17.803 Evaluation and award.

17.804 ~~Procedures.~~

~~17.805~~ Solicitation provision and contract clauses.

~~Parent topic: Federal Acquisition Regulation~~
17.000 Scope of part.
This part prescribes policies and procedures for the acquisition of supplies and services through special contracting methods, including~~-~~—

(a) ~~Multi-year~~Multiyear contracting;

(b) Options;

(c) Leader company contracting; and

(d) Interagency acquisitions;

(e) Management and operating contracts; and

(f)~~The use of~~ Reverse auctions~~ to obtain competitive pricing.~~

Subpart 17.1 - ~~Multi-year~~Multiyear Contracting
17.101 Authority.
This subpart ~~implements 41 U.S.C. 3903 and 10 U.S.C. 3501 and provides policy~~prescribes policies and procedures for ~~the use of multi-year~~acquiring supplies or services through multiyear contracting, as authorized by 10 U.S.C. 3501 and 41 U.S.C. 3903. It addresses requirements for presolicitation planning, solicitation content, evaluation and award, funding~~.~~

~~17.102 Applicability.~~
~~For DoD, NASA~~, and ~~the Coast Guard, the authorities cited in 17.101 do not apply~~cancellation provisions unique to multiyear contracts~~ for the purchase of supplies to which 40 U.S.C.759 applies (information resource management supply contracts).~~.

17.~~103~~102 Definitions.
As used in this subpart~~-~~—

Cancellation means the cancellation (within a contractually specified time) of the total requirements of all remaining program years. Cancellation results when the contracting officer-

(1) Notifies the contractor of nonavailability of funds for contract performance for any subsequent program year; or

(2) Fails to notify the contractor that funds are available for performance of the succeeding program year requirement.

Cancellation ceiling means the maximum cancellation charge that the contractor can receive ~~in~~if the ~~event of cancellation~~contract is cancelled.

Cancellation charge means the amount of unrecovered costs which would have been recouped through amortization over the full term of the contract, including the ~~term~~ canceled term.

Multi-year contract means a contract for the purchase of supplies or services for more than 1, but not more than 5~~,~~ program years. A ~~multi-year~~multiyear contract may provide that performance under the contract during the second and subsequent years of the contract is contingent upon the appropriation of funds, and (if it does so provide) may provide for a cancellation payment to be made to the contractor if appropriations are not made. The key distinguishing difference between ~~multi-year~~multiyear contracts and multiple year contracts is that ~~multi-year~~multiyear contracts~~, defined in the statutes cited at 17.101,~~ buy more than 1 year's requirement (of a product or service) without establishing and having to exercise an option for each program year after the first.

Nonrecurring costs means ~~those~~ costs ~~which~~that are generally incurred on a one-time basis and include such costs as plant or equipment relocation, plant rearrangement, special tooling and special test equipment, preproduction engineering, preliminary design effort, initial spoilage and rework, and specialized work force training.

Recurring costs means costs that vary with the quantity being produced, such as labor and materials, and are the ongoing expenses associated with its production and maintenance.

17.~~104 General~~103 Presolicitation.

~~(a) Multi-year contracting is a special contracting method to acquire known requirements in quantities and total cost not over planned requirements for up to 5 years unless otherwise authorized by statute, even though the total funds ultimately to be obligated may not be available at the time of contract award. This method may be used in sealed bidding or contracting by negotiation.~~

~~(b) Multi-year contracting is a flexible contracting method applicable to a wide range of acquisitions. The extent to which cancellation terms are used in multi-year contracts will depend on the unique circumstances of each contract. Accordingly, for multi-year contracts, the agency head may authorize modification of the requirements of this subpart and the clause at 52.217-2, Cancellation Under Multi-year Contracts.~~

~~(c) Agency funding of multiyear contracts shall conform to the policies in OMB Circular A-11 (Preparation, Submission, and Execution of the Budget) and other applicable guidance regarding the funding of multiyear contracts. As provided by that guidance, the funds obligated for multi-year contracts must be sufficient to cover any potential cancellation and/or termination costs; and~~

~~multi-year contracts for the acquisition of fixed assets should be fully funded or funded in stages that are economically or programmatically viable.~~

~~(d) The termination for convenience procedure may apply to any Government contract, including multiyear contracts. As contrasted with cancellation, termination can be effected at any time during the life of the contract (cancellation is effected between fiscal years) and can be for the total quantity or partial quantity (where as cancellation must be for all subsequent fiscal years' quantities).~~

17.~~105~~103-1 Policy.
~~17.105-1 Uses.~~
(a) Except for DoD, NASA, and the Coast Guard, the contracting officer may enter into a multi-year contract if the head of the contracting activity determines that~~-~~—

(1) The need for the supplies or services is reasonably firm and continuing ~~over the period of~~throughout the contract period; and

(2) A ~~multi-year~~multiyear contract will serve the best ~~interests~~interest of the ~~United States~~Government by either encouraging ~~full and open~~ competition or promoting economy in program administration, performance, and operation ~~of the agency's programs~~.

(b) For DoD, NASA, and the Coast Guard, the head of the agency may enter into a ~~multi-year~~multiyear contract for supplies if~~-~~—

(1) The ~~use of such a~~ contract will ~~result in~~save significant ~~savings of the total estimated~~ costs ~~of carrying out the program~~ compared to using annual contracts, or will provide necessary stability to the defense industrial base not otherwise achievable through annual contracts;

(2) The ~~minimum need to be purchased is~~required purchase amounts are expected to remain substantially unchanged ~~during~~throughout the ~~contemplated~~ contract period, in terms of production ~~rate,~~and procurement ~~rate,~~rates and total quantities;

(3) ~~There is a stable~~ The agency head is reasonably expected to request sufficient funding throughout the contract period at a level required to avoid contract cancellation;

(4) The design ~~for~~of the supplies ~~to be acquired~~is stable, and ~~the~~ technical risks ~~associated with such supplies~~ are not excessive;

~~(4) There is a reasonable expectation that, throughout the contemplated contract period, the head of the agency will request funding for the contract at a level to avoid contract cancellation; and~~

(5) ~~The~~ Both the contract cost estimates ~~of both the cost of the contract and the~~ and projected cost avoidance through the use of a multiyear contract are realistic;

(6) For Department of Defense purchases, the contract will promote national security of the United States; and

(7) For Department of Defense contracts valued at $500,000,000 or more, the Secretary certifies that the conditions in 10 U.S.C. 3501 (i)(3) subparagraphs (C) through (F) will be met.

17.103-2 Procedures.
(a) Method of contracting. The specific requirement should guide the selection of the contracting method.

(b) Funding.

(1) Agency funding of multiyear contracts must follow the policies in OMB Circular A-11 (Preparation, Submission, and Execution of the Budget) and other applicable guidance on funding multiyear contracts.

(2) Multiyear contracts for fixed assets should be either-

(i) Fully funded; or

(ii) Funded in economically or programmatically viable stages.

17.103-3 Solicitations.
(a) In solicitations for multiyear contracts, the contracting officer must include-

(1) The supply or service requirements for the first program year, and the entire multiyear contract period, broken down by program year;

(2) ~~multi~~A statement that if the Government only needs the first-year ~~contract are realistic.~~requirements, evaluation will be based on first year pricing;

(3) A provision requiring a cancellation ceiling (as a percentage or dollar amount) and applicable dates for each program year that could be cancelled; and

(4) ~~(c) The multi-year contracting method may be used for the acquisition of supplies or services.~~

~~(d) If funds are not appropriated to support the succeeding years'~~ A statement that the Government will not award less than the first program year requirements~~, the agency~~.

(b) The solicitation must ~~cancel the contract~~explain how the Government will compare offers for the first year against offers for the entire multiyear period. This applies to both sealed bidding and negotiated acquisitions.

~~17.105-2 Objectives.~~
~~Use of multi-year contracting is encouraged to take advantage of one or more of the following:~~

~~(a) Lower costs.~~

~~(b) Enhancement of standardization.~~

~~(c) Reduction of administrative burden in the placement and administration of contracts.~~

~~(d) Substantial continuity of production or performance, thus avoiding annual startup costs, preproduction testing costs, make-ready expenses, and phaseout costs.~~
17.104 Evaluation and Award.

17.104-1 General.
Contracting officers must follow the appropriate acquisition policies
~~(e) Stabilization of contractor work forces.~~

~~(f) Avoidance of the need for establishing quality control techniques~~ and procedures ~~for a new contractor each year.~~

~~(g) Broadening the competitive base with opportunity for participation by firms not otherwise willing or able~~(such as those in parts 14 and 15). In addition, contracting officers must comply with the requirements unique to ~~compete for lesser quantities, particularly in cases involving high startup costs.~~

~~(h) Providing incentives to contractors to improve productivity through investment in capital facilities, equipment, and advanced technology~~multiyear contracting in this section, ~~.~~

~~17.106 Procedures.~~
~~17.106-1 General.~~
~~(a) Method of contracting. The nature of the requirement should govern the selection of the method of contracting, since the multi-year procedure is compatible with sealed bidding,~~ including ~~two-step sealed bidding, and negotiation.~~

~~(b) Type of contract. Given the longer performance period associated with multi-year acquisition, consideration in pricing fixed-priced contracts should be given to the use of economic price adjustment terms and profit objectives commensurate with contractor risk and financing arrangements.~~

~~(c)~~ cancellation procedures, congressional notification, and funding obligations at award.

17.104-2 Cancellation provisions.
(a) Cancellation procedures.

(1) All program years except the first are subject to cancellation.

(2) For each program year subject to cancellation, the contracting officer must—

(i) ~~shall establish~~Set a cancellation ceiling;

(ii) ~~. Ceilings must exclude~~Not include amounts for requirements ~~included in~~from prior program years~~. The contracting officer shall reduce the cancellation ceiling for each program year in direct proportion to the remaining requirements subject to cancellation. For example, consider that the total nonrecurring costs (see 15.408, Table 15-1, III. Formats for Submission of Line Item Summaries C(8)) are estimated at 10 percent of the total multi-year price, and the percentages for each of the program year requirements for 5 years are (i)30 in the firstyear, (ii)30 in the second, (iii)20 in the third, (iv)10 in the fourth, and (v)10 in the fifth.~~ ; and

(iii) Lower the cancellation ~~percentages, after deducting 3 percent for the first program year, would be 7, 4, 2, and 1 percent of the total price applicable to the second, third, fourth, and fifth program years, respectively~~ceiling proportionally as requirements are completed.

(3) When calculating cancellation ceilings, the contracting officer must—

(i) Estimate reasonable startup costs, learning curve costs, and other nonrecurring costs; and

(ii) Not include labor, materials, or other costs related to future program years.

(4) ~~(2) In determining cancellation ceilings, the contracting officer must estimate reasonable preproduction or startup, labor learning, and other nonrecurring costs to be incurred by an "average" prime contractor or subcontractor, which would be applicable to, and which normally would be amortized over, the items or services to be furnished under the multi-year requirements. Nonrecurring costs include such costs, where applicable, as plant or equipment relocation or rearrangement, special tooling and special test equipment, preproduction engineering, initial rework, initial spoilage, pilot runs, allocable portions of the costs of facilities to be acquired or established for the conduct of the work, costs incurred for the assembly, training, and transportation to and from the job site of a specialized work force, and unrealized labor learning. They shall not include any costs of labor or materials, or other expenses (except as indicated above), which might be incurred for performance of subsequent program year requirements. The total estimate of the above costs must then be compared with the best estimate of the contract cost to arrive at a reasonable percentage or dollar figure. To perform this calculation, the contracting officer should obtain in-house engineering cost estimates identifying the detailed recurring and nonrecurring costs, and the effect of labor learning.~~

~~(3) The contracting officer shall establish~~Set specific cancellation dates for each program ~~year's requirements regarding~~year based on production ~~lead time~~needs and ~~the date by which~~ funding ~~for these requirements can reasonably be established. The contracting officer shall include~~availability. These dates must be in the contract schedule~~, as appropriate~~.

~~(d) Cancellation~~(b) Revising ceilings~~.~~ or dates. The contracting officer may revise cancellation ceilings ~~and~~or dates ~~may be revised~~ after ~~issuing the~~ solicitation ~~if~~release when necessary. ~~In~~For sealed bidding, ~~the contracting officer shall change the ceiling by amending the solicitation~~changes must be made by amendment before bid opening. In ~~two-step sealed bidding~~negotiated acquisitions, discussions ~~conducted during the first step~~ may ~~indicate the~~reveal a need for ~~revised ceilings and dates which may be incorporated in step two. In a~~

~~negotiated acquisition, negotiations with offerors may provide information requiring a change in cancellation ceilings and dates~~changes before final ~~negotiation and~~award.

17.104-3 Congressional notification.
(a) Except for DoD, NASA, and the Coast Guard, a multiyear contract ~~award~~with a cancellation ceiling over $20 million may not be awarded until the agency head notifies Congress in writing.

(b) For DoD, NASA, and the Coast Guard, when the ceiling is over $200 million, the agency head must notify the House and Senate armed services and appropriations committees in writing.

(c) The contract may not be awarded until 31 days after notification.

17.104-4 Funding at award.
(a) At award, obligated funds must cover either—

(1) The full contract period; or

(2) The ~~(e) Payment of~~first fiscal year plus any potential cancellation ~~charges. If~~ and termination costs.

(b) The contract must state the funded amount for the first program year and any amounts for cancellation or termination.

17.~~occurs, the Government's liability will be determined~~104-5 Special procedures for DoD, NASA, and the Coast Guard.
(a) Participation by ~~the terms of the applicable contract~~subcontractors and suppliers. To the extent practicable, structure multiyear contracts to attract and retain a diverse defense industrial base.

(b) Protection of existing authority. To the extent practicable, multiyear contracting must not limit an agency's ability to maintain competition or terminate contracts based on performance deficiencies related to cost, quality, or schedule.

(c) Property. Multiyear contracts must be—

(1) Firm-fixed-price;

(2) Fixed-price with economic price adjustment; or

(3) Fixed-price incentive.

(
~~(f) Presolicitation or pre-bid conferences. To ensure that all interested sources of supply are thoroughly aware of how multi-year contracting is accomplished, use of presolicitation or pre-bid conferences may be advisable.~~

~~(g) Payment limit.~~d) Level unit prices. Where appropriate, the contracting officer ~~shall limit the Government's payment obligation to an amount available for contract performance. The contracting officer shall insert the amount~~should negotiate level unit prices for the ~~first~~items to be delivered in each program year ~~in the contract upon award and modify it for successive program years upon availability of funds~~.

~~(h~~17.105 Postaward.
(a) Termination ~~payment. If the contract is terminated for the~~ vs. cancellation. The termination for convenience ~~of the~~procedure applies to any Government ~~in whole~~contract, including multiyear contracts. Termination differs from cancellation in these ways:

(1) Timing. Termination can occur anytime during the contract life, while cancellation happens between fiscal years.

(2) ~~requirements subject~~Quantity. Termination can apply to total or partial quantities, while cancellation must apply to all quantities for future fiscal years.

(b) Funding limitations upon termination. If funds are not available to continue a multiyear contract into the next fiscal year, the contract must be canceled or terminated. If the Government terminates the entire contract for convenience, including all cancellable requirements, the Government obligation is no more than:

(1)~~cancellation, the Government's obligation shall not exceed~~ The amount specified ~~in the Schedule~~ as available for contract performance~~,~~; plus ~~the cancellation ceiling.~~

~~17.106~~ (2 ~~Solicitations.~~
~~Solicitations for multi-year contracts shall reflect all the factors to be considered for evaluation, specifically including the following:~~

~~(~~a) The ~~requirements, by item of supply or service, for the~~

~~(1) First program year; and~~
applicable
~~(2) Multi-year contract including the requirements for each program year.~~

~~(b) Criteria for comparing the lowest evaluated submission on the first program year requirements to the lowest evaluated submission on the multi-year requirements.~~

~~(c) A provision that, if the Government determines before award that only the first program year requirements are needed, the Government's evaluation of the price or estimated cost and fee shall consider only the firstyear.~~

~~(d) A provision specifying a separate~~ cancellation ceiling ~~(on a percentage or dollar basis) and dates applicable to each program year subject to a cancellation (see 17.106-1(c) and (d)).~~.

~~(e) A statement that award will not be made on less than the first program year requirements.~~

~~(f) The Government's administrative costs of annual contracting may be used as a factor in the evaluation only if they can be reasonably established and are stated in the solicitation.~~

~~(g) The cancellation ceiling shall not be an evaluation factor.~~

~~17.106-3 Special procedures applicable to DoD, NASA, and the Coast Guard.~~
~~(a) Participation by subcontractors, suppliers, and vendors. In order to broaden the defense industrial base, to the maximum extent practicable-~~

~~(1) Multi-year contracting shall be used in such a manner as to seek, retain, and promote the use under such contracts of companies that are subcontractors, suppliers, and vendors; and~~

~~(2) Upon accrual of any payment or other benefit under such a multi-year contract to any subcontractor, supplier, or vendor company participating in such contract, such payment or benefit shall be delivered to such company in the most expeditious manner practicable.~~

~~(b) Protection of existing authority. To the extent practicable, multi-year contracting shall not be carried out in a manner to preclude or curtail the existing ability of the Department or agency to provide for termination of a prime contract, the performance of which is deficient with respect to cost, quality, or schedule.~~
17.106
~~(c) Cancellation or termination for insufficient funding. In the event funds are not made available for the continuation of a multi-year contract awarded using the procedures in this section, the contract shall be canceled or terminated.~~

~~(d) Contracts awarded under the multi-year procedure shall be firm-fixed-price, fixed-price with economic price adjustment, or Fixed-price incentive.~~

~~(e) Recurring costs in cancellation ceiling. The inclusion of recurring costs in cancellation ceilings is an exception to normal contract financing arrangements and requires approval by the agency head.~~

~~(f) Annual and multi-year proposals. Obtaining both annual and multi-year offers provides reduced lead time for making an annual award in the event that the multi-year award is not in the Government's interest. Obtaining both also provides a basis for the computation of savings and other benefits. However, the preparation and evaluation of dual offers may increase administrative costs and workload for both offerors and the Government, especially for large or complex acquisitions. The head of a contracting activity may authorize the use of a solicitation requesting only multi-year prices, provided it is found that such a solicitation is in the Government's interest, and that dual proposals are not necessary to meet the objectives in 17.105-2.~~

~~(g) Level unit prices. Multi-year contract procedures provide for the amortization of certain costs over the entire contract quantity resulting in identical (level) unit prices (except when the economic price adjustment terms apply) for all items or services under the multi-year contract. If~~

~~level unit pricing is not in the Government's interest, the head of a contracting activity may approve the use of variable unit prices, provided that for competitive proposals there is a valid method of evaluation.~~

~~17.107 Options.~~
~~Benefits may accrue by including options in a multi-year contract. In that event, contracting officers must follow the requirements of subpart 17.2. Options should not include charges for plant and equipment already amortized, or other nonrecurring charges which were included in the basic contract.~~

~~17.108 Congressional notification.~~
~~(a) Except for DoD, NASA, and the Coast Guard, a multi-year contract which includes a cancellation ceiling in excess of $20 million may not be awarded until the head of the agency gives written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the committees on appropriations of the House of Representatives and Senate and the appropriate oversight committees of the House and Senate for the agency in question. Information on such committees may not be readily available to contracting officers. Accordingly, agencies should provide such information through its internal regulations. The contract may not be awarded until the thirty-firstday after the date of notification.~~

~~(b) For DoD, NASA, and the Coast Guard, a multi-year contract which includes a cancellation ceiling in excess of $200 million may not be awarded until the head of the agency gives written notification of the proposed contract and of the proposed cancellation ceiling for that contract to the committees on armed services and appropriations of the House of Representatives and Senate. The contract may not be awarded until the thirty-firstday after the date of notification.~~

~~17.109~~ Contract clauses.
(a) The contracting officer ~~shall~~must insert the clause at 52.217-2, Cancellation Under ~~Multi-year~~Multiyear Contracts, in solicitations and contracts when a ~~multi-year~~multiyear contract is contemplated.

(b) ~~Economic price adjustment clauses. Economic price adjustment clauses are adaptable to multi-year contracting needs.~~ When the ~~period of~~ production ~~is likely to warrant~~period may cause an offeror to include a labor ~~and~~or material ~~costs~~cost contingency in the contract price, ~~the contracting officer should normally use~~consider using an economic price adjustment clause (see ~~16.203). When contracting for services, the contracting officer-~~part 16).

(c) For service contracts, the contracting officer-

(1) ~~Shall add~~Must include the clause at 52.222-43, Fair Labor Standards Act and Service Contract Labor Standards~~-~~—Price Adjustment (Multiple Year and Option Contracts), when the contract includes the clause at 52.222-41, Service Contract Labor Standards;

(2) May modify the clause at 52.222-43 in overseas contracts when laws, regulations, or international agreements require contractors to pay higher wage rates; or

(3) May use an economic price adjustment clause authorized by part 16~~.203~~, when ~~potential fluctuations~~price changes require coverage and are not included in ~~cost contingencies provided for~~not already addressed by the clause at 52.222-43.

Subpart 17.2 - Options
17.200 Scope of subpart.
This subpart prescribes policies and procedures for the use of option solicitation provisions and contract clauses. Except as provided in agency regulations, this subpart does not apply to contracts for (a) services involving the construction, alteration, or repair (including dredging, excavating, and painting) of buildings, bridges, roads, or other kinds of real property; (b) architect-engineer services; and (c) research and development services. However, it does not preclude the use of options in those contracts.

17.201 ~~[Reserved]~~Presolicitation.

17.~~202~~201-1 Use of options.
(a) ~~Subject to the limitations of paragraphs (b) and (c) of this section, for both~~ In contracting by sealed bidding ~~and contracting by~~ or negotiation, the contracting officer may ~~include~~add options ~~in~~to contracts when ~~it is in the Government's interest. When using~~beneficial to the Government, within the limitations in paragraphs (b) and (c). For sealed bidding, ~~the contracting officer shall make a written determination that there is a reasonable likelihood that the options will be exercised~~ before including the provision at 52.217-5, Evaluation of Options, ~~in~~ the ~~solicitation. (See 17.207(f) with regard to~~contracting officer must document in writing that there is a probability that the Government will exercise ~~of~~the options~~.)~~.

(b) Inclusion of an option is normally not ~~in~~beneficial to the ~~Government's interest~~Government when~~, in the judgment of~~ the contracting officer~~-~~ determines that:

(1) The ~~foreseeable requirements~~Government's needs involve-

(i) Minimum economic quantities (~~i.e., quantities large~~ enough volume to permit the recovery of startup costs and the production of ~~the required~~ supplies at ~~a~~ reasonable ~~price~~prices); and

(ii) Delivery ~~requirements~~needs far enough ~~into~~in the future to ~~permit~~ allow for a new competitive ~~acquisition, production, and delivery~~contract.

(2) An indefinite quantity or requirements contract ~~would be more appropriate than a contract with options.~~better meets the government's needs. However, ~~this does not preclude the use of an indefinite quantity~~these contract ~~or requirements contract with~~types may still include options if appropriate.

(c) The contracting officer ~~shall~~must not ~~employ~~use options ~~if~~when-

~~(1) The contractor will incur undue risks; e.g., the~~ (1) Price or availability of necessary ~~materials~~material or labor is not reasonably foreseeable~~;~~, introducing significant risk into option pricing; or

(2) Market prices for the supplies or services ~~involved~~ are likely to change ~~substantially; or~~significantly.

~~(3~~17.201-2 Contracts.
(a) The ~~option represents known firm requirements for which funds are available unless-~~

~~(i) The basic quantity is a learning or testing quantity; and~~

~~(ii) Competition for the option is impracticable once the initial~~ contract ~~is awarded.~~

~~(d) In recognition of-~~
must clearly
~~(1) The Government's need in certain service contracts for continuity of operations; and~~

~~(2) The potential cost of disrupted support, options may be included in service contracts if there is an anticipated need for a similar service beyond the first contract period.~~

~~17.203 Solicitations.~~
~~(a) Solicitations shall include appropriate option provisions and clauses when resulting contracts will provide for the exercise of options (see 17.208).~~

~~(b) Solicitations containing option provisions shall~~ state ~~the basis of evaluation, either exclusive or inclusive of the option and, when appropriate, shall inform offerors that it is anticipated that the Government may exercise the option at time of award.~~

~~(c) Solicitations normally should allow option quantities to be offered without limitation as to price, and there shall be no limitation as to price if the option quantity is to be considered in the evaluation for award (see 17.206).~~

~~(d) Solicitations that allow the offer of options at unit prices which differ from the unit prices for the basic requirement shall state that offerors may offer varying prices for options, depending on the quantities actually ordered and the dates when ordered.~~

~~(e) If it is anticipated that the Government may exercise an option at the time of award and if the condition specified in paragraph (d) of this section applies, solicitations shall specify the price at which the Government will evaluate the option (highest option price offered or option price for specified requirements).~~

~~(f) Solicitations may, in unusual circumstances, require that options be offered at prices no higher than those for the initial requirement; e.g., when-~~

~~(1) The option cannot be evaluated under 17.206; or;~~

~~(2) Future competition for the option is impracticable.~~

~~(g) Solicitations that require the offering of an option at prices no higher than those for the initial requirement shall-~~

~~(1) Specify that the Government will accept an offer containing an option price higher than the base price only if the acceptance does not prejudice any other offeror; and~~

~~(2) Limit option quantities for additional supplies to not more than 50 percent of the initial quantity of the same line item. In unusual circumstances, an authorized person at a level above the contracting officer may approve a greater percentage of quantity.~~

~~(h) Include the value of options in determining if the acquisition will exceed the World Trade Organization Government Procurement Agreement or Free Trade Agreement thresholds.~~

~~17.204 Contracts.~~
~~(a) The contract shall specify~~ limits on-

(1) ~~the purchase of~~ The additional supplies or services~~, or the overall duration of the term of the contract,~~ the Government may purchase including ~~any extension.~~the number, type, frequency or duration; or

(~~b~~2) The contract duration, including any extensions.

(b) The contracting officer must—

(1) Specify ~~shall state~~in the contract the period within which the option may be exercised~~.~~

~~(c) The period shall be set so as to provide the contractor~~, allowing adequate lead time for the contractor to ensure continuous production~~.~~; and

~~(d) The period may extend beyond the~~ (2) Follow any statutory limits on contract ~~completion date for service contracts. This is necessary for situations when exercise of the option would result in the obligation of funds that are not available in the fiscal year in which the contract would otherwise be completed.~~

~~(e) Unless otherwise approved in accordance with agency procedures, the total of the basic and option periods shall not exceed 5 years in the case of services, and the total of the basic and option quantities shall not exceed the requirement for 5 years in the case of supplies. These limitations do not apply to information technology contracts. However, statutes applicable to various classes of contracts,~~ duration (for example, under the Service Contract Labor Standards statute ~~(~~ see ~~22.1002-1), may place additional restrictions on the length of contracts.~~

~~(f) Contracts may express options for increased quantities of supplies or services in terms of-~~

~~(1) Percentage of specific line items,~~

~~(2) Increase in specific line items; or~~

~~(3) Additional numbered line items identified as the option.~~

~~(g) Contracts may express extensions of the term of the contract as an amended completion date or as additional time for performance; e.g., days, weeks, or months.~~

~~17.205 Documentation.~~
~~(a) The contracting officer shall justify in writing the quantities or the term under option, the notification period for exercising the option, and any limitation on option price under 17.203(g); and shall include the justification document in the contract file.~~

~~(b) Any justifications and approvals and any determination and findings required by~~ part ~~6 shall specify both the basic requirement and the increase permitted by the option.~~22).

17.~~206~~202 Evaluation and award.
(a) ~~In~~Prior to awarding the basic contract, the contracting officer ~~shall, except as provided in paragraph (b) of this section,~~must evaluate offers for ~~any~~ option quantities or periods ~~contained~~included in ~~a~~the solicitation ~~when it has been determined prior to soliciting offers that the Government is likely to exercise the options. (See 17.208.)~~.

(b)(1) The contracting officer ~~need not evaluate offers for any~~ may skip the evaluation of option quantities when ~~it is determined that~~ such evaluation would not ~~be in the best interests of~~ benefit the Government. This exception should be reserved for rare instances.
(2) This decision must be—

(i) ~~and this determination is~~ In writing;

(ii) Approved at ~~a~~least one level above the contracting officer~~. An example of a circumstance that may support a determination not to evaluate offers for option quantities is when there is a reasonable certainty that funds will be unavailable to permit exercise of the option.~~; and

~~17.207 Exercise of options.~~
~~(a) When exercising an option, the contracting officer shall provide written notice to the contractor within the time period specified in the contract.~~

~~(b) When the contract provides for economic price adjustment and the contractor requests a revision of the price, the contracting officer shall determine the effect of the adjustment on prices under the option before the option is exercised.~~

~~(c) The contracting officer may exercise options only after determining that-~~

~~(1) Funds are available;~~

~~(2) The requirement covered by the option fulfills an existing Government need;~~

~~(3) The exercise of the option is the most advantageous method of fulfilling the Government's need, price and other factors (see paragraphs (d) and (e) of this section) considered;~~
(iii) Included in the contract file.

17.203
~~(4) The option was synopsized in accordance with part 5 unless exempted by 5.202(a)(11) or other appropriate exemptions in 5.202;~~

~~(5) The contractor does not have an active exclusion record in the System for Award Management (see FAR 9.405-1);~~

~~(6) The contractor's past performance evaluations on other contract actions have been considered; and~~

~~(7) The contractor's performance on this contract has been acceptable, e.g., received satisfactory ratings.~~

~~(d) The contracting officer, after considering price and other factors, shall make the determination on the basis of one of the following:~~

~~(1) A new solicitation fails to produce a better price or a more advantageous offer than that offered by the option. If it is anticipated that the best price available is the option price or that this is the more advantageous offer, the contracting officer should not use this method of testing the market.~~

~~(2) An informal analysis of prices or an examination of the market indicates that the option price is better than prices available in the market or that the option is the more advantageous offer.~~

~~(3) The time between the award of the contract containing the option and the exercise of the option is so short that it indicates the option price is the lowest price obtainable or the more advantageous offer. The contracting officer shall take into consideration such factors as market stability and comparison of the time since award with the usual duration of contracts for such supplies or services.~~

~~(e) The determination of other factors under paragraph (c)(3) of this section-~~

~~(1) Should take into account the Government's need for continuity of operations and potential costs of disrupting operations; and~~

~~(2) May consider the effect on small business.~~

~~(f) Before exercising an option, the contracting officer shall make a written determination for the contract file that exercise is in accordance with the terms of the option, the requirements of this section, and part 6. To satisfy requirements of part 6 regarding full and open competition, the option must have been evaluated as part of the initial competition and be exercisable at an amount specified in or reasonably determinable from the terms of the basic contract, e.g.-~~

~~(1) A specific dollar amount;~~

~~(2) An amount to be determined by applying provisions (or a formula) provided in the basic contract, but not including renegotiation of the price for work in a fixed-price type contract;~~

~~(3) In the case of a cost-type contract, if-~~

~~(i) The option contains a fixed or maximum fee; or~~

~~(ii) The fixed or maximum fee amount is determinable by applying a formula contained in the basic contract (but see 16.102(c));~~

~~(4) A specific price that is subject to an economic price adjustment provision; or~~

~~(5) A specific price that is subject to change as the result of changes to prevailing labor rates provided by the Secretary of Labor.~~

~~(g) The contract modification or other written document which notifies the contractor of the exercise of the option shall cite the option clause as authority.~~

~~17.208~~ Solicitation provisions and contract clauses.
(a) Insert a provision substantially the same as the provision at 52.217-3, Evaluation Exclusive of Options, in solicitations when the solicitation includes an option clause ~~and~~but does not include ~~one of~~ the ~~provisions prescribed~~provision described in either paragraph (b) or (c) of this section.

(b) Insert a provision substantially the same as the provision at 52.217-4, Evaluation of Options Exercised at Time of Contract Award, in solicitations when ~~the solicitation includes an option clause, the contracting officer has determined that there is a reasonable likelihood that the option will be exercised, and the option may be exercised at the time of contract award.~~-

(1) The solicitation includes an option clause; and

(2) The contracting officer determines there is a reasonable likelihood of option exercised when the contract is awarded.

(c) Insert a provision substantially the same as the provision at 52.217-5, Evaluation of Options, in solicitations when-

(1) The solicitation ~~contains~~includes an option clause;

~~(2) An option is not to be exercised at the time of contract award;~~

~~(3) A firm-fixed-price contract, a fixed-price contract with economic price adjustment, or other type of contract approved under agency procedures is contemplated;~~ and

(~~4~~2) The contracting officer ~~has determined that~~determines there is a reasonable likelihood ~~that~~of exercise, and the option will not be exercised~~. For sealed bids,~~ at the ~~determination shall be in writing~~time of contract award.

(d) Insert a ~~clause~~provision substantially the same as the clause at 52.217-6, Option for Increased Quantity, in solicitations and contracts, ~~other than~~except those for services, when ~~the inclusion of~~adding an option is appropriate (see 17.~~200 and 17.202)~~201), and the option quantity ~~is expressed~~appears as a percentage of the basic contract quantity or as ~~an~~ additional ~~quantity~~quantities of a specific line item.

(e) Insert a ~~clause~~provision substantially the same as the clause at 52.217-7, Option for Increased Quantity~~-~~—Separately Priced Line Item, in solicitations and contracts, ~~other than~~except those for services , when ~~the inclusion of~~adding an option is appropriate (see 17.~~200 and 17.202)~~201), and the option quantity ~~is identified~~appears as a ~~separately priced~~separate line item ~~having~~with the same ~~nomenclature~~name as a corresponding basic line item.

(f) Insert a ~~clause~~provision substantially the same as the clause at 52.217-8, ~~Option~~Options to Extend Services, in solicitations and contracts for services when ~~the inclusion of~~adding an option is appropriate. (See 17.~~200, 17.202,~~201 and part 37~~.111.)~~).

(g) Insert a ~~clause~~provision substantially the same as the clause at 52.217-9, Option to Extend the Term of the Contract, in solicitations and contracts when ~~the inclusion of~~adding an option is appropriate (see 17.~~200~~201) and ~~17.202) and it is necessary to include in~~ the contract needs to include any ~~or all~~ of ~~the following~~these elements:

(1) A requirement ~~that~~for the Government ~~must~~to give the contractor ~~a preliminary~~advance written notice of ~~its~~ intent to extend~~ the contract.~~;

(2) A statement that an extension of the contract ~~includes an extension of~~ also extends the option~~.~~; or

(3) A ~~specified limitation~~specific limit on the total contract duration.

17.204 Postaward.

17.204-1 Exercise of options.

(a) If the contract includes an economic price adjustment clause and the contractor requests a price revision, the contracting officer must determine how the adjustment affects option prices before exercising the option.

(b) The contracting officer may exercise options only after—

(1) Providing written notice to the contractor of the ~~contract.~~Government's intention to exercise the option, within the time specified in the contract;

(2) Confirming that funds are available; and

(3) Determining that–

(i) The option fulfills an existing Government requirement;

(ii) The option was synopsized as required, unless exempt (see part 5);

(iii) The Contractor does not have an active exclusion record in the System for Award Management (see part 9);

(iv) The contractor's performance on the current contract has been acceptable (for example, satisfactory or better performance ratings);

(v) After reviewing price and other factors, the option price is fair and reasonable based on current market conditions and exercise of the option is in the Government's best interest; and

(vi) The option exercise complies with the requirements of part 6 for full and open competition, i.e., the option was evaluated as part of the initial competition and is exercisable at an amount specified in or reasonably determinable from the terms of the contract.

Subpart 17.3 - [Reserved]

Subpart 17.4 - Leader Company Contracting

17.401 ~~General~~Policy.

Leader company contracting is an extraordinary acquisition technique~~ that is~~, limited to special circumstances, and ~~utilized~~may only ~~when its use is ~~be used in accordance with agency procedures. Under this technique, a developer or sole producer of a product or system is designated ~~under this acquisition technique to be~~as the leader company~~, and to furnish~~. The leader company is responsible for furnishing assistance and proprietary know-how under an approved contract to one or more designated follower companies~~, so they can become a source~~. The purpose is to enable those follower companies to qualify as sources of supply~~. The objectives of this technique are one or more of ~~ for the ~~following:~~

~~(a) Reduce delivery time.~~product or system, thereby expanding

~~(b) Achieve geographic dispersion of suppliers.~~

~~(c) Maximize~~ the ~~use of scarce tooling or special equipment.~~

~~(d) Achieve economies in production.~~

~~(e) Ensure uniformity and reliability in equipment, compatibility or standardization of components, and interchangeability of parts.~~

~~(f) Eliminate problems in the use of proprietary data that cannot be resolved by more satisfactory solutions.~~

~~(g) Facilitate the transition from development to production and to subsequent competitive acquisition of end items or major components.~~

~~17.402 Limitations.~~
~~(a) Leader company contracting is to be used only when-~~

~~(1) The leader company has the necessary production know-how and is able to furnish required assistance to the follower(s);~~
industrial base and promoting competition
~~(2) No other source can meet the Government's requirements without the assistance of a leader company;~~

~~(3) The assistance required of the leader company is limited to that which is essential to enable the follower(s) to produce the items; and~~

~~(4) Its use is authorized in accordance with agency procedures.~~

~~(b) When leader company contracting is used, the Government shall reserve the right to approve subcontracts between the leader company and the follower(s).~~

~~17.403 Procedures.~~
~~(a) The contracting officer may award a prime contract to a-~~

~~(1) Leader company, obligating it to subcontract a designated portion of the required end items to a specified follower company and to assist it to produce the required end items;~~

~~(2) Leader company, for the required assistance to a follower company, and a prime contract to the follower for production of the items; or~~

~~(3) Follower company, obligating it to subcontract with a designated leader company for the required assistance.~~

~~(b) The contracting officer shall ensure that any contract awarded under this arrangement contains a firm agreement regarding disclosure, if any, of contractor trade secrets, technical designs or concepts, and specific data, or software, of a proprietary nature~~.

Subpart 17.5 - Interagency Acquisitions
17.500 Scope of subpart.
(a) This subpart prescribes policies and procedures ~~applicable to~~for all interagency acquisitions under any authority, except as provided ~~for~~ in paragraph (c) of this section. ~~In addition to complying with the interagency acquisition policy and procedures in this subpart,~~When nondefense agencies ~~acquiring~~acquire supplies ~~and~~or services on behalf of the Department of Defense ~~shall also comply with the policy and procedures at~~, the requirements in subpart 17.7 also apply.

(b) This subpart applies to interagency acquisitions~~, see~~ as defined in 2.101 ~~for definition~~, when~~-~~

~~(1)~~ an agency:

(1) ~~needing~~ Requires supplies or services ~~obtains them using~~and uses another agency's contract; or

(2) ~~An agency uses~~Requests another agency to provide acquisition assistance, ~~such as~~ including but not limited to awarding ~~and~~or administering a contract, ~~a~~ task order, or delivery order.

(c) This subpart does not apply to-

(1) ~~Interagency~~ Reimbursable work performed by ~~Federal~~one agency's employees ~~(other than~~for another agency (except acquisition assistance), or interagency activities where contracting is ~~incidental to~~not the primary purpose ~~of the transaction~~; or

(2) Orders ~~of~~at or below $750,000 ~~or less~~ issued against Federal Supply Schedules.

17.501 General.
(a) Interagency acquisitions are ~~commonly~~usually conducted through indefinite-delivery contracts~~, such as task- and delivery-order contracts. The indefinite-delivery contracts used most frequently to support~~ .

(b) An interagency ~~acquisitions are Federal Supply Schedules (FSS), Governmentwide~~ acquisition ~~contracts (GWACs), and multi-agency contracts (MACs).~~

~~(b) An agency shall~~must not ~~use an interagency acquisition~~ be used to circumvent ~~conditions and limitations imposed~~statutory or regulatory restrictions on the obligation or use of funds.

(c) An interagency acquisition ~~is~~must not ~~exempt from the requirements of subpart 7.3, Contractor Versus Government Performance.~~

~~(d) An agency shall not use an interagency acquisition to make acquisitions conflicting~~conflict with ~~any other~~another agency's statutory authority or responsibility ~~(~~. For example, ~~that of~~ the Administrator of General Services has authority under ~~title~~ 40~~, United States Code,~~ U.S.C. "Public Buildings, Property, and Works" and 41 U.S.C. division C of subtitle I~~,~~ ("Procurement~~.)~~").

17.502 Procedures.
17.502-1 General.
(a) Written agreement on responsibility for management and administration~~—~~.

(1) Assisted acquisitions.

(i) ~~Prior to the issuance of~~Before issuing a solicitation, both the servicing agency and ~~the~~ requesting agency ~~shall both~~must sign a written interagency agreement that establishes the

~~general~~basic terms and conditions governing the relationship~~ between the parties, including~~, which must include—

(A) The roles and responsibilities for acquisition planning;

(B)~~,~~ Contract execution~~,~~; and

(C) Administration and management of the contract(s) or order(s).

(ii) The requesting agency ~~shall provide to~~must—

(A) Provide the servicing agency for incorporation into the order or contract, any unique requesting agency terms, conditions~~,~~ and applicable agency-specific statutes, regulations, directives, and other applicable requirements~~ for incorporation into the order or contract. In the event there are no agency unique requirements beyond the FAR, the requesting agency shall so~~, or

(B) Inform the servicing agency contracting officer in writing~~.~~ that there are no special requirements beyond the FAR.

(iii) For assisted acquisitions ~~on behalf of~~for the Department of Defense, also see subpart ~~17.7. For patent rights, see 27.304-2. In preparing interagency agreements to support assisted acquisitions,~~17.6.

(iv) Agencies should ~~review the~~follow applicable Office of Federal Procurement Policy ~~(OFPP)~~ guidance~~,~~ on Interagency Acquisitions~~, available at https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/assets/OMB/procurement/interagency_acq/iac_revised.pdf~~ when creating these agreements.

~~(ii) Each agency's file shall include the interagency~~(v) Both agencies must keep the signed agreement ~~between the requesting and servicing agency, and shall include~~ in their files along with sufficient documentation to ~~ensure an adequate~~permit a proper audit~~ consistent with 4.801(b).~~.

(2) Direct acquisitions. When the requesting agency administers the order~~; therefore~~ itself, no written agreement with the servicing agency is required.

(b) Business-case analysis requirements for multi-agency contracts and governmentwide acquisition contracts. ~~In order to establish a multi-agency or governmentwide acquisition contract, a business-case analysis must be prepared by the servicing agency and approved in accordance with the OFPP business case guidance, available at https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/procurement/memo/development-review-and-approval-of-business-cases-for-certain-interagency-and-agency-specific-acquisitions-memo.pdf . The business-case analysis shall —~~In accordance with section 865 of Public Law 110-417, the agency business case must address how the contract will be administered, analyze all direct and indirect costs of awarding and administering the contract, and describe the impact the contract will have on the Government's ability to leverage its purchasing power. For example, the analysis should address whether the new contract could dilute the effectiveness of existing contracts. For additional requirements see OMB Memorandum M-19-13.

~~(1) Consider strategies for the effective participation of small businesses during acquisition planning (see 7.103(u));~~

~~(2) Detail the administration of such contract, including an analysis of all direct and indirect costs to the Government of awarding and administering such contract;~~

~~(3) Describe the impact such contract will have on the ability of the Government to leverage its purchasing power, e.g., will it have a negative effect because it dilutes other existing contracts;~~

~~(4) Include an analysis concluding that there is a need for establishing the multi-agency contract; and~~

~~(5) Document roles and responsibilities in the administration of the contract.~~

17.502-2 The Economy Act.
(a) The Economy Act (31 U.S.C. 1535)—

(1) Authorizes agencies to enter into agreements to obtain supplies or services from ~~another agency.~~other agencies. The FAR applies when one agency uses another agency's contract~~ to obtain supplies or services.~~. If the ~~interagency business~~ transaction between agencies does not result in a contract or ~~an~~ order, ~~then~~ the FAR does not apply~~. The Economy Act also provides authority for placement of~~;

(2) Allows orders between major organizational units within ~~an~~the same agency~~;~~. Agencies should address the procedures for ~~such~~these intra-agency transactions ~~are addressed~~ in agency regulations~~.~~; and

~~(b) The Economy Act~~(3) Applies when more specific statutory authority does not exist~~. Examples of more specific authority are~~, such as 40 U.S.C. 501 for ~~the~~ Federal Supply Schedules (~~subpart~~see part 8~~.4), and~~) or 40 U.S.C. 11302(e) for Governmentwide acquisition contracts (GWACs).

~~(c) Requirements for determinations and findings.~~

~~(1~~(b) Each Economy Act order ~~to obtain supplies or services by interagency acquisition shall~~must be supported by a determination and findings (D&F~~). The D&F shall~~
)
~~(i) State~~ that ~~use of an interagency~~ must:

(1) State that the inter-agency acquisition is in the best interest of the Government;

(~~ii~~2) State that the supplies or services cannot be obtained as conveniently or ~~economically~~cheaply by contracting directly with a private source; and

~~(iii) Include a statement that at least one of the following circumstances applies:~~

~~(A~~(3) State which one (or more) of these conditions is true:

(i) The ~~acquisition will appropriately be made under~~servicing agency has an existing contract ~~of the servicing agency, entered into~~that was created before ~~placement of~~this order and meets the ~~order, to meet the requirements of~~ same needs.

(ii) The servicing agency ~~for the same or similar supplies or services.~~
has
~~(B) The servicing agency has the capability or~~ expertise or abilities to enter ~~into~~ a contract ~~for such supplies or services~~ that is not available within the requesting agency.

~~(C) The servicing agency is specifically authorized by law or regulation to purchase such supplies or services on behalf of other agencies.~~

~~(2~~(4) The D&F ~~shall~~must be approved by a contracting officer ~~of~~from the requesting agency with authority to contract for ~~the~~these supplies or services~~ to be ordered, or by another~~. Alternatively, an official designated by the agency head~~, except that,~~ may approve it. If the servicing agency is not ~~covered by~~subject to the FAR, approval ~~of the D&F~~ may not be delegated below the senior procurement executive of the requesting agency.

(~~3~~5) The requesting agency ~~shall furnish~~must send a copy of the D&F to the servicing agency with ~~the~~their order request~~ for order~~.

(~~d~~c) Payment~~.~~

~~(~~.(1) The servicing agency may ~~ask the requesting agency, in writing, for~~request advance payment for ~~all or part of the~~ estimated ~~cost of furnishing the supplies or services. Adjustment on the basis of~~ costs in writing. Adjustments based on actual costs ~~shall~~must be made as agreed to by the agencies.
(2) If ~~approved by~~ the servicing agency~~, payment for actual costs may be made by~~ approves, the requesting agency may pay actual costs after receiving the supplies or services~~ have been furnished~~.

(3) Bills rendered or ~~requests for~~ advance payment ~~shall~~requests must not be subject to audit or certification in advance of payment.

(4) ~~In no event shall~~ The servicing agency ~~require, or~~must not charge, and the requesting agency must not pay, any fee ~~or charge in excess of~~exceeding the actual cost (or estimated cost if ~~the~~ actual cost is ~~not known~~unknown) of entering into and administering the contract or~~ other~~ agreement under which the order is filled.

17.503 Ordering procedures.
(a) Before placing an order for supplies or services with another Government agency, the requesting agency ~~shall~~must follow the procedures in 17.502-1 and, if under the Economy Act, ~~also~~ 17.502-2.

(b) The order may be placed on any form or document that ~~is acceptable to~~ both agencies accept. The order should include~~-~~—

(1) A description of the supplies or services required;

(2) Delivery requirements;

(3) A funds citation;

(4) A payment provision (see 17.502-2(~~d~~c) for Economy Act orders); and

(5) Acquisition authority as may be appropriate (see 17.503(d)).

(c) The requesting and servicing agencies should agree to procedures for ~~the resolution of~~resolving disagreements that may arise under interagency acquisitions~~, including, in~~. When appropriate~~ circumstances, the use of~~, this may include using a third-party forum. If a third party is proposed, ~~consent of the third~~that party should ~~be obtained in writing~~provide their written consent.

(d) When an interagency acquisition requires the servicing agency to award a contract, ~~the following~~these additional procedures ~~also~~ apply:

(1) If law or regulation requires a justification and approval or a D&F (other than the requesting agency's D&F required in 17.502-2(c~~) is required by law or regulation,~~)), the servicing agency ~~shall execute~~must prepare and issue ~~the justification and approval or D&F.~~it. The requesting agency ~~shall furnish the servicing agency~~must provide any information needed ~~to make~~for the justification and approval or D&F.

(2) The requesting agency ~~shall also be responsible for furnishing~~must provide other necessary assistance~~ that may be necessary~~, such as ~~providing~~ information or special contract terms needed to comply with any ~~condition~~conditions or ~~limitation applicable to the funds of~~limitations on the requesting ~~agency~~agency's funds.

(3) The servicing agency is responsible for compliance with all other legal or regulatory requirements ~~applicable to~~for the contract, including~~-~~—

(i) Having ~~adequate statutory~~proper legal authority for the ~~contractual~~contract action; and

(ii) ~~Complying fully with the~~Following all competition requirements ~~of~~in part 6~~ (see 6.002). However,~~. If the servicing agency is not subject to the ~~Federal Acquisition Regulation~~FAR, the requesting agency ~~shall~~must verify that contracts ~~utilized~~used to meet its requirements contain provisions protecting the Government from inappropriate charges (for example, provisions ~~mandated for FAR agencies~~required by part 31~~), and~~). The requesting agency must also verify that adequate contract administration will be provided.

(e) Nonsponsoring Federal agencies may use a Federally Funded Research and Development Center (FFRDC) only if the terms of the FFRDC's sponsoring agreement ~~permit~~allow work from agencies other than ~~a sponsoring agency. Work placed with the FFRDC is subject~~the sponsor. Work given to the FFRDC requires the sponsor's acceptance ~~by the sponsor~~ and must fall within the FFRDC's purpose, mission, general scope of effort, or special ~~competency of the FFRDC.~~expertise. (See part 35~~.017; see also~~ and part 6~~.302~~ for procedures ~~to follow where~~when using other than full and open competition.) The nonsponsoring agency ~~shall~~must provide ~~to the sponsoring agency necessary~~ documentation to the sponsoring agency showing that the requested work would not place the FFRDC in direct competition with domestic private industry.

17.504 Reporting requirements.
(a) The senior procurement executive for each executive agency ~~shall~~must submit ~~to the Director of OMB~~ an annual report on interagency acquisitions to the Director of OMB, as directed by OMB.

(b) The contracting officer for the servicing agency ~~shall~~must ensure ~~that~~all service contractor reporting requirements are met in accordance with ~~subpart~~ part 4.~~17, Service Contracts Inventory.~~

~~Subpart 17.6 - Management and Operating Contracts~~
Subpart 17.6 - Interagency Acquisitions: Acquisitions by Nondefense Agencies on Behalf of the Department of Defense
17.600 Scope of subpart.
~~This subpart prescribes policies and procedures for management and operating contracts for the Department of Energy and any other agency having requisite statutory authority.~~

~~17.601 Definition.~~
~~Management and operating contract means an agreement under which the Government contracts for the operation, maintenance, or support, on its behalf, of a Government-owned or -controlled research, development, special production, or testing establishment wholly or principally devoted to one or more major programs of the contracting Federal agency.~~

~~17.602 Policy.~~
~~(a) Heads of agencies, with requisite statutory authority, may determine in writing to authorize contracting officers to enter into or renew any management and operating contract in accordance with the agency's statutory authority, or 41 U.S.C. chapter 33, and the agency's regulations governing such contracts. This authority shall not be delegated. Every contract so authorized shall show its authorization upon its face.~~

~~(b) Agencies may authorize management and operating contracts only in a manner consistent with the guidance of this subpart and only if they are consistent with the situations described in 17.604.~~

~~(c) Within 2 years of the effective date of this regulation, agencies shall review their current contractual arrangements in the light of the guidance of this subpart, in order to-~~

~~(1) Identify, modify as necessary, and authorize management and operating contracts; and~~

~~(2) Modify as necessary or terminate contracts not so identified and authorized, except that any contract with less than 4 years remaining as of the effective date of this regulation need not be terminated, nor need it be identified, modified, or authorized unless it is renewed or its terms are substantially renegotiated.~~

~~17.603 Limitations.~~
~~(a) Management and operating contracts shall not be authorized for-~~

~~(1) Functions involving the direction, supervision, or control of Government personnel, except for supervision incidental to training;~~

~~(2) Functions involving the exercise of police or regulatory powers in the name of the Government, other than guard or plant protection services;~~

~~(3) Functions of determining basic Government policies;~~

~~(4) Day-to-day staff or management functions of the agency or of any of its elements; or~~

~~(5) Functions that can more properly be accomplished in accordance with subpart 45.3, Authorizing the Use and Rental of Government Property.~~

~~(b) Since issuance of an authorization under 17.602(a) is deemed sufficient proof of compliance with paragraph (a) immediately above, nothing in paragraph (a) immediately above shall affect the validity or legality of such an authorization.~~

~~(c) For use of project labor agreements, see subpart 22.5.~~

~~17.604 Identifying management and operating contracts.~~
~~A management and operating contract is characterized both by its purpose (see 17.601) and by the special relationship it creates between Government and contractor. The following criteria can generally be applied in identifying management and operating contracts:~~

~~(a) Government-owned or -controlled facilities must be utilized; for instance-~~

~~(1) In the interest of national defense or mobilization readiness;~~

~~(2) To perform the agency's mission adequately; or~~

~~(3) Because private enterprise is unable or unwilling to use its own facilities for the work.~~

~~(b) Because of the nature of the work, or because it is to be performed in Government facilities, the Government must maintain a special, close relationship with the contractor and the contractor's personnel in various important areas (e.g., safety, security, cost control, site conditions).~~

~~(c) The conduct of the work is wholly or at least substantially separate from the contractor's other business, if any.~~

~~(d) The work is closely related to the agency's mission and is of a long-term or continuing nature, and there is a need-~~

~~(1) To ensure its continuity; and~~

~~(2) For special protection covering the orderly transition of personnel and work in the event of a change in contractors.~~

~~17.605 Award, renewal, and extension.~~
~~(a) Effective work performance under management and operating contracts usually involves high levels of expertise and continuity of operations and personnel. Because of program requirements and the unusual (sometimes unique) nature of the work performed under management and operating contracts, the Government is often limited in its ability to effect competition or to replace a contractor. Therefore contracting officers should take extraordinary steps before award to assure themselves that the prospective contractor's technical and managerial capacity are sufficient, that organizational conflicts of interest are adequately covered, and that the contract will grant the Government broad and continuing rights to involve itself, if necessary, in technical and managerial decisionmaking concerning performance.~~

~~(b) The contracting officer shall review each management and operating contract, following agency procedures, at appropriate intervals and at least once every 5 years. The review should determine whether meaningful improvement in performance or cost might reasonably be achieved. Any extension or renewal of an operating and management contract must be authorized at a level within the agency no lower than the level at which the original contract was authorized in accordance with 17.602(a).~~

~~(c) Replacement of an incumbent contractor is usually based largely upon expectation of meaningful improvement in performance or cost. Therefore, when reviewing contractor performance, contracting officers should consider-~~

~~(1) The incumbent contractor's overall performance, including, specifically, technical, administrative, and cost performance;~~

~~(2) The potential impact of a change in contractors on program needs, including safety, national defense, and mobilization considerations; and~~

~~(3) Whether it is likely that qualified offerors will compete for the contract.~~

~~Subpart 17.7 - Interagency Acquisitions: Acquisitions by Nondefense Agencies on Behalf of the Department of Defense~~
~~17.700 Scope of subpart.~~
(a) Compliance with this subpart is required in addition to the policies and procedures for interagency acquisitions ~~set forth~~ in subpart 17.5. This subpart ~~prescribes~~establishes policies and procedures ~~specific to~~specifically for acquisitions of supplies and services by nondefense agencies on behalf of the Department of Defense (DoD).

(b) This subpart implements ~~Pub. L.~~Public Law 110-181, section 801, as amended (10 U.S.C. 3201 note prec.).

17.~~701~~601 Definitions.
As used in this subpart~~-~~—

Department of Defense (DoD) acquisition official means~~-~~—

(1) A DoD contracting officer; or

(2) Any other DoD official authorized to approve a direct acquisition or an assisted acquisition on behalf of DoD.

Nondefense agency means any department or agency of the Federal Government other than the Department of Defense.

Nondefense agency that is an element of the intelligence community means the agencies identified in 50 U.S.C. 3003(4~~) which include the~~).

~~Office of the Director of National Intelligence;~~

~~Central Intelligence Agency;~~

~~Intelligence elements of the Federal Bureau of Investigation, Department of Energy, and Drug Enforcement Agency;~~

~~Bureau of Intelligence and Research of the Department of State;~~

~~Office of Intelligence and Analysis of the Department of the Treasury;~~

~~The Office of Intelligence and Analysis of the Department of Homeland Security and the Office of Intelligence of the Coast Guard; and~~

~~Such other elements of any department or agency as have been designated by the President, or designated jointly by the Director of National Intelligence and the head of the department or agency concerned, as an element of the intelligence community.~~

17.~~702~~602 Applicability.

(a) This subpart applies to all acquisitions made by nondefense agencies on behalf of DoD.

(b) ~~It~~This subpart does not apply to contracts entered into by a nondefense agency that is an element of the intelligence community for ~~the performance of~~ a joint program ~~conducted to meet~~that meets the needs of both DoD and the nondefense agency.

17.~~703~~603 Policy.

(a) A DoD acquisition official may request a nondefense agency to conduct an acquisition on behalf of DoD ~~in excess of~~above the simplified acquisition threshold only if the head of the nondefense agency ~~conducting the acquisition on DoD's behalf~~ has certified that the agency will comply with applicable procurement requirements for that fiscal year, except when waived ~~in accordance with~~as provided by paragraph (e) of this section.

(b) A nondefense agency is compliant with applicable procurement requirements if ~~the~~its procurement policies, procedures, and internal controls ~~of the nondefense agency applicable to the procurement of supplies and services~~for acquisitions on behalf of DoD, and ~~the manner in which they are administered, are adequate to~~their administration, adequately ensure the ~~compliance of the~~ nondefense ~~department or~~ agency complies with~~-~~—

(1) The Federal Acquisition Regulation and other laws and regulations that apply to procurements of supplies and services by Federal agencies; and

(2) Laws and regulations that apply to procurements of supplies and services made by DoD through other Federal agencies, including DoD financial management regulations, the Defense Federal Acquisition Regulation Supplement (DFARS), DoD class deviations, and the DFARS Procedures, Guidance, and Information (PGI). (The DFARS, DoD class deviations, and PGI are ~~accessible~~available at: http://www.acq.osd.mil/dpap/dars).

(c) Within 30 days of the beginning of each fiscal year, submit nondefense agency certifications of compliance to the Principal Director, Defense Pricing and Contracting at: Department of Defense, Office of the Under Secretary of Defense (Acquisition and Sustainment), Defense Pricing and Contracting, Contract Policy, Room 3B938, 3060 Defense Pentagon, Washington DC 20301-3060.

~~Department of Defense~~

~~Office of the Under Secretary of Defense (Acquisition and Sustainment)~~

~~Defense Pricing and Contracting~~

~~Contract Policy~~

~~Room 3B938~~

~~3060 Defense Pentagon,~~

~~Washington D.C. 20301-3060.~~

(d)(1) The DoD acquisition official~~, as defined at 17.701, shall~~ must provide ~~to~~ the servicing nondefense agency contracting officer with any DoD-unique terms, conditions, other related statutes, regulations, directives, ~~and~~or other applicable requirements for incorporation into the order or contract. ~~In the event~~
(2) If there are no DoD-unique requirements beyond the FAR, the DoD acquisition official ~~shall so~~must inform the servicing nondefense agency contracting officer in writing.

(3) Nondefense agency contracting officers are responsible for ensuring support provided in response to DoD's request complies with paragraph (b) of this section.

(e) Waiver. The limitation in paragraph (a) of this section ~~shall~~does not apply to ~~the acquisition~~acquisitions of supplies and services on behalf of DoD by a nondefense agency during any fiscal year for which the Under Secretary of Defense for Acquisition and Sustainment has determined in writing that it is necessary in ~~the~~DoD's interest ~~of DoD~~ to acquire supplies and services through the nondefense agency during ~~the~~that fiscal year. The written determination ~~shall~~must identify the acquisition categories to which the waiver applies.

(f) Nondefense agency certifications, waivers, and additional information are available at https://www.acq.osd.mil/asda/dpc/cp/policy/interagency-acquisition.html~~.~~

Subpart 17.7 - Interagency Acquisitions: Acquisitions by Nondefense Agencies on Behalf of the Department of Defense
17.700 Scope of subpart.
This subpart establishes policies and procedures for management and operating contracts for the Department of Energy and any other agencies with the necessary statutory authority.

17.701 Definition.
Management and operating contract means an agreement where the Government contracts for the operation, maintenance, or support, on its behalf, of a Government-owned or -controlled research, development, special production, or testing facility that primarily serves one or more major programs of the Federal agency.

17.702 Presolicitation.
17.702-1 Policy.
The head of an agency, without power of delegation, and with statutory authority, may authorize contracting officers, in writing, to enter into or renew management and operating contracts. This authorization must comply with the agency's statutory authority or 41 U.S.C. chapter 33, and the agency's regulations for such contracts. Every authorized contract must state this authorization on its face.

17.702-2 Limitations.
(a) Management and operating contracts must not be authorized for—

(1) Functions involving direction, supervision, or control of Government personnel, except supervision related to training;

(2) Functions involving the exercise of police or regulatory powers in the Government's name, other than guard or plant protection services;

(3) Functions determining basic Government policies;

(4) Day-to-day staff or management functions of the agency or any of its elements; or

(5) Functions that can be better accomplished by the use or rental of Government property under subpart 45.3, Authorizing the Use and Rental of Government Property.

(b) Since an authorization under 17.702-1 is considered sufficient proof of compliance with paragraph (a) above, nothing in paragraph (a) affects the validity or legality of such an authorization.

(c) For use of project labor agreements, see part 22.

17.703 Award, renewal, and extension.
(a) Effective performance under management and operating contracts typically requires high expertise levels and continuity in operations and personnel. Due to program requirements and the unusual or unique nature of work performed under these contracts, the Government often has limited ability to create competition or replace a contractor. Therefore, contracting officers must take extraordinary steps before award to ensure that—

(1) The prospective contractor has sufficient technical and managerial capacity,

(2) Organizational conflicts of interest are adequately addressed; and

(3) The contract gives the Government broad and continuing rights to involve itself in technical and managerial decision making about performance, when necessary.

(b) The contracting officer must review each management and operating contract, following agency procedures, at appropriate intervals and at least once every 5 years.

(1) The review should determine if meaningful improvement in performance or cost might reasonably be achieved.

(2) Any extension or renewal of a management and operating contract must be authorized at a level within the agency no lower than the level at which the original contract was authorized under 17.702-1.

(c) Replacing an incumbent contractor is usually based largely on expectations of meaningful improvement in performance or cost. When reviewing contractor performance, contracting officers should consider—

(1) The incumbent contractor's overall performance, specifically including technical, administrative, and cost performance;

(2) The potential impact of changing contractors on program needs, including safety, national defense, and mobilization considerations; and

(3) Whether qualified offerors are likely to compete for the contract.

Subpart 17.8 - Reverse Auctions
17.800 Scope of subpart.
This subpart prescribes policies and procedures for conducting reverse auctions and ~~utilizing~~using reverse auction service providers.

17.801 Definitions.
As used in this subpart—

Government data means any information, document, media, or machine-readable material regardless of physical form or characteristics, that is created or obtained by the Government~~,~~ in the course of official Government business.

Government-related data means any information, document, media, or machine-readable material regardless of physical form or characteristics that is created or obtained by a contractor through the storage, processing, or communication of Government data. This does not include a contractor's business records (e.g., financial records, legal records, etc.) or data such as operating procedures, software coding, or algorithms that are not uniquely applied to the Government data.

Reverse auction service provider means a commercial or Government entity that provides a means for conducting reverse auctions when acquiring supplies or services to be used by the Government.

17.802 Presolicitation.
17.802-1 Policy.
(a) ~~The use of~~ Reverse auctions may be appropriate when market research ~~indicates~~shows that—

(1) A competitive marketplace exists for the supplies and/or services being acquired;

(2) Multiple offerors can ~~satisfy~~meet the agency's requirement; and

(3) The nature of the supplies and/or services ~~being acquired (e.g.,~~ (such as clearly defined specifications~~,~~ or less complex requirements) ~~encourages~~supports an iterative bidding process ~~(i.e., multiple offerors participate and at least one offeror submits more than one offer during the reverse auction).~~.

(b) The reverse auction process is used to obtain pricing for an acquisition. When using ~~the~~ reverse ~~auction process~~auctions, contracting officers ~~are~~must still ~~required to~~ follow the appropriate acquisition policies and procedures (~~e.g.,~~such as those ~~prescribed~~ in ~~subpart~~parts 8~~.4~~, 13, 15 or 16~~.5, or part 13 or 15), as appropriate for the particular acquisition.~~).

(c~~)~~

~~(1) A service platform for conducting reverse auctions may be provided by a commercial or Government entity.~~

~~(2) While some reverse auction service providers are paid directly by the Government for reverse auction services, other providers may incorporate a fee structure that uses an indirect payment method. When using an indirect payment method, the reverse auction service provider adds a fee(s) to the price of the successful offer that is provided to the Government at the close of an auction. The Government then pays the successful offeror the total price of the offer, which includes the fee(s) added by the reverse auction service provider. The reverse auction service provider then collects its fee(s) from the successful offeror.~~

~~(3~~) When acquiring reverse auction services from a commercial ~~reverse auction service~~ provider, agencies ~~shall~~must—

(~~i~~1) Use competitive procedures, unless an exception applies;

(~~ii~~2) Detail the provider's fee structure in the ~~resultant~~resulting contract or agreement ~~for reverse auction services~~; and

(~~iii~~3) Make the ~~details of the~~ contract or agreement ~~for reverse auction services~~details, including the ~~provider's~~ fee structure, available to contracting officers ~~for consideration~~to consider when ~~determining~~deciding whether to use ~~a reverse auction service~~that provider, ~~in accordance with~~as required by subpart 17.~~804(a).~~802-3.

(~~4~~d) When acquiring reverse auction services, the contracting officer ~~shall~~must ensure the ~~following information is provided in the~~ solicitation and contract~~:~~ include—

(~~i~~1) Descriptions of Government data and Government-related data.

(~~ii~~2) Data ownership, licensing, delivery, and disposition instructions ~~specific to the~~for relevant types of Government data and Government-related data (~~e.g.,~~such as DD Form 1423, Contract Data Requirements List~~;~~, work statement task~~;~~, line item).

(3) Disposition instructions ~~shall provide~~that must allow for ~~the~~data transition ~~of data~~ in commercially available~~,~~ or open and non-proprietary format and for permanent records~~, in accordance with disposition guidance issued by the~~ according to National Archives and Records Administration guidance.

(~~d~~e) Contracting officers ~~shall~~must only use ~~the services of a~~ reverse auction service ~~provider~~providers that—

(1) ~~Does~~Do not ~~assert~~claim or imply ~~that it~~they can or will obtain a Government contract for auction participants~~ of a reverse auction~~;

(2) ~~Allows~~Allow entities to register~~, at no cost,~~ for free as potential offerors for Government reverse auctions ~~conducted~~ on ~~behalf of the Government on the provider's reverse auction~~their platform;

(3) ~~Allows~~Allow each entity, ~~as part of the~~ during registration~~ process, the opportunity to execute~~, to sign a proprietary data protection agreement with the provider~~; provided~~ that ~~the terms in the agreement do~~does not affect ~~the terms and conditions of a~~ Government solicitation or contract terms;

(4) ~~Protects~~Protect from unauthorized use or disclosure and ~~does~~do not release outside ~~of~~ the Government—

(i) All contractor bid or proposal information ~~(see 3.104-1)~~ and source selection information ~~associated with~~related to providing reverse auction services to the Government;

(ii) All information ~~similarly~~ generated to support ~~the issuance of~~issuing a task order~~ or~~, delivery order, or order under a blanket purchase agreement; and

(iii) Information ~~identified by~~ an offeror identifies as restricted from duplication, use, or disclosure ~~—in whole or in part—~~for any purpose ~~other than to evaluate~~except evaluating the reverse auction participant's price or proposal;

(5) ~~Allows~~Allow offerors to see the successive lowest price(s) offered in the auction without revealing ~~an offeror's identity~~offerors' identities;

(6) At the close of each auction—

(i) ~~Provides~~Provide the Government with the apparent successful offer, ~~along with~~including information that separately identifies the offeror's price and the price for each provider fee or charge ~~included~~ in the total price; and

(ii) ~~Provides~~Provide the Government with all information and documentation received from offerors ~~in response~~responding to the reverse auction~~.~~;

(7) ~~Does~~Do not participate as an offeror in any reverse auction ~~which the provider is hosting on behalf of~~they host for the Government. This prohibition includes participation ~~in a reverse auction~~ by any entity with which the provider has a relationship ~~that raises~~creating an actual or potential conflict of interest; and

(8) ~~Asserts~~Assert no rights or license in the data gathered or generated during a reverse auction.

(~~e~~f) Only a contracting officer ~~shall~~may—

(1) Exclude an offeror from participating in an auction;

(2) Determine the awardee(s) of any reverse auction; or

(3) Determine that the offeror is a responsible prospective contractor (see ~~9.103, 9.104-1, and 9.405(d)).~~part 9).

17.~~803~~802-2 Applicability.
Reverse auction processes ~~shall~~must not be used for—

(a) Design-build construction contracts (see part 36~~.104~~);

(b) Procurements for architect-engineer services subject to 40 U.S.C. chapter 11 (see part 36~~.601~~);

(c) Procurements using sealed bidding procedures (see part 14); or

(d) Acquisition of personal protective equipment, in accordance with Sections 813 and 814 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114-328); Section 882 of the NDAA for FY 2018 (Pub. L. 115-91); and Section 880 of the John S. McCain NDAA for FY 2019 (Pub. L. 115-232, 41 U.S.C. 3701 note).~~—~~

~~(1) Sections 813 and 814 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 (Pub. L. 114-328);~~

~~(2) Section 882 of the NDAA for FY 2018 (Pub. L. 115-91); and~~

~~(3) Section 880 of the John S. McCain NDAA for FY 2019 (Pub.~~ 17.802-3 Reverse auction service provider.
~~L. 115-232, 41 U.S.C. 3701 note).~~

~~17.804 Procedures.~~
~~(a)~~ When considering ~~the use of~~using a reverse auction service provider, the contracting officer ~~shall~~must—

(~~1~~a) Conduct market research ~~for~~of available sources of reverse auction services (~~e.g.,~~such as existing agency contracts or agreements, commercial service providers, or Government service providers);

(~~2~~b) Evaluate the fee structure for each reverse auction service provider; and

(~~3~~c) Document in the contract file that ~~the use of~~using a reverse auction service provider is cost effective.

~~(b~~17.803 Evaluation and award.
(a) When conducting a reverse auction, the contracting officer ~~shall~~must—

(1) Not ~~disclose~~reveal the identity of ~~the~~ offeror(s) except for the awardee's identity ~~subsequent to~~after making an award ~~resulting~~ from the auction ~~(see 3.104-4(a) and (e)(1));~~;

(2) Allow offerors ~~the opportunity~~ to continually revise their prices downward during the reverse auction until ~~the close of the auction~~it closes; and

(3) Allow an offeror to withdraw an offer ~~from further consideration prior to~~before the ~~close of an~~ auction closes.

(~~c~~b) When using ~~the services of a~~ reverse auction service ~~provider~~providers, contracting officers ~~shall~~must—

(1) Include contact information, including the contracting officer name and email address, in the synopsis and solicitation ~~that will allow~~so offerors ~~to~~can contact the contracting officer directly with ~~any~~ questions;

(2) Upon ~~receipt of~~receiving a successful offer, verify that any provider fees or charges ~~included~~ in the price ~~are in accordance with~~match the provider's fee structure~~, as evaluated in accordance with paragraph (a)(2) of this section~~; and

(3) Include in the contract file any information and/or documentation received by the reverse auction service provider from offerors responding to the reverse auction.

(~~d~~c) If only one offeror participates in an auction, the contracting officer may—

(1) Cancel the auction and document the contract file with evidence of ~~the~~single offeror participation~~ of only one offeror~~; or

(2) Accept the offer, but only if the price is determined to be fair and reasonable~~ (see 13.106-3(a)(2) and 15.404-1).~~.

17.~~805~~804 Solicitation provision and contract clauses.
~~(a) The contracting officer shall~~(a) Insert the provision at 52.217-10, Reverse Auction, in solicitations when using a reverse auction to award a contract or blanket purchase agreement.

~~(b) The contracting officer shall~~(b) Insert the clause at 52.217-11, Reverse Auction—Orders, in solicitations and contracts for a multiple-award contract or blanket purchase agreement~~,~~ when a reverse auction may be used to place orders under the basic contract or blanket purchase agreement.

~~(c)The contracting officer shall~~ (c)Insert the clause at 52.217-12, Reverse Auction Services, in all solicitations and contracts for the purchase of reverse auction services.