reject any of the representations, certifications, terms, conditions, or provisions of the solicitation, may be excluded from consideration.

7. Facsimile Bids.

- (a) **Definition.** Facsimile bid, means a bid, modification of a bid, or withdrawal of a bid that is transmitted to a specified telephone number and received by the Government via electronic equipment that communicates and reproduces both printed and handwritten material.
- (b) Facsimile bids must arrive at the place and by the time specified in the solicitation.
- (c) Facsimile bids must contain the required signatures.
- (d) The Government reserves the right to make award solely on the facsimile bid. However, if requested to do so by the Contracting Officer, the apparently successful bidder agrees to promptly submit the complete original signed copy.
- (e) Telephone number will be furnished in the solicitation.
- (f) If the bidder chooses to transmit a facsimile bid, the Government will not be responsible for any failure attributable to the transmission or receipt of the facsimile bid including, but not limited to, the following—
 - (1) Receipt of garbled or incomplete bid.
 - (2) Availability or condition of the receiving facsimile equipment.
 - (3) Incompatibility between the sending and receiving equipment.
 - (4) Delay in transmission or receipt of bid.
 - (5) Failure of the bidder to properly identify the bid.
 - (6) Illegibility of bid.
 - (7) Security of bid data.

- (g) Once facsimile bid is received by the Government it will be sealed in an envelope until bid opening. Government personnel will not validate for the vendor prior to bid opening any of the conditions cited in (f).
- (h) Facsimile quotes and proposals will not be considered unless authorized by the solicitation, or Contracting Officer.
- (i) GPO will use the time/date stamp shown on the facsimile transmission as of the time the last page is received to validate the timeliness of the entire submission.

8. Late Submissions, Modifications, and Withdrawals of Bids.

- (a) Any bid received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it was received before award is made and it—
 - (1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of bids (e.g., a bid submitted in response to a solicitation requiring receipt of bids by the 20th of the month must have been mailed by the 15th);
 - (2) Was sent by mail, facsimile, or hand-carried (including delivery by a commercial carrier) if it is determined by the Government that the late receipt was due primarily to Government mishandling after receipt at the Government installation; or, if an emergency or unanticipated event interrupts normal Government processes, as determined by the Government, so as to prevent submission of the bid at specified time; or
 - (3) Was sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 5 P.M. at the place of mailing two workdays prior to the date specified for receipt of bids. The term “workdays” excludes weekends and U.S. federal holidays.
- (b) Any modification or withdrawal of a bid is subject to the same conditions as in paragraph (a) of this provision.
- (c) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent either by registered or certified mail is the U.S.

Postal Service postmark both on the envelope or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date or the bid, modification, or withdrawal shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. Postal Service on the date of mailing. Therefore, bidders should request the postal clerk to place a legible hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

- (d) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of that installation on the bid wrapper or other documentary evidence of receipt maintained by the installation, or the facsimile transmittal date and time on a Government calibrated facsimile machine.
- (e) The only acceptable evidence to establish the date of mailing of a late bid, modification, or withdrawal sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service—Post Office to Addressee" label and the postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (c) of this provision. Therefore, bidders should request the postal clerk to place a legible hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.
- (f) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful bid that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.
- (g) Bids may be withdrawn by written notice received at any time before the exact time set for receipt of bids. A bid may be withdrawn in person by a bidder or its authorized representative if, before the exact time set for receipt of bids, the identity of the person requesting withdrawal is established and the person signs a receipt for the bid.

9. Late Submissions, Modifications, and Withdrawals of Proposals (or quotations as applicable).

- (a) Any proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before award is made and it—
 - (1) Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of offers (e.g., an offer submitted in response to a solicitation requiring receipt of offers by the 20th of the month must have been mailed by the 15th);
 - (2) Was sent by mail, facsimile or hand carried (including delivery by a commercial carrier) if it is determined by the Government that the late receipt was due primarily to Government mishandling after receipt at the Government installation; or, if an emergency or unanticipated event interrupts normal Government processes, as determined by the Government, so as to prevent submission of the bid at specified time; or
 - (3) Was sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 5 P.M. at the place of mailing two workdays prior to the date specified for receipt of proposals. The term "workdays" excludes weekends and U.S. federal holidays; or
 - (4) Is the only proposal or quotation received.
- (b) Any modification of a proposal or quotation, except a modification resulting from the Contracting Officer's request for "best and final" offer, is subject to the same conditions as in subparagraphs (a)(1), (2), and (3) of this provision.
- (c) A modification resulting from the Contracting Officer's request for "best and final" offer received after the time and date specified in the request will not be considered unless received before award and the late receipt is due solely to mishandling by the Government after receipt at the Government installation.
- (d) The only acceptable evidence to establish the date of mailing of a late proposal or modification sent either by U.S. Postal Service registered or certified mail is the U.S. Postal Service postmark both on

the envelope or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date or the proposal, or modification shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by employees of the U.S. Postal Service on the date of mailing. Therefore, offerors should request the postal clerk to place a legible hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.

- (e) The only acceptable evidence to establish the time of receipt at the Government installation is the time/date stamp of that installation on the proposal wrapper or other documentary evidence of receipt maintained by the installation.
- (f) The only acceptable evidence to establish the date of mailing of a late offer, modification, or withdrawal sent by Express Mail Next Day Service—Post Office to Addressee is the date entered by the post office receiving clerk on the "Express Mail Next Day Service—Post Office to Addressee" label and the postmark on both the envelope or wrapper and on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined in paragraph (d) of this provision. Therefore, offerors should request the postal clerk to place a legible hand cancellation bull's-eye postmark on both the receipt and the envelope or wrapper.
- (g) Notwithstanding paragraph (a) of this provision, a late modification of an otherwise successful proposal that makes its terms more favorable to the Government will be considered at any time it is received and may be accepted.
- (h) Proposals may be withdrawn by written notice received at any time before award. Proposals may be withdrawn in person by an offeror or an authorized representative, if the representative's identity is made known and the representative signs a receipt for the proposal before award.
- (i) A quote may be withdrawn at any time prior to award.

10. False Statements in Bids.

Bidders must provide full, accurate, and complete information as required by the solicitation and its attachments. The penalty for making false statements in bids is prescribed in 18 U.S.C. 1001.

11. Postponement of Sealed Bid Opening (Invitation for Bid).

If an emergency or unanticipated event interrupts normal Government processes so as to cause postponement of the scheduled bid opening, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the opening date, the time specified for receipt of bids will be deemed to be extended to the same time of day specified in the solicitation on the first workday on which normal Government processes resume.

12. Discounts.

Prompt payment discounts offered by vendors will be applied by the Government as follows:

(a) Evaluation.

- (1) Unless otherwise provided in the specifications, prompt payment discounts offered for payment in less than 20 calendar days will not be considered in evaluating bids for award.
- (2) When prices are offered in response to a solicitation, any prompt payment discount which is eligible for consideration in the evaluation of bids (i.e. for a period of 20 days or more) will be applied directly to the prices offered.
- (3) When the solicitation contains basic prices and the bid consists of the basic prices plus a percentage or the basic prices minus a percentage, such percentage will be applied first to determine the evaluated price offered. An eligible prompt payment discount will be applied directly to the evaluated price offered.

(b) Payment.

- (1) The discount will be taken if payment is made within the offered prompt payment period, even if it was not considered in the evaluation of bids at time of award.
- (2) When payment is made after the expiration of the prompt payment discount period and the

offered prompt payment discount exceeds 5 percent, any percentage in excess of 5 percent will be considered by the Government to be a special discount which the bidder agrees that the Government will be entitled to regardless of when payment is made, and the special discount will be deducted from the payment.

- (3) For the purpose of earning the discount, time will be computed from the date a correct invoice is received by the GPO in accordance with the instructions in Publication 1050, "Doing Business with GPO", to the date that GPO makes payment.

13. Contract Award—Sealed Bid (Invitation for Bid).

- (a) The Government will evaluate bids in response to the solicitation without discussions and will award a contract to the responsible bidder whose bid, conforming to the solicitation, will be most advantageous to the Government, considering only price and the price related factors specified elsewhere in the solicitation.
- (b) The Government may
 - (1) reject any or all bids,
 - (2) accept other than the lowest bid, and
 - (3) waive informalities or minor irregularities in bids received.
- (c) A written award or acceptance of a bid mailed or otherwise furnished to the successful bidder within the time for acceptance specified in the bid shall result in a binding contract without further action by either party.
- (d) The Government may reject a bid as nonresponsive if the prices that make up the bid are materially unbalanced between line items or subline items. A bid is materially unbalanced if
 - (1) it is based on prices significantly less than costs for some work and on prices significantly overstated in relation to costs for other work;
 - (2) there is reasonable doubt the bid will result in the lowest overall cost to the Government even though it may be the lowest evaluated bid; or,
 - (3) the bid is so unbalanced it is tantamount to allowing an advanced payment.

14. Contract Award—Competitive Negotiation (Request for Quotations/Request for Proposals).

- (a) The Government may accept within the time specified therein, any offer, whether or not there are negotiations subsequent to its receipt, unless the offer is withdrawn. If subsequent negotiations are conducted, they shall not constitute a rejection or counter offer on the part of the Government.
- (b) The right is reserved to accept other than the lowest offer, to reject any or all offers, or waive informalities or minor irregularities.
- (c) The Government may award a contract, based on initial offers received, without discussion of such offers. Accordingly, each initial offer should be submitted on the most favorable terms from a price and technical standpoint which the offeror can submit to the Government.
- (d) Any financial data submitted with any offer hereunder or any representation concerning facilities or financing will not form a part of any resulting contract; provided, however, that if the resulting contract contains a clause providing for price reduction for defective cost or pricing data, the contract price will be subject to reduction if cost or pricing data furnished hereunder is incomplete, inaccurate, or not current.
- (e) The contract will be awarded to that responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, cost or price and other factors (specified elsewhere in the solicitation) considered.

15. Certification of Independent Price Determination.

- (a) The certification, listed herein, is not applicable to a foreign bidder submitting a bid for a contract which requires performance or delivery outside the United States, its possessions, and Puerto Rico.
- (b) A bid will not be considered for award where paragraphs C-4 (a) and (c), of the certification has been deleted or modified. Where paragraph C-4(b) of the certification has been deleted or modified, the bid will not be considered for award unless the bidder furnishes with the bid a signed statement which sets forth in detail the circumstances of the

disclosure and the Managing Director, Customer Services, or designee, determines that such disclosure was not made for the purpose of restricting competition.

16. Government Furnished Property.

No material, labor or facilities will be furnished by the Government unless otherwise provided in the solicitation.

17. Utilization of Small, Small Disadvantaged and Women-Owned Small Business Concerns.

- (a) It is the policy of the United States that small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals and small business concerns owned and controlled by women shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, small business concerns owned and controlled by socially and economically disadvantaged individuals and small business concerns owned and controlled by women.
- (b) The contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The contractor further agrees to cooperate in any studies or surveys as may be conducted or may be necessary to determine the extent of the contractor's compliance with this provision.
- (c) As used in the contract, the term "small business concern" shall mean a small business as defined pursuant to section 3 of the Small Business Act and relevant regulations promulgated thereto. The term "small business concern owned and controlled by socially and economically disadvantaged individuals" shall mean a small business concern
 - (1) which is at least 51 percent unconditionally owned by one or more socially and

economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 per centum of the stock of which is unconditionally owned by one or more socially and economically disadvantaged individuals; and

- (2) whose management and daily business operations are controlled by one or more of such individuals. This term also means a small business concern that is at least 51 percent unconditionally owned by an economically disadvantaged Indian tribe or Native Hawaiian organization, or a publicly owned business having at least 51 percent of its stock unconditionally owned by one of these entities which has its management and daily business controlled by members of an economically disadvantaged Indian tribe or Native Hawaiian organization, and which meets the requirements of 13 CFR 124. The contractor shall presume that socially and economically disadvantaged individuals include Black Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, and other minorities, or any other individual found to be disadvantaged pursuant to section 8(a) of the Small Business Act. The contractor shall presume that socially and economically disadvantaged entities also include Indian tribes and Native Hawaiian organizations.
- (d) The term "small business concern owned and controlled by women" shall mean a small business concern—
 - (1) Which is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
 - (2) Whose management and daily business operations are controlled by one or more women.
- (e) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a small business concern owned and controlled by socially and economically disadvantaged individuals or a small business concern owned and controlled by women.

18. Service of Protest.

- (a) Protests (as defined in the Printing Procurement Regulation, GPO Pub. 305.3) that are filed directly with the Government Publishing Office (GPO), and copies of any protests that are filed with the Government Accountability Office (GAO), shall be served on the Contracting Officer at the procurement office from which the solicitation was issued by obtaining written and dated acknowledgement of receipt from the official or location designated by the Contracting Officer.
- (b) When filing a protest with GAO, a copy must be received by the Contracting Officer at the office issuing the solicitation within one day of submission.

19. Recovered Materials Program.

- (a) The Government Publishing Office is promoting the use of recovered materials to the maximum extent practicable in its contracts, provided all specification requirements are met. Offerors are encouraged to supply paper and paper products that contain recovered materials even in the absence of a specific solicitation provision or contract clause requiring such materials.
- (b) Recovered materials shall mean “recovered fiber” or “postconsumer recovered fiber.” However, when used in conjunction with the cotton/linen content of paper, “recovered fiber” means a postconsumer fiber and “recovered material” means a preconsumer fiber.
- (c) By submission of a bid or offer, or by substantial performance on a small purchase, the offeror certifies that the paper to be supplied contains at least the minimum percentage of recovered materials in paper products as specified. This certification concerns a matter within the jurisdiction of an agency of the United States, and the making of false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001. The Government reserves the right to require proof of such certification prior to first delivery and thereafter as may be otherwise provided for under the provisions of the contract.

- d) When the use of recovered materials is specified, the contractor shall maintain manufacture/mill accounting and record summaries of the fiber weight content used as feedstock, for the purposes of Government audit, that will verify
 - (1) the contractor's certification of the minimum percentage of recovered materials used in performance of the contract,
 - (2) that the paper and paper products are in compliance with the specification requirements, and
 - (3) the paper is manufactured in prosecution under Title 18, in accordance with the Environmental Protection Agency (EPA) Paper Products Recovered Materials Advisory Notice II (63 FR certification prior to first delivery and thereafter as may be 31214, June 08, 1998) whether the products are manufactured by the contractor or another paper mill. The contractor shall maintain and make available to the Government, these documents for 1 year after expiration of the contract. Nothing in this provision shall excuse the contractor from furnishing the specified paper.

REPRESENTATIONS, CERTIFICATIONS, BID ACCEPTANCE PERIOD

Exceptions to the certifications may render your bid nonresponsive. Submission of your bid without statement of exception shall constitute certification of the seven items.

REPRESENTATIONS.

R-1. Small Business. By submission of a bid, the bidder represents that the bidder is a small business concern, unless the bid contains an affirmative representation that the bidder is not a small business concern.

R-2. Small Disadvantaged Business Concern. By submission of a bid, the bidder represents that the bidder is not a small disadvantaged business concern, unless the bid itself contains an affirmative representation that the bidder is a small disadvantaged business concern.

R-3. Women-Owned Small Business Concern. By submission of a bid, the bidder represents that the bidder is not a women-owned small business concern, unless the bid itself contains an affirmative representation that the bidder is a women-owned small business concern.

CERTIFICATIONS.

C-1. Covenant Against Contingent Fees. Submission of a bid without statement of exception shall constitute certification.

- (a) The contractor warrants that no person or agency has been employed or retained to solicit or obtain a contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul the contract without liability or, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.
- (b) "Bona fide agency" means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any

Government contract or contracts through improper influence.

"Bona fide employee" means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

"Contingent fee" means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

"Improper influence" means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

C-2. Buy American Certification. Except as may be listed with the bid itself, the bidder certifies with the submission of a bid that each end product is a domestic end product (as defined in clause 37 "Buy American Act" in Contract Clauses), and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States. Any exception listed with the bid itself must list both the excluded end products and the country of origin of each.

C-3. Clean Air and Water. Submission of a bid without statement of exception shall constitute certification.

(Applicable if the bid or offer exceeds \$100,000, or the Contracting Officer has determined that orders under an indefinite quantity contract in any year will exceed \$100,000, or a facility to be used has been the subject of a conviction under the Clean Air Act (42 U.S.C. 7413 (C)(1)) or the Federal Water Pollution Control Act (33 U.S.C. 1319(c)) and is listed by EPA, or is not otherwise exempt.)

- (a) Any facility to be utilized in the performance of the proposed contract has not been listed on the Environmental Protection Agency List of Violating Facilities.
- (b) The Contracting Officer will be promptly notified, prior to award, of the receipt of any communication from the Director, Office of Federal Activities, Environmental Protection Agency, indicating that

any facility which he/she proposes to use for the performance of the contract is under consideration to be listed on the EPA List of Violating Facilities.

- (c) Bidder will include substantially this certification, including this paragraph (c), in every nonexempt subcontract.

C-4. Certificate of Independent Price Determination.

Submission of a bid without statement of exception shall constitute certification.

- (a) The offeror certifies that—

- (1) The prices in the offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (i) those prices; (ii) the intention to submit an offer; or (iii) the methods or factors used to calculate the prices offered.
- (2) The prices in the offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and
- (3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

- (b) Each signature on the offer is considered to be a certification by the signatory that the signatory—

- (1) Is the person in the offeror's organization responsible for determining the prices being offered in the bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) of this provision; or
- (2) (i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a) (1) through (a) (3) of this provision [*insert full name of person(s) in the offeror's organization responsible for determining the prices offered in the bid or proposal, and the title of his or her position in the offeror's organization*];

- (ii) As an authorized agent, does certify that the principals named in subdivision (b)(2)(i) of this provision have not participated, and will not participate, in any action contrary to sub-paragraphs (a)(1) through (a)(3) of this provision; and

- (iii) As an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) of this provision.

- (c) If the offeror deletes or modifies subparagraph (a) (2) of this provision, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

C-5. Certification Regarding Responsibility Matters

- (a) (1) The Offeror certifies, to the best of its knowledge and belief, that—

- (i) The Offeror and/or any of its Principals—

- (aa) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

- (bb) Have not within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;

- (cc) Are not presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision;

- (dd) Have not within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,500 for which the liability remains unsatisfied.

- (1) Federal taxes are considered delinquent if both of the following criteria apply:
- (i) The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
 - (ii) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.
- (2) Examples.
- (i) The taxpayer has received a statutory notice of deficiency, under I.R.C. § 6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.
 - (ii) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. § 6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.
 - (iii) The taxpayer has entered into an installment agreement pursuant to I.R.C. § 6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.
 - (iv) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).
 - (ii) The Offeror has not, within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.
- (2) "Principal," for the purposes of this certification, means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions).
- This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.
- (b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
 - (c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.
 - (d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
 - (e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to

other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

C-6. Certification of Nonsegregated Facilities.

Submission of a bid without statement of exception shall constitute certification.

- (a) "Segregated facilities," as used in this provision, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin because of habit, local custom, or otherwise.
- (b) By submission of an offer, the offeror certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The offeror agrees that a breach of this certification is a violation of the Equal Opportunity clause in the contract.
- (c) The offeror further agrees that (except where it has obtained identical certifications from proposed subcontractors for specific time periods) it will —
 - (1) Obtain identical certifications from proposed sub-contractors before the award of subcontracts under which the subcontractor will be subject to the Equal Opportunity clause;
 - (2) Retain the certifications in the files; and
 - (3) Forward the following notice to the proposed sub-contractors (except if the proposed subcontractors have submitted identical certifications for specific time periods).

C-7. Notice to Prospective Subcontractors of Requirement for Certification of Nonsegregated Facilities. A Certification of Nonsegregated Facilities must be submitted before the award of a subcontract under which the subcontractor will be subject to the Equal Opportunity clause. The certification may be submitted either for each subcontract or for all subcontracts during a period (i.e., quarterly, semiannually, or annually).

Note: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

BID ACCEPTANCE PERIOD

The bidder agrees, if their bid is accepted within 60 calendar days (unless a different period is submitted with the bid) from the date for receipt of bids, to furnish the specified items at the price set opposite each item, delivered at the designated point(s), in exact accordance with specifications.

REFERENCED DOCUMENTS

All referenced documents, including any amendments, are incorporated by reference and become an integral part of the contract. A referenced document is that version which is in effect at time of award. Copies of these documents may be obtained as indicated below or on the **gpo.gov** website.

Government Paper Specification Standards is available at <https://www.gpo.gov/how-to-work-with-us/agency/forms-and-standards>.

Additional information Defense Priorities and Allocation System (DPAS) may be obtained from U.S. Department of Commerce, Bureau of Industry and Security, at <https://www.bis.doc.gov/index.php/other-areas/strategic-industries-and-economic-security-sies/defense-priorities-a-allocations-system-program-dpas>.

The *U.S. Government Publishing Office Style Manual* is for sale at <http://bookstore.gpo.gov> or can be downloaded at <https://www.govinfo.gov/app/details/GPO-STYLEMANUAL-2016>.

Domestic Mail Manual (DMM) and International Mail Manual (IMM) are available at <https://pe.usps.gov>.

ANSI Standards are for sale at <http://webstore.ansi.org>. Government Publishing Office forms are available to bidders at the Government Publishing Office, <https://www.gpo.gov/how-to-work-with-us/vendors/forms-and-standards>.

General printing procurement information and electronic posting of Central and Regional office solicitations are available at <https://www.gpo.gov/how-to-work-with-us/vendors/contract-opportunities>.

SUPPLEMENTAL SPECIFICATIONS

GENERAL

1. Ink.

- (a) If lithographic ink is used in the performance of the contract, the ink shall contain not less than the following percentages of vegetable oil:
 - (1) News ink, 40 percent,
 - (2) Sheet-fed and forms ink, 20 percent, and
 - (3) Heat-set ink, 10 percent.
- (b) High quality color process printing on high speed heat-set presses is excepted when slow drying time significantly increases production costs.

2. Quality.

- (a) The quality requirements indicated in the specifications represent the minimum acceptable level.
- (b) Notwithstanding the minimum acceptable level, the following shall also apply:
 - (1) Printing and binding shall be held to a high standard of imposition; makeready; press running; clear, sharp printing; binding; and good quality in every respect including registration between parts, as applicable.
 - (2) Products other than printing and binding shall be produced in such manner, within specifications, to provide the user with products capable of being used for their intended purpose with good quality in every respect.
- (c) Contractors must have a quality control system that will assure product quality acceptable to the Government. See article 14 "Inspection and Tests" of Contract Clauses.
- (d) Specific quality requirements are further defined in GPO Publication 310.1, Quality Assurance Through Attributes Program, as revised.
- (e) Products without specific attributes must meet commercially accepted standards.

3. Packing.

The method of packing indicated in the specifications must be accomplished in accordance with the following interpretations. The method and manner of packaging for preservation and required storage and/or transportation shall be in accordance with either the National Motor Freight Classification (NMFC) or the Uniform Freight Classification (UFC) tariff. The

material used in packing must be of such quality as to insure arrival of the printed matter at its destination in a satisfactory and usable condition. Each packing unit must be uniform in size and quantity contained therein. Unless otherwise indicated, each shipping container must not exceed 45 pounds when fully packed. Quantities which fill less than one-half a shipping container may be wrapped in shipping bundles.

- (a) **Numbered products.** Numbered products must be packaged in numerical sequence. Inner packages must be placed in shipping containers and shipping containers placed on pallets or skids (if pallets or skids are used) in numerical sequence. The low numbers must be on top unless otherwise ordered. The label(s) placed on each package and shipping bundle or container must also carry the first and last number contained therein.
- (b) **Kraft paper wrapping.** Wrap in packages not to exceed 10" in height or in quantities as ordered. Place a piece of lightweight chipboard or newsboard, cut to the same size as the printed work, on top and bottom of the printed work, tight-wrap with kraft paper, and seal.
- (c) **Shrink-film wrapping.** Wrap in packages not to exceed 10" in height or in quantities as ordered. Place a piece of lightweight chipboard or newsboard, cut to the same size as the printed work, on the bottom of the printed work, and wrap with heat-shrink film of suitable thickness and quality. The label may be placed inside the wrap, on the top or on the end.
- (d) **Boxing.** Solid pack in suitable paperboard boxes, which have closely fitted sides and ends. Tops and bottoms must be securely fastened.
- (e) **Tying.** Tie in packages not to exceed 10" in height, or in quantities as ordered. Place a piece of lightweight chipboard or newsboard, cut to the same size as the printed work, on top and bottom of the printed work, and tie in one position around both the length and width with substantial cord or twine. The cord or twine must be wrapped at least twice in each direction.
- (f) **Banding.** Band with a strip of heavy kraft paper, not less than 2" in width, around the short dimension of the form. The ends of the band must overlap and be held together with a suitable adhesive or gummed tape.

- (g) **Kraft paper wrapping and tying.** Prepare as indicated under paragraph (b) except tying shall be substituted for sealing.
- (h) **Shipping bundles.** The contents of bundles shall first be protected by using a good grade of corrugated mailing board on all sides and ends, then wrapped in 2 or more layers of heavy kraft paper and tied in both directions with heavy twine or rope.
- (i) **Individual mailing containers.** Containers may be ordered plain or printed with title and stock number in 18 point caps on the spine, in black ink, positioned so sealing tape will not cover the type. All containers must be packed solidly; in the event the product does not fit snugly, open-cell pads or thicknesses of corrugated board must be added to prevent shifting during transit.
- (1) For domestic use: Containers are to be one-piece, made of "B" fluted material and have a minimum bursting strength of 200 pounds per square inch or a minimum edge crush test (ECT) of 32 pounds per inch width. Folders (containers with open corners) may not be used when the thickness of the contents exceeds 2". When the thickness of the contents exceeds 2", containers with closed corners such as mailers or regular slotted cartons (RSC) must be used. Containers must be packed and sealed in a manner that will insure acceptance and safe delivery by the U.S. Postal Service.
- (2) For overseas use: Containers are to be one-piece, made of "B" fluted material and have a minimum bursting strength of 275 pounds per square inch or a minimum ECT of 44 pounds per inch width. A flap at one end of the container must not be fastened in order that postal inspection may be accomplished in accordance with international postal regulations. This tuck-in flap must be of sufficient length to hold the product securely, without danger of opening, but permit ready opening and reclosing without damage to the product or the container. Containers must be formed, packed, and sealed (with the exception of one flap) in a manner that will assure acceptance and safe delivery by the carrier. Each container must be marked as to the contents therein. Folders (containers with open corners) are not acceptable for mailing to overseas destinations.
- (j) Shipping containers. Only new corrugated or solid fiberboard containers may be used. Containers must be made in accordance with ASTM D5118 and any amendments thereto. Unless otherwise provided in the specifications, containers shall have a minimum bursting strength of 275 pounds per square inch or a minimum ECT of 44 pounds per inch width. Containers must be packed solidly (top and sides) with material laid flat on the bottom of the containers (never stand on end); top and bottom pads of corrugated fiberboard shall be used and be in contact with the top and bottom of the container. In the event the material does not fit snugly on the top or sides, open-cell pads or thicknesses of corrugated board must be added. Top and bottom flaps must be closed and fastened firmly with water-resistant adhesive. Adhesive must be applied over not less than 50 percent of the area of contact between the inner and outer flaps. The bottom flaps may be stapled instead of glued, provided this is done before the container is packed.
- (k) At contractor's option, containers may be sealed with tape which must completely cover the butted edges of the flaps and extend at least 2" on the ends of the containers. Tapes may be either a minimum 3" wide fiberglass reinforced non-strippable gummed paper tape that conforms to Commercial Item Description A-A-1671B and any amendments thereto; a minimum 2" wide waterproof, pressure-sensitive adhesive tape that conforms to ASTM D5486 and any amendments thereto; or a minimum 1-inch wide Type III, pressure-sensitive, filament tape that conforms to ASTM D5330 and any amendments thereto.
- (l) Noncompliance with the packaging specifications may be cause for the Government to reject the shipment, at destination, and return it to the contractor at their expense. After giving notice of the deficiency and affording the contractor an opportunity and a reasonable time to correct if time allows, the Government may, at its option, repackage in accordance with the specifications and charge all costs to the contractor.

4. Labeling and Marking.

Shipping and packing labels must be furnished by the contractor in accordance with these specifications. Contractors are not permitted to display advertisements on skids, pallets, shipping containers, or boxes. All labels and entries made thereon must conform to and be in accordance with these specifications and accurately reflect the contents (including quantity) of all packaged units.

- (a) **Inner packages.** Each inner package must be marked or labeled with the Department name, Requisition number, Form number (including any revision dates, if any), title and quantity. Mark or label boxes and wrapped packages only on one end – (never top, bottom, or sides). Banded packages should be marked on the band. Tied packages should be labeled on chipboard or newsboard. Shrink film packages must be labeled, not marked, on the top or the end. Labels may be placed inside the wrap.
- (b) **Shipping containers.** Each shipping container must have the shipping label applied to one end – (not top, bottom or sides). The label shall be reproduced to 7-7/8" x 6-1/8" from the label (Form 905) posted on gpo.gov in black ink on white paper. The label must be filled in accurately and legibly, using bold characters at least 1/4" high, except the "From" box which may be smaller. The name and requisition number of the receiving department must be used in the "Dept." box and "Dept Req. No." box on all shipping container labels in lieu of the name and requisition number of the order department. Label entries must remain clear and legible for a period of at least two (2) years under normal warehouse conditions. Label information may be rearranged on shipping containers of such dimensions that prevent acceptance of 7-7/8" x 6-1/8" labels.
- (c) **Bar Code Markings.** When indicated, bar code markings will be required on inner packages and/or shipping containers. Bar code using standard 3 of 9 (Code 39) Bar Code System, for noncontact reading, in accordance with Military Standard 1189. The bar code label must be positioned in accordance with Federal Standard 123.
- (d) **Shipping bundles.** The information required on the facsimile label (Form 905) must appear in a convenient location on each shipping bundle.

- (e) **Mailed shipments.** A separate mailing label conforming to Postal Regulations must be used for all shipments by U.S. mail.
- (f) Noncompliance with labeling and marking specifications may be cause for the Government to reject the shipment, at destination, and return it to the contractor at their expense. After giving notice of the deficiency and affording the contractor an opportunity and a reasonable time to correct if time allows, the Government may, at its option, relabel and/or remark in accordance with the specifications and charge all costs to the contractor.

5. Deliveries.

- (a) The contractor shall ship directly to the destinations stated in the specifications. Unless otherwise indicated, truck deliveries must be made at the point of destination between the hours of 8:30 a.m. and 3:30 p.m., on federal workdays. Shipments must be consigned as specified and the unloading and delivery charges borne by the contractor, and free of all charges for boxing, cartage, and freight, unless otherwise indicated. The maximum weight of any shipping crate, including contents, must not exceed 250 pounds. When supplies are delivered on skids or pallets, the gross weight of the skid and supplies must not exceed 2,000 pounds.
- (b) When specified, upon completion of each order, the contractor must notify the ordering agency on the same day that the product delivers via email at the address specified in the specifications. The subject line of the email shall be "Distribution Notice for Jacket XXX-XXX, Program XXXX-S, Print Order XXXXX." The notice must provide all applicable tracking numbers, shipping method, and title. Contractor must be able to provide copies of all delivery receipts upon agency request.

6. Shipping Instructions.

- (a) The term "contractor's city" is considered to be the commercial zone (as defined by the Department of Transportation) of the municipality in which the contractor's plant is located. If the municipality in which the contractor is located is encompassed in whole, or in part, by the commercial zone of an adjacent larger municipality, the contractor will be deemed to be located in such larger municipality and the commercial zone of the larger municipality will apply. All consignments to destinations within

the contractor's city must be delivered by the specified date at the contractor's expense.

- (b) In the event the contractor has offered prices "free on board" (f.o.b.) destination, the GPO may, at its option, order material shipped (1) f.o.b. contractor's city (and may furnish Government bills of lading (GBL)), (2) by parcel post, or (3) by any premium method. Upon exercise of such option, a deduction of the contractor's documented bid price for shipping or, if documentation is not available, the applicable published commercial freight costs will be made from the invoice/voucher. An adjustment will be made for parcel post or any premium shipping costs prepaid by the contractor upon presentation with the invoice/voucher of parcel post receipts properly filled out, stamped, and/or receipted by the U.S. Postal Service, commercial carrier airway bill, or freight bill. Parcel post charges and/or freight charges must be included on the invoice/voucher as a separate item, supported by the paid receipts. Such receipts cannot be returned, as they become a permanent part of the contract file.
- (c) In the event the contractor has offered prices f.o.b. contractor's city, GBL's may be furnished for all freight and express shipments destined outside the commercial zone of the contractor's bid f.o.b. point. The method of shipping and instructions for the preparation of GBL's will be furnished with the GBL's. When GBL's are issued, the contractor is required to distribute them immediately after shipment in accordance with the accompanying instructions.
- (d) The GPO, at its option, may order the contractor to effect shipment via commercial bill of lading or U.S. Postal Service. If so directed, the contractor must prepay all charges and will be reimbursed for such charges upon presentation, with the invoice/voucher, of Postal Service receipts (properly filled out and stamped by the post office) or copies of each paid commercial carrier's airway bill or freight bill as applicable.
- (e) Local commercial zone and f.o.b. destination deliveries to the GPO, its warehouses and distribution centers must be complete shipments to each address, received between 8:30 a.m. and 3:30 p.m. local time, on workdays and tailgated by the carrier unless the rear door of the vehicle has a minimum height opening of 80".

7. Drayage and Special Charges.

- (a) Whenever shipments are made under bills of lading (Government or commercial), charges made by a carrier for delivery of materials to a contractor's plant when the specifications provide such materials will be delivered "f.o.b. contractor's city," or charges made by a carrier for picking up materials from a contractor's plant for delivery to designated destinations when the specifications provide that delivery is to be made "f.o.b. contractor's city," are not payable by the Government but are payable by the contractor and if paid by the Government such costs will be recovered by deduction from the contractor's invoice/voucher. Also, charges made by a carrier for winch or other special services are not payable by the Government but are payable by the contractor and if paid by the Government such costs will be recovered by deduction from the contractor's invoice/voucher.
- (b) Charges for local drayage, dunnage, labor, blocking, and/or bracing will be allowed when the contractor is ordered to combine less-than-carload shipments for two or more orders so as to take advantage of full carload rates. Rail shipments will be utilized only when full carload rates do not exceed truckload rates and when both the contractor and the consignee have rail facilities and time is not of the essence.

8. Palletizing.

- (a) When indicated in specifications, the contractor shall furnish pallets for bulk shipments, in shipping containers, when the containers fill two layers or more on the pallet.
- (b) Pallets must be type III, size 2, group 2 (or group 3 contractor's option) made in accordance with Federal Specification NN-P-71C and any amendments thereto. Full entry must be on the long dimension.
- (c) Material may be secured on pallet by stretch-wrap plastic, plastic shrink-wrap, steel strapping or plastic or nylon strapping over edge protectors. Fasten with straps over edge protectors when the containers fill more than 2 layers on the pallet. Pallets shall be suitably packed so as to insure acceptance and safe delivery by common carrier. Maximum height allowed including pallet is 55". Maximum gross weight is 2,000 lbs. Pack flush

to corners, top side up, label facing out, without overhang at any edge. Voids must be to the center of the pallet. Pack with care. Loaded pallets may be stored four high at destination.

- (d) Noncompliance with the palletizing specifications may be cause for the Government to reject the shipment at destination and return it to the contractor at their expense. The Government may, at its option, offer the contractor an opportunity and a reasonable time to correct, however, the Government may choose to repackage in accordance with the specifications and charge all costs to the contractor.

9. Imprints Unless Otherwise Specified.

The contractor must download one of the formats available on gpo.gov the GPO imprint line and set in 6-point sans serif type, the current calendar year, a dash, and the jacket number e.g. 2016—000—000 and in cases of term contracts the print order number shall be included e.g., 2016—000—000/00000. The imprint must appear at the bottom of the last printed page on books and pamphlets; at the bottom of the back on face and back products; at the bottom of face only products (except for items such as labels, envelopes, letterheads, certificates, etc.); or in the stub of multipart sets. There shall be no additional charge to the Government to fulfill this requirement. Commercial identification mark(s) of any kind must not appear on any product ordered.

Failure to include the GPO imprint line may result in the Government exercising its rights and remedies under this contract, under QATAP for an equitable adjustment.

10. Reproduction Media.

- (a) Reproduction media not required to be delivered to the government may, unless otherwise specified, be derived from camera, projection, laser, or other reproduction method, provided that the quality assurance levels and standards are met.
- (b) When electronic media is furnished, upon completion of each order, the contractor shall furnish final production native application files (digital deliverables) with the furnished material. The digital deliverables must be an exact representation of the final printed product and shall be returned on the same type of storage media as was originally furnished, unless otherwise

specified. The Government will not accept, as digital deliverables, PostScript files, Adobe Acrobat Portable Document Format (PDF) files, or any proprietary file formats other than those supplied, unless specified by the Government. (The Government will accept Adobe Acrobat Portable Document Format (PDF) files as digital deliverables when furnished by the Government.)

11. Certificate of Conformance.

- (a) When “Postage and Fees Paid” mailing labels or indicia are used for mailing by the contractor, the contractor must complete GPO Form 712 “Certificate of Conformance,” which is available online at gpo.gov. Particular emphasis is directed to the instructions at the top of the form and the terms and conditions. Contractors are advised that the Postal Service will require postmasters to validate the certificate.
- (b) The Contractor shall email the verified mailing statement, containing postage computations, within 24 hours of receipt from the U.S. Postal Service to gpopostage@gpo.gov for mailings that bear the GPO permit imprint of G26 or G796.

12. Changes on Multipart Sets.

- (a) Changes will be indicated and will be referred to as Marginal (Mar), Minor (Mi), or Major (Maj).
- (b) Marginal (Mar) changes are defined as the change or deletion of one line of words, phrases, designating letters or numbers, etc., not affecting the spacing of the base form. Copy designations appearing within 1 inch of the bottom or top of the form will be restricted to three lines or less, all other marginal changes are restricted to one line.
- (c) Minor (Mi) changes are defined as (a) two “marginal” changes per part; (b) any deletion(s) without the insertion of new copy except the deletion of line(s) as provided for under “marginal change”; (c) any deletion(s) with the insertion of not more than (1 inch) of new copy in one location.
- (d) Major (Maj) changes are defined as any change which does not fall into the definitions of marginal or minor changes
- (e) Not more than one change as defined above shall be applied to any one part.

- (f) **Alignment.** The printing on each form of each set manufactured must be properly aligned so that the printing will register within 1/32-inch when the forms are gathered into sets. Misregister greater than 1/32-inch may be cause for rejection.
- (g) **Perforations.** Stub and alignment perforations must be such as to guarantee easy separation of all parts in one operation, but sufficient strength must be retained to prevent disengagement of any part under normal handling and shipping conditions. Stub perforations shall be on parts only, unless otherwise ordered.

13. Timework/System Timework.

Operations which cannot be properly classified under any other measurable item shall be charged as timework or system timework as applicable. Generally, timework charges will not be applicable. Each item and the time required therefore must be indicated separately and fully described on or with the contractor’s invoice/ voucher; otherwise, the charges will not be allowed. The Government Publishing Office reserves the right to determine the appropriate amount of time to be allowed for all such charges.

14. Departmental Random Copies (Blue Label).

- (a) All orders must be divided into equal sublots in accordance with the chart below. A random copy must be selected from each subplot. Do not choose copies from the same general area in each subplot. The contractor will be required to certify that copies were selected as directed using GPO Form 917-Certificate of Selection of Random Copies (located at <https://www.gpo.gov/how-to-work-with-us/vendors/forms-and-standards>).
- The random copies constitute a part of the total quantity ordered, and no additional charge will be allowed.

Quantity Ordered	Number of Sublots
500 - 3,200	50
3,201 - 10,000	80
10,001 - 35,000	125
35,001 and over	200

- (b) These randomly selected copies must be packed separately and identified by a special label (GPO Form 2678-Departmental Random Copies (Blue Label) that must be printed on blue paper and affixed to each affected container. This form can

be downloaded at <https://www.gpo.gov/how-to-work-with-us/vendors/forms-and-standards>. The container and its contents shall be recorded separately on all shipping documents and sent in accordance with the distribution list.

A copy of the print order/specification and a signed Certificate of Selection of Random Copies shall be included.

PROOFS

15. General Requirements.

- (a) All proofs must be accompanied by the original GFP and submitted for approval when indicated in the specifications and/or print order, and shall be sent to the address listed in the specifications.
- (b) The Contractor shall perform all necessary proofreading to insure that all proofs are in conformity with the original GFP submitted.
- (c) Proofs may not be submitted in installments unless authorized in the specifications.
- (d) If any contractor’s errors are serious enough in the opinion of the GPO to require revised proofs, the revised proofs are to be provided at no expense to the Government. No extra time can be allowed for this reproofing; such operations must be accomplished within the original production schedule allotted in the specifications.
- (e) Unless otherwise specified, the contractor must not proceed with production or print any portion of an order prior to receiving an “OK to proceed” or an “OK to print” from the Government.

16. Author’s Alterations.

- (a) Author’s alterations consist of all marks made by the author at variance with the original Government furnished material as submitted to the contractor, but do not include corrections made by the author due to the failure of the contractor to follow the furnished material literally.
- (b) **Proof of charge.** Charges for author’s alterations will not be honored unless the invoice/voucher which is submitted to the GPO is supported by a contract modification. Charges will not be allowed for proofing operations or materials which are due to the fault of the contractor.

17. Proofing Procedures.

- (a) When revised proofs are required, the contractor will be required to make all marked corrections and submit the specified number of sets of proofs, accompanied by the furnished media and the last proof set received containing the author's marks. These marked proofs will be returned to the contractor for modification requests as applicable.
- (b) Contractor errors consist of mistakes (i) made in variance of the original furnished media, or (ii) introduced in the correction of author's alterations.
- (c) Errors discovered and marked on proofs by Government personnel will not be all inclusive and shall be an indication only that mistakes have been introduced by the contractor. It is the responsibility of the contractor to determine the extent of the errors made and their subsequent correction.

STRINGER AND DECKBOARD DESIGN FOR TYPE III, Four-way (Partial) Flush Pallet

a) Federal Specification Pallets. Material Handling. Wood, Stringer Construction. 2-way end 4-way (partial), NN-P-71C, dated 8-10-73.

b) Classification

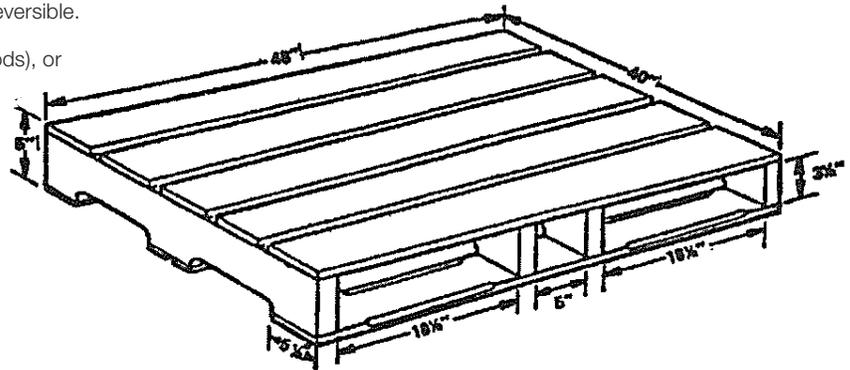
1. Type III—four-way (partial), flush, assembled, nonreversible.
2. Size 2 - 40" x 48".
3. Wood Group II — medium density woods (softwoods), or Wood Group III—high density woods (hardwoods).
4. Grade A—untreated.

c) Preproduction model not required.

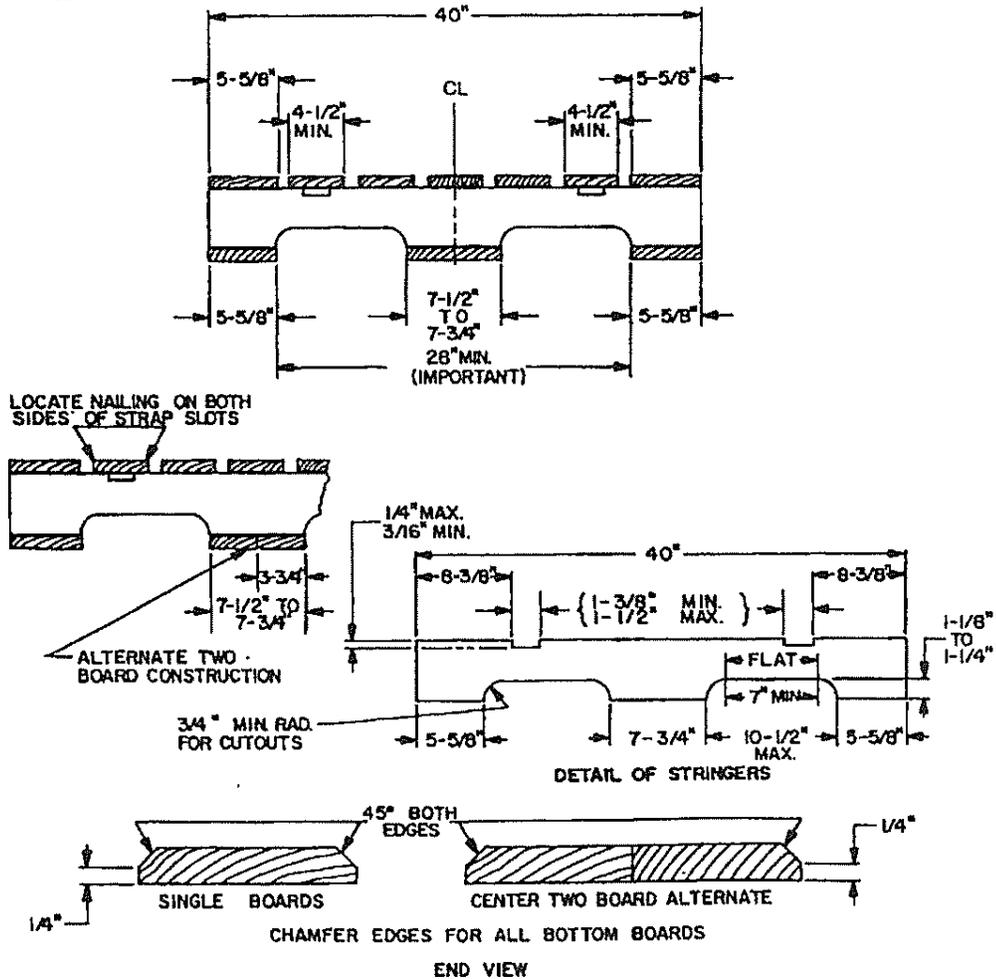
d) Moisture content as per specification.

e) Manufacturer's identification not required.

f) Bundling for shipment not required.



NN-P-71C



1. Dimensions are in inches.

2. Notches are to be centered about the centerline (CL).

3. Corners of notches shall be rounded as indicated.

4. One or two bottom deckboards may be used at the center.

CONTRACT CLAUSES

1. Contractual Responsibility.

Awards by GPO for printing, binding, and related services are the sole responsibility of GPO. Customer agencies have no authority to make changes. Modifications shall have no force or effect unless addressed before the fact and subsequently confirmed in writing by the Contracting Officer. Awards made by authorized federal customer agencies of the Simplified Purchase Agreement require prior written approval for all modifications. Failure to comply with this clause may be cause for nonpayment of additional costs incurred or rejection of the order.

2. Order of Precedence.

In the event of an inconsistency, the inconsistency shall be resolved by giving precedence in the following order: (a) specifications; (b) supplemental specifications (including GPO Form 2511/Print Order); (c) solicitation provisions; (d) contract clauses; and (e) other provisions whether incorporated by reference or otherwise.

3. Workday.

- (a) The term “workday” is defined as Monday through Friday of each week, exclusive of the days on which Federal Government holidays are observed. Also excluded are those days on which the GPO is not open for the transaction of business, such as days of national mourning, hazardous weather, etc.
- (b) References to “days” other than “workdays” shall mean calendar days.
- (c) Unless indicated otherwise in the specifications, a workday shall be considered between the hours of 7:30 a.m. and 3:30 p.m. local time at the point of contact (i.e. the location where delivery is being made or communication is being received) on federal workdays.

4. Changes.

- (a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of the contract in any one or more of the following:
 - (1) Specifications when the supplies to be furnished are to be specially manufactured for the Government in accordance with the specifications.
 - (2) Method of shipment or packing.
 - (3) Place of delivery.

- (b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.
- (c) The contractor must submit any “proposal for adjustment” (hereafter referred to as proposal) under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted anytime before final payment.
- (d) If the contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.
- (e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the contractor from proceeding with the contract as changed.

5. Disputes.

- (a) This contract is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. §§ 7101-7109 as modified by Section 1501 (d) of Title I of Division H of the Consolidated Appropriations Act, 2008, Public Law No. 110-161).
- (b) Except as provided in the Contract Disputes Act of 1978, all disputes arising under or relating to this contract shall be resolved under this clause.
- (c) “Claim,” as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified. A invoice/voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is

disputed either as to liability or amount or is not acted upon in a reasonable time.

- (d) (1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.
- (2) (i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$50,000.
- (ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.
- (iii) The certification shall state as follows:
“I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Contractor.”
- (3) The certification may be executed by any person duly authorized to bind the Contractor with respect to the claim.
- (e) For Contractor claims of \$50,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$50,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.
- (f) The Contracting Officer’s decision shall be final unless the Contractor appeals, within ninety (90) days of receipt of a Contracting Officer’s decision, to the U.S. Government Accountability Office Contract Appeals Board (GAO CAB), 441 G Street, NW, Room 7182, Washington, DC, 20548; Fax: 202.512.9749; Email: CAB@gao.gov.
- (g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative

dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor’s specific reasons for rejecting the offer.

- (h) The Government shall pay interest on the amount found due and unpaid from
 - (1) the date that the Contracting Officer receives the claim (certified, if required); or
 - (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, interest shall be paid from the date that the Contracting Officer initially receives the claim. [A “defective certification” means a certificate which alters or otherwise deviates from the language in (d) (2)(iii) above, or which is not executed by a person duly authorized to bind the contractor with respect to the claim. Failure to certify shall not be deemed to be a defective certification.] Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6 month period as fixed by the Treasury Secretary during the pendency of the claim.
- (i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

6. Subcontracts.

- (a) The contractor may make contracts with any other party for the furnishing of any part of the supplies or work called for, with the exception that the predominant production function required in the performance of the contract shall not be sub-contracted. If the predominant production function is other than printing, it shall be so identified in the specifications.
- (b) The term “printing” includes, but is not limited to processes of composition, platemaking, presswork, duplicating, screen processes, and digital imaging reproduction.

7. Government Furnished Property (GFP).

The contractor is required to examine the furnished property immediately upon receipt. For furnished electronic media, prior to image processing, the contractor is responsible for checking files contained on the furnished media to insure that such features as bleeds, register marks, and correct file output selection have been provided for, so as to correctly generate output for printing. If at that time there is disagreement with the description or the requirements as presented in the specification (or ordering document), and prior to the performance of any work, the contractor shall contact the originating GPO office and contest the description. (Failure to examine the GFP/specifications and bring any discrepancies to the attention of the Contracting Officer will not relieve the contractor of responsibility to perform.) The Contracting Officer will then investigate and make a determination which will be final. If the decision is reached that the original description is proper, the contractor shall proceed with the work. Failure to agree to the description shall be a dispute within the meaning of the Disputes clause. If the decision is reached that the description is erroneous, the Contracting Officer will proceed in one of the following manners:

- (a) In the case of sealed bids, either an equitable adjustment, if required, will be negotiated with the contractor and a supplemental agreement issued or the order will be terminated.
- (b) In the case of a print order placed through a term contract, an equitable adjustment, if required, will be negotiated and a supplemental agreement issued. However, in multiple award contracts where GPO determines contractor sequence on each print order, GPO will recompute the print order sequence using the revised specifications. If this results in a different contractor having the overall low cost for that print order, the order may be terminated in accordance with the Termination for the Convenience of the Government clause and, if terminated, will be offered to the new low contractor.
- (c) The Contracting Officer may at their option, when requested, furnish the contractor with materials or supplies not readily obtainable in the open market which are required by the contractor for performance. In such event, the cost to the Government of the materials or supplies, plus any handling and administrative costs, shall be deducted from the contract price of the items,

supplies, or work herein contracted for in such manner and at such times as the Contracting Officer may specify.

8. Use of Government Furnished Property.

The Government furnished property or content shall, unless otherwise approved by the Contracting Officer, be used only for performance of the requirement. The Government has unlimited rights to all content first produced in the performance of a contract and to all final content delivered under a contract, unless a contractor has written permission from the Contracting Officer to assert copyright on the material.

9. Risk of Loss.

Unless otherwise provided, the contractor assumes the risk of, and shall be responsible for, any loss or damage or unauthorized access to Government property. This includes all materials and content furnished in any format. The contractor shall be liable for loss, damage, release of information, or destruction of Government property/ material caused by its negligence. Should the property/ material be destroyed or damaged by an act of God and the contractor used sound judgment in protecting it, then the contractor shall be absolved of liability. Responsibility for Government property provided under contract begins upon receipt by the contractor's agent (including pickup delivery services as well as data transferred electronically) for delivery to the contractor or any of its subcontractors, and extends until the contractor or their agent has delivered to specified location.

10. Return of Government Property.

- (a) Government furnished production media such as, but not limited to: positives, negatives, artwork, camera copy, electronic media, shall be returned to the agency upon completion or termination of the contract, without demand by the Government, at the contractor's expense unless specifically provided otherwise in the specifications or by the Contracting Officer.
- (b) GBL's shall be returned via traceable means.
- (c) The contractor agrees to return all excess paper, supplies, or materials received from the Government resulting from overdelivery of such materials, more economical production than anticipated, or for any other reason, at the Government's expense unless specifically provided otherwise. The contractor shall request advice from the Contracting Officer as to the disposition

of the excess materials. The contractor warrants, in submitting a claim upon the Government that all such materials, supplies, and excess paper have been returned to the Government. It shall be the responsibility of the contractor to secure evidence of return of such Government property in the form of delivery receipts signed by an authorized officer or agent of GPO, or any other receipt acceptable to the Government.

- (d) Upon completion, the contractor must furnish one set of final production native application files (digital deliverables) with the furnished material, as applicable. The digital deliverables must be an exact representation of the final printed product and shall be returned on the same type of storage media as was originally furnished. The Government will not accept, as digital deliverables, Postscript files, Adobe Acrobat, Portable Document Format (PDF) files, or any proprietary file formats other than those supplied, unless specified by the Government.

11. Quantity Variations.

- (a) No variation in quantity of any item ordered will be permitted unless authorized in the specifications or by the Contracting Officer. If authorized, the extent of the variation will also be prescribed.
- (b) If the Contractor delivers and the Government receives quantities of any item in excess of the quantity called for (after considering any allowable variation in quantity), and had failed to get previous authorization from the Contracting Officer, such excess quantities will be treated as being delivered for the convenience of the Contractor. Since overshipments result in unnecessary administrative costs to the Government in determining disposition of the excess quantity, the Government may retain such excess quantities up to \$250 in value without compensating the Contractor therefor, and the Contractor waives all right, title, or interests therein. Quantities in excess of \$250 will, at the option of the Government, either be rejected and the contractor will be notified to remove the copies at the Contractor's expense or be retained and paid for by the Government at the agreed upon rate.
- (c) Unless otherwise indicated, the contractor shall contact the Contracting Officer for direction before delivery of an order with an authorized quantity variation.

- (d) Any plus quantity of printed matter in excess of the permissible variation, which was printed on Government furnished property, is the property of the Government.
- (e) The right to purchase overruns on other than Government furnished property at
 - (1) a negotiated rate, or
 - (2) the additional rate contained in the contract, is reserved to the Government, at its option. If, however, such overruns are not purchased by the Government, they shall be disposed of by the contractor so as to preclude their use for any purpose other than salvage. (See the clause "Reproduction of Printing Prohibited".) Requests for information regarding disposal of overruns must be furnished in writing to the Contracting Officer as soon as possible. Delay in requesting or receiving instructions concerning such overruns shall not delay shipment of the basic order beyond the date specified in the contract.
- (f) Notwithstanding any authorized variation in quantity, the contractor shall take every precaution to insure a full count of all quantities ordered for delivery to the U.S. Government Publishing Office, Washington, D.C. 20401, marked either "Consigned Stock," "Depository Copies," "Sales Copies," "File Copies," "Capitol—Hold for Binding," or other "Doc Title," or "Plain Titles." Shortages occurring in these or other consignments will be cause for requiring the contractor to make up shortages at no additional cost to the Government.

12. Notice of Compliance with Schedules.

- (a) In order to successfully and adequately maintain progress records, GPO must have certain information concerning shipment/delivery. The contractor, therefore, must furnish contract compliance information required in accordance with the following:
 - (1) If Government Furnished Property has not been received on or before the dates scheduled, the contractor shall immediately notify the Contract Compliance Section or originating Regional Printing Procurement Office by telephone, fax, or email as set forth in the specifications.
 - (2) Immediately after shipment/delivery of proofs

(if required), the contractor shall notify the Contract Compliance Section/originating Regional Printing Procurement Office and agency contact provided in the specifications of the date of shipment/delivery and advise of the method used (e.g. overnight courier and tracking number, etc.).

- (3) When pickup of shipments has been prearranged by the Transportation Management Section, the contractor must notify the Traffic Manager no later than 3:00 p.m. (EDT or EST) of the workday prior to the scheduled pickup day of any inability to release the completed product. Contact information will be indicated in the specifications.
 - (4) If shipment/delivery of the finished product will not be made on the scheduled date(s), the contractor shall immediately notify the Contract Compliance Section or originating Regional Printing Procurement Office by telephone, fax, or email notification of the anticipated failure to ship/deliver as scheduled, the reasons for the failure, and a revised date(s) for shipment/delivery.
 - (5) Unless otherwise specified, immediately after shipment/delivery has been made, the contractor shall notify the Contract Compliance Section/originating Regional Printing Procurement Office and ordering agency (when contact is provided in the specifications) by telephone, fax, or email of the fact and identify the method used; e.g., U.S. Postal Service, overnight courier and tracking number, local delivery service or contractor-owned transportation. The name of the contractor, GBL or freight bill number, and name of the carrier must be furnished in the case of shipment by common carrier; only the name of the company is required in the case of local delivery service.
 - (6) Toll free numbers and an email address are available for use in making the above progress reports. The telephone numbers and email addresses are set forth in the specifications.
- (b) Extension of schedules.
- (1) In the event a delay is caused by any action of the Government, including failure to furnish ordering document, copy, and/or materials as

scheduled, the shipping/delivery schedule will be extended automatically by the total number of workdays that work was delayed PLUS 1 workday for each day of delay; such period of grace for any schedule will not exceed 3 workdays. For example:

1 workday late + 1 workday grace =
2 workdays extension

2 workdays late + 2 workdays grace =
4 workdays extension

3 workdays late + 3 workdays grace =
6 workdays extension

Over 3 workdays late: total number of workdays late + 3 workdays grace = total number of workdays extension. No more than 3 workdays grace will be allowed on any one order

- (2) If, as a result of Government-caused delay, additional time is required beyond that provided for in paragraph (b)(1), the contractor shall furnish a written request to the Contracting Officer within 5 calendar days from the end of the Government-caused delay. If, in the opinion of the Contracting Officer, additional time beyond the 5 calendar days for submitting such written request is warranted, it may be granted.
- (3) In the event no adjustment of schedule has been requested, the contractor will be considered to be delinquent if shipment/delivery has not been made by the date established by the automatic extension.
- (4) In the event an adjustment of schedule has been requested in writing by the contractor and is approved by the Contracting Officer, the contractor shall meet the adjusted shipping/delivery date and will be considered delinquent if it is not met.

13. Failure to Ship/Deliver Full Quantities.

The contractor shall be considered delinquent on an order that ships/delivers with any shortage that is not authorized.

If a packing list is not included with the shipment, or if there is a discrepancy between the packing list and carton labels, the quantity verified by the Government will be accepted as final and conclusive.

14. Inspection and Tests.

- (a) **Definition.** "Supplies," as used in this clause includes but is not limited to raw materials, components, intermediate assemblies, end products, and supplies by lot.
- (b) The contractor shall provide and maintain an inspection system acceptable to the GPO covering supplies under the contract and shall tender to the Government for acceptance only the supplies that have been inspected in accordance with the inspection system and have been found by the contractor to be in conformity with contract requirements. As part of the system, the contractor shall prepare records evidencing all inspections made under the system and the outcome. The contractor shall keep a complete record of these inspections and make them available to the GPO until expiration of the warranty periods. The GPO may perform reviews and evaluations as reasonably necessary to ascertain compliance with this paragraph, which shall be conducted in a manner that will not unduly delay performance. The right to review, whether exercised or not, does not relieve the contractor of contractual obligations.
- (c) The Government has the right to inspect and test all supplies called for, to the extent practicable, at all places and times, including the period of manufacture, and in any event before acceptance, at no additional charge. The Government may perform inspections and tests in a manner that will not unduly delay performance and assumes no contractual obligation to perform any inspection and test for the benefit of the contractor unless specifically set forth elsewhere.
- (d) If the Government performs inspection or test on the premises of the contractor or a subcontractor, the contractor shall furnish, and shall require subcontractors to furnish, without additional charge, all reasonable facilities and assistance for the safe and convenient performance of these duties. Except as otherwise provided, the Government shall bear the expense of Government inspections or tests made at other than the contractor's or subcontractor's premises; provided, that in case of rejection, the Government shall not be liable for any reduction in the value of inspection or test samples.
- (e) (1) When supplies are not ready at the time specified by the contractor for inspection or test or an unreasonable amount of time is taken to produce satisfactory press sheets, the Contracting Officer may charge to the contractor the additional cost of inspection or test.
(2) The Contracting Officer may also charge the contractor for any additional cost of inspection or test when prior rejection makes reinspection or retest necessary.
- (f) The Government has the right either to reject or to require correction of nonconforming supplies. Supplies are nonconforming when they are defective in material or workmanship or are otherwise not in conformity with contract requirements. The Government may reject nonconforming supplies with or without disposition instructions.
- (g) The contractor shall, promptly after notice, remove supplies rejected or required to be corrected. However, the Contracting Officer may require or permit correction in place, promptly after notice, by and at the expense of the contractor. The contractor shall not tender for acceptance, corrected or rejected supplies without disclosing the former rejection or requirement for correction, and, when required, shall disclose the corrective action taken.
- (h) If the contractor fails to promptly remove, replace, or correct rejected supplies that are required to be removed or to be replaced or corrected, the Government may either:
 - (1) By contract or otherwise, remove, replace, or correct the supplies and charge the cost to the contractor; or
 - (2) Terminate for default as provided in the Default clause. Unless the contractor corrects or replaces the supplies within the established delivery schedule, the Contracting Officer may accept their later delivery and make an equitable price reduction. Failure to agree to a price reduction shall be a dispute concerning a question of fact within the meaning of the Disputes clause.
- (i) (1) If the contract provides for the performance of Government quality assurance at source, or if requested by the Government, the contractor shall furnish advance notification of the time

- (i) when contractor inspection or tests will be performed in accordance with the terms and conditions of the contract, and
 - (ii) when the supplies will be ready for Government inspection.
- (2) The GPO request shall specify the period and method of the advance notification and the Government representative to whom it shall be furnished.
- (j) The Government shall accept or reject supplies as promptly as practicable after delivery unless otherwise provided in the contract. Government failure to inspect and accept or reject the supplies shall not relieve the contractor from responsibility, nor imposes liability on the Government, for nonconforming supplies.
- (k) Inspections and tests by the Government do not relieve the contractor of responsibility for defects or other failures to meet contract requirements discovered before acceptance. Acceptance shall be conclusive, except for latent defects, fraud, gross mistakes amounting to fraud, or as otherwise provided in the contract.
- (l) If acceptance is not conclusive for any of the reasons in paragraph (k) hereof, the Government, in addition to any other rights and remedies provided by law, or under other provisions of the contract, may have the right to require the contractor
- (1) at no increase in contract price, to correct or replace the defective or nonconforming supplies at the original point of delivery or at the contractor's plant at the Contracting Officer's election, and in accordance with a delivery schedule as may be agreed upon between the contractor and the Contracting Officer; provided, that the Contracting Officer may require a reduction in the contract price if the contractor fails to meet such delivery schedule, or
 - (2) within a reasonable time after receipt by the contractor of notice of defects or non-conformance, to repay such portion of the contract as is equitable under the circumstances if the Contracting Officer elects not to require correction or replacement. When supplies are returned to the contractor, the contractor shall bear the transportation cost from the original point of delivery to the

contractor's plant and return to the original point when that point is not the contractor's plant. If the contractor fails to perform or act as required in (1) or (2) above and does not cure such failure within a period of 5 days (or such period of time as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure, the Government shall have the right by contract or otherwise to replace or correct such supplies and charge to the contractor the cost occasioned the Government thereby.

15. Warranty.

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

“Acceptance” means the act of an authorized representative of the Government by which the Government assumes for itself, or as an agent of another, ownership of existing supplies, or approves specific services as partial or complete performance of the contract.

“Correction” means the elimination of a defect. “Supplies” means the end item furnished by the contractor and related services required under the contract.

- (b) *Contractor's obligations.*

- (1) Notwithstanding inspection and acceptance by the Government of supplies furnished under the contract, or any condition of the contract concerning the conclusiveness thereof, the contractor warrants that for 120 days from the date of final payment—

(i) All supplies furnished under the contract will be free from defects in material or workmanship and will conform to all requirements of the contract; and

(ii) The preservation, packaging, packing, and marking, and the preparation for, and method of, shipment of such supplies will conform to the requirements of the contract.

- (2) When return, correction, or replacement is required, transportation charges and responsibility for the supplies while in transit shall be borne by the contractor. However, the contractor's liability for the transportation charges shall not exceed an amount equal to the cost of transportation by the usual commercial method of shipment between the

place of delivery specified in the contract and the contractor's plant, and return.

- (3) Any supplies or parts thereof, corrected or furnished in replacement under this clause, shall also be subject to the terms of this clause to the same extent as supplies initially delivered. The warranty, with respect to supplies or parts thereof, shall be equal in duration to that in paragraph (b)(1) of this clause and shall run from the date of delivery of the corrected or replaced supplies.
- (4) All implied warranties of merchantability and "fitness for a particular purpose" are excluded from any obligation contained in this clause.

(c) *Remedies available to the Government.*

- (1) The Contracting Officer or their authorized representative shall give written notice to the contractor of any breach of warranties in paragraph (a)(1) above within 120 days, unless otherwise specified, from the final payment date.
- (2) Within a reasonable time after the notice, the Contracting Officer may either —
 - (i) Require, by written notice, the prompt correction or replacement of any supplies or parts thereof (including preservation, packaging, packing, and marking) that do not conform with the requirements of the contract within the meaning of paragraph (b)(1) of this clause; or
 - (ii) Retain such supplies and reduce the contract price by an amount equitable under the circumstances.
- (3) If the contract provides for inspection of supplies by sampling procedures, conformance of supplies or components subject to warranty shall be determined by the applicable sampling procedures in the contract. The Contracting Officer—
 - (i) May, for sampling purposes, group any supplies delivered under the contract;
 - (ii) Shall require the size of the sample to be that required by sampling procedures specified in the contract for the quantity of supplies on which warranty action is proposed;
 - (iii) May project warranty sampling results over supplies in the same shipment or other

supplies contained in other shipments even though all of such supplies are not present at the point of reinspection; provided, that the supplies remaining are reasonably representative of the quantity on which warranty action is proposed; and

- (iv) Need not use the same lot size as on original inspection or reconstitute the original inspection lots.
- (4) Within a reasonable time after notice of any breach of the warranties specified in paragraph (b)(1) of this clause, the Contracting Officer may exercise one or more of the following options:
 - (i) Require an equitable adjustment in the contract price for any group of supplies.
 - (ii) Screen the supplies grouped for warranty action under this clause at the contractor's expense and return all nonconforming supplies to the contractor at the contractor's expense for correction or replacement.
 - (iii) Require the contractor to inspect the supplies at locations designated by the Government within the continental United States and to correct or replace all nonconforming supplies
 - (iv) Return the supplies grouped for warranty action under this clause to the contractor (irrespective of the f.o.b. point or the point of acceptance) for identifying and separating the acceptable supplies from the nonconforming supplies at the contractor's expense and correction or replacement of the nonconforming supplies at the contractor's expense.
 - (5) (i) The Contracting Officer may, by contract or otherwise, correct or replace the nonconforming supplies from another source and charge to the contractor the cost occasioned to the Government thereby if the contractor—
 - (A) Fails to make redelivery of the corrected or replaced supplies within the time established for their return; or
 - (B) Fails either to accept return of the nonconforming supplies or fails to make progress after their return to correct or replace them so as to endanger performance of the delivery schedule, and

in either of these circumstances does not cure such failure within a period of 5 days (or such longer period as the Contracting Officer may authorize in writing) after receipt of notice from the Contracting Officer specifying such failure.

(ii) Instead of correction or replacement by the Government, the Contracting Officer may require an equitable adjustment of the contract price.

(6) If the contractor fails to furnish timely disposition instructions, the Contracting Officer may dispose of the nonconforming supplies for the contractor's account in a reasonable manner. The Government is entitled to reimbursement from the contractor, or from proceeds of such disposal, for the reasonable expenses of the care and disposition of the nonconforming supplies, as well as for excess costs incurred or to be incurred.

(7) The rights and remedies of the Government provided in this clause are in addition to, and do not limit, any rights afforded to the Government by any other clause.

16. Notice and Assistance Regarding Patent and Copyright Infringement.

- (a) The contractor shall report to the Contracting Officer, promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on performance of the contract of which the contractor has knowledge.
- (b) In the event of any claim or suit against the Government, due to alleged patent or copyright infringement arising out of performance or out of the use of any supplies furnished or work or services performed hereunder, the contractor shall furnish to the Government, when requested by the Contracting Officer, all evidence and information in possession of the contractor pertaining to such suit or claim. Such evidence and information shall be furnished at the expense of the contractor.
- (c) The contractor agrees to include, and require inclusion of this clause in all subcontracts at any tier for supplies or services (including those for material, supplies, models, samples, or design or testing services) expected to exceed \$100,000.

17. Patent Indemnity.

- (a) The contractor shall indemnify the Government and its officers, agents, and employees against liability, including costs, for infringement of any United States patent (except a patent issued upon an application which is now or may hereafter be withheld from issue pursuant to a secrecy order under 35 U.S.C. 181) arising out of the manufacture or delivery of supplies or the performance of services, under the contract, or out of the use or disposal by or for the account of the Government of such supplies.
- (b) This indemnity shall not apply unless the contractor shall have been informed as soon as practicable by the Government of the suit or action alleging such infringement, and shall have been given such opportunity as is afforded by applicable laws, rules, or regulations to participate in the defense thereof; and, further, such indemnity shall not apply if:
 - (1) An infringement resulting from compliance with specific written instructions of the Contracting Officer directing a change in the supplies to be delivered or in the materials or equipment to be used, or directing a manner of performance of the contract not normally used by the contractor;
 - (2) An infringement resulting from addition to or change in supplies or components furnished that was made subsequent to delivery or performance; or
 - (3) A claimed infringement is unreasonably settled without the consent of the contractor, unless required by final decree of a court of competent jurisdiction.

18. Reproduction of Printing Prohibited.

No printing or other work to be performed shall be reproduced by the contractor for sale or for any purpose other than that provided.

19. Termination for the Convenience of the Government.

- (a) The Government may terminate performance of work in whole or in part if the Contracting Officer determines that a termination is in the Government's interest. Termination for the Convenience of the Government is for reasons other than default of the contractor.

The Contracting Officer shall terminate by delivering to the contractor a Notice of Termination specifying the extent of termination and the effective date.

- (b) After receipt of a Notice of Termination, and except as directed by the Contracting Officer, the contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
- (1) Stop work as specified in the notice.
 - (2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract.
 - (3) Terminate all subcontracts to the extent they relate to the work terminated.
 - (4) Assign to the Government, as directed by the Contracting Officer, all right, title, and interest under the subcontracts terminated, in which case the Government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations.
 - (5) With approval or ratification to the extent required by the Contracting Officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause.
 - (6) As directed by the Contracting Officer, transfer title and deliver to the Government (i) work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the Government.
 - (7) Complete performance of the work not terminated.
 - (8) Take any action that may be necessary, or that the Contracting Officer may direct, for the protection and preservation of property that is in the possession of the contractor and in which the Government has or may acquire an interest.

- (9) Use its best efforts to sell, as directed or authorized by the Contracting Officer, any property of the types referred to in subparagraph (6) above; provided, however, that the contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.
 - (10) Use its best efforts to sell, as directed or authorized by the Contracting Officer, termination inventory other than that retained by the Government under subparagraph (6) above; provided, however, that the contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the Contracting Officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the Government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the Contracting Officer.
 - (11) Immediately advise the Contracting Officer of any special circumstances precluding the stoppage of work and any legal proceedings against the contractor growing out of any subcontract or other commitment related to the terminated portion of the contract.
- (c) After termination, the contractor shall submit a final termination settlement proposal on GPO Form 911 to the Contracting Officer. The contractor shall submit the proposal promptly, but no later than 90 days from the effective date of termination, unless extended in writing by the Contracting Officer upon written request of the contractor within this 90 day period. However, if the Contracting Officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 90 days from the effective date of termination or any extension thereof. If the contractor fails to submit the proposal within the time allowed, the

Contracting Officer may determine, on the basis of information available, the amount, if any, due the contractor because of the termination and shall pay the amount determined.

- (d) Subject to paragraph (c) above, the contractor and the Contracting Officer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (d) or paragraph (e) below, exclusive of costs shown in subparagraph (e)(3) below, may not exceed the total contract price as reduced by
- (1) the amount of payments previously made, and
 - (2) the contract price of work not terminated. The contract shall be modified and the contractor paid the agreed amount. Paragraph (e) below shall not limit, restrict, or affect the amount that may be agreed upon to be paid under this paragraph.
- (e) If the contractor and the Contracting Officer fail to agree on the whole amount to be paid because of the termination of work, the Contracting Officer shall pay the contractor the amounts determined by the Contracting Officer as follows, but without duplication of any amounts agreed on under paragraph (d) above:
- (1) The contract price for completed supplies or services accepted by the Government (or sold or acquired under subparagraph (b)(9) above) not previously paid for, adjusted for any savings of freight and other charges.
 - (2) The total of—
 - (i) The costs incurred in the performance of the work terminated, including initial costs and preparatory expenses allocable thereto, but excluding any costs attributable to supplies or services paid or to be paid under subparagraph (e)(1) above;
 - (ii) The cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the contract if not included in subdivision (i) above; and
 - (iii) A sum, as profit on subdivision (i) above, determined by the Contracting Officer to be fair and reasonable; however, if it appears that the contractor would have sustained a loss

on the entire contract had it been completed, the Contracting Officer shall allow no profit under this subdivision (iii) and shall reduce the settlement to reflect the indicated rate of loss.

- (3) The reasonable costs of settlement of the work terminated, including—
 - (i) Accounting, legal, clerical, and other expenses reasonably necessary for the preparation of termination settlement proposals and supporting data;
 - (ii) The termination and settlement of subcontracts (excluding the amounts of such settlement); and
 - (iii) Storage, transportation, and other costs incurred, reasonably necessary for the preservation, protection, or disposition of the termination inventory.
- (f) Except for normal spoilage, and except to the extent that the Government expressly assumed the risk of loss, the Contracting Officer shall exclude from the amounts payable to the contractor under paragraph (e) above,
 - (1) the fair value, as determined by the Contracting Officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the Government or to a buyer; and
 - (2) the value of property that does not conform to contract specifications.
- (g) The Contract Cost Principles and Procedures Instruction 305.9 shall govern all costs claimed, agreed to, or determined under this clause.
- (h) The contractor shall have the right of appeal under the Disputes clause from any determination made by the Contracting Officer under paragraph (c), (e), or (j), except that if the contractor failed to submit the termination settlement proposal or request for equitable adjustment within the time provided in paragraph (c) or (j), and failed to request a time extension, there is no right of appeal. If the Contracting Officer has made a determination of the amount due under paragraph (c), (e), or (j), the Government shall pay the contractor (1) the amount determined by the Contracting Officer if there is no right of appeal or if no timely appeal has been taken, or (2) the amount finally determined on an appeal.

- (i) In arriving at the amount due the contractor under this clause, there shall be deducted—
 - (1) All unliquidated advance or other payments to the contractor under the terminated portion;
 - (2) Any claim which the Government has against the contractor under this contract; and
 - (3) The agreed price for, or the proceeds of sale of, materials, supplies, or other things acquired by the contractor or sold under the provisions of this clause and not recovered by or credited to the Government.
- (j) If the termination is partial, the contractor may file a proposal with the Contracting Officer for an equitable adjustment of the price(s) of the continued portion. The Contracting Officer shall make any equitable adjustment agreed upon. Any proposal by the contractor for an equitable adjustment under this clause shall be requested within 90 days from the effective date of termination unless extended in writing by the Contracting Officer.
- (k) (1) The Government may, under the terms and conditions it prescribes, make partial payments and payments against costs incurred by the contractor for the terminated portion, if the Contracting Officer believes the total of these payments will not exceed the amount to which the contractor will be entitled.
 - (2) If the total payments exceed the amount finally determined to be due, the contractor shall repay the excess to the Government upon demand, together with interest computed at the rate established by the Secretary of the Treasury under 31 USC § 3717 (a)(1) Interest shall be computed for the period from the date the excess payment is received by the contractor to the date the excess is repaid. Interest shall not be charged on any excess payment due to a reduction in the contractor's termination settlement proposal because of retention or other disposition of termination inventory until 10 days after the date of the retention or disposition, or a later date determined by the Contracting Officer because of the circumstances.
- (l) Unless otherwise provided or by statute, the contractor shall maintain all records and documents relating to the terminated portion for 3 years after final settlement. This includes all books and other evidence bearing on the contractor's costs and

expenses. The contractor shall make these records and documents available to the Government, at the contractor's office, at all reasonable times, without any direct charge. If approved by the Contracting Officer, electronic reproductions may be maintained instead of original records and documents.

20. Default.

- (a) (1) The Government may, subject to paragraphs (c) and (d) below, by written notice of default to the contractor, terminate the contract in whole or in part if the contractor fails to—
 - (i) Deliver the supplies or to perform the services within the time specified or any extension thereof;
 - (ii) Make progress, so as to endanger performance (but see subparagraph (a)(2) below); or
 - (iii) Perform any of the other provisions.
- (2) The Government's right to terminate under subdivision (1) (ii) and (iii) above, may be exercised if the contractor does not cure such failure within 10 days (or such other period as the Contracting Officer may determine to be reasonable and authorize in writing) after receipt of the notice from the Contracting Officer specifying the failure.
- (b) If the Government terminates in whole or in part, it may acquire, under the terms and in the manner the Contracting Officer considers appropriate, supplies or services similar to those terminated, and the contractor will be liable to the Government for any excess costs for those supplies or services. However, the contractor shall continue the work not terminated.
- (c) Except for defaults of subcontractors at any tier, the contractor shall not be liable for any excess costs if the failure to perform arises from causes beyond the control and without the fault or negligence of the contractor. Examples of such causes include acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather. In each instance, the failure to perform must be beyond the control and without the fault or negligence of the contractor.

- (d) If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the contractor and subcontractor, and without the fault or negligence of either, the contractor shall not be liable for any excess costs for failure to perform unless the subcontracted supplies or services were obtainable from other sources in sufficient time for the contractor to meet the required delivery schedule.
- (e) If terminated for default, the Government may require the contractor to transfer title and deliver to the Government, as directed by the Contracting Officer, any completed articles and materials, that the contractor has specifically produced or acquired for the terminated portion. Upon direction of the Contracting Officer, the contractor shall also protect and preserve property in its possession in which the Government has an interest.
- (f) The Government shall pay the contract price for completed supplies delivered and accepted. The contractor and Contracting Officer shall agree on the amount of payment for any materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The Government may withhold from these amounts any sum the Contracting Officer determines to be necessary to protect the Government against loss because of outstanding liens or claims of former lien holders.
- (g) If, after termination, it is determined that the contractor was not in default, or that the default was excusable, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the Government.
- (h) The rights and remedies of the Government in this clause are in addition to any other rights and remedies provided by law or under this contract.

21. Actual Damages.

Actual damages may be charged for contractor failure to ship/deliver or perform within the time specified, or any extension thereof or for loss or damage of GFP.

- (a) When damages occur as the result of a contractor's failure to provide services, materials, supplies,

and equipment for which no extension of time is provided, the contractor is chargeable with all expenses caused the Government by reason of delay, as actual damages to the Government on account of such delays.

- (b) The contractor will be charged, as actual damages, for all expenses caused the Government occasioned by delivery of materials, supplies, and equipment not conforming to specifications.
- (c) The contractor will be charged, as actual damages, for all expenses caused the Government, for lost or damaged Government furnished material.

22. Liquidated Damages.

Liquidated damages may be charged for contractor failure to ship/deliver or perform within the time specified, or any extension thereof, only if prescribed in the contract.

- (a) When such damages for delay are to be charged, the Government will assess, and deduct, not by way of penalty, liquidated damages at the rate specified. The damages will be computed on the basis of the number of workdays delayed from the date shipment/delivery was due to the actual date of shipment/delivery.
- (b) Should the contractor default on the specified shipping/delivery schedules, the contractor will be assessed liquidated damages against that part or parts of an order which have not been shipped/delivered to the specified destination on the specified date. Liquidated damages will not be assessed if the contractor has shipped/delivered at least 90 percent of the quantity ordered for shipment to a specified destination on or before the scheduled date.
- (c) When prescribed, liquidated damages will apply to all shipments/deliveries except the following: materials furnished the contractor which are to be returned to the Government; sample copies or materials for file or storage purposes; and shipments marked either "File Copies" or "Depository Copies" sent to the Government Publishing Office. However, payment of an order will be withheld until evidence of shipment/receipt of such material or copies is furnished.
- (d) Alternatively, GPO may terminate in whole or in part as provided in paragraph (a) of the Default clause, and in that event the contractor shall be

liable, in addition to the excess costs provided in paragraph (b) thereof, for such liquidated damages accruing until such time as GPO may reasonably obtain shipment/delivery or performance of similar supplies or services. Such damages are in addition to any excess cost of reprourement.

- (e) The contractor shall not be liable for liquidated damages when the delay arises out of causes beyond the control and without the fault or negligence of the contractor, as defined in paragraph (c) of the Default clause. In such event, and subject to the Disputes clause, the Contracting Officer shall determine the facts and extent of the delay.

23. Delay in Deliveries.

Damages shall not be applied against the contractor for delays in shipment/delivery occasioned by unforeseeable causes beyond the control and without the fault or negligence of the contractor as detailed in paragraph (c) of the Default clause; provided, that the contractor shall, within 10 calendar days (by telephone and confirmed promptly in writing if the remaining production time is less than 10 days) from the beginning of such delay, notify the Contracting Officer in writing of the cause of the delay; provided further, that such notice to the Contracting Officer shall contain the justification for such delay. In the event that Government bills of lading are furnished and the contractor elects to make more shipments/deliveries than provided for by the specifications or the number of bills of lading which are furnished, the contractor will not be relieved of any damages for delays in shipment/delivery occasioned by its failure to request additional bills of lading which may be required or any increased cost of shipment/delivery.

24. Payments on Purchase Order.

- (a) Payment will be made to the contractor upon submission of a properly completed invoice/voucher, in accordance with GPO Publication 300.3, Billing Instructions. Utilizing the GPO barcode coversheet program application is the fastest method of getting paid. Submit all invoices/vouchers to the Comptroller via facsimile in accordance with the instructions listed at <https://www.gpo.gov> or mail to FMCE, Office of Financial Management, U.S. Government Publishing Office, Washington, DC 20401. The following are required in support of the charges:

- (1) Any of the forms listed below, properly filled out, signed, and dated will be accepted as evidence of shipment:
 - (i) Memorandum copy of Government bill of lading (Standard Form 1103a), signed and dated by the carrier on the date material is picked up. The date must be the actual pickup date.
 - (ii) U.S. Postal Service certificates of mailings (see Domestic Mail Manual) or other form evidencing payment of postage which may be acceptable by the Contracting Officer, properly filled out, stamped, and initialed or signed by the postmaster or a Postal Service clerk. These forms must show the amount of postage paid, number of copies mailed, jacket number, and GPO purchase or print order numbers.
 - (iii) Where shipments are prepaid, and reimbursement for such charges will be made to the contractor, the contractor must submit with its invoice/voucher U.S. Postal Service receipts evidencing payment of postage or a copy of the commercial carrier prepaid airway bill or freight bill.
 - (iv) A properly executed GPO Form 712, "Certificate of Conformance," for ordered products which are mailed using Government-furnished postage and fees paid labels.
 - (v) A copy of the contractor's own delivery receipt when contractor-owned transportation is utilized.
 - (vi) Small parcel carrier receipts in any form provided the correct GPO identifiers appear on the receipt.
- (2) The following forms, filled out, signed, and dated will be accepted as evidence of delivery:
 - (i) A copy of the commercial carriers' airway bill or freight bill.
 - (ii) U.S. Postal Service receipts.
 - (iii) A copy of contractor's own delivery receipt signed by a representative of the Government.
 - (iv) A valid receipt from a small package carrier signed by a representative of the Government.

- (3) Evidence of return of furnished property, excess stock, and other articles supplied by GPO shall be in the form of delivery receipts, signed by a representative of the Government. U.S. Postal Service receipts, Government bill of lading memorandum copies, or copies of commercial carrier airway bills or freight bills will be acceptable as proof of shipment.
- (4) One completed copy of the specified product (except classified documents) only when required by the contract.
- (5) A copy of the print order or purchase order as applicable.
 - (b) The submission of a invoice/voucher to GPO is a certification by the contractor that the contractor has furnished the supplies or services called for in the contract in accordance with all applicable requirements, and that the supplies or services are of the quality specified and conform in all respects with the contract requirements, including specifications, drawings, preservation, packaging, packing, marking requirements, and physical item identification (part or form number), and are in the quantity shown on the attached acceptance document.
 - (c) Payments tendered by GPO of any invoice submitted by the contractor, whether equal to or less than the amount invoiced, are tendered as final payment. Acceptance of payment of any amount so tendered shall operate as a bar to the assertion of any exceptions by the contractor to the amount paid by GPO unless the contractor notifies the Contracting Officer in writing within 60 calendar days of the date of such check. Such notice shall specify the exception taken to the sum tendered, and the reasons therefor.
 - (d) W-9 submission from contractor to GPO. Contractor is must submit and maintain current W-9 with GPO in order to receive payment. The updated W9 must be submitted within 3 workdays to GPO's Bid Section via fax or e-mail. Additionally when GPO requests an updated W9 from a contractor and the contractor does not comply within 5 workdays of the request, GPO will withhold payments until received.
 - (e) Requests for prompt payment discounts submitted on the invoice/voucher after award (i.e. requests for payment sooner than 30 days after receipt of invoice/ voucher submitted by the contractor or sooner than the terms at time of award) will not be authorized without prior approval by the Contracting Officer.

25. Partial Payment.

Partial payments may be made provided invoices/ vouchers are submitted in accordance with the clause "Payments on Purchase Order," and the amounts billed are properly supported by acceptable evidence of shipment or delivery.

26. Payment for Accelerated Delivery.

Reimbursement to the contractor for any additional costs incurred for accelerated delivery authorized by the Contracting Officer shall be paid upon approval by GPO of the actual net increase in manufacturing expense. A contract modification (GPO Form 913) will be issued by the Contracting Officer authorizing a maximum amount reimbursable to the contractor. However, if the actual expense incurred is less than the authorized maximum amount, GPO's liability shall extend to that lesser amount only. In the determination of actual expenses incurred, the Contracting Officer may require the contractor to furnish labor or other records which will clearly substantiate the additional expense incurred.

27. Federal, State, and Local Taxes.

- (a) Definition of terms used in this clause are—
 - "Contract date" means the date set for bid opening or, if it is a negotiated contract or a modification, the effective date of the contract or modification.
 - "All applicable federal, state, and local taxes and duties" means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by the contract.
 - "After imposed federal tax" means any new or increased federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced

during the contract period, on the transactions or property covered by the contract that the contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

“After-relieved federal tax” means any amount of federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by the contract, but which the contractor is not required to pay or bear, or for which the contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

“Local taxes” includes taxes imposed by a possession or territory of the United States, Puerto Rico, or the Northern Mariana Islands, if the contract is performed wholly or partly in any of those areas.

- (b) Unless otherwise provided in the contract, the contract price includes all applicable federal, state, and local taxes and duties. Taxes imposed under 26 U.S.C. 5000C may not be (i) Included in the contract price; nor (ii) Reimbursed.
- (c) The contract price shall be increased by the amount of any after-imposed federal tax, provided the contractor warrants in writing that no amount for such newly imposed federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.
- (d) The contract price shall be decreased by the amount of any after-relieved federal tax.
- (e) The contract price shall be decreased by the amount of any federal excise tax or duty, except social security or other employment taxes, that the contractor is required to pay or bear, or does not obtain a refund of, through the contractor’s fault, negligence, or failure to follow instructions of the Contracting Officer.
- (f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.
- (g) The contractor shall promptly notify the Contracting Officer of all matters relating to any federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the

contract price and shall take appropriate action as the Contracting Officer directs.

- (h) The Government shall, without liability, furnish evidence appropriate to establish exemption from any federal, state, or local tax when the contractor requests such evidence and a reasonable basis exists to sustain the exemption.

28. Payments made by GPO.

- (a) **Method of payment.** (1) Payments by the GPO under the contract shall be made by electronic funds transfer (EFT) except as provided in paragraph (a)(2) of this clause. As used in this clause, the term “EFT” refers to the funds transfer and may also include the payment information transfer.
 - (2) In the event GPO is unable to release one or more payments by EFT, the contractor agrees to either –
 - (i) Accept payment by check or some other mutually agreeable method of payment; or
 - (ii) Request GPO to extend the payment due date until such time as the Government makes payment by EFT (but see paragraph (d) of this clause).
- (b) **Submission of contractor’s EFT information.** The Government shall make payment to the Contractor using the EFT information contained in the GPO Accounts Payable database. In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to the GPO. The contractor shall provide the EFT information on SF 3881, a copy of which can be obtained at <https://www.gpo.gov>.
- (c) **Mechanisms for EFT payment.** GPO may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing federal payments through the ACH are contained in 31 CFR Part 210.
- (d) **Suspension of payment.** (1) Notwithstanding the provisions of any other clause of the contract, the Government is not required to make any payment under the contract until after receipt, by the designated payment office, of the correct EFT payment information from the contractor in

accordance with paragraph (b) of this clause. Until receipt of the correct EFT information, any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of Prompt Payment clause under the contract.

(2) If the EFT information changes after submission of correct EFT information, the Government shall begin using the changed EFT information no later than 30 days after its receipt by the designated office to the extent payment is made by EFT. However, the contractor may request that no further payments be made until the updated EFT information is implemented by the payment office. If such suspension would result in a late payment under the Prompt Payment terms of the contract, the contractor's request for suspension shall extend the due date for payment by the number of days of the suspension.

(e) **Liability for uncompleted or erroneous transfers.**

(1) If an uncompleted or erroneous transfer occurs because the Government used the contractor-provided EFT information incorrectly, the Government remains responsible for—

- (i) Making a correct payment;
- (ii) Paying any prompt payment penalty due; and
- (iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the contractor-provided EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and—

- (i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the contractor is responsible for recovery of any erroneously directed funds; or
- (ii) If the funds remain under the control of the payment office, the Government shall not make payment and the provisions of paragraph (d) shall apply.

(f) **EFT and prompt payment.** A payment shall be deemed to have been made in a timely manner in accordance with the Prompt Payment clause of the contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment

is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(g) **EFT and assignment of claims.** If the contractor assigns the proceeds of the contract as provided for in the Assignment of Claims clause of the contract, the contractor shall require as a condition of any such assignment, that the assignee shall register separately and provide the EFT information required by paragraph (b) of this clause to the designated office, and shall be paid by EFT in accordance with the terms of this clause. Notwithstanding any other requirement of this contract, payment to an ultimate recipient other than the Contractor, or a financial institution properly recognized under an assignment of claims, is not permitted. In all respects, the requirements of this clause shall apply to the assignee as if it were the contractor. EFT information that shows the ultimate recipient of the transfer to be other than the contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(h) **Liability for change of EFT information by financial agent.** The Government is not liable for errors resulting from changes to EFT information provided by the contractor's financial agent.

(i) **Payment information.** The payment or disbursing office shall forward to the contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address in the contract.

- (j) **Contractor EFT arrangements.** The contractor may supply this data for this or multiple contracts (see paragraph (b) of this clause). The contractor shall designate a single financial agent per contract capable of receiving and processing the EFT information using the EFT methods described in paragraph (c) of this clause.

29. Assignment of Claims.

The contractor, under the Assignment of Claims Act, as amended (31 U.S.C. 3727, 41 U.S.C. 6305 (hereinafter referred to as “the Act”), may assign its claims for monies due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.

The Act permits the assignment of funds due under a contract providing:

- (a) The contract provides for payment aggregating \$1,000 or more;
- (b) The payments are assigned to a bank, trust company, or other financing institution, including any federal lending agency; and
- (c) The contract does not prohibit the assignment.
- (d) Unless otherwise expressly permitted in the contract, the assignment –
 - (1) Covers all unpaid amounts payable under the contract;
 - (2) Is made only to one party, except that any assignment may be made to one party as agent or trustee for two or more parties participating in the financing of the contract; and,
- (e) The contractor shall not furnish or disclose to any assignee under this contract any classified document (including the contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.
- (f) Assignment of claims forms shall be furnished to the Contracting Officer who awarded the contract on behalf of the GPO.

30. Convict Labor.

The contractor shall not employ in the performance of the contract any person undergoing a sentence of imprisonment which has been imposed by any court of a State, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa or the Northern Mariana Islands. This limitation, however, shall not prohibit the employment by the contractor in the performance of the contract of persons on parole or probation to work at paid employment during the term of their sentence or persons who have been pardoned or who have served their terms. Nor shall it prohibit the employment by the contractor in the performance of the contract of persons confined for violation of the laws of any of the States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, American Samoa, the Northern Mariana Islands who are authorized to work at paid employment in the community under the laws of such jurisdiction, if—

- (a) The worker is paid or is in an approved work training program on a voluntary basis;
- (b) Representatives of local union central bodies or similar labor union organizations have been consulted;
- (c) Such paid employment will not result in the displacement of employed workers, or be applied in skills, crafts, or trades in which there is a surplus of available gainful labor in the locality, or impair existing contracts for services;
- (d) The rates of pay and other conditions of employment will not be less than those paid or provided for work of a similar nature in the locality in which the work is being performed; and,
- (e) The Attorney General of the United States has certified that the work-release laws or regulations of the jurisdiction involved are in conformity with the requirements of Executive Order 11755, as amended by Executive Orders 12608 and 12943.

31. Contract Work Hours and Safety Standards Act—Overtime Compensation.

The contract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. 3702-3705), is subject to the following provisions and to all other applicable provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

- (a) **Overtime requirements.** No contractor or subcontractor employing laborers or mechanics shall require or permit them to work over 40 hours in any workweek unless they are paid at least one and one-half times the basic rate of pay for each hour worked over 40 hours.
- (b) **Violation, liability for unpaid wages, and liquidated damages.** The contractor and any subcontractor are liable for unpaid wages if they violate the terms in paragraph (a) of this clause. In addition, the contractor and subcontractor are liable for liquidated damages payable to the Government. The Contracting Officer will apply liquidated damages at the rate of \$10 per affected employee for each calendar day on which the employer required or permitted the employee to work in excess of the standard workweek of 40 hours without paying overtime wages required by the provisions set forth in paragraph (a) of this clause.
- (c) **Withholding for unpaid wages and liquidated damages.** The Contracting Officer shall withhold from payments due under the contract sufficient funds required to satisfy any contractor or subcontractor liabilities for unpaid wages and liquidated damages as provided in the provisions set forth in paragraph (b) of this clause. If amounts withheld under the contract are insufficient to satisfy contractor or subcontractor liabilities, the Contracting Officer shall withhold payments from other federal or federally assisted contracts held by the same contractor that are subject to the Contract Work Hours and Safety Standards Act.
- (d) **Payrolls and basic records.**
 - (1) The contractor or subcontractor shall maintain payrolls and basic payroll records for all laborers and mechanics working on the contract during the contract and shall make them available for a period of 3 years after contract completion. The records shall contain the name and address of each employee, social security number, labor classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.
 - (2) The contractor and its subcontractors shall allow authorized representatives of the Contracting Officer or the Department of Labor to inspect, copy, or transcribe records maintained under paragraph (d)(1) of this

clause. The contractor or subcontractor shall also allow authorized representatives of the Contracting Officer or Department of Labor to interview employees during working hours.

- (e) **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts exceeding \$100,000 the provisions set forth in paragraphs (a) through (d) of this clause and also a clause requiring the subcontractors to include these provisions in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the provisions set forth in paragraphs (a) through (d) of this clause.

32. Walsh-Healey Public Contracts Act.

If the contract is for the manufacture or furnishing of materials, supplies, articles or equipment in an amount that exceeds or may exceed \$15,000, and is otherwise subject to the Walsh-Healey Public Contracts Act, as amended (41 U.S.C. 6502-6511), the following terms and conditions apply:

- (a) All stipulations required by the Act and regulations issued by the Secretary of Labor (41 CFR Chapter 50) are incorporated by reference. These stipulations are subject to all applicable rulings and interpretations of the Secretary of Labor that are now, or may hereafter, be in effect.
- (b) All employees whose work relates to this contract shall be paid not less than the minimum wage prescribed by regulations issued by the Secretary of Labor (41 CFR 50-202.2). Learners, student learners, apprentices, and handicapped workers may be employed at less than the prescribed minimum wage (see 41 CFR 50-202.3) to the same extent that such employment is permitted under Section 14 of the Fair Labor Standards Act (41 U.S.C. 6508).

33. Equal Opportunity.

- (a) If, during any 12-month period (including the 12 months preceding award), the contractor has been or is awarded nonexempt federal contracts and/or subcontracts that have an aggregate value in excess of \$10,000, the contractor shall comply with subparagraphs (b) (1) through (11) below. Upon request, the contractor shall provide information necessary to determine the applicability of this clause.

- (b) During performance, the contractor agrees as follows:
- (1) The contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity or national origin.
 - (2) The contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity or national origin. This shall include, but not be limited to:
 - (i) Employment,
 - (ii) Upgrading,
 - (iii) Demotion,
 - (iv) Transfer,
 - (v) Recruitment or recruitment advertising,
 - (vi) Layoff or termination,
 - (vii) Rates of pay or other forms of compensation,
 and
 - (viii) Selection for training, including apprenticeship.
 - (3) The contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
 - (4) The contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity or national origin.
 - (5) (i) The Contractor shall not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This prohibition against discrimination does not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who

do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

- (ii) The Contractor shall disseminate the prohibition on discrimination in paragraph (c)(5)(i) of this clause, using language prescribed by the Director of the Office of Federal Contract Compliance Programs (OFCCP), to employees and applicants by—
 - (aa) Incorporation into existing employee manuals or handbooks; and
 - (bb) Electronic posting or by posting a copy of the provision in conspicuous places available to employees and applicants for employment.
- (6) The contractor shall send, to each labor union or representative of workers with which it has a collective-bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers' representative of the contractor's commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
- (7) The contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
- (8) The contractor shall furnish to GPO all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR Part 60-1. Unless the contractor has filed within the 12 months preceding the date of award, the contractor shall, within 30 days after award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.

- (9) The contractor shall permit access to its premises, during normal business hours, by the GPO or OFCCP for the purpose of conducting on-site compliance valuations and complaint investigations. The contractor shall permit the Government to inspect and copy any books, accounts and records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.
 - (10) If the GPO or OFCCP determines that the contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, the contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor, or as otherwise provided by law.
 - (11) The contractor shall include the terms and conditions of subparagraph (b)(1) through (11) of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.
 - (12) The contractor shall take such action with respect to any subcontract or purchase order as the Contracting Officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance; provided, that if the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the contractor may request the United States to enter into the litigation to protect the interests of the United States.
- (c) Notwithstanding any other clause in the contract, disputes relative to this clause will be governed by the procedures in 41 CFR part 60-1.1.

34. Nondiscrimination Because of Age.

- (a) During performance, the contractor and its subcontractors agrees it shall not, in connection with employment, advancement, or discharge of employees, or the terms, conditions, or privileges of their employment, discriminate against persons because of their age except upon the basis of a bona fide occupational qualification, retirement plan, or statutory requirement.
- (b) The contractor agrees that it and its subcontractors it, or persons acting on their behalf, shall not specify in solicitations or advertisements for employees to work on Government contracts, a maximum age limit for employment unless the specified maximum age limit is based upon a bona fide occupational qualification, retirement plan, or statutory requirement.

35. Equal Opportunity for Workers With Disabilities.

This clause applies to all nonexempt contracts and subcontracts over \$15,000.

- (a) **General.**
 - (1) Regarding any position for which the employee or applicant for employment is qualified, the contractor shall not discriminate against any employee or applicant because of physical or mental disability. The contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified individuals with disabilities without discrimination based upon their physical or mental disability in all employment practices such as—
 - (i) Recruitment, advertising, and job application procedures;
 - (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
 - (iii) Rates of pay or any other form of compensation and changes in compensation;
 - (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

- (v) Leaves of absence, sick leave, or any other leave;
 - (vi) Fringe benefits available by virtue of employment, whether or not administered by the contractor;
 - (vii) Selection and financial support for training, including apprenticeships, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;
 - (viii) Activities sponsored by the contractor, including social or recreational programs; and
 - (ix) Any other term, condition, or privilege of employment.
- (2) The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor (Secretary) issued under the Rehabilitation Act of 1973 (29 U.S.C. 793) (the Act), as amended.

(b) **Postings.**

- (1) The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, Office of Federal Contract Compliance Programs stating—
- (2) Such notices shall state the rights of applicants and employees as well as the contractor’s obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants with disabilities. The contractor must ensure that applicants or employees with disabilities are provided the notice in a form that is accessible and understandable to the individual applicant or employee (e.g., providing Braille or large print versions of the notice, or posting a copy of the notice at a lower height for easy viewing by a person using a wheelchair). With respect to employees who do not work at a physical location of the contractor, a contractor will satisfy its posting obligations by posting such notices in an electronic format, provided that the contractor provides computers, or access to computers, that can access the electronic posting to such employees, or the contractor has actual knowledge that such employees

otherwise are able to access the electronically posted notices. Electronic notices for employees must be posted in a conspicuous location and format on the company’s intranet or sent by electronic mail to employees.

An electronic posting must be used by the contractor to notify job applicants of their rights if the contractor utilizes an electronic application process. Such electronic applicant notice must be conspicuously stored with, or as part of, the electronic application.

- (3) The contractor shall notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Section 503 of the Act, as amended, and is committed to take affirmative action to employ, and advance in employment, and shall not discriminate against, individuals with physical or mental disabilities.

- (c) **Noncompliance.** In the event of the contractor’s noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the act.
- (d) **Subcontracts.** The contractor shall include the terms of this clause in every subcontract or purchase order in excess of \$15,000 unless exempted by rules, regulations, or orders of the Secretary. The contractor shall act as specified by the Deputy Assistant Secretary to enforce the terms, including action for noncompliance.

36. Equal Opportunity for Veterans.

This clause is applicable if the contract is for \$100,000 or more.

- (a) **Definitions.** As used in this clause—
 - “All employment openings” means all positions except executive and senior management, those positions that will be filled from within the contractor’s organization, and positions lasting 3 days or less. This term includes full-time employment, temporary employment of more than 3 days duration, and part-time employment.

“Armed Forces service medal veteran” means any veteran who, while serving on active duty in the U.S. military, ground, naval, or air service, participated in a United States military operation for which an Armed Forces service medal was awarded pursuant to Executive Order 12985 (61 FR 1209).

“Disabled veteran” means-

- (1) A veteran of the U.S. military, ground, naval, or air service, who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Secretary of Veterans Affairs; or
- (2) A person who was discharged or released from active duty because of a service-connected disability.

“Executive and senior management” means—

- (1) Any employee—
 - (i) Compensated on a salary basis at a rate of not less than \$455 per week (or \$380 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities;
 - (ii) Whose primary duty consists of the management of the enterprise in which the individual is employed or of a customarily recognized department or subdivision thereof;
 - (iii) Who customarily and regularly directs the work of two or more other employees; and
 - (iv) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; or
- (2) Any employee who owns at least a bona fide 20-percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management.

“Other protected veteran” means a veteran who served on active duty in the U.S. military, ground, naval, or air service, during a war or in a campaign or expedition for

which a campaign badge has been authorized under the laws administered by the Department of Defense.

“Positions that will be filled from within the contractor’s organization” means employment openings for which no consideration will be given to persons outside the contractor’s organization (including any affiliates, subsidiaries, and parent companies) and includes any openings that the contractor proposes to fill from regularly established “recall” lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of its organization.

“Qualified disabled veteran” means a disabled veteran who has the ability to perform the essential functions of the employment positions with or without reasonable accommodation.

“Recently separated veteran” means any veteran during the three-year period beginning on the date of such veteran’s discharge or release from active duty in the U.S. military, ground, naval or air service.

(b) **General.**

- (1) The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-300.5(a), as of March 24, 2014, as amended. The contractor shall not discriminate against any employee or applicant for employment because the individual is a disabled veteran, recently separated veteran, other protected veterans, or Armed Forces service medal veteran, regarding any position for which the employee or applicant for employment is qualified. The contractor shall take affirmative action to employ, advance in employment, and otherwise treat qualified individuals, including qualified disabled veterans, without discrimination based upon their status as a disabled veteran, recently separated veteran, Armed Forces service medal veteran, and other protected veteran in all employment practices including the following:
 - (i) Recruitment, advertising, and job application procedures;
 - (ii) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring.

- (iii) Rate of pay or any other form of compensation and changes in compensation.
 - (iv) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists.
 - (v) Leaves of absence, sick leave, or any other leave.
 - (vi) Fringe benefits available by virtue of employment, whether or not administered by the contractor.
 - (vii) Selection and financial support for training, including apprenticeship and on-the-job training under 38 U.S.C. 3687, professional meetings, conferences and other related activities, and selection for leaves of absence to pursue training.
 - (viii) Activities sponsored by the contractor including social and recreational programs.
 - (ix) Any other term, condition, or privilege of employment.
- (2) The contractor shall comply with the rules, regulations, and relevant orders of the Secretary of Labor issued under the Vietnam Era Veterans' Readjustment Assistance Act of 1972 (the Act), as amended (38 U.S.C. 4211 and 4212).
- (3) The Department of Labor's regulations require contractors with 50 or more employees and a contract of \$100,000 or more to have an affirmative action program for veterans. See 41 CFR Part 60-300, Subpart C.

(c) **Listing openings.**

- (1) The contractor shall immediately list all employment openings existing at contract award or occurring during contract performance, at an appropriate office of the State employment service system in the locality where the opening occurs. These openings include those occurring at any contractor facility, including one not connected with performing the contract. An independent corporate affiliate is exempt from this requirement.
- (2) The contractor shall make the listing of employment openings with the appropriate

employment service delivery system at least concurrently with using any other recruitment source or effort and shall involve the normal obligations of placing a bona fide job order, including accepting referrals of veterans and nonveterans. This listing of employment openings does not require hiring any particular job applicant or hiring from any particular group of job applicants and is not intended to relieve the contractor from any requirements of Executive Orders or regulations concerning nondiscrimination in employment.

- (3) Whenever the contractor becomes contractually bound to the listing terms of this clause, it shall advise the State workforce agency, in each State where it has establishments, of the name and location of each hiring location in the State. As long as the contractor is contractually bound to these terms and has so advised the State agency, it need not advise the State agency of subsequent contracts. The contractor may advise the State agency when it is no longer bound by this contract clause.
- (d) **Applicability.** This clause does not apply to the listing of employment openings that occur and are filled outside the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam and the U.S. Virgin Islands.
- (e) **Postings.**
 - (1) The Contractor shall post employment notices in conspicuous places that are available to employees and applicants for employment.
 - (2) The employment notices shall—
 - (i) State the rights of applicants and employees as well as the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified employees and applicants who are disabled veterans, recently separated veterans, Armed Forces service medal veterans, and other protected veterans; and
 - (ii) Be in a form prescribed by the Director, Office of Federal Contract Compliance Programs, and provided by or through the Contracting Officer.

- (3) The contractor shall ensure that applicants or employees who are disabled veterans are informed of the contents of the notice (e.g., the contractor may have the notice read to a visually disabled veteran, or may lower the posted notice so that it can be read by a person in a wheelchair).
 - (4) The contractor shall notify each labor union or representative of workers with which it has a collective-bargaining agreement, or other contract understanding, that the contractor is bound by the terms of the Act, and is committed to take affirmative action to employ, and advance in employment, qualified disabled veterans, recently separated veterans, other protected veterans, and Armed Forces service medal veterans.
- (f) **Noncompliance.** If the contractor does not comply with the requirements of this clause, the Government may take appropriate actions under the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act. (Include penalties?)
- (g) **Subcontracts.** The contractor shall include the terms of this clause in every subcontract or purchase order of \$100,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance.

37. Buy American Act.

The Buy American Act (41 U.S.C. §§ 8301-8304, as amended) establishes as a policy of the Government that manufactured materials, supplies, or articles acquired for public use shall be substantially constituted from domestically mined or manufactured articles or supplies.

- (a) **Definitions.** “Component” means an article, material or supply incorporated directly into an end product or into another component.
 “End product” means an article, material, or supply to be acquired for public use under the contract.
 “Domestic end product,” means:
 (1) An unmanufactured end product mined or produced in the United States, or

- (2) An end product manufactured in the United States if the cost of its components mined, produced, or manufactured in the United States exceed 50 percent of the cost of all its components. The cost of components shall include transportation costs to the place of incorporation into the end product and shall include duty in the case of components of foreign origin.

“United States” means the 50 States, the District of Columbia, Guam, Puerto Rico, American Samoa, The U.S. Virgin Islands and the Northern Mariana Islands.

“Foreign end product” means an end product other than a domestic end product.

“Domestic bid” or “domestic offer” mean either a bid or an offer for a domestic end product, including transportation to destination.

“Foreign bid” or “foreign offer,” mean either a bid or an offer other than a domestic bid or domestic offer, including transportation to destination and duty.

- (b) The contractor shall deliver only domestic end products, except those—
 - (1) End products which are for use outside the United States;
 - (2) End products for which the Director of the U.S. Government Publishing Office makes a determination that domestic preference would be inconsistent with the public interest;
 - (3) End products for which the Contracting Officer makes a determination that the cost of the domestic end products would be unreasonable.
 - (4) End products which the Government determines on behalf of the entire Government are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.
 - (5) End products for which there is a determination stating that the domestic preference is inconsistent with the public interest, or for which there is a determination stating that the cost to the Government is unreasonable.
- (c) In making such determination, bids and proposals shall be evaluated so as to give preference to domestic bids as follows:

- (1) Each foreign bid shall be adjusted for purposes of evaluation by adding to the foreign bid (inclusive of duty) a factor of 6 percent of that bid, except that a 12 percent factor shall be used if the firm submitting the low acceptable domestic bid is a small business concern.
- (2) If an award for more than \$100,000 would be made to a domestic concern if the 12 percent factor is applied, but would not be made if the 6 percent factor is applied, the Government will determine whether the award to the small business concern would involve unreasonable cost or inconsistency with the public interest.
- (3) If the evaluation procedure results in a tie between a foreign bid and a domestic bid, award shall be made to the domestic bid.

38. Advertising of Award Prohibited.

It shall be strictly understood and agreed that all contracts will be treated confidentially in every respect and that the contractor shall refrain from the use of its imprint, label, and any other publicity or advertising concerning the furnishing of products or services to the Government.

39. Maintenance of Records on Recovered Materials in Paper Products.

The contractor shall maintain manufacturer/mill accounting and record summaries on the fiber weight content used as feedstock, for purposes of Government audit, that will verify (a) the contractor's certification of the minimum percentage of recovered materials used in performance of the contract, (b) that the paper and paper products are in compliance with the specification requirements, and (c) the paper is manufactured in accordance with the Environmental Protection Agency Paper Products Recovered Materials Advisory Notice II (63 FR 31214, June 08, 1998) whether the products are manufactured by the contractor or another paper mill. The contractor, if not the manufacturer, shall obtain this information from the paper manufacturer. The contractor shall maintain, and make available to the Government, these documents for one year after the expiration of the contract. Nothing in this clause shall excuse the contractor from furnishing the specified paper.

40. Examination of Records.

- (a) This clause applies if the contract exceeds the GPO small purchase threshold and was entered into by negotiation.
- (b) The GPO Office of Inspector General or Comptroller General of the United States (or a duly authorized representative from the Government Accountability Office) shall, until 3 years after final payment, have access to and the right to examine any of the contractor's directly pertinent books, documents, papers, or other records involving transactions related to the contract.
- (c) The contractor agrees to include in first-tier subcontracts, a clause to the effect that the GPO Office of Inspector General or Comptroller General (or a duly authorized representative from the Government Accountability Office) shall, until 3 years after final payment under the subcontract, have access to and the right to examine any of the subcontractor's directly pertinent books, documents, papers, or other records involving transactions related to the subcontract. "Subcontract," as used in this clause, excludes (1) purchase orders not exceeding \$100,000, and (2) subcontracts or purchase orders for public utility services at rates established to apply uniformly to the public, plus any applicable reasonable connection charge.
- (d) The period of access and examination in paragraphs (b) and (c) above for records relating to
 - (1) appeals under the Disputes clause,
 - (2) litigation or settlement of claims arising from the performance, or
 - (3) costs and expenses to which the Inspector General or Comptroller General (or a duly authorized representative from the Government Accountability Office) has taken exception shall continue until such appeals, litigation, claims, or exceptions are disposed of.

41. Audit and Records—Sealed Bidding.

This clause is effective when the contract amount exceeds \$100,000:

- (a) As used in this clause, "records" includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.

- (b) **Cost or pricing data.** If the contractor has submitted cost or pricing data in connection with the pricing of any modification to the contract, the Contracting Officer or an authorized representative of the Contracting Officer, in order to evaluate the accuracy, completeness, and currency of the cost or pricing data, shall have the right to examine and audit all of the contractor's records, including computations and projections, related to—
 - (1) The proposal for the modification;
 - (2) The discussions conducted on the proposal(s), including those related to negotiating;
 - (3) Pricing of the modification; or
 - (4) Performance of the modification.
- (c) **Comptroller General/GPO Inspector General.** In the case of pricing any modification, the GPO Office of Inspector General or Comptroller General of the United States, or authorized representatives, shall have the same rights as specified in paragraph (b) of this clause and also the right to interview any current employee regarding such transactions.
- (d) **Availability.** The contractor shall make available at its office at all reasonable times the materials described in paragraph (b) of this clause, for examination, audit, or reproduction, until 3 years after final payment under the contract:
 - (1) If the contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement.
 - (2) Records pertaining to appeals under the Disputes clause or to litigation or the settlement of claims arising under the performance of the contract shall be made available until disposition of such appeals, litigation, or claims.
- (e) The contractor shall insert a clause containing all the provisions of this clause, including this paragraph (e), in all subcontracts expected to exceed \$100,000 for submission of cost or pricing data, altering the clause only as necessary to identify properly the contracting parties and the GPO under the Government prime contract.

42. Price Reduction for Defective Certified Cost or Pricing Data—Modifications—Sealed Bidding.

- (a) This clause shall become operative only for any modification to the contract involving aggregate

increases and/or decreases in costs, plus applicable profits, expected to exceed \$100,000 except that this clause does not apply to a modification for which the price is—

- (1) Based on adequate price competition;
 - (2) Based on established catalog or market prices of commercial items sold in substantial quantities to the general public; or
 - (3) Set by law or regulation.
- (b) If any price, including profit, negotiated in connection with any modification under this clause, was increased by any significant amount because
 - (1) the contractor or a subcontractor furnished certified cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data,
 - (2) a subcontractor or prospective subcontractor furnished the contractor certified cost or pricing data that were not complete, accurate, and current as certified in the contractor's Certificate of Current Cost or Pricing Data, or
 - (3) any of these parties furnished data of any description that were not accurate, the price shall be reduced accordingly and the contract shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under Paragraph (a) of this clause.
 - (c) Any reduction in the contract price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which
 - (1) the actual subcontract or
 - (2) the actual cost to the contractor, if there was no subcontract, was less than the prospective sub-contract cost estimate submitted by the contractor; provided, that the actual subcontract price was not itself affected by defective cost or pricing data.
 - (d) (1) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made, the contractor agrees not to raise the following matters as a defense:

- (i) The contractor or subcontractor was a sole source supplier or otherwise was in a superior bargaining position and thus the price of the contract would not have been modified even if accurate, complete, and current cost or pricing data had been submitted.
- (ii) The Contracting Officer should have known that the cost or pricing data in issue were defective even though the contractor or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.
- (iii) The contract was based on an agreement about the total cost of the contract and there was no agreement about the cost of each item procured under the contract.
- (iv) The contractor or subcontractor did not submit a certificate of current cost or pricing data.
- (2) (i) Except as prohibited by subparagraph (d) (2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of a contract price reduction if—
 - (aa) The contractor certifies to the Contracting Officer that, to the best of the contractor's knowledge and belief, the contractor is entitled to the offset in the amount requested; and
 - (bb) The contractor proves that the cost or pricing data were available before the date of agreement on the price of the contract (or price of the modification) and that the data were not submitted before such date.
- (ii) An offset shall not be allowed if—
 - (aa) The understated data was known by the contractor to be understated when the certificate of current cost or pricing data was signed; or
 - (bb) The Government proves that the facts demonstrate that the contract price would not have increased in the amount to be offset even if the available data had been submitted before the date of agreement on price.

- (e) If any reduction in the contract price under this clause reduces the price of items for which payment was made prior to the modification reflecting the price reduction, the contractor shall be liable to and shall pay the United States at the time such overpayment is repaid—
 - (1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the contractor to the date the Government is repaid by the contractor at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and
 - (2) A penalty equal to the amount of the overpayment, if the contractor or subcontractor knowingly submitted cost or pricing data which were incomplete, inaccurate, or noncurrent.

43. Audit and Records — Negotiation.

As used in this clause, records includes books, documents, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of electronic data, or in any other form.

- (a) **Examination of costs.** If the contract is a cost-reimbursement, incentive, time-and-materials, labor-hour, or price-redeterminable contract, or any combination of these, the contractor shall maintain—and the Contracting Officer, or an authorized representative of the Contracting Officer who is an employee of the Government, shall have the right to examine and audit all records and other evidence sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred directly or indirectly in performing the contract. This right of examination shall include inspection at all reasonable times of the contractor's plants, or parts of them, engaged in performing the contract.
- (b) **Certified cost or pricing data.** If, pursuant to law, the contractor has been required to submit certified cost or pricing data in connection with pricing the contract or any modification to the contract, the Contracting Officer, or an authorized representative of the Contracting Officer who is an employee of the Government, in order to evaluate the accuracy, completeness, and currency of the certified cost or pricing data, shall have the right to examine and

audit all books, records, documents, and other data of the contractor (including computations and projections) related to negotiating, pricing, or performing the contract or modification. The right of examination shall extend to all documents necessary to permit adequate evaluation of the cost of pricing data submitted, along with the computations and projections used.

- (c) **Reports.** If the contractor is required to furnish cost, funding, or performance reports, the Contracting Officer, or an authorized representative of the Contracting Officer who is an employee of the Government, shall have the right to examine and audit books, records, other documents, and supporting materials, for the purpose of evaluating (1) the effectiveness of the contractor's policies and procedures to produce data compatible with the objectives of these reports and (2) the data reported.
- (d) **Availability.** The contractor shall make available at its office at all reasonable times the materials described in paragraphs (a), (b), and (c) above, for examination, audit, or reproduction, until 3 years after final payment under the contract. In addition -
 - (1) If the contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement; and
 - (2) Records relating to appeals under the Disputes clause or to litigation of the settlement of claims arising under the contract shall be made available until such appeals, litigation, or claims are resolved with finality.
- (e) The contractor shall insert a clause containing all the terms of this clause, including this paragraph (e), in all subcontracts over \$100,000 under the contract, altering the clause only as necessary to identify properly the contracting parties and the Contracting Officer under the Government prime contract.

44. Gratuities.

- (a) The right of the contractor to proceed may be terminated by written notice if, after notice and hearing, the Director of the U.S. Government Publishing Office or a designee determines that the contractor, its agent, or another representative—

- (1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and
- (2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.
- (b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.
- (c) If the contract is terminated under paragraph (a) above, the Government is entitled—
 - (1) To pursue the same remedies as in a breach of the contract; and
 - (2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the contractor in giving gratuities to the person concerned, as determined by the Director of the U.S. Government Publishing Office or a designee. (This subparagraph (c)(2) is applicable only if the contract uses money appropriated to the Department of Defense.)
- (d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the contract.

45. Covenant Against Contingent Fees.

- (a) The contractor warrants that no person or agency has been employed or retained to solicit or obtain the contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul the contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.
- (b) "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a contractor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a contractor and subject to the contractor's supervision and control as to time, place, and manner of performance,

who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

“Contingent fee,” as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

“Improper influence,” as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

46. Contract Cost Principles and Procedures.

When required, contracts shall be subject to GPO Instruction 305.9, Contract Cost Principles and Procedures, dated May 25, 1999.

47. Joint Ventures.

The Government will recognize the integrity and validity of contractor team arrangements for contracts valued in excess of \$100,000. Agreements shall be in writing and signed by all parties to the joint venture and contain the following before acceptance by the Government:

- (a) The written agreement between the parties shall reserve to the Government the right to enforce the terms of the contract both jointly and severably against the coventurers.
- (b) The agreement must contain a statement from the attorney for each venturer that the joint venture is within the corporate power of each venturer.
- (c) One party to the joint venture must have total control of all phases of contract performance. Control must include delegated authority to fix the responsibilities of the coventurers.
- (d) One party to the joint venture must perform the contract primary production function. All other parties must perform at least one of the remaining production functions as described in the solicitation.
- (e) Invoices for all phases of contract performance must be submitted by only one party to the joint venture. All payments will be made in the name of the joint venture.

- (f) The agreement should identify each venturer's contribution toward contract completion such as materials, personnel, and expenses.
- (g) The joint venture agreement must be limited solely to the objective of the contract.
- (h) A copy of the executed agreement must be submitted with the proposal or bid.

48. Protest After Award.

- (a) Upon receipt of a notice of protest (as defined in section 3 of GPO Instruction 305.7) or a determination that a protest is likely (see section 4(d) of GPO Instruction 305.7), the Contracting Officer may, by written order to the contractor, direct the contractor to stop performance of the work called for by the contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either—
 - (1) Cancel the stop-work order; or
 - (2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of the contract.
- (b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if—
 - (1) The stop-work order results in an increase in the time required for, or in the contractor's cost properly allocable to, the performance of any part of the contract; and
 - (2) The contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; provided that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under the contract.

- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.
- (e) The Government's rights to terminate the contract at any time are not affected by action taken under this clause.
- (f) If, as a result of the contractor's intentional misstatement, misrepresentation, or miscertification, a protest related to the contract is sustained and the Government pays costs, as provided in 4(c)(2) or 6(h)(1) of GPO Instruction 305.7, the Government may require the contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, the Government may collect this debt by offsetting the amount against any payment due the contractor under any contract between the contractor and the Government.

49. Anti-Kickback Procedures.

- (a) *Definitions.* "Kickback," as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided, directly or indirectly, to any prime contractor, prime contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or in connection with a subcontract relating to a prime contract.

"Person," as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

"Prime contract," as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

"Prime contractor," as used in this clause, means a person who has entered into a prime contract with the United States.

"Prime contractor employee," as used in this clause, means any officer, partner, employee, or agent of a prime contractor.

"Subcontract," as used in this clause, means a contract or contractual action entered into by a prime contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

"Subcontractor," as used in this clause, (1) means any person, other than the prime contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and (2) includes any person who offers to furnish or furnishes general supplies to the prime contractor or a higher tier subcontractor.

"Subcontractor employee," as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

- (b) 41 U.S.C. chapter 87, Kickbacks, prohibits any person from—
 - (1) Providing or attempting to provide or offering to provide any kickback;
 - (2) Soliciting, accepting, or attempting to accept any kickback; or
 - (3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime contractor to the United States or in the contract price charged by a subcontractor to a prime contractor or higher tier subcontractor.
- (c) (1) The contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.
- (2) When the contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the contractor shall promptly report in writing the possible violation. Such reports shall be made to the GPO Inspector General or the Attorney General.
- (3) The contractor shall cooperate fully with any federal agency investigating a possible violation described in paragraph (b) of this clause.
- (4) The Contracting Officer may (i) offset the amount of the kickback against any monies

owed by the United States under the prime contract and/or (ii) direct that the prime contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subparagraph (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subparagraph (c)(4)(i) of this clause. In either case, the prime contractor shall notify the Contracting Officer when the monies are withheld.

- (5) The contractor agrees to incorporate the substance of this clause, including subparagraph (c)(5) but excepting subparagraph (c)(1), in all sub-contracts under contracts exceeding \$100,000.

50. Bankruptcy.

In the event the contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within 5 days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under the contract.

51. Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity. This clause is prescribed for contracts that exceed \$100,000.

- (a) If the Government receives information that a contractor or a person has violated 41 U.S.C. 2102-2104, Restrictions on Obtaining and Disclosing Certain Information, the Government may—
 - (1) Cancel the solicitation, if the contract has not yet been awarded or issued; or
 - (2) Rescind the contract with respect to which—
 - (i) The contractor or someone acting for the

contractor has been convicted for an offense where the conduct violated 41 U.S.C. 2102 for the purpose of either—

- (aa) Exchanging the information covered by such subsections for anything of value; or
- (bb) Obtaining or giving anyone a competitive advantage in the award of a federal agency procurement contract; or
- (ii) The Managing Director, Customer Services has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct punishable under 41 U.S.C. 2105(a).

- (b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.
- (c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

52. Price or Fee Adjustment for Illegal or Improper Activity.

This clause is prescribed for contracts that exceed \$100,000.

- (a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the Managing Director, Customer Services or designee determines that there was a violation of 41 U.S.C. 2102, as implemented in section 3.104 of the Federal Acquisition Regulation.
- (b) The price or fee reduction referred to in Paragraph (a) of this clause shall be—
 - (1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;
 - (2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or “fee floor” specified in the contract;

- (3) For cost-plus-award-fee contracts—
 - (i) The base fee established in the contract at the time of contract award; or
 - (ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the contractor for each award fee evaluation period or at each award fee determination point.
- (4) For fixed-price-incentive contracts, the Government may—
 - (i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or
 - (ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.
- (5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.
- (c) The Government may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.
- (d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate the contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under the contract.

53. Restrictions on Subcontractor Sales to the Government.

- (a) Except as provided in paragraph (b) of this clause, the contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractor directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under the contract or under any follow-on production contract.
- (b) The prohibition in (a) of this clause does not preclude the contractor from asserting rights that are otherwise authorized by law or regulation.
- (c) The contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract which exceed \$100,000.



U.S. GOVERNMENT PUBLISHING OFFICE

732 North Capitol Street, NW

Washington, DC 20401-0001

Keeping America Informed | OFFICIAL | DIGITAL | SECURE

www.gpo.gov | facebook.com/USGPO | twitter.com/usgpo