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Part VII

Federal Emergency Management Agency

Procurement; Interim Rules and Request
for Comments

FEDERAL EMERGENCY MANAGEMENT AGENCY

41 CFR Chapter 44

[Docket No. FEMA-MISC-41-44]

Procurement; Interim Rules and Request for Comments

AGENCY: Federal Emergency
Management Agency.

ACTION: Interim regulations and request
for comments.

SUMMARY: These interim rules establish policies and procedures for acquisition of personal property and nonpersonal services (including construction) by the Federal Emergency Management Agency (FEMA). They implement the Federal Procurement Regulations in accordance with 41 CFR 1-1.008. Although these regulations involve contracts, FEMA is requesting public comment but by issuing a regulation which serves as a fully effective operating rule and at the same time affording an opportunity for such comment.

DATES: Effective date is December 6, 1979. Written comments should be submitted on or before February 4, 1980.

ADDRESS: Federal Emergency Management Agency, 1725 I Street NW, (M Street Bldg.), Washington, D.C. 20472.

FOR FURTHER INFORMATION CONTACT: Steve Goodman, Division of Acquisition Management, Policy and Support Branch, (202) 634-6046.

SUPPLEMENTARY INFORMATION: Reorganization Plan No. 3 of 1978 established the Federal Emergency Management Agency (FEMA). The Plan was activated effective April 1, 1979 by Executive Order 12127 of March 31, 1979, "Federal Emergency Management Agency," 44 FR 19367. The plan, The Executive Order, and subsequently, Executive Order 12148, effective July 15, 1979, 44 FR 43239, together transferred to the new agency functions of five existing agencies in four departments or parent agencies. Under the plan, and pursuant to the order, regulations of the predecessor agencies remain in full force and effect in FEMA until those regulations are superceded. Accordingly, to provide a single regulation for the acquisition of personal property and nonpersonal services (including construction) for all FEMA procuring offices, it is necessary to adopt FEMA regulations.

Interested parties may participate in the comment process by submitting their views, in writing, on this interim

regulation to FEMA. Each comment should include the name and address of the person or organization submitting the comment and should make reference to the above-cited docket number. All comments received on or before the date set out above will be considered in promulgating final regulations on the matters addressed here. All written comments received will be docketed and made available for public inspection at FEMA. It has been determined that the April 1, 1979 effective date of Reorganization Plan No. 3 of 1978 and the July 15, 1979 effective date for Executive Order 12148 established good cause for immediate publication of these regulations for interim effect.

Accordingly, a new Chapter 44 of Title 41 of the Code of Federal Regulations is added:

Dated: November 30, 1979.

John W. Macy, Jr.,
Director.

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Authority.—41 CFR 1-1.008.

§ 44-1.000 Scope of part.

This part sets forth policies and procedures concerning: The Federal Emergency Management Agency Procurement Regulation System; definition of terms used throughout this chapter; general policies of procurement; small business concerns; labor surplus area concerns; and publicizing procurement actions.

Subpart 1.0—Regulation System

§ 44-1.001 Scope of subpart.

This subpart sets forth introductory information pertaining to the Federal Emergency Management Agency Procurement Regulation System; its purpose, authority, applicability, issuance, arrangement, implementation, supplementation and deviation procedure.

§ 44-1.002 Purpose.

This subpart establishes the Federal Emergency Management Agency Procurement Regulations (FEMAPR) for the codification and publication of uniform policies and procedures applicable to the Federal Emergency Management Agency (FEMA) in the procurement of personal property and nonpersonal services (including construction).

§ 44-1.003 Authority.

41 CFR 1-1.008 requires that as portions of Federal Procurement Regulation (FPR) material are prescribed, agencies shall publish in the Federal Register implementing regulations deemed necessary for business concerns, and others properly interested, to understand basic and significant agency procurement policies and procedures which implement, supplement, and deviate from the FPR. In compliance with this requirement, the FEMAPR are herein prescribed.

§ 44-1.004 Applicability.

The FEMAPR apply to all procurements within FEMA but do not apply to the placement or administration of cooperative agreements or grants.

§ 44-1.004-50 Relationship to the FPR.

Material published in the FEMAPR will not repeat, paraphrase or otherwise restate material in the FPR except to the extent necessary to implement, supplement or deviate therefrom.

§ 44-1.005 Exclusions.

Certain FEMA policies and procedures which come within the scope of the FEMAPR nevertheless may be excluded from the FEMAPR. These exclusions include the following categories:

- (a) Policy or procedure for subject matter which bears a security classification.
(b) Policy or procedure which is expected to be effective for a period of six months or less.
(c) Policy or procedure which is being instituted on an experimental basis for a reasonable period.
(d) Policy or procedure of an internal nature which shall be issued as either a FEMA Handbook or Standard Operating Procedure or a revision to either of the above.

§ 44-1.006 Issuance.

§ 44-1.006-1 Code arrangement.

The FEMAPR are issued in the Code of Federal Regulations as Chapter 44 of Title 41, Public Contracts and Property Management.

§ 44-1.006-2 Publication.

The FEMAPR, as deemed necessary by the Director, Office of Finance and Administration, for information to the general public, are published initially in the daily issue of the Federal Register and in final cumulated form in Title 41 of the Code of Federal Regulations. The above regulations are printed in separate loose-leaf volume form for distribution to appropriate FEMA organizational elements.

§ 44-1.006-3 Copies.

Copies of the FEMAPR in Federal Register and Code of Federal Regulations form may be purchased at nominal cost from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Upon request, copies of the FEMAPR loose-leaf volume and amendments and additions thereto will be distributed to agency procuring offices and other appropriate agency organizational units by the Policy and Support Branch of the Division of Acquisition Management.

§ 44-1.006-4 Coordination.

In the development of FEMAPR issuances, the views of interested agency procuring offices, and, where appropriate and feasible, the views of

interested business and professional organizations, will be considered.

§ 44-1.007 Arrangement.

§ 44-1.007-1 General plan.

The general plan, numbering system, and nomenclature used in the FEMAPR conform with those of the Federal Procurement Regulation (FPR) and Federal Register Standards approved for the FPR.

§ 44-1.007-2 Numbering and titling.

(a) Where the FEMAPR implements or deviates from a part, subpart, section or subsection of the FPR, the FEMAPR part, subpart, section or subsection will be numbered and titled to correspond to the part, subpart, section or subsection of the FPR.

(b) Where the subject matter contained in a part, subpart, section or subsection of the FPR requires no further implementation, the FEMAPR will contain no corresponding part, subpart, section or subsection number and the subject matter as published in the FPR governs.

(c) Material published in the FEMAPR which supplements the FPR will be assigned numbers from the number 50 onward to denote the new part, subpart, section or subsection being added. For example, § 44-50.100 (new part), § 44-1.5000 (new subpart), § 44-1.150 (new section), § 44-1.102-50 (new subsection).

§ 44-1.007-3 Citation.

FEMAPR will be cited in accordance with Federal Register Standards approved for the FPR. Thus this section, when referred to in divisions of the FEMAPR should be cited as "§ 44-1.007-3 of this chapter". When this section is referred to formally in official documents, such as legal briefs, it should be cited as "41 CFR 44-1.007-3". Any section of the FEMAPR may be informally identified as "FEMAPR" followed by the section number, such as FEMAPR 44-007-3.

§ 44-1.009 Deviation.

§ 44-1.009-1 Description.

As used in the FEMAPR, the term "deviation" includes any of the actions set forth in 41 CFR 1-1.009-1 for either the FEMAPR or the FPR.

§ 44-1.009-2 Procedure.

In the interest of establishing and maintaining uniformity to the greatest extent feasible, deviations from the FPR and the FEMAPR shall be kept to a minimum and controlled as follows:

(a) Deviations in both individual cases and classes of cases must be authorized in advance by the Director, Division of

Acquisition Management. Requests for such authorization shall:

(1) Cite the specific parts of the FPR or FEMAPR from which it is desired to deviate.

(2) Provided a full description of the deviation.

(3) Indicate the circumstances which will require use of the deviation.

(4) Give detailed reasons supporting the actions requested; and

(5) Give reasons why the action is in the best interest of the Government.

(b) Where the deviation applies to a class of cases, review and approval shall be accomplished in accordance with 41 CFR 1-1.009-2(c) for deviations to either the FPR or the FEMAPR.

(c) The contract file(s) of the requesting office shall include a copy of the request and the approval. Class deviations will be issued as a part of the FEMAPR, if they are of a continuing nature and publication is deemed appropriate by the Director, Office of Finance and Administration.

Subpart 1.2—Definition of Terms

§ 44-1.201 Definitions.

For the purposes of the FEMAPR, and unless otherwise indicated the following terms have the meaning set forth in this subpart.

§ 44-1.202 Agency.

"Agency" means the Federal Emergency Management Agency or as it is referred to throughout the FEMAPR, "FEMA".

§ 44-1.204 Director.

"Director" means the Director of the Federal Emergency Management Agency. In the FPR, the term "Secretary", where it pertains to a procuring agency, shall be construed to mean "Director".

§ 44-1.205 Procuring office.

"Procuring offices" means those offices which have delegated or redelegated authority to purchase or contract for supplies, services and/or construction.

§ 44-1.206 Head of the procuring activity.

"Head of the procuring activity" means the Director, Division of Acquisition Management.

§ 44-1.250 Contractor.

"Contractor" means any person, firm, association, or corporation entering into a contract with the Government.

§ 44-1.251 Subcontractor.

"Subcontractor" means any person, firm, association or corporation entering

into a subcontract with a contractor or higher-tier subcontractor.

§ 44-1.252 Supplies and property.

"Supplies and Property" means materials and goods to be delivered to the Agency under contracts or purchase orders.

§ 44-1.253 Personal services.

"Personal Services" means those services rendered by an officially appointed or employed individual engaged in the performance of authorized Federal functions who is compensated on either a time or contract basis and is under the direct supervision of a Federal officer thereby establishing an employer-employee relationship.

§ 44-1.254 Nonpersonal services.

"Nonpersonal Services" means those services rendered by non-Government firms, institutions or persons through contract or agreement with FEMA wherein no employer-employee relationship exists.

§ 44-1.255 Program office.

"Program office" means any of various offices within the agency which generate requests for procurement action.

§ 44-1.256 Project officer.

"Project officer" means the representative of a program office cognizant over the technical aspects of a given procurement action.

§ 44-1.257 Interagency agreement.

"Interagency agreement" means an agreement between two or more agencies, bureaus, or departments of the Federal Government by which supplies, services or property are provided to, or obtained from, one or more agencies, bureaus or departments of the Federal Government.

Subpart 1.3—General Policies

§ 44-1.302 Procurement sources.

§ 44-1.302-1 General.

Supplies and services may be obtained from the following sources:

(a) Government Program Sources. Procuring offices shall endeavor to obtain required supplies or services from the following sources prior to initiating purchases from other sources. These sources shall be utilized to the maximum extent practicable in accordance with applicable laws and regulations and shall be solicited in the order in which they appear below:

(1) Excess and surplus stocks in the possession of any Government agency (See FEMAPR 44-4.5004).

(2) Federal Supply Schedules.

(3) GSA Stores Stock.

(4) Federal Supply Service Consolidated Purchase Program.

(5) Federal Prison Industries, Inc.

(6) National Industries for the Blind.

(b) Sources outside the Government. If the required supplies and/or services cannot be obtained from any of the sources listed in paragraph (a) above, procuring offices shall endeavor to obtain them from commercial or other non-Government sources (including State and local Governments) to the maximum extent practicable.

(c) Other Federal Agencies. If supplies and/or services are available from another Federal agency, and the circumstances of the requirement meet the criteria set forth in OMB Circular A-76, procuring offices may obtain the supplies or services from that Federal agency (See FEMAPR 44-4.5004).

§ 44-1.302-3 Contracts between the Government and Government employees or business concerns substantially owned or controlled by Government employees.

When a requisitioning office becomes aware that a suggested procurement source is either a Government employee, or a business or organization substantially owned by a Government employee, or the spouse or immediate family of a Government employee, the appropriate procurement office shall be immediately notified and shall seek alternative sources. If no alternative sources can be located, the requisitioning office shall prepare a written justification to clearly support a contracting officer decision to procure from the Government employee source and to provide for actions, where possible, to prevent future related procurements from employee sources. Approval shall be obtained from the head of the program office and the Director, Office of Finance and Administration prior to any procurement award to a Government employee source.

§ 44-1.305 Specifications.

§ 44-1.305-6 Military and departmental specifications.

If no Federal Specification is available, Interim Federal, Military and Departmental Specifications shall be considered, in the order of precedence indicated herein, prior to using or developing other specifications.

§ 44-1.317 Noncollusive bids and proposals.

The authority to make the determination described in paragraph (d) of the certification set forth in 41 CFR 1-1.317(a) shall vest in the head of

the procuring activity without authority to redelegate.

Subpart 1.4—Procurement Responsibility and Authority

§ 44-1.400 Scope of subpart.

This subpart deals with the placement of procurement authority and responsibility with the Agency, the selection and designation of contracting officers, and the authority of procuring offices.

§ 44-1.401 Responsibility of the head of the procuring activity.

The head of the procuring activity shall be responsible for the establishment of policy throughout the Agency, monitoring the overall effectiveness and efficiency of the Agency's procuring offices, the establishment of adequate controls to assure compliance with applicable laws, regulations and procedures, and shall be responsible for delegating or re delegating contracting officer authority, which has been delegated the head of the procuring activity.

§ 44-1.404 Selection, designation and termination of designation of contracting officers.

§ 44-1.404-1 Selection.

In selecting contracting officers, the appointing authorities shall consider experience, training, education, business acumen, judgment, character, reputation and ethics. In the areas of experience, training and education the following shall be required unless contracting authority is limited to simplified purchase procedures. Waiver of any of the criteria set out below shall be in writing with specific justification therefor.

(a) Experience of an individual contracting officer or appointment of an individual to a position having contracting officer authority shall consist of a minimum of two years experience performing contracting, procurement or purchasing operations in a Government or commercial procurement office. Additionally where appointment of a contracting officer involves a specialized procurement field, experience in the field shall be considered as a criterion for the appointment.

(b) Educational requirements of an individual contracting officer or appointment of an individual to a position having contracting officer authority shall require as a minimum the equivalent of a bachelor's degree from an accredited college or institution with major studies in business administration, law, accounting or

related fields. This educational requirement may be waived by the appointing official when it is determined that a potential appointee is otherwise qualified by virtue of extensive contract-related experience, training, business acumen, judgment, character, reputation and ethics.

(c) Training requirements of an individual contracting officer or appointment of an individual to a position having contracting authority as a minimum shall require that the individual has successfully completed training courses in Government basic procurement, of not less than 80 class hours, and Government contract administration, not less than 80 class hours. Incumbents not meeting the special training requirements shall be given 24 months to meet the minimum qualification standards.

§ 44-1.404-2 Designation.

Except for disaster-related activities and unusual circumstances as determined by the head of the procuring activity, it is the policy of the Agency to delegate contracting officer authority to positions rather than to individuals. Except in those instances where the redelegation of authority specifically includes the authority for further redelegation to subordinate positions, no other delegations or redelegations may be made. Delegations of contracting officer authority shall include clear statement of such authority, its responsibilities and limitations.

Subpart 1.7—Small Business Concerns

§ 44-1.700 General.

This subpart implements and supplements general policies and procedures set forth in 41 CFR Subpart 1-1.7.

§ 44-1.704 FEMA direction and operation.

FEMA shall implement the policies and procedures set forth in 41 CFR 1-1.7 through its small business advisor and its small business specialists.

§ 44-1.704-1 Small business advisor.

The Director, Division of Acquisition Management, is hereby designated as FEMA's small business advisor for all procurement matters. The small business advisor is responsible for the establishment, implementation and execution of the small business procurement program. He is the central point of contact of inquiries concerning the program from industry, the Small Business Administration, the Congress, the Office of the Director and others. His duties include developing a plan of operation that will insure that an equitable share of contracts will be

awarded to small businesses by the Agency. He will be assisted on a daily basis by the small business specialists.

§ 44-1.704-2 Small business specialists.

The small business advisor shall designate, by name and in writing, a small business specialist in each procuring office of FEMA, as appropriate, who shall be responsible for maintaining the program in that procuring office in accordance with the requirements of the FPR, the FEMAPR, and any further directives from the small business advisor. The small business specialist, for the Division of Acquisition Management at FEMA Headquarters, in addition to the above duties, shall act as coordinator for the small business activities in the other procuring offices and provide liaison between the other small business specialists and the small business advisor.

§ 44-1.705 Cooperation with the Small Business Administration.

§ 44-1.705-3 Screening of procurements.

FEMA has no SBA representative assigned to it on a full or part-time basis except to the extent that a representative of SBA regularly monitors the small business program within the Agency. Therefore, for all practical purposes, the small business specialists perform the duties of on-site SBA representatives.

Accordingly, all proposed procurements estimated to exceed \$10,000 will be reviewed by the small business specialists to identify those procurements which should be set aside in whole or in part for small business, unless the head of the procuring activity determines in accordance with 41 CFR 1-1.705-3(a) that such review would unduly delay the procurement process. The small business specialist initiates recommendations to the contracting officer for small business set-asides for those individual procurements or classes of procurements, or portions thereof.

§ 44-1.706 Procurement set-asides for small business.

§ 44-1.706-2 Review of set-aside recommendations initiated by small business specialist(s).

When the small business specialist recommends that all, or a portion, of an individual procurement or class of procurements be set aside for small business, the contracting officer shall promptly either (a) concur in the recommendation or (b) disapprove the recommendation, stating in writing his reasons for disapproval. If the

contracting officer disapproves the recommendation of a small business specialist, the small business specialist may appeal to the head of the procuring activity whose decision shall be final.

§ 44-1.706-3 Withdrawal or modification of set-asides.

A withdrawal or modification of an individual or class set-aside which was originally established upon the recommendation of the small business specialist may be proposed by the contracting officer by giving notice, containing the reason for the proposed withdrawal or modification, to the small business specialist. If the small business specialist does not agree to a withdrawal or modification, the contracting officer may appeal to the head of the procuring activity whose decision shall be final.

§ 44-1.706-5 Small business class set-aside for construction, including repair and alteration.

A class set-aside is hereby made for each proposed procurement for construction which is not expected to exceed \$1,000,000 in amount. Accordingly, contracting officers shall set aside for small business each such proposed procurement. If a contracting officer determines that any individual procurement falling within the class set-aside requirements of this section is unsuitable for such a set-aside in part or in total, the set-aside may be withdrawn or modified in accordance with FEMAPR 44-1.706-3. Proposed procurements for construction which exceed an estimate of \$1,000,000 shall be considered for set-aside on a case-by-case basis.

§ 44-1.706-50 Review of class set-aside program for construction, including repair and alteration.

Each procuring office, shall forward a semi-annual report on class set-aside withdrawals to the Director, Division of Acquisition Management as a part of the required Standard Form 37, Report on Procurement by Civilian Executive Agencies. The Director, Division of Acquisition Management, acting as the small business advisor, shall direct actions to be taken to improve small business participation under the class set-aside in FEMAPR 44-1.706-5.

§ 44-1.713 FEMA contracts with the SBA.

It is the policy of FEMA to increase small business participation in procurement programs by awarding procurement contracts, whenever feasible to the SBA as authorized by Section 8(a) of the Small Business Act (15 USC 637(a)) and the FPR.

§ 44-1.750 FEMA responsibilities and functions pursuant to section 8(a) of the Small Business Act are as follows.

(a) 8(a) program responsibilities. The FEMA Director for Small and Disadvantaged Business Utilization shall be responsible for the development and review of goals to be achieved under the 8(a) program and shall coordinate with the Director, the program offices, and the regional directors in establishing the level of FEMA's participation in the 8(a) program and the level of coordination with the small business advisor appropriate and necessary to definitize FEMA's plan for implementation of the 8(a) established goals. In conjunction with this responsibility for establishing 8(a) goals, the Director for Small and Disadvantaged Business Utilization shall make available to the small business advisor 8(a) program guides for use by the small business specialists and contracting officers in making determinations on individual procurements that should be processed as an 8(a) contract to be awarded to SBA.

(b) 8(a) procurement responsibility. The procurement and contracting aspects of this program shall be the responsibility of the small business advisor who shall assure that 8(a) procurement requirements are implemented through the small business specialists in each of their appropriate areas of assignment.

(c) 8(a) functions of the small business specialist. The small business specialist(s) acting on behalf of the small business advisor, shall screen proposed solicitations to determine the feasibility of placement under the 8(a) program as part of the performance of those duties set forth under FEMAPR 1.704-1. The small business specialists, after consideration of the goals and guidance established pursuant to paragraph (a) of this section, shall make recommendations for 8(a) procurement to the contracting officer, who may, in his discretion, contract with the Small Business Administration in accordance with 41 CFR 1-1.705-7 and 1-1.713.

(d) 8(a) reporting requirements. The small business advisor shall report to the Director for Small and Disadvantaged Business Utilization on a quarterly basis covering the activities of the 8(a) program which report shall include the following:

- (1) A narrative statement regarding the operation of the program during the three month period; and
- (2) The number and dollar amount of awards made to small business under the 8(a) program.

Subpart 1.8—Labor Surplus Area Concerns

§ 44-1.800 Scope of subpart.

This subpart sets forth policies and procedures governing aid to sections classified as having concentrated unemployment or underemployment and areas of persistent or substantial labor surplus hereinafter referred to as labor surplus areas.

§ 44-1.803 FEMA direction and operation.

FEMA shall implement the policies and procedures set forth in 41 CFR 1-1.8 through its labor surplus area advisor and its labor surplus area specialists.

§ 44-1.803-1 Labor surplus area advisor.

The Director, Division of Acquisition Management, is hereby designated as FEMA's labor surplus area advisor for all procurement matters. The labor surplus area advisor is responsible for the establishment, implementation and execution of the labor surplus area program within FEMA. He is the point of contact for inquiries concerning the program from industry, the Departments of Labor and Commerce, the Small Business Administration, the Congress, the Office of the Director and others. His duties include developing a plan of operation to increase the share of contracts awarded to labor surplus area concerns by FEMA. He will be assisted on a daily basis by the labor surplus area specialists.

§ 44-1.803-2 Labor surplus area specialists.

The labor surplus area advisor shall designate, by name and in writing, a labor surplus area specialist in each procuring office of FEMA who shall be responsible for maintaining the program in those procuring offices in accordance with the requirements of the FPR, the FEMAPR and any further directives from the labor surplus area advisor.

The labor surplus area specialist for the Division of Acquisition Management at FEMA headquarters, in addition to the above, shall also act as coordinator for the labor surplus area activities in the other procuring offices and provide liaison between the other labor surplus area specialists and the labor surplus area advisor.

§ 44-1.803-3 Screening of procurements.

All proposed procurements estimated to exceed \$10,000 shall be reviewed by the labor surplus area specialist to identify those procurements which should be set aside in whole or in part for labor surplus area concerns in accordance with 41 CFR 1-1.804-1 and to identify possible subcontracting

opportunities for labor surplus area concerns.

The labor surplus area specialist shall initiate recommendations to the contracting officer based upon these reviews for labor surplus area set-asides for those individual procurements or classes of procurements or portions thereof identified.

§ 44-1.803-4 Review of set-aside recommendations initiated by labor surplus area specialists.

When the labor surplus area specialist recommends that all, or a portion, of an individual procurement or class of procurements be set aside for labor surplus area concerns, the contracting officer shall promptly either (a) concur in the recommendation or (b) disapprove the recommendation, stating in writing his reasons for disapproval. If the contracting officer disapproves the recommendation, the labor surplus area specialist may appeal to the head of the procuring activity whose decision shall be final.

§ 44-1.804 Partial set-asides for labor surplus area concerns.

§ 44-1.804-4 Withdrawal of set-asides.

A withdrawal of an individual or class set-aside which was originally established upon the recommendation of the labor surplus area specialist may be proposed by the contracting officer by giving written notice, containing the reason for the proposed withdrawal to the labor surplus area specialist. If the labor surplus area specialist does not agree to a withdrawal, the contracting officer may appeal to the head of the procuring activity whose decision shall be final.

§ 44-1.804-50 Modifications of set-asides.

Modifications of set-asides shall be handled in the same manner as withdrawals of set-asides.

Subpart 1.10—Publicizing Procurement Actions

§ 44-1.1003-2 General requirements.

(a) Except in the instances described in 41 CFR 1-1.1003-2(a)(1) through (10) every proposed modification to, or exercise of an option on, existing contracts, when new funds are obligated for additional supplies and services, which may result in an award of \$5,000 or more, shall be published promptly in the Commerce Business Daily.

(b) Synopses prepared in accordance with paragraph (a) above on procurements negotiated on a noncompetitive basis, shall indicate that the procurement is being synopsisized to show that the agency believes only one

source to exist. Descriptions of noncompetitive procurements contained in such synopses shall be in such detail that a firm can clearly understand the requirement and thus decide on the basis of adequate information whether it has the ability to compete in performing the work.

Subpart 1.13—Small Business Concerns Owned and Controlled by One or More Socially and Economically Disadvantaged Individuals

§ 44-1.1300 Scope of subpart.

This subpart contains policies and procedures applicable to the participation in FEMA procurement of small business concerns owned and controlled by one or more socially and economically disadvantaged individuals.

§ 44-1.1302 Policy.

It is the policy of FEMA to foster and promote the participation, of small business concerns owned and controlled by one or more socially and economically disadvantaged individuals in the Agency's procurement program and to offer guidance to such firms to the maximum extent practicable in order to enhance their ability to compete for the placement of FEMA procurement contracts. In furtherance of this policy, a presolicitation notice shall be sent to each small business concern owned and controlled by one or more socially and economically disadvantaged individuals listed on the Bidders Mailing list which has indicated a capability in the particular subject area. Such notification shall include a description of the procurement in sufficient detail to allow the firm to make a judgment as to whether or not to request the solicitation package. This notification shall be sent as soon as practicable after receipt of the procurement but in no event later than the date the synopsis is forwarded to the Commerce Business Daily. Failure of a firm to respond to three consecutive presolicitation notices shall result in removal of that firm's name from the Bidders Mailing List.

§ 44-1.1303 Solicitation representation.

As with procurements over \$10,000, it is desirable that a representation as a small business concern owned and controlled by one or more socially and economically disadvantaged individuals be obtained from all bidders, offerors, and contractors for procurement under \$10,000. Accordingly, procuring offices shall request, whether in a solicitation or otherwise, that all bidders, offerors and contractors, complete and return on

a voluntary basis, the certificate set forth in 41 CFR 1-1.1303, indicating also the applicable solicitation number or purchase order number. Completion of the certificate shall not be regarded as a condition for award.

Subpart 1.50—Criteria for Use of Procurement Contracts Versus Assistance Instruments [Reserved]

PART 44-2—PROCUREMENT BY FORMAL ADVERTISING

Sec.

44-2.000 Scope of part.

Subpart 2.1—Use of Formal Advertising

44-2.106 Procurement management review.

Subpart 2.2—Solicitation of Bids

44-2.201 Preparation of invitation for bids.
44-2.202 Miscellaneous rules for solicitation of bids.

44-2.202-1 Bidding time.

44-2.202-2 Telegraphic bids.

44-2.202-3 Place and method of delivery of supplies.

44-2.202-4 Bid samples.

44-2.202-50 Extension of time for bid opening.

44-2.202-51 Pre-bid conferences.

44-2.202-52 Bid envelopes.

44-2.205 Bidders mailing lists.

44-2.205-1 Establishment of lists.

44-2.205-4 Excessively long bidders mailing lists.

44-2.250 Small business concerns owned and controlled by one or more socially and economically disadvantaged individuals and labor surplus area concerns.

Subpart 2.3—Submission of Bids

44-2.301 Responsiveness of bids.

44-2.303 Late bids.

44-2.303-6 Notification to late bidders.

44-2.303-7 Disposition of late bids.

Subpart 2.4—Opening of Bids and Award of Contract

44-2.401 Receipt and safeguarding of bids.

44-2.402 Opening of bids.

44-2.406 Mistakes in bids.

44-2.406-3 Other mistakes disclosed before award.

44-2.407 Award.

44-2.407-7 Statement and certificate of award.

44-2.407-8 Protests against award.

Subpart 2.5—Two-Step Formal Advertising

44-2.502 Conditions for use.

Authority: 41 CFR 1-1.008.

§ 44-2.000 Scope of part.

This part implements and supplements the basic requirements for procurement of personal property and non-personal services (including construction) by formal-advertising, and establishes policies with respect to solicitation of bids, submission of bids, opening and evaluation of bids and the

awarding of contracts as set forth in 41 CFR Part 1-2.

Subpart 2.1—Use of Formal Advertising

§ 44-2.106 Procurement management reviews.

The Policy and Support Branch of the Division of Acquisition Management shall be responsible for meeting the requirements of 41 CFR Part 1-2.106.

Subpart 2.2—Solicitation of Bids

§ 44-2.201 Preparation of invitation for bids

Forms used in the preparation of invitations for bids are prescribed in 41 CFR Subparts 1-16.1 and 1-16.4 and Part 16 of the FEMAPR.

§ 44-2.202 Miscellaneous rules for solicitation of bids.

§ 44-2.202-1 Bidding time.

In the procurement of supplies and services, the following shall be observed:

(a) Procurement action which does not provide for the minimum bidding time required by 41 CFR 1-2.202-1(c) shall be justified by the contracting officer prior to releasing the invitation for bids. This justification shall take the form of a finding of fact which establishes the contracting officer's basis for the exception to the minimum bidding time.

(b) The minimum bidding time stipulated in 41 CFR 1-2.202-1(c) shall not be construed as a maximum. Each prospective procurement shall be examined on its own merits to determine the bidding time that will facilitate competition on reasonable and equal terms. As a general rule, procurement of a less complicated nature for which no extensive bid preparation by the prospective bidder is required in development of his bid may contain a bidding time of 20 calendar days. Where the specification may require prospective bidders to develop drawings or samples, or to do extensive preparation in developing a meaningful bid, 30 calendar days or more of bidding time may be required.

§ 44-2.202-2 Telegraphic bids.

Telegraphic bids will be authorized only by the contracting officer who shall document the official procurement file as to the necessity of telegraphic bids. Conditions under which telegraphic bids may be authorized are set forth in 41 CFR 1-2.202-2. When telegraphic bids are authorized by the contracting officer, a clause shall be incorporated in the invitation for bids, authorizing such bids and providing instructions on their

submission in accordance with 41 CFR Part 1-2.202-2(a).

§ 44-2.202-3 Place and method of delivery of supplies.

To the maximum extent practical, invitations for bids issued by FEMA shall stipulate "f.o.b. destination." Only where the contracting officer determines in writing that it is in the Government's best interest may he deviate from this policy.

§ 44-2.202-4 Bid samples.

Bid samples submitted by bidders as required by an invitation for bids or as unsolicited samples, if not returned in accordance with 41 CFR Part 1-2.202-4(h), shall be disposed of by the contracting officer who shall document the contract file as to the method of disposition.

§ 44-2.202-50 Extension of time for bid opening.

Whenever such action is determined by the contracting officer to be in the best interest of the Government, bid openings may be rescheduled for a later date by issuance and distribution of an amendment (See 41 CFR 1-2.207) to the invitation for bids. Notices of change in bid opening date shall specify the exact time and date for the new opening and will be issued by mail or telegram as soon as possible, but, in any event, prior to the time specified for the opening of bids.

§ 44-2.202-51 Prebid conferences.

Whenever a prebid conference is proposed for a formally advertised procurement the following will be applicable:

(a) *General.* One of the essential elements of formal advertising is that all bidders are afforded an equal opportunity to compete. For this reason, discussions with prospective bidders will only be conducted by or with the knowledge and approval of the contracting officer. It is incumbent upon the contracting officer to avail all prospective bidders of the same information so as not to give one an advantage over the others. The need for prebid conferences in advertised procurements should be infrequent and such conferences shall not be used as a substitute for formally amending defective or ambiguous solicitations or to disseminate additional specification requirements. A prebid conference is only authorized when it is deemed by the contracting officer to be in the best interest of the Government and approved by the head of the procuring activity or when written internal program policy requires it under certain specified circumstances.

(b) *Purpose.* A prebid conference is held to accomplish these primary objectives:

(1) To provide discussion of unusual aspects of complex procurements.

(2) To impart information that removes areas of performance uncertainties which, unless removed, result in higher price to the Government, i.e., inclusion in the bid of an amount for the uncertainty or contingency.

(3) To avoid post-award performance problems which firms could have been made aware of at the time of bid preparation.

(c) *Format.* The typical format of a prebid conference is a formal presentation by the contracting officer or his representative followed by a question and answer period. All prospective bidders and their subcontractors shall be invited to the meeting in a manner deemed appropriate by the contracting officer. When held, a prebid conference shall be scheduled sufficiently in advance of the date set for bid opening to permit prospective bidders to use the information. A written record of the prebid conference shall be made and maintained in the procurement file as the official record of what was presented at the conference.

(d) *Conclusion.* As a result of the prebid conference, it may become necessary to change or substantially clarify the invitation for bid. This action shall be transmitted to all those receiving invitation for bids in the form of an official amendment to the solicitation, taking into consideration any extension of the closing date for the receipt of bids.

§ 44-2.202-52 Bid envelopes.

Mailing labels, or envelopes, bearing "Postage and Fees Paid" indicia shall not be distributed with the invitation for bids or otherwise supplied to prospective bidders. To provide for ready identification and proper handling of bids, the Optional Form 17, "Sealed Bid Label" may be furnished with each bid set to inform the bidder as to what will be required on the bid envelope. 41 CFR 1-16.902-OF17 illustrates the referenced form and copies of same can be obtained from the General Services Administration.

§ 44-2.205 Bidders mailing lists.

§ 44-2.205-1 Establishment of lists.

New prospective suppliers that have been added to the bidders mailing list shall be notified by the procuring office by a letter so indicating.

§ 44-2.205-4 Excessively long bidders mailing lists.

It is the policy of FEMA to send preinvitation notices to concerns on the mailing list, described in 41 CFR 1-2.205-4(c), in lieu of initially forwarding complete bid sets for all procurements expected to result in awards in excess of \$10,000.

§ 44-2.250 Small business concerns owned and controlled by one or more socially and economically disadvantaged individuals and labor surplus area concerns.

It is the policy of FEMA to send preinvitation notices to all small business concerns owned and controlled by one or more socially and economically disadvantaged individuals and labor surplus area concerns that are on the bidder's mailing list for each procurement expected to result in an award in excess of \$10,000, subject to the provisions of 44-1.1302.

Subpart 2.3—Submission of Bids**§ 44-2.301 Responsiveness of bids.**

Any bid which is not signed by the bidder or his authorized representative shall be disregarded, except when it is accompanied by other evidence which demonstrates the bidder's intention to be bound by the unsigned bid document. An example of such evidence is a bid guarantee or a letter (which does not qualify or otherwise render the bid non-responsive) signed by the bidder referring to, and clearly identifying the bid itself. In such a case, the contracting officer may waive the deficiency as a minor informality or irregularity (see 41 CFR 1-2.405) and shall document the file to so indicate.

§ 44-2.303 Late bids.**§ 44-2.303-6 Notification to late bidders.**

In setting the date to be inserted in the notice to late bidders contained in 41 CFR 1-2.303-6, consideration should be given to the time required by the bidder to develop and prepare the required evidence in relation to the acceptance period specified by the otherwise apparent low bidder, avoidance of undue delay in the procurement cycle, and other pertinent factors. As a general rule, the bidder should be allowed a minimum of three (3) working days in addition to a time allowance for transmitting the notice to, and receipt of the evidence by, the contracting officer. The bidder shall be notified immediately in writing if his bid cannot be considered for award because of lateness.

§ 44-2.303-7 Disposition of late bids.

The return of a late bid which cannot be considered for award shall be accompanied by a statement from the contracting officer that the bid was not considered because of its late receipt. If the late bid had to be opened for identification purposes or was opened by mistake, this fact shall be included in the statement from the contracting officer accompanying the returned bid. In all cases where a late bid is not considered and returned to the bidder, the file shall be documented with all information relating to the determination of late receipt which shall include a copy of the late bid envelope.

Subpart 2.4—Opening of Bids and Award of Contract**§ 44-2.401 Receipt and safeguarding of bids.**

(a) Envelopes or other outer coverings containing identified bids shall be stamped or otherwise marked to show the office of receipt, the time of day received and the date. The individual receiving the bids shall then place his initials under the above marking.

(b) The contracting officer shall, in addition to the requirements of 41 CFR 1-2.401(b), retain in the file a copy of the envelope, wrapper or other container bearing the required documentation of a bid which was opened by mistake or for purposes of identification.

§ 44-2.402 Opening of bids.

The bid opening will be conducted by the contracting officer or his duly authorized representative designated as the bid opening officer. At the bid opening, the relative merits of any bids shall not be discussed by the person opening the bids, or the contracting officer, with the bidders, their representatives, casual observers, or Agency personnel. No statement shall be made by the person opening the bids or the contracting officer at a bid opening bearing on the award, the possibility of a readvertisement, mistakes in bids, the responsiveness of any bid or responsibility of any bidder, etc. Oral instructions shall not be given to bidders at any time during the opening. Protests of bidders and inquiries regarding the award of the contract shall be referred to the contracting officer after the completion of the bid opening. Bidders are cautioned that information obtained at bid opening from other than the contracting officer may only be relied upon by the bidder at the bidder's own risk. After all bids have been opened, read aloud and recorded, the bid

opening officer shall state that opening of bids has been completed.

§ 44-2.402-50 Timing of acceptance and withdrawal of bids.

Bidders may not withdraw their bids after bid opening unless the notice of withdrawal was mailed prior to the time set for bid opening and handled in accordance with 41 CFR 1-2.305.

§ 44-2.406 Mistakes in bid.**§ 44-2.406-3 Other mistakes disclosed before award.**

The Director, Division of Acquisition Management, is delegated the authority to make determinations in accordance with 41 CFR 1-2.406-3 concerning mistakes in bid discovered prior to award other than obvious clerical errors. Each such determination shall be approved by the Office of General Counsel prior to notification of the bidder.

§ 44-2.407 Award.**§ 44-2.407-8 Protests against award.**

(a) Resolution of protests, received before or after award, shall be pursued initially by the contracting officer. If the protest cannot be resolved to the satisfaction of the protestor, the contracting officer shall refer the matter to the head of the procuring activity prior to issuing a final decision. In referring the matter, the contracting officer shall prepare and forward to the head of the procuring activity a report consisting of the documents set forth in 41 CFR 1-2.407-8(a)(2). The head of the procuring activity shall consider the matter on the basis of this report, and any advice from the Office of General Counsel, the General Accounting Office (GAO) as may be requested, and shall provide the contracting officer with a recommended course of action to resolve the protest.

(b) A protestor shall be notified of the final decision on his protest within thirty (30) working days from the date the protest is received in the procuring activity, except where GAO views are requested in which case the time for rendering a decision shall be twenty (20) working days from receipt by the head of the procuring activity of GAO views.

(c) In a case where a protest is referred to the head of the procuring activity for review, to assure that the protestor receives timely notification of the final decision, the contracting officer shall submit the required report described above to the head of the procuring activity within ten (10) working days after receipt of the protest and the head of the procuring activity shall provide the contracting officer with

the recommended course of action within fifteen (15) working days after his receipt of the report or fifteen (15) days after receipt of GAO views, if requested.

(d) The contracting officer, except as described above, is responsible for all matters relating to protests against award of contracts within FEMA unless the protest has been filed concurrently or otherwise with the GAO. In such cases, the Office of General Counsel is responsible for liaison with the GAO. All communications concerning a protest, written or otherwise, directed to GAO shall be coordinated with the Office of General Counsel and all written communications from FEMA to the GAO shall be by the Office of General Counsel. The contracting officer, via the head of the procuring activity, is responsible for furnishing the Office of General Counsel with all information relating to the protest.

(e) Upon receipt of a protest, or upon receipt of notification from the head of the procuring activity that a protest has been filed with GAO, the contracting officer shall promptly notify in writing the contractor, if award has been made, and in any case, all bidders who, in the opinion of the contracting officer appear to have a reasonable prospect of receiving an award if the protest is sustained. This notification shall indicate that a protest has been filed concerning the solicitation or the award of the contract and the basis for the protest (see 41 CFR 1-2.407-8(a)(3)). In addition, the contracting officer shall request the bidders to extend the time for acceptance of their bids. Both the contracting officer's request for such extension and the bidders' responses shall be in writing. Where a protest has been lodged with the GAO, and the GAO requests that a formal report be submitted, the Office of General Counsel shall be responsible for submitting the formal report, or a written statement setting forth the reasons for any delay and the expected date of submission to GAO, within twenty-five (25) working days after receipt of the request, unless a different time is stipulated by GAO.

(f) Upon receipt of the request, the Office of General Counsel shall immediately notify the head of the procuring activity of the request, and the head of the procuring activity shall immediately notify the contracting officer of same. Upon such notification from the head of the procuring activity, the contracting officer shall begin to compile the report that he would normally compile for protests which are referred to the head of the procuring activity, plus a statement of the urgency of the procurement and the extent to

which a delay in award may result in significant performance difficulties or additional expense to the Government, if appropriate, or if not appropriate, a statement of the length of time an award may be delayed without significant expense or difficulty in performance. The contracting officer shall then submit the report to the head of the procuring activity within ten (10) working days from receipt of notification. The head of the procuring activity shall then forward the report, with any comments, to the Office of General Counsel within five (5) working days of receipt. The Office of General Counsel's report to GAO shall include the documents and statements submitted by the head of the procuring activity, as appropriate, the GAO file number assigned to the protest, and any additional comments by the Office of General Counsel. The report shall be transmitted by a covering letter addressed to the individual in the GAO who signed the request and shall state that copies thereof have been sent to the protestor and any other name parties who have been given notice of the protest. The external distribution shall be shown on the original of the letter to GAO. In addition, letters shall be sent to the protestor and other interested parties enclosing a copy of the completed report and shall advise recipients that any comments shall be filed with the Office of General Counsel, General Accounting Office, within ten (10) working days after receipt, with copies to the procuring activity and the Office of General Counsel of FEMA. If GAO requests additional information, a supplementary report shall be transmitted to GAO within five (5) working days after FEMA receives the request and shall follow the procedures set forth in 41 CFR 2.4078(a)(4). Where the contracting officer makes a determination to award a contract notwithstanding a protest as authorized by 41 CFR 1-2.4078(b)(4), the head of the procuring activity shall approve such a determination prior to award.

(g) If the protest has not been filed with GAO, the head of the procuring activity may, at his discretion, obtain, through the Office of General Counsel the views of GAO regarding the protest whenever such action is considered desirable, prior to approving or disapproving the determination. If the head of the procuring activity approves the determination, he shall notify the contracting officer that he is authorized to make the award. If the protest has been filed with the GAO, the head of the procuring activity, upon approval of the determination, but prior to authorizing the contracting officer to make the

award, shall notify the Officer of General Counsel of the intent to make the award. The Office of General Counsel shall then furnish GAO with notification of the intent to obtain formal or informal advice concerning the current status of the case prior to making the award. This advice shall be transmitted to the head of the procuring activity, who, in light of this advice, shall notify the contracting officer as to whether or not the award should be made. However, if in the opinion of head of the procuring activity, obtaining this advice will delay excessively the award, he may proceed with award after advising GAO through the Office of General Counsel of his intent.

(h) Protests shall be filed to be received at the procuring office not later than five (5) working days after the basis for protest is known or reasonably should have been known, whichever is earlier.

(i) The head of the procuring activity shall maintain records relating to all protests received. The records shall contain adequate data to show the number and nature of formal protests received (whether filed directly with FEMA or with GAO), their disposition and the time for resolution. These records will be reviewed annually in order to update protest procedures.

Subpart 2.5—Two-Step Formal Advertising

§ 44-2.502 Conditions for use.

Pursuant to 41 CFR 1-2.502, approval must be obtained from the head of the procuring activity before the two-step formal advertising method of procurement may be used.

PART 44-3—PROCUREMENT BY NEGOTIATION

Sec.

44-3.000 Scope of part.

Subpart 3.1—Use of Negotiation

44-3.100 Scope of subpart.

44-3.101-50 Noncompetitive procurement.

44-3.101-51 Preference for local contractors in Federally-declared disaster areas.

44-3.103 Publicizing procurement actions.

44-3.103-50 Preproposal conferences.

44-3.104 Disclosure of mistakes after award.

44-3.150 Treatment of proposal information

44-3.150-1 General.

44-3.150-2 Disposition of unsuccessful proposals.

44-3.150-3 Use of successful proposals.

Subpart 3.4—Types of Contracts

44-3.400 Scope of subpart.

44-3.405-3 Cost-sharing contract.

44-3.408 Letter contract.

Subpart 3.7—Negotiated Overhead Rates

44-3.700 Scope of subpart.

- Sec.
44-3.702 General.
44-3.707 Overhead ceilings.

Subpart 3.6—Price Negotiation Policies and Techniques

- 44-3.800 Scope of subpart.
44-3.801-2 Responsibility for determination of final price.
44-3.802 Preparation for negotiation.
44-3.802-2 Alternate procedures for consideration of late proposals.
44-3.805 Selection of offerors for negotiation and award.
44-3.805-50 Source selection procedures.

Subpart 3.51—Protests Against Award

- 3.5101 Negotiated procurement protests.
Authority: 41 CFR 1-1.008.

§ 44-3.000 Scope of part.

This part prescribes policies and procedures which shall be observed by FEMA procuring offices in connection with procurement by negotiation.

Subpart 3.1—Use of Negotiation

§ 44-3.100 Scope of subpart.

This subpart sets forth policies and procedures concerning exceptions to normal negotiation procedures and the dissemination of procurement information.

§ 44-3.101-50 Noncompetitive procurement.

(a) *General.* FEMA procurement shall be accomplished on a competitive basis to the maximum extent practicable. Procurement without competition shall be limited to those circumstances in which only one firm, organization or individual can provide the required supplies or services.

(1) *Procurements not expected to exceed \$100,000.* Program offices recommending procurement on a noncompetitive basis shall submit a detailed summary of the factual circumstances justifying noncompetitive procurement to the contracting officer. The contracting officer shall review the justification in accordance with the criteria outlined in paragraph (c) of this section. If, in the judgment of the contract officer, the justification adequately supports procurement on a noncompetitive basis pursuant to paragraph (c) of this section, the contracting officer shall evidence his approval of the justification by preparing and signing a determination which states that the circumstances set forth in the justification meet one of the criteria for procurement on a noncompetitive basis set forth in FEMAPR 3.101-50(c) and which details the reasons why these circumstances are considered to meet this criterion. The contracting officer shall then insert the determination and accompanying

rationale in the contract file with the justification and commence negotiations with the identified firm. In the event that the contracting officer does not feel that the justification adequately supports procurement on a noncompetitive basis, he shall evidence his disapproval of the justification by preparing and signing a determination which states that the circumstances set forth in the justification do not meet either of the criteria for procurement on a noncompetitive basis set forth in FEMAPR 3.101-50(c) and which details the reasons why these circumstances are not considered to meet either of the criteria. If the justification is disapproved by the contracting officer the originating program office may appeal the determination to the head of the procuring activity whose decision shall be final.

(2) *Procurements expected to exceed \$100,000 But not expected to exceed \$500,000.* The procedures set forth in paragraph (a) (1) of this section shall be followed for procurements expected to exceed \$100,000, but not expected to exceed \$500,000, except that when the contracting officer has either approved or disapproved the justification for noncompetitive procurement, the contracting officer shall submit the determination, the accompanying rationale and the justification along with the contract file to the head of the procuring activity. The head of the procuring activity shall then review the contracting officer's determination, accompanying rationale and the justification and either concur or not concur in the determination in writing. All nonconcurrences by the head of the procuring activity shall be accompanied by a statement of the reasons for the nonconcurrence. If the concurrence or nonconcurrence of the head of the procuring activity results in approval of the justification for noncompetitive procurement, the contracting officer shall commence negotiations with the identified firm. If the concurrence or nonconcurrence of the head of the procuring activity results in disapproval of the justification, the contracting officer shall advise the originating program office in writing, of the disapproval detailing the reasons therefor.

(3) *Procurements expected to exceed \$500,000.* The procedures set forth in paragraph (a)(2) of this section shall be followed for procurements expected to exceed \$500,000, except that when the head of the procuring activity has either concurred or not concurred in the determination of the contracting officer the head of the procuring activity shall submit the contracting officer's

determination, accompanying rationale and the justification along with the written concurrence or nonconcurrence of the determination to the Director, Officer of Finance and Administration. The Office of Finance and Administration shall review the justification in light of the information provided by the head of the procuring activity and approve or disapprove the justification. If the approval or disapproval represents a nonconcurrence with the recommendation of the head of the procuring activity, the Director, Office of Finance and Administration shall provide a written statement to the head of the procuring activity detailing the reasons therefor. If the justification is approved the contracting officer shall advise the originating program office, in writing, of the disapproval detailing the reasons therefor.

(b) *Exclusions.* The provisions of FEMAPR 44-3.101-50(a) do not apply to the following:

- (1) Procurements of \$500 or less
- (2) Procurements from or through other Government Agencies
- (3) Procurements of architect-engineer services
- (4) Procurements of utility services where the services are available from only one source
- (5) Procurements with the Small Business Administration
- (6) Purchases from mandatory Federal Supply Schedule contracts which list only one source.

(c) *Justification for noncompetitive procurement.* In order for procurement on a noncompetitive basis to be approved by the Contracting Officer, the justification must demonstrate that one of the following criteria has been met:

- (1) The recommended source possesses a unique characteristic or capability that serves to make that source the only one able to provide the desired product or service and all other sources unable to provide the product or service.
- (2) The proposed procurement is for replacement of components for equipment specially designed by a manufacturer, and available data is not adequate to assure that replacement parts or components, if provided by a source other than the manufacturer of the equipment, would be compatible with, or perform the same function as, the parts or components being replaced.

§ 44-3.101-51 Preference to local contractor in procurements resulting from Presidentially declared major disasters or emergencies.

(a) *Scope of subsection.* This subsection establishes policies relating to local contractor preference to receive

procurement awards resulting from competitively negotiated solicitations with a Presidentially-declared major disaster or emergency operation.

(b) *Geographical coverage.* The geographic areas to which local contractor preference shall apply are those affected by the Presidentially-declared disaster and designated by the Associate Director for Disaster Response and Recovery in the Federal Register. Geographical areas shall be identified by county or other political subdivision.

(c) *Procurement for implementation of the procurement of supplies and services for disaster relief response.* The clause set forth below shall be included in each competitively negotiated solicitation for disaster relief response.

Provision for Competitively Negotiated Solicitations

In awarding any contract(s) pursuant to this solicitation, the Government shall give preference to local organizations, firms and individuals residing or doing business primarily in the geographic area identified as the disaster area by the Associate Director for Disaster Response and Recovery.

The contracting officer reserves the right to request offerors to furnish documentation to demonstrate eligibility for local contractor preference. To be eligible for local contractor preference, the offeror shall have been residing (in the case of individuals) or doing the major portion of its business (in the case of business entities) in the disaster area.

Offerors for which eligibility is established (local offerors) shall be permitted to reduce their proposed price to meet the lowest price received from an otherwise eligible nonlocal offeror, provided that the proposed price from the local offeror(s) does not exceed 130% of the price received from the nonlocal offeror. The lowest priced local offeror within 130% of the lowest nonlocal price shall be given the initial opportunity to meet the nonlocal price. If the local offeror meets the lowest nonlocal price and is determined to be responsible, award shall be made. If the nonlocal offer is not met, the next lowest local offeror within 130% shall be given an opportunity to meet the lowest nonlocal price. This process shall continue until award is made to a local offeror within the 130% requirement or the supply of such local offerors is exhausted and award made to the lowest nonlocal offerors.

(d) *Exception to use of local preference provisions.* If it is determined by the Contracting Officer to be in the best interest of the Government the clause set forth in Paragraph (c) of this

section need not be included in solicitations. Such determination shall be documented in the contract file with a findings and determination signed by the contracting officer and approved by the head of the procuring activity.

(e) *Additional methods for encouraging local participation.* In the event the contracting officer makes the determination of paragraph (d) of this section, local participation may be encouraged by:

(1) Setting the procurement aside for labor surplus areas if the disaster area has been established as a labor surplus area;

(2) Advertising only in the local disaster area; and/or

(3) Subdividing large requirements into several smaller requirements.

§ 44-3.103 Dissemination of procurement information.

(a) *Publicizing procurement actions.* The agency shall continually search for and develop information on sources (including small businesses owned and controlled by one or more socially or economically disadvantaged individuals) competent to provide supplies or services. Advance publicity, including use of the Commerce Business Daily to the fullest extent practicable, shall be given for this purpose. The search should include (a) a review of relevant data or brochures furnished by sources seeking to do business with the agency and (b) a cooperative effort by program personnel, small business specialists and contracting officers to obtain information and recommendations with respect to potential sources and to consider the desirability of seeking other sources by publication of proposed procurements, in addition to the synopsis requirements. Each procuring office shall use to the maximum extent practicable its bidders mailing list for soliciting competition.

(b) *Release of information during the solicitation phase.* No information shall be released during the solicitation phase of a procurement except as follows:

Each solicitation for a negotiated procurement shall specify an individual within the procuring office who shall be responsible for responding to inquiries concerning the solicitation and evaluation of proposals resulting from the solicitation. All questions concerning the solicitation whether of a procedural or substantive nature shall be directed to the above individual. All other personnel will avoid exchange of comments with all offerors or potential offerors. Answers to questions requiring clarification of the substantive portion of the solicitation shall be provided by amendment to the solicitation a copy of which shall be furnished to each recipient of the solicitation.

(c) *Release of information during the evaluation phase.* During the course of evaluating proposals, personnel involved in this activity shall not reveal any information concerning the evaluation of proposals to anyone who is not also participating in the same evaluation proceedings, except as may be required for internal clearances. However, the contracting officer, upon determination that a proposal is unacceptable, or not within the competitive range, shall provide prompt notice of the fact to the offeror submitting the proposal. In addition to stating that the proposal has been determined to be unacceptable, or not within the competitive range, the notice to the offeror shall indicate, in general terms, the basis for such determination and shall advise the offeror that since further negotiation with him is not contemplated, a revision of his proposal will not be considered. Such notice need not be given if (a) in the judgment of the contracting officer, the disclosure will prejudice the Government's interest (the possibility of protest shall not be considered prejudicial), or if the proposed contract is to be awarded within a few days and notice pursuant to 41 CFR 1-3.103 would suffice. This notification procedure shall not apply to procurements negotiated pursuant to 41 USC 252(c) (4), (5) or (6); negotiated with a foreign supplier when only foreign sources of supplies or services have been solicited; or urgent procurement actions which the contracting officer determines in writing must be awarded without delay to protect the public interest. The contracting officer's determination shall be placed in the contract file.

(d) *Postaward release of procurement information.* Promptly after making award of any procurement in excess of \$10,000, the contracting officer shall, if he has not done so pursuant to FEMAPR 44-3.103(c), give written notice to the unsuccessful offerors that their proposals were not accepted. The notice should name the successful contractor and state the amount of the award and the number of proposals received. Where additional information is requested by the offeror, it shall be provided as follows:

(1) It is the policy of FEMA to provide a debriefing to any unsuccessful offeror who makes a written request to the contracting officer within two (2) months after contract award.

(2) A debriefing is intended to:
(i) Tell an unsuccessful offeror which areas of his proposal were judged to be weak or deficient and whether the weaknesses or deficiencies were factors in his not having been selected.

(ii) Identify the factors which were the basis for selection of the successful contractor. If the quality of the successful offeror's proposal to satisfy the mission requirement was the basis, the unsuccessful offeror should be so informed and given a general comparison of significant areas, but not a point by point comparison of all the elements considered in the evaluation criteria.

(3) A debriefing should not reveal:

(i) Confidential business information, trade secrets, techniques, or processes of the other offerors; and

(ii) The relative merits or technical standing of the unsuccessful offerors or the scoring by the Source Evaluation Board or Technical Evaluation Panel.

(4) Any FEMA official who receives from an unsuccessful offeror a request, written or oral, for a debriefing shall immediately refer the request to the appropriate procuring office which shall make the necessary arrangements for the debriefing.

(5) It is essential that the debriefing be conducted in a scrupulously fair, objective and impartial manner, and that the information given be factual and consistent with the findings of the evaluation and the basis on which the source selection official made his decision.

(6) It is most important that all FEMA personnel engaged in the evaluation and selection process be aware of the foregoing policies and procedures. Detailed and complete records will be maintained by key technical and business participants in a manner which will facilitate either a written or oral debriefing of any unsuccessful offeror's proposal.

§ 44-3.103-50 Preproposal conferences.

In cases of complex procurement, preproposal conferences may be used to explain complicated specifications and requirements to prospective offerors so as to permit them to submit proposals without undue expenditure of effort, time and money. The preproposal conference shall not be used as a method for prequalification of offerors, and may only be used when approved by the head of the procuring activity. The preproposal conference shall be arranged and conducted by the contracting officer or his representative with participation by technical, legal and such other personnel as appropriate. All prospective offerors shall be furnished identical information in connection with the proposed procurement. Remarks and explanations at the conference shall not qualify the terms of the solicitation and specifications. All conferees shall be

advised that unless the solicitation is amended in writing it will remain unchanged and that if an amendment is issued, normal procedures relating to the acknowledgement and receipt of solicitation amendments shall be applied. A complete record shall be made of the conference.

§ 44-3.104 Disclosure of mistakes after award.

Mistakes discovered in prospective contractor's proposals after award is made, shall be handled in accordance with 41 CFR 1-2.406-4 as implemented by FEMAPR 44-2.406-4.

§ 44-3.150 Treatment of proposal information.

§ 44-3.150-1 General.

It is the general policy of FEMA to use information contained in proposals only for evaluation purposes except to the extent such information is generally available to the public, is already the property of the Government or the Government already has unrestricted use rights, or it is, or has been made available to the Government from other sources, including the offeror, without restriction.

§ 44-3.150-2 Disposition of unsuccessful proposals.

Unsuccessful proposals shall be disposed of as follows:

(a) All but one copy of each unsuccessful proposal shall be destroyed upon contract award. The one remaining copy of each unsuccessful proposal may be retained in the official contract file until for sixty (60) days at the end of which time it would be destroyed.

(b) Unsuccessful proposals shall not be used for purposes other than internal reference unless (1) written permission has been obtained from the offeror or (2) the proposal expressly states that unrestricted use of the proposal is given to the Government regardless of its success in the competition or (3) any of the conditions described in FEMAPR 44-3.150-1 exist.

§ 44-3.150-3 Use of successful proposals.

The Government shall normally be accorded unrestricted use of successful proposals. In the event that the successful offeror desires to place restrictions on the use of his proposal, the terms and extent of such restrictions may be set forth in the resulting contract. In any event the Freedom of Information Act will govern.

Subpart 3.4—Types of Contracts

§ 44-3.400 Scope of subpart.

This subpart sets forth policies and procedures concerning the use of cost-sharing contracts and letter contracts.

§ 44-3.405-3 Cost sharing contracts.

(a) *Purpose.* This subsection sets forth basic guidelines governing cost-sharing on research contracts with non-Federal organizations.

(b) *Basic guidelines.* Cost sharing with non-Federal organizations shall be encouraged as provided below for the following contracts for basic or applied research:

(1) A contract in which the parties have considerable mutual interest in the research (e.g., when it is probable that the performing organization or institution will receive significant future benefits from the research such as increased technical knowledge useful in future operations, additional technical or scientific expertise or training for its personnel, opportunity to benefit through patent rights, or the use of background knowledge in future production contracts).

(2) Cost sharing ordinarily shall not be applied to the following contracts:

(i) When the contracting officer has determined that:

(A) The research effort has only minor relevance to the non-Federal activities of the performing organization which is proposing to undertake the research primarily as a service to the Government; or

(B) The performing organization has few or no non-Federal sources of funds from which to make a cost contribution; or

(C) The performing organization is predominately engaged in research and development and has little or no production or other service activities and is, therefore, not in a favorable position to make a cost contribution; or

(D) Payment of the full cost of the project is necessary in order to obtain the services of the particular organization.

The contracting officer shall include the substance of his determination in the negotiation summary.

(ii) Contracts, except when cost sharing is specifically directed by the Director, Division of Acquisition Management, or voluntarily offered by the performing organization for projects:

(A) Where a particular research objective or scope of effort is specified by FEMA rather than proposed by the performing organization. This will usually include any formal solicitation for a specific contractual requirement.

(B) The principal purpose of which is the production of, or design, testing, or improving of products, materials, devices, systems or methods.

(c) *Guidelines for determining the amount of cost sharing.* (1) For educational institutions and other not-for-profit or non profit organizations, cost sharing normally may vary from 1 percent to as much as 50 percent of the costs of the project. In some cases it may be appropriate for educational institutions to provide a higher degree of cost sharing, such as when the cost of the research consists primarily of the academic year salary of faculty members, or when the equipment acquired by the institution for the project will be of significant value to the institution in its educational activities.

(2) The amount of cost participation by commercial or industrial organizations may vary from as little as 1 percent or less of the total project cost to more than 50 percent of total project cost, depending upon the extent to which the research effort is likely to enhance the performing organization's capability, expertise or competitive position and the value of such enhancement to the performing organization. It should be recognized that those organizations which are predominately engaged in research and development and have little or no production or other service activities may not be in a favorable position to derive a monetary benefit from the research under Federal agreements.

(3) A fee or profit will usually not be paid to the performing organization if the organization is to contribute to the cost of the research effort, but the amount of cost sharing may be reduced to reflect the fact that the organization is foregoing its normal fee or profit on the research. However, if the research is expected to be of only minor value to the performing organization and if cost-sharing is not required by statute, it may be appropriate for the performer to make a contribution in the form of a reduced fee or profit, rather than sharing the costs of the project.

(4) Each cost-sharing contract negotiated by the agency shall contain the clause included in FEMAPR 44-7.5002-9.

§ 44-3.408 Letter contract.

Prior to the award of a letter contract the contracting officer shall make a determination that no other type of contract is suitable under the circumstances surrounding the procurement and shall support this determination by detailing the reasons why no other type of contract is suitable. The determination and

supporting documentation shall then be submitted to, and must be approved by, the head of the procuring activity before the letter contract may be awarded.

Subpart 3.7—Negotiated Overhead Rates

§ 44-3.700 Scope of subpart.

This subpart sets forth policies and procedures concerning negotiated overhead rates for use in cost-reimbursement type contracts.

§ 44-3.702 General.

(a) When a contractor performs work in the same period under several contracts for one or more procuring offices or agencies, it may be desirable and appropriate, when mutually agreed to by FEMA and the contractor, to negotiate uniform overhead rates for application to all such contracts in order to (1) effect uniformity of approach, (2) effect economy in administrative effort, and (3) promote timely settlement of reimbursement claims.

(b) When the contracting officer determines that the above conditions exist, he shall include the negotiated overhead rate clause set forth in 41 CFR 1-3.704-1.

(c) If the prospective cost-reimbursement contract is the only contract to be performed by the contractor for the Government during a given period or if the contracting officer determines that it is not appropriate to include the clause specified in 41 CFR 1-3.704-1, determination of the reimbursable amount of the overhead under the contract shall be based upon final audit of the actual costs incurred during the period of performance and the clause set forth in FEMAPR 44-7.5002-6 shall be included.

§ 44-3.707 Overhead ceilings.

When the contracting officer determines in accordance with 41 CFR 1-3.707 that it is appropriate to place an overhead ceiling in the contract, he shall include the clause set forth in FEMAPR 44-7.5002-8.

Subpart 3.8—Price Negotiation Policy and Techniques

§ 44-3.800 Scope of subpart.

This subpart sets forth policies and procedures concerning final price negotiation, consideration of late proposals, and source selection.

§ 44-3.801-2 Responsibility for determination of final price.

In the event a contractor insists on a price or demands a profit or fee which the contracting officer considers unreasonable and, if the contracting

officer is unable to obtain a satisfactory solution after exhausting the courses of action set forth in 41 CFR 1-3.801-2(c), the matter shall be referred for resolution to the head of the procuring activity with a statement of facts and the contracting officer's recommendations.

§ 44-3.802 Preparation for negotiation.

§ 44-3.802-2 Alternate procedures for consideration of late proposals.

When the head of the procuring activity determines that the procedures set forth in 41 CFR 1-3.802-1 are not appropriate for certain classes of negotiated procurement conducted by FEMA, he may authorize the adoption of the procedures set forth in 41 CFR 1-3.802-2(b) for consideration of late proposals and modifications (except where the procurement of general purpose automated data processing equipment is involved unless use of the procedures set forth in 41 CFR 1-3.802-2(b) is expressly authorized by the Commissioner, Automated Data and Telecommunications Service, GSA).

§ 44-3.805 Selection of offerors for negotiation and award.

§ 44-3.805-50 Source selection procedures.

All competitive procurements in excess of \$10,000 shall be subject to a formal selection procedure as described herein.

(a) A proposal evaluation team shall be appointed for each competitive procurement. For procurements under \$500,000, the team shall be called the Technical Evaluation Panel. For those procurements in excess of \$500,000, the team shall be called the Source Evaluation Board.

(b) Each competitive solicitation shall contain applicable selection criteria including the numerical ranking of each major criterion and shall be agreed upon by the proposal evaluation team.

(c) The proposal evaluation team shall evaluate each proposal against the criteria established in the request for proposal. The initial evaluation shall be to determine technical merit and then shall be combined with the business evaluation to determine the overall merit. Upon completion of this total evaluation the competitive range shall be established. The competitive range shall include those proposals which through written or oral discussions with the proposer have a reasonable chance of selection when all factors are considered, including cost. The competitive range shall be established by the Source Evaluation Board for procurements in excess of \$500,000 and

by the contracting officer on those under \$500,000.

(d) Discussions shall be conducted with all proposers in the competitive range. Each proposer shall be given an opportunity to submit a revised proposal. A common cutoff date shall be established for receipt of the revisions. Upon receipt the appropriate evaluation team shall evaluate and prepare a final ranking. A final recommendation report will be prepared and furnished to the selecting official. The selecting official for those procurements under \$500,000 shall be the contracting officer and for those over \$500,000 the head of the cognizant program office shall be the selecting official.

(e) The selecting official shall consider the recommendations and select the firm(s) for final negotiations. The contracting officer shall then enter into final negotiations with the selected firm(s) to resolve all remaining terms and conditions necessary to reach final agreement.

Subpart 3.51—Protests Against Award

§ 44-3.5101 Negotiated procurement protests.

Protests against award of negotiated contracts shall be processed in accordance with FEMAPR 44-2.407-8 and 41 CFR 1-2.407-8.

PART 44-4—SPECIAL TYPES AND METHODS OF PROCUREMENT

Sec.
44-4.000 Scope and applicability of part.

Subpart 4.9—Unsolicited Proposals [Reserved]

Subpart 4.10—Architect-Engineer Services

- 44-4.1000 Scope of subpart.
- 44-4.1004 Selection.
- 44-4.1004-1 Establishment of architect-engineer evaluation boards.
- 44-4.1004-50 Conflict of interest.
- 44-4.1004-51 Privity of information.

Subpart 4.11—Procurement and Contracting for Government-Wide Automated Data Processing Equipment, Software, Maintenance Services, and Supplies

- 44-4.1100 Scope of subpart.
- 44-4.1104 Request for procurement action.
- 44-4.1104-50 Clearance procedures.

Subpart 4.50—Interagency Procurement [Reserved]

Authority: 41 CFR 1-1.008.

§ 44-4.000 Scope and applicability of part.

This part sets forth policies and procedures regarding unsolicited proposals and the procurement of architect-engineer services, automatic data processing equipment and services,

and property and services from other Federal agencies.

Subpart 4.9—Unsolicited Proposals [Reserved]

Subpart 4.10—Architect-Engineer Services

§ 44-4.1000 Scope of subpart.

This subpart sets forth policies and procedures for the establishment of architect-engineer evaluation boards and for architect-engineer source selection.

§ 44-4.1004 Selection.

§ 44-4.1004-1 Establishment of architect-engineer evaluation boards.

Each architect-engineer evaluation board, whether permanent or ad hoc, shall consist of at least five voting members who are Federal employees from the appropriate FEMA program office or, from Federal offices outside the program office, as appropriate. One member of each board shall be appointed chairman. Five alternate members, who are Federal employees, shall also be appointed. The majority of voting members shall be from the program office concerned. The members of a permanent board shall be appointed by the Director for a period of two (2) years.

§ 44-4.1004-4 Source selection.

(a) The heads of offices cognizant over programs which from time to time may require architect-engineer services are designated as source selection officials for all procurements of architect-engineer services, and as such are vested with the authority to review the recommendations of the evaluation board and to make the final selection of the firms best qualified to perform the work, in accordance with the provisions of 41 CFR 1-4.1004-4. Rejections of the recommended firms and the reasons for their rejection will be in writing.

(b) Upon the determination of the qualified firms by the source selection official, a requisition shall be forwarded to the procuring office which shall indicate the order of qualification, including capability, of the selected firms. The procuring office shall then send a request for proposal to, and begin negotiations with, the firm ranked highest on the list.

§ 44-4.1004-50 Conflict of interest.

If at any time during the selection process a board member or advisor to the board encounters a situation with one or more of the firms being considered that might be, or might appear to be, a conflict of interest, he

will disqualify himself and call it to the attention of the chairman who shall refer the matter to the Office of General Counsel.

§ 44-4.1004-51 Privity of information.

The evaluation board is to be insulated from outside pressures to the extent practical. No person having knowledge of the activities of the board shall divulge information concerning the deliberations of the board to any other persons not having a need to know such information.

Subpart 4.11—Procurement and Contracting for Government-Wide Automated Data Processing Equipment, Software, Maintenance Services, and Supplies

§ 44-4.1100 Scope of subpart.

This subpart sets forth policy governing the procurement of all automatic data processing equipment, software, maintenance services, and supplies by FEMA.

§ 44-4.1104 Request for procurement action.

§ 44-4.1104-50 Clearance procedures.

No solicitation or modification to an existing contract, when related in whole or in part to the procurement of ADP equipment or services, shall be issued until approval is obtained from the General Services Administration pursuant to 41 CFR 1-4.1104.

Subpart 4.50—Interagency Procurement [Reserved]

PART 44-7—CONTRACT CLAUSES

Sec.
44-7.000 Scope of part.

Subpart 7.50—Additional Clauses

- 44-7.5001 Additional clauses to be used in all contracts.
- 44-7.5001-1 Notification of changes.
- 44-7.5001-2 Suspension of work.
- 44-7.5001-3 Disabled veterans and veterans of the Vietnam era.
- 44-7.5002 Additional clauses to be used in contracts as appropriate.
- 44-7.5002-1 Rights in data.
- 44-7.5002-2 Reproduction of reports.
- 44-7.5002-3 Coordination of Federal reporting requirements.
- 44-7.5002-4 Services of consultants.
- 44-7.5002-5 Publication.
- 44-7.5002-6 Indirect costs (actual).
- 44-7.5002-7 Limitation of funds.
- 44-7.5002-8 Indirect costs (ceiling).
- 44-7.5002-9 Consideration and payment (cost-sharing).
- 44-7.5002-10 Warranty.
- 44-7.5002-11 Ocean freight shipment—use of American-flag vessels—reports.
- 44-7.5002-12 Method of payment—letter of credit.

Authority: 41 CFR 1-1.1008.

§ 44-7.000 Scope of part.

This part sets forth special contract clauses which are in addition to clauses set forth in the FPR for use in connection with the procurement of personal property and nonpersonal services (including construction).

Subpart 7.50—Additional Clauses**§ 44-7.5001 Additional clauses to be used in all contracts.****§ 44-7.5001-1 Notification of changes.****Notification of Changes**

(a) *Notices.* Except in the case of changes identified as such in writing and signed by the contracting officer, the contractor shall notify the contracting officer in writing promptly, and in any event within 5 calendar days from the date that the contractor identifies any Government conduct (including actions, inactions, and written or oral communications) which the contractor regards as a change to the contract terms and conditions. The notice shall state:

- (1) The date, nature, and circumstances of the conduct regarded as a change;
- (2) The name, function, and activity of each Government individual and contractor official or employee involved in or knowledgeable about such conduct; and
- (3) The identification of any documents and the substance of any oral communication involved in such conduct.

(b) *Continued Performance.* Following submission of the notice required by paragraph (a) of this section, the contractor shall diligently continue performance of this contract to the maximum extent possible in accordance with its terms and conditions as construed by the contractor.

(c) *Government response.* The contracting officer shall promptly, and in any event within five calendar days after receipt of notice, respond thereto in writing. In such response the contracting officer shall either:

(1) Confirm or deny that the conduct of which the contractor gave notice constitutes a change, and

(2) In the event that the contracting officer confirms that the conduct constitutes a change, he shall provide the contractor with appropriate direction. In the event that the contracting officer denies that the conduct constitutes a change, he shall direct the contractor to continue performance of the contract in accordance with the communication regarded as a change, and advise him that should he wish to pursue the matter

further to do so pursuant to the Disputes clause of the contract.

(d) *Equitable Adjustments.* If the contracting officer confirms that Government conduct effected a change as alleged by the contractor, and such conduct causes an increase or decrease in the contractor's cost of, or the time required for, performance of any part of the work under this contract, an equitable adjustment shall be made.

(e) *Notification of contacting officer.* If the contractor fails to notify the contracting officer of Government conduct regarded by the contractor to constitute a change to the contract within five (5) days from the date such conduct is identified, the Government will assume no liability in regard to the alleged change.

§ 44-7.5001-2 Suspension of work.**Suspension of Work**

(a) The contracting officer may, at any time, by written order to the contractor, require the contractor to suspend, delay or interrupt all, or any part, of the work called for by this contract for a period up to ninety (90) days after the order is delivered to the contractor, and for any further period to which the parties may agree. Any such order shall be specifically identified as a suspension of work issued pursuant to this clause. Upon receipt of such an order, the contractor shall forthwith 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 suspension. Within a period of ninety (90) days after a suspension of work order is delivered to the contractor, or within any extension of that period to which the parties shall have agreed, the contracting officer shall either:

- (1) Cancel the suspension of work order; or
- (2) Terminate the work covered by such order as provided in the "Termination for Convenience" clause of this contract.

(b) If a suspension of work issued under this clause is cancelled or the period of the order or any extension thereof expires, the contractor shall resume work. An equitable adjustment shall be made in the delivery schedule or contract price, or both, and the contract shall be modified in writing accordingly, if:

(1) The suspension of work results in an increase in the time required for, or in the contractor's cost properly allocable to, the performance of any part of this contract, and

(2) The contractor asserts a claim for such adjustment within thirty (30) days

after the end of the period of work stoppage; provided, that, if the contracting officer decides the facts justify such action, he may receive and act upon any such claim asserted at any time prior to final payment under this contract.

Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(c) If a suspension of work order is not cancelled and the work covered by such order is terminated for the convenience of the Government, the reasonable costs resulting from the suspension of work order shall be allowed in arriving at the termination settlement.

(d) If a suspension of work order is not cancelled and the work covered by such order is terminated for default, the reasonable costs resulting from the suspension of work order shall be allowed by equitable adjustment or otherwise.

§ 44-7.5001-3 Disabled veterans and veterans of the Vietnam era.**Disabled Veterans and Veterans of the Vietnam Era**

(a) The contractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam era in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans status in all employment practices such as the following: employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

(b) The contractor agrees that all suitable employment openings of the contractor which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the contractor other than the one wherein the contract is being performed but excluding those of independently operated corporate affiliates, shall be listed at an appropriate local office of the State employment service system wherein the opening occurs. The contractor further agrees to provide such reports to such local office regarding

employment openings and hires as may be required. State and local government agencies holding Federal contracts of \$10,000 or more shall also list all their suitable openings with the appropriate office of the State employment service, but are not required to provide those reports set forth in paragraphs (d) and (e) of this section.

(c) Listing of employment openings with the employment service system pursuant to this clause shall be made at least concurrently with the use of any other recruitment source or effort and shall involve the normal obligations which attach to the placings of a bona fide job order, including the acceptance of referrals of veterans and nonveterans. The listing of employment openings does not require the hiring of any particular job applicant or from any particular group of job applicants, and nothing herein is intended to relieve the contractor from any requirements in Executive orders or regulations regarding nondiscrimination in employment.

(d) The reports required by paragraph (b) of this order shall include, but not be limited to periodic reports which shall be filed at least quarterly with the appropriate local office or, where the contractor has more than one hiring location in a State, with the central office of that State employment service. Such reports shall indicate for each hiring location (1) the number of individuals hired during the reporting period, (2) the number of nondisabled veterans of the Vietnam era hired, (3) the number of disabled veterans of the Vietnam era hired, and (4) the total number of disabled veterans hired. The reports should include covered veterans hired for on-the-job training under 38 U.S.C. 1787. The contractor shall submit a report within 30 days after the end of each reporting period wherein any performance is made on this contract identifying data for each hiring location. The contractor shall maintain at each hiring location copies of the reports submitted until the expiration of one year after final payment under the contract, during which time these reports and related documentation shall be made available, upon request, for examination by any authorized representatives of the contracting officer or of the Secretary of Labor. Documentation would include personnel records respecting job openings, recruitment, and placement.

(e) Whenever the contractor becomes contractually bound to the listing provisions of this clause, it shall advise the employment service system 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 provisions and has so advised the State system, there is no need to advise the State system of subsequent contracts. The contractor may advise the State system when it is no longer bound by this contract clause.

(f) This clause does not apply to the listing of employment openings which occur and are filled outside the 50 States, the District of Columbia, Puerto Rico, Guam, and the Virgin Islands.

(g) The provisions of paragraphs (b), (c), (d), and (e) of this clause do not apply to openings which the contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of his own organization or employer-union arrangement for that opening.

(h) As used in this clause:

(1) "All suitable employment openings" includes, but is not limited to, openings which occur in the following job categories: production and non-production; plant and office; laborers and mechanics; supervisory and nonsupervisory; technical; and executive, administrative, and professional openings that are compensated on a salary basis of less than \$25,000 per year. This term includes full-time employment, temporary employment of more than 3 days' duration, and part-time employment. It does not include openings which the contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement nor openings in an educational institution which are restricted to students of that institution. Under the most compelling circumstances an employment opening may not be suitable for listing, including such situations where the needs of the Government cannot reasonably be otherwise supplied, where listing would be contrary to national security, or where the requirement of listing would otherwise not be in the best interest of the Government.

(2) "Appropriate office of the State employment service system" means the local office of the Federal/State national system of public employment offices with assigned responsibility for serving the area where the employment opening is to be filled, including the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

(3) "Openings which the contractor proposes to fill from within his own

organization" means employment openings for which no consideration will be given to persons outside the contractor's organization (including any affiliates, subsidiaries, and the parent companies) and includes any openings which the contractor proposes to fill from regularly established "recall" lists.

(4) "Openings which the contractor proposes to fill pursuant to a customary and traditional employer-union hiring arrangement" means employment openings which the contractor proposes to fill from union halls, which is part of the customary and traditional hiring relationship which exists between the contractor and representatives of his employees.

(i) The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Vietnam Era Veteran's Readjustment Act (Hereinafter referred to as "The Act").

(j) 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.

(k) 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, provided by or through the contracting officer. Such notice shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era for employment, and the rights of applicants and employees.

(l) The contractor will 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 terms of the Vietnam Era Veteran's Readjustment Assistance Act and is committed to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era.

(m) The contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or order of the Secretary issued pursuant to the Act, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

§ 44-7.5001-7 Payment of interest on contractor's claims.**Payment of Interest on Contractor's Claims**

(a) If an appeal is filed by the contractor from a final decision of the contracting officer under the Disputes clauses of this contract, denying a claim arising under the contract, simple interest on the amount of the claim finally determined owed by the Government shall be payable to the contractor. Such interest shall be at the rate determined by the Secretary of the Treasury pursuant to Public Law 92-41, 85 Stat. 97, from the date the contractor furnishes to the contracting officer his written appeal under the Disputes clause of this contract, to the date of (1) a final judgment by a court of competent jurisdiction, or (2) mailing to the contractor of a supplemental agreement for execution either confirming completed negotiations between the parties or carrying out a decision of a board of contract appeals.

(b) Notwithstanding paragraph (a) of this section, (1) interest shall be applied only from the date payment was due, if such date is later than the filing of appeal, and (2) interest shall not be paid for any period of time that the contracting officer determines the contractor has unduly delayed in pursuing his remedies before a board of contract appeals or a court of competent jurisdiction.

§ 44-7.5002 Additional clauses to be used in contracts as appropriate.**§ 44-7.5002-1 Rights in data.****Rights in Data**

The following clause shall be included in each contract for which data is expected to be a product of the work:

(a) *Subject data.* As used in this clause, the term "subject data" means writings, sound recordings, pictorial reproductions, drawings, designs or other graphic representations, procedural manuals, forms, diagrams, workflow charts, equipment descriptions, data files and data processing or computer programs, and works of any similar nature (whether or not copyrighted or copyrightable) which are specified to be delivered under this contract. The term does not include financial reports, cost analyses, and similar information incidental to contract administration.

(b) *Government-rights.* Subject only to the proviso of paragraph (c) of this section, the Government may use, duplicate or disclose in any manner and for any purpose whatsoever, and have

or permit others to do so, all subject data delivered under this contract.

(c) *License to copyrighted data.* In addition to the Government rights as provided in paragraph (b) of this section, with respect to any subject data which may be copyrighted, the contractor agrees to and does hereby grant to the Government a royalty-free, nonexclusive and irrevocable license throughout the world to use, duplicate or dispose of such data in any manner and for any purpose whatsoever and to have or permit others to do so: provided, however, that such license shall be only to the extent that the contractor now has, or prior to completion or final settlement of this contract may acquire the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

(d) *Relation to patents.* Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(e) *Marking and identification.* The contractor shall mark all subject data with the number of this contract and the name and address of the contractor or subcontractor who generated the data. The contractor shall not affix any restrictive markings upon any subject data, and if such markings are affixed, the Government shall have the right at any time to modify, remove, obliterate, or ignore any such markings.

(f) *Subcontractor data.* Whenever any subject data is to be obtained from a subcontractor under this contract, the contractor shall use this same clause in the subcontract, without alteration, and no other clause shall be used to enlarge or diminish the Government's rights in that subcontractor subject data.

(g) *Deferred ordering and delivery of data.* The Government shall have the right to order, at any time during the performance of this contract, or within two years from either acceptance of all items (other than data) to be delivered under this contract or termination of this contract, whichever is later, any subject data and any data not called for in the schedule of this contract but generated in performance of the contract, and the contractor shall promptly prepare and deliver such data as is ordered. The Government's right to use data delivered pursuant to this paragraph (g) shall be the same as the rights in subject data as provided in paragraph (b) of this section. The contractor shall be relieved of the obligation to furnish data pertaining to an item obtained from a subcontractor upon the expiration of two years from the date he accepts such items. When

data, other than subject data, is delivered pursuant to this paragraph (g), payment shall be made, by equitable adjustment or otherwise, for converting the data into the prescribed form, reproducing it or preparing it for delivery.

§ 44-7.5002-2 Reproduction of reports.

Include the following clause when the product of the contract is a report, data or other written material.

Reproduction of Reports

Reproduction of reports, data or other written material, if required herein is authorized provided that the material produced does not exceed 5,000 production units of any page and that items consisting of multiple pages do not exceed 25,000 production units in aggregate. The aggregate number of production units is to be determined by multiplying pages times copies. A production unit is one sheet, size 8 by 10-1/4 inches or less, printed on one side only and in one color. All copy preparation to produce camera ready copy for reproduction must be set by methods other than hot metal typesetting. The reports should be produced by methods employing stencils masters and plates which are to be used on single unit duplicating equipment no larger than 11 by 17 inches with a maximum image of 10-3/4 by 14-1/4 inches and are prepared by methods or devices that do not utilize reusable contact negatives and/or positives prepared with a camera requiring a darkroom. All reproducibles (camera ready copies for reproduction by photo offset methods) shall become the property of the Government and shall be delivered to the Government with the report, data or other written material.

§ 44-7.5002-3 Coordination of Federal reporting requirements.

The following clause shall be included in contracts when appropriate:

Coordination of Federal Reporting Services

In the event that it is a contractual requirement to collect information from ten or more public respondents, the provisions of 44 U.S.C., Chapter 35, (Coordination of Federal Reporting Requirements), shall apply to this contract. The contractor shall obtain through the project officer the required Office of Management and Budget clearance before making public contacts for the collection of data or expending any funds for such collection. The authority to proceed with the collection of data from public respondents and the expenditure of funds therefor shall be in writing signed by the contracting officer.

§ 44-7.5002-4 Services of consultants.

The following clause shall be used in contracts where it is anticipated that consultant services may be used:

Services of Consultants

Except as otherwise expressly provided elsewhere in this contract, and notwithstanding the provisions of the clause of this contract entitled, "Subcontracting."

the prior written approval of the contracting officer shall be required:

(a) Whenever any employee of the contractor is to be reimbursed as a "consultant" under this contract; and

(b) For the utilization of the services of any consultant under this contract except when the consultant has been identified and rates established during negotiations of this contract.

Whenever contracting officer approval is required, the contractor shall obtain and furnish to the contracting office information concerning the need of such consultant services and the reasonableness of the fees to be paid, including, but not limited to, whether fees to be paid to any consultant exceed the lowest fee charged by such consultant to others for performing consultant services of a similar nature.

§ 44-7.5002-5 Publication.

The following clause shall be used in all contracts under which it is anticipated that a report will be a product:

Publication

(a) *Definition.* For the purpose of this clause, "publication" includes (1) any document containing information intended for public consumption or (2) the act of, or any act which may result in, disclosing information to the public.

(b) *General.* The results of the research and development and studies conducted under this contract are to be made available to the public through dedication, assignment to the Government, or such other means as the Director of the Federal Emergency Management Agency shall determine.

(c) *Reports furnished the Government.* All intermediate and final reports of the research and development and studies conducted hereunder shall indicate on the cover or other initial page that the research and development and studies forming the basis for the report were conducted pursuant to a contract with the Federal Emergency Management Agency. Such reports are official Government property and may not be published or reproduced (in toto, in verbatim excerpt, or in a form approximating either of these) as an unofficial paper or article. The contractor or technical personnel (each employee or consultant working under the administrative direction of the contractor or any subcontractor hereunder) may publish such reports in whole or in part in a non-Government publication only in accordance with this paragraph (c) and paragraph (e)(1) of this clause.

(d) *Publication by Government.* The Government shall have full right to publish all information, data, and findings developed as a result of the research and development and studies conducted hereunder.

(e) *Publication by contractor or technical personnel.*

(1) *Publication in whole or in part of contractor's reports furnished the Government.* Unless such reports have been placed in the public domain by Government publication, the contractor or technical personnel (each employee or consultant

working under the administrative direction of the contractor or any subcontractor hereunder) may publish a report furnished the Government, in toto or in verbatim excerpt, but consistent with paragraph (c) of this clause may not secure copyright therein, subject to the following conditions, and the conditions in paragraph (e)(4) and paragraph (f):

(i) During the first six months after submission of the full final report, if written permission to publish is obtained from the contracting officer.

(ii) After six months following submission of the full final report, and if paragraph (e)(3) is inapplicable, if a foreword or footnote in the non-Government publication indicates the source of the verbatim material.

(2) *Publication, except verbatim excerpts, concerning or based in whole or in part on results of research and development and studies hereunder.* The contractor or technical personnel may issue a publication concerning, or based in whole or in part on the results of, the research and development and studies conducted under this contract and may secure copyright therein but in so publishing is not authorized thereby to inhibit the unrestricted right of the Director of the Federal Emergency Management Agency to disclose or publish in such manner as he may deem to be in the public interest the results of such research and development and studies, subject to the following conditions and the requirement in paragraph (e)(4):

(i) During the first six months after submission of the full final report, and if paragraph (e)(3) is inapplicable, if written waiver of the waiting period is obtained from the contracting officer.

(ii) After six months following submission of the full final report, and if paragraph (e)(3) is inapplicable, subject to Government exercise of an option that the publication contain a foreword or initial footnote substantially as follows:

The (research) (development) (studies) forming (part of) the basis for this publication were conducted pursuant to a contract with the Federal Emergency Management Agency. The substance of such (research) (development) (studies) is dedicated to the public. The author and publisher are solely responsible for the accuracy of statements or interpretations contained herein.

(3) *General condition if FEMA determines that contractor's final report contains patentable subject matter developed in contract performance.* If the contracting officer determines that the contractor's full final report contains patentable subject matter developed in the performance of this contract and so notifies the contractor in writing prior to six months from date of submission of such report, no publication of verbatim excerpts from contractors' reports or publication concerning or based in whole or in part on the results of the research and development and studies hereunder shall be made without the written consent of the contracting officer.

(4) *Copies of contractor and technical personnel publications to be furnished the Government.* The contractor or technical personnel will furnish the contracting officer

six (6) copies of any publications which are based in whole or in part on the research and development and studies conducted under this contract.

(f) *Administratively confidential information.* The contractor shall not publish or otherwise disclose, except to the Government and except matters of public record, any information or data obtained hereunder from private individuals, organizations, or public agencies, in a publication whereby the information or data furnished by any particular person or establishment can be identified, except with the consent of such person or establishment.

(g) *Inclusion of provisions in contractor's agreements.* The contractor shall include provisions appropriate to effectuate the purposes of this clause in all contracts of employment with persons who perform any part of the research or development or study under this contract and in any consultant's agreements or subcontracts involving research or development or study hereunder.

§ 44-7.5002-6 Indirect costs (actual).

When it has been determined pursuant to FEMAPR 44-3.702(c) that it is not appropriate to include the Negotiated Overhead Rates clause set forth in 41 CFR 1-3.704, the following clause shall be inserted:

Indirect Cost (Actual)

In accordance with the "Allowable Cost, Fixed Fee, and Payment" clause of the contract, the contractor shall be paid his actual overhead cost. Allowable overhead cost will be determined by the contracting officer in accordance with the principles set forth in 41 CFR Part 1-15. Any failure of the parties hereto to agree as to what constitutes actual overhead costs shall be considered a dispute covering a question of fact within the meaning of the clause of this contract entitled "Disputes".

§ 44-7.5002-7 Limitation of funds.

When a contract has not been funded in full the following clause shall be included:

Limitation of Funds

(a) It is estimated that the cost to the Government for the performance of this contract will not exceed the estimated cost set forth in the Schedule, and the contractor agrees to use his best efforts to perform the work specified in the Schedule and all obligations under this contract within such estimated cost.

(b) The amount presently available for payment and allotted to this contract, the items covered thereby, the period of performance which it is estimated the allotted amount will cover, are specified in the Schedule. It is contemplated that from time to time additional funds will be allotted to this contract up to the full estimated cost set forth in the Schedule, exclusive of any fee. The contractor agrees to perform or have performed work on this contract up to the point at which the total amount paid and payable by the Government pursuant to the terms of this contract approximates, but does

not exceed, the total amount actually allotted to the contract.

(c) If at any time the contractor has reason to believe that the costs which he expects to incur in the performance of this contract in the next succeeding 60 days, when added to all costs previously incurred, will exceed 75 percent of the total amount then allotted to the contract, the contractor shall notify the contracting officer in writing to that effect. The notice shall state the estimated amount of additional funds required to continue performance for the period set forth in the Schedule. Sixty days prior to the end of the period specified in the Schedule the contractor will advise the contracting officer in writing as to the estimated amount of additional funds, if any, that will be required for the timely performance of the work under the contract or for such further period as may be specified in the Schedule or otherwise agreed to by the parties. If, after such notification, additional funds are not allotted by the end of the period set forth in the Schedule or an agreed date substituted therefor, the contracting officer will, upon written request by the contractor, terminate this contract pursuant to the provisions of the Termination clause on such date. If the contractor, in the exercise of his reasonable judgment, estimates that the funds available will allow him to continue to discharge his obligations hereunder for a period extending beyond such date, he shall specify the later date in his request and the contracting officer, in his discretion, may terminate this contract on that later date.

(d) Except as required by other provisions of this contract specifically citing and stated to be an exception from this clause, the Government shall not be obligated to reimburse the contractor for costs incurred in excess of the estimated cost to the Government set forth in the schedule, and the contractor shall not be obligated to continue performance under the contract (including actions under the Termination clause) or otherwise to incur costs in excess of the total of the amount then allotted to the contract by the Government plus the contractor's corresponding share unless and until the contracting officer has notified the contractor in writing that such allotted amount has been increased and has specified in such notice an increased amount constituting the total amount then allotted to the contract. To the extent the amount allotted exceeds the estimated cost set forth in the Schedule, such estimated cost shall be correspondingly increased. No notice, communication, or representation in any other form or from any person other than the contracting officer shall affect the amount allotted to this contract. In the absence of the specified notice, the Government shall not be obligated to reimburse the contractor for any costs in excess of the total amount then allotted to the contract, whether those excess costs were incurred during the course of the contract or a result of termination. When and to the extent that the amount allotted to the contract has been increased, any costs incurred by the contractor in excess of the amount previously allotted shall be allowable to the same extent as if such costs had been incurred after such increase in the amount allotted, unless the

contracting officer issues a termination or other notice and directs that the increase is solely for the purpose of covering termination or other specified expenses.

(e) Change orders issued pursuant to the Changes clause of this contract shall not be considered an authorization to the contractor to exceed the amount allotted in the schedule in the absence of a statement in the change order, or other contract modification, increasing the amount allotted.

(f) Nothing in this clause shall affect the right of the Government to terminate this contract. In the event this contract is terminated, the Government and the contractor shall negotiate an equitable distribution of all property produced or purchased under the contract based upon the share of costs incurred by each.

(g) In the event that sufficient funds are not allotted to this contract to allow completion of the work contemplated by this contract, the contractor shall be entitled to that percentage of the fee set forth in the schedule equivalent to the percentage of completion of the work contemplated by this contract.

§ 44-7.5002-8 Indirect costs (ceiling).

When it has determined in accordance with 41 CFR 1-3.707 that it is appropriate to place an overhead ceiling in the contracts, insert the following clause:

Indirect Costs (With Ceiling)

(a) Pursuant to the provisions of the clause of this contract entitled, "Indirect Costs (Actual)", the following rates are established: Period, Cost Center, Type, Rate, Base

(b) In addition to the principles for determination of costs set forth in the clause of this contract entitled "Indirect Costs (Actual)", the following special provision shall be applicable to this contract.

Final overhead rates shall not exceed _____% of the allowable direct labor dollars; provided, however, that in the event overhead rates developed by the cognizant audit activity on the basis of actual allowable costs are less than the ceiling overhead rate agreed to herein then the rates based upon those established by such cognizant auditor shall apply. The Government will not be obligated to pay any additional amounts on account of overhead above the ceiling overhead rate set forth above.

§ 44-7.5002-9 Consideration and payment (cost-sharing).

The following clause shall be inserted in each cost-sharing contract:

Consideration and Payment (Cost-Sharing)

(a) The estimated cost for the performance of this contract is \$_____. The contractor agrees to bear without reimbursement by the Government _____% of the cost for performance hereunder. Such cost sharing shall be effected as set forth in Paragraph (b) below.

(b) Public vouchers or invoices shall be submitted to the contracting officer in

an original and five (5) copies and shall show the total cost incurred for the period for which the voucher or invoice is submitted, the cumulative total of costs incurred through the billing period, and the percentage of costs to be reimbursed by the Government. However, the Government is not obligated to reimburse the contractor in excess of _____% of such amount. The Government shall not be obligated to reimburse the contractor for the Government's share of the costs in excess of \$_____ nor is the contractor obligated by this contract to expend his own funds in excess of \$_____.

§ 44-7.5002-10 Warranty.

When it has been determined that it is appropriate to place a warranty on equipment or services furnished under a contract, insert the following clause set forth below. Each construction contract shall incorporate an appropriate clause.

Warranty

The contractor agrees that the supplies or services furnished by the contractor under this contract shall be covered by warranties which are either standard or customary in the trade or are substantially similar to, and not in excess of, a standard or customary trade warranty. The contractor shall furnish any warranty description at time of delivery. Supply package shall be simply marked to show existence of the warranty, its expiration date and the company official to be notified.

§ 44-7.5002-11 Ocean freight shipment—Use of American-flag vessels—Reports.

The following clause shall be used when appropriate with the required report filed as set forth in paragraph (b) of this section.

(a) It is the policy of FEMA to encourage and foster the American Merchant Marine. Pursuant to the provisions of section 901(b) of the Merchant Marine Act of 1936 (46 U.S.C. 1241) invitations for bids and request for proposals shall in appropriate cases contain the following clause:

U.S.-Flag Vessel Provision

The contractor agrees to ship in privately owned U.S.-flag commercial vessels at least 50 percent of the gross tonnage of any equipment, materials, or commodities (computed separately for dry bulk carriers, dry cargo liners, and tankers) which may be transported on ocean vessels. Pursuant to section 901(b) of the Merchant Marine Act, 1936, as amended (46 U.S.C. sec. 1241(b)), the Director or his duly authorized representative may permit shipment in a manner other than that required by this provision upon the basis of evidence furnished by the contractor that U.S.-flag commercial vessels are not

available at fair and reasonable rates for U.S.-flag commercial vessels. The contractor will be required to certify compliance with this requirement prior to final payment. For purposes of this section, the term "privately owned U.S.-flag commercial vessels" shall not be deemed to include any vessels which, subsequent to September 21, 1961, shall have been either: (a) built outside the United States, (b) rebuilt outside the United States, or (c) documented under any foreign registry, until such vessel shall have been documented under the laws of the United States for a period of 3 years.

(b) Each affected office shall submit to the Chief, Office of Market Development, Cargo Preference Control Center, Maritime Administration, U.S. Department of Commerce, Washington, D.C. 20235, a report as follows: Within 20 working days of the date of loading for each shipment originating in the United States, or within 30 working days for each shipment originating outside the United States, a report consisting, where obtainable, of a properly notated and legible copy in English of the ocean bill of lading. If a copy of the bill of lading is unobtainable or not in English, the report shall be made in the following format:

Federal Emergency Management Agency

Office _____
 Date _____
 Cargo preference shipment report:
 Vessel name _____
 Vessel flag _____
 Date of loading _____
 Port of loading _____
 Port of final discharge _____
 Commodity description _____
 Gross weight in pounds _____
 Total ocean freight revenue in U.S. dollars _____

**§ 44-7.5002-12 Methods of payment—
 Letter of credit.**

(a) The contractor shall be paid with funds made available under the Federal Reserve Letter of Credit No. _____, established by _____, Federal Emergency Management Agency (FEMA), against which the contractor will withdraw funds pursuant to prescribed Federal Reserve Letter of Credit procedures, as implemented by FEMA.

(b) The contractor shall: (1) initiate cash drawdowns only when actually needed for its disbursements, (2) timely report cash disbursements and balances as required by the contracting office, and (3) impose the same standards of timing and amount upon any secondary recipients including the furnishing of reports of cash disbursements and balances. Failure to adhere to these material provisions will be considered

an event under paragraph (f) of this clause.

(c) The funds drawn by the contractor against the Federal Reserve Letter of Credit referred to above shall be only for current allowable expenditures necessary for the performance of the contract.

(d) Then so requested in writing by the contracting officer, the contractor shall repay to the Government, in accordance with prescribed agency procedures, such part of the unliquidated balance of the advance payments as shall, in the opinion of the contracting officer, be in excess of the contractor's current needs or in excess of the contract price.

(e) If upon completion or termination of this contract all amounts obtained by the contractor under this letter of credit have not been fully liquidated by authorized charges under the contract, the balance thereof shall be deducted from any sums otherwise due to the contractor from the Government, and any excess funds shall be repaid by the contractor to the Government.

(f) Upon the happening of any of the following events of default: (1) a finding by the contracting officer that the contractor (i) has failed to observe any of the covenants, conditions, or warranties of these provisions or has failed to comply with any material provision of this contract, or (ii) has so failed to make progress, or is in such unsatisfactory financial condition, as to endanger performance of this contract, or (iii) has allocated inventory to this contract substantially exceeding reasonable requirements, or (iv) is delinquent in payment of taxes or of the costs of performance of this contract in the ordinary course of business; (2) appointment of a trustee, receiver or liquidator for all or a substantial part of the contractor's property, or institution of bankruptcy, reorganization, arrangement or liquidation proceedings by or against the contractor; (3) service of any writ of attachment, levy of execution, or commencement of garnishment proceedings; or (4) the commission of an act of bankruptcy; the Government, without limiting any rights which it may otherwise have, may, in its discretion and upon written notice to the contractor withhold further withdrawals under the Letter of Credit and withhold further payments on this contract. Upon the continuance of any such events of default for a period of thirty (30) days after such written notice to the contractor, the Government may, in its discretion, and without limiting any other rights which the Government may have, take the following additional

actions as it may deem appropriate in the circumstances:

(1) Charge interest on advance payments outstanding during the period of any such default at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41, 85 Stat. 97 for the Renegotiation Board;

(2) Demand immediate repayment of the unliquidated balance of advance payments hereunder; or

(3) Take possession of and, with or without advertisements, sell at public sale at which the Government may be the purchaser, or at a private sale, all or any part of the property on which the Government has a lien under this contract and, after deducting any expenses incident to such sale, apply the net proceeds of such sale in reduction of the unliquidated balance of advance payments hereunder and in reduction of any other claims of the Government against the contractor.

(g) Notwithstanding any other provision of this contract, the contractor shall not transfer, pledge, or otherwise assign this contract, or any interest therein, or any claim arising thereunder, to any party or parties, bank, trust company, or other financing institution.

(h) (1) Interest shall be charged in the manner provided herein at the rate established by the Secretary of the Treasury pursuant to Public Law 92-41; 85 Stat. 97, for the Renegotiation Board on subadvances or downpayments to subcontractors, and such interest will be credited to the account of the Government. However, interest need not be charged on subadvances on subcontracts with nonprofit educational or research institutions for experimental, developmental or research work.

(2) The office administering advance payments is designated as the Division of Acquisition Management.

(i) For the performance of this contract, the Government shall pay the contractor: The cost thereof (hereinafter referred to as "allowable cost") determined by the contracting officer to be allowable in accordance with (1) 41-CFR 1-15 as in effect on the date of this contract; and (2) the terms of this contract.

(j) For the purpose of determining amounts to be advanced under this contract, costs previously incurred shall only include those recorded costs which result, at the time of requests for further advances, from payment by cash, check, or other form of actual payment for items or services purchased directly for the contract, together with (when the contractor is not delinquent in payment of costs of contract performance in the ordinary course of business) costs incurred, but not necessarily paid for

materials which have been issued from the contractor's stores inventory and production process for use on the contract, for direct labor, for direct travel, for other direct inhouse costs, and for properly allocable and allowable indirect costs, as is shown by records maintained by the contractor for purposes of obtaining reimbursement under Government contracts plus the amount of progress payments which have been paid to the Contractor's subcontractors under similar cost standards. In addition, when pension contributions are paid by the contractor to the retirement fund less frequently than quarterly, accrued costs therefor shall be excluded from indirect costs for purposes of obtaining advances under this contract until such costs are paid. If pension contributions are paid on a quarterly or more frequent basis, accruals therefor may be included in indirect costs for payment purposes provided that they are paid to the fund within 30 days after the close of the period covered. If payments are not made to the fund within such 30-day period, pension contribution costs shall be excluded from indirect cost for payment purposes of obtaining advances under this contract until payment has been made.

(l) The contractor shall submit an invoice or a voucher designated as a "Completion Invoice" or "Completion Voucher" promptly following completion of the work under this contract but in no event later than one year (or such longer time as the contracting officer may in his discretion approve in writing) from the date of such completion. The contracting officer can direct that a final report of expenditures be included with the completion invoice or voucher.

(m) The contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the contractor or any assignee under this contract shall be paid by the contractor to the Government, to the extent that they are properly allocable to costs for which the contractor has been reimbursed by the Government under this contract. Reasonable expenses incurred by the contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by the contracting officer. Prior to final payment under this contract, the contractor shall execute and deliver:

(1) An assignment to the Government, in form and substance satisfactory to the contracting officer, of refunds, rebates, credits, or other amounts (including any interest thereon) properly

allowable to costs for which the contractor has been reimbursed by the Government under this contract; and

(2) A release discharging the government, its officers, agents, and employees from all liabilities, obligations, and claims arising out of or under this contract subject only to the following exceptions:

(i) Specified claims in stated amounts or in estimated amounts where the amounts are not susceptible of exact statements by the contractor;

(ii) Claims, together with reasonable expenses incidental thereto, based upon liabilities of the contractor to third parties arising out of the performance of this contract; provided, however, that such claims are not known to the contractor on the date of the execution of the release, and provided further, that the contractor gives notice of such claims in writing to the contracting officer not more than six years after the date of the release or the date of any notice to the contractor that the Government is prepared to make final payment, whichever is earlier; and

(iii) Claims for reimbursement of costs (other than expenses of the contractor by reason of its indemnification of the Government against patent liability), including reasonable expenses incidental thereto, incurred by the contractor under the provisions of this contract relating to patents.

(3) Any cost incurred by the contractor under the terms of this contract which would constitute allowable cost under the provisions of this clause shall be included in determining the amount payable under this contract, notwithstanding any provisions contained in the specifications or other documents incorporated in this contract by references, designating services to be performed or materials to be furnished by the contractor at his expense or without cost to the Government.

PART 44-11—FEDERAL, STATE AND LOCAL TAXES

Sec.
44-11.000 Scope of part.

Subpart 11.4—Contract Clauses

44-11.401-4 Matters requiring special consideration.

Subpart 11.50—Resolution of Tax Problems

44-11.500-1 Resolution of tax problems.
Authority: 41 CFR 1-1.008.

§ 44-11.000 Scope of part.

This part sets forth policies and procedures for dealing with matters concerning Federal, State or local taxes.

Subpart 11.4—Contract Clauses

§ 44-11.401-4 Matters requiring special consideration.

Pursuant to 41 CFR 1-11.401-4(d), it is the policy of FEMA to implement the procedures set forth in 41 CFR 1-11.401-4 (a), (b), and (c) as appropriate.

Subpart 11.50—Resolution of tax problems

§ 44-11.500-1 Resolution of tax problems.

In order to have uniformity in FEMA's treatment of the tax aspects of a contract and to insure effective cooperation with other Government agencies on tax matters of mutual interest, the Office of General Counsel has the responsibility within FEMA for handling all tax problems. Therefore, procuring offices will not engage in negotiation with any taxing authority for the purpose of determining the validity or applicability of, or obtaining exemptions from or refund of, any tax. When a problem exists, the contracting officer shall request in writing the assistance of the Office of General Counsel. The request shall detail the problem and be accompanied by appropriate backup data. The Office of General Counsel shall report to the contracting officer as to the necessary disposition of the tax problem. The contracting officer will notify the contractor of the outcome of the tax problem. The Office of General Counsel shall have the responsibility for communications with the Department of Justice for representation or intervention in proceedings concerning taxes.

PART 44-13—GOVERNMENT PROPERTY

Sec.
44-13.000 Scope of part.
44-13.001 General policy.

Subpart 13.1—Definitions

44-13.100 Scope of subpart.
44-13.101 Government property.
44-13.102 Real property.
44-13.103 Personal property.
44-13.104 Facilities.

Subpart 13.2—Furnishing Government Property to Contractors

44-13.201 Responsibility of FEMA.
44-13.202 Availability of required property.
Authority: 41 CFR 1-1.008.

§ 44-13.000 Scope of part.

This part sets forth policy concerning the furnishing of Government property to contractors under FEMA contracts.

§ 44-13.001 General policy.

It is the general policy of FEMA to contract with suppliers which are able to perform the requirements of a

contract without being furnished property by the Government. This policy has been established to prevent FEMA from assuming any responsibility for the performance of work under a contract which rightly vests in the contractor, and to preclude the possibility of creating an unfair competitive advantage for one prospective contractor over another. However, circumstances may arise in which the interests of the Government would be best served by furnishing property to contractors, such as in a case where the property is necessary to contract performance, or, when furnishing Government property will result in substantial cost savings to the Government.

Subpart 13.1—Definitions

§ 44-13.100 Scope of subpart.

For purposes of this part, and unless otherwise indicated, the following terms have the meaning set forth in this subpart.

§ 44-13.101 Government property.

"Government property" means all property furnished by the Government or acquired with Federal funds by the contractor for use in performance of his contractual obligations. Government property includes Government-furnished property and contractor-acquired property as defined below:

(1) "Government-furnished property" is property in the possession of, or acquired directly by, the Government and subsequently delivered or otherwise; made available to the contractor; and

(2) "Contractor-acquired property" is property procured or otherwise provided by the contractor for the performance of a contract, title to which is vested in the Government.

§ 44-13.102 Real property.

"Real Property" means land, buildings or items permanently affixed to either land or buildings.

§ 44-13.103 Personal property.

"Personal property" means all property that is subject to ownership except real property. Personal property includes:

(a) *Reportable property.* All property other than real property having a unit acquisition of cost of \$100.00 or more and tools regardless of cost.

(b) *Expendable property (material).* Property which may be incorporated into, or attached to, an end item to be delivered under the contract or which may be consumed or expended in the performance of the contract.

It is the general policy of FEMA that contractors will furnish all materials required for the performance of its contracts. However, furnishing materials to contractors could be preferable when:

(1) The material is not readily available on the market or cannot be conveniently manufactured by a contractor or his subcontractors. This premise is valid only if the Government has the material in inventory or can readily obtain it;

(2) The cost would be less than if the contractor obtained the material;

(3) The Government may already be exercising control over the material;

(4) Standardization or Government-design control is desired;

(5) It is necessary to expedite the research; and

(6) Furnishing the material may significantly broaden the competitive base.

(c) *Residual Materials and Property.* All serviceable material not consumed in the performance of a contract, and all unserviceable or scrap equipment not consumed in the performance of a contract.

§ 44-13.104 Facilities.

"Facilities" means all industrial property (other than material, special tooling, military or space property, special test equipment and technical information) used for the production, maintenance, research, development, or test, including real property and rights therein, buildings, structures, improvements, and plant equipment.

Subpart 13.2—Furnishing Government Property to Contractors

§ 44-13.201 Responsibility of FEMA.

When the Government furnishes property it assumes a direct role in the performance of the contract. Therefore, the furnishing of Government property should be carefully planned and scheduled in order to avoid delays or mistakes. When Government-furnished property is essential for performance of the contract, FEMA must insure that the contractor receives the property in the specified quantities and at the required time.

§ 44-13.202 Availability of required property.

Prior to making a decision to furnish property to a prospective contractor, the contracting officer shall first ascertain whether the subject property is available by inquiring into existing inventories. Property requested should be identified by functional need in order to maximize the effectiveness of furnishing Government property. The functions to which the Government

furnished property are to be applied should be analyzed to determine what types of equipment can be used from available sources. When existing Government property is not available or suitable, the contractor may be authorized (subject to surveillance and approval of the contracting officer) to purchase new property. The contractor then vouchers for the property along with the normal billing process, is reimbursed and the Government takes title to the property. Contractor-acquired and Government furnished property can be combined in the same contract.

PART 44-15—CONTRACT COST PRINCIPLES AND PROCEDURES

Sec.

44-15.000 Scope of part.

Subpart 15.50—Suspension and Disallowance of Contract Costs

44-15.5000 Scope of subpart.

44-15.5001 Suspension and disallowance of costs.

44-15.5001-1 Procedure.

44-15.5001-2 Recourse to determination of cost as unallowable.

Authority: 41 CFR 1-1.008.

§ 44-15.000 Scope of part.

This part sets forth policies and procedures concerning unallowable costs.

Subpart 15.50—Suspension and Disallowance of Contract Costs

§ 44-15.5000 Scope of subpart.

This subpart sets forth policies and procedures concerning suspension and disallowance of contract costs and recourse to determination of costs as unallowable.

§ 44-15.5001 Suspension and disallowance of costs.

§ 44-15.5001-1 Procedure.

In the event that the contractor presents a cost for reimbursement which the contracting officer considers to be unallowable, questionably allowable or partially unallowable, either specifically pursuant to 41 CFR 1-15, or consistent with the intent thereof, he shall notify the Division of Budget and Finance, the project officer, and the contractor that the subject cost, plus any corresponding overhead, general and administrative expense, indirect cost or fee associated with its incurrence, is being suspended pending receipt of supporting documentation from the contractor justifying the cost. This notification in each case shall be in writing and shall be accompanied by a copy of the invoice indicating the questioned cost. The notification to the contractor shall also

indicate that supporting documentation for the cost must be received within thirty days, or such longer period as may be granted by the contracting officer, or the cost will be disallowed pending final audit. The notification to the Division of Budget and Finance shall also indicate that the cost and associated pool costs and/or fee should not be reimbursed. If the contractor provides the requested documentation, and the contracting officer considers it to adequately support the cost as allowable, the contracting officer shall so notify the contractor and advise him to resubmit the cost and associated pool costs on his next invoice clearly indicating the origin and identity of the cost. In the event that the contractor should fail to submit the requested documentation, or if the supporting documentation is considered to be inadequate, or does not support the cost as allowable, the contracting officer shall notify the contractor, in writing, to this effect and advise him that the cost is being disallowed and, therefore, shall not be reimbursed.

§ 44-15.5001-2 Recourse to determination of cost as unallowable.

When the contracting officer has determined, in accordance with the foregoing procedure, that a cost is unallowable, his decision shall be final and conclusive unless the contractor seeks remedy pursuant to the Disputes clause of the contract.

PART 44-16—PROCUREMENT FORMS

Sec.
44-16.000 Scope of part.

Subpart 16.1—Forms for Advertised Supply Contracts

44-16.101 Contract forms.

Subpart 16.2—Forms for Negotiated Supply Contracts

44-16.202 Contract forms.
44-16.202-50 Fixed price contracts.
44-16.202-51 Cost-reimbursement contracts.

Subpart 16.3—Purchase and Delivery Order Forms

44-16.301 Order-invoice-voucher forms.
44-16.301-2 Order for supplies or services (Standard Forms 147 and 148).

Subpart 16.5—Forms for Advertised and Negotiated Nonpersonal Service Contracts (Other Than Construction and Architect Engineer Contracts)

44-16.501 Contract forms.
44-16.501-1 Fixed price contracts.
44-16.501-2 Cost-reimbursement contracts.

Subpart 16.7—Forms for Negotiated Architect-Engineer Contracts

44-16.701 Forms prescribed.
44-16.701-1 Fixed price contracts.
44-16.701-2 Cost-reimbursement contracts.

Subpart 16.8—Miscellaneous Forms.

44-16.806 Contract pricing proposals.
Authority: 41 CFR 1-1.008.

§ 44-16.000 Scope of part.

This part prescribes forms for use by FEMA procuring offices in connection with the procurement of supplies, purchase and delivery orders, nonpersonal services, and architect-engineer services and other miscellaneous forms for use in connection with the procurement of supplies and services.

Subpart 16.1—Forms for Advertised Supply Contracts

§ 44-16.101 Contract forms.
Standard Form 32 (SF-32) shall be used for all advertised supply contracts in excess of \$10,000.

Subpart 16.2—Forms for Negotiated Supply Contracts

§ 44-16.202 Contract forms.
§ 44-16.202-50 Fixed price contracts.
Standard Form 32 (SF-32) shall be used for all negotiated fixed price supply contracts in excess of \$10,000.

§ 44-16.202-51 Cost-reimbursement contracts.

FEMA Form DAM/GP-1 shall be used for all cost-reimbursement supply contracts in excess of \$10,000.

Subpart 16.3—Purchase and Delivery Order Forms

§ 44-16.301 Order-invoice-voucher forms.

§ 44-16.301-2 Order for supplies or services (Standard Forms 147 and 148).

All FEMA purchase and delivery orders shall be executed on Standard Form 147 (SF-147), "Order for Supplies or Services", and Standard Form 148 (SF-148), "Continuation Sheet".

Subpart 16.5—Forms for Advertised and Negotiated Nonpersonal Service Contracts (Other Than Construction and Architect-Engineer Contracts)

§ 44-16.501 Contract forms.

§ 44-16.501-1 Fixed price contracts.
FEMA Form DAM/GP-3 shall be used for all advertised or negotiated fixed price contracts in excess of \$10,000 for nonpersonal services other than construction, architect-engineer services and transportation.

§ 44-16.501-2 Cost-reimbursement contracts.

FEMA Form DAM/GP-2 shall be used for all cost-reimbursement contracts in excess of \$10,000 for nonpersonal

services other than construction, architect-engineer services or transportation.

Subpart 16.7—Forms for Negotiated Architect-Engineer Contracts

§ 44-16.701 Forms prescribed.

§ 44-16.701-1 Fixed price contracts.

The forms prescribed in 41 CFR 1-16.701 shall be used exclusively in preparing fixed price architect-engineer contracts with the exception that the clause set forth in 41 CFR 1-16.703(d) shall be substituted for Clause 7 of the Standard Form 253 (SF-253). In addition, FEMA Form DAM/SP-1 shall also be used.

Subpart 16.8—Miscellaneous Forms

§ 44-16.806 Contract pricing proposals.

Cost or pricing data shall be submitted by contractors on Optional Form 59, if the proposed contract is for other than research and development work.

PART 44-30—CONTRACT FINANCING

Sec.
44-30.000 Scope of part.

Subpart 30.4—Advance Payments

44-30.400 Scope of subpart.
44-30.406 Responsibility—delegation of authority.
44-30.408-1 Use of letter of credit method of financing.
44-30.414-2 Contract provisions for advance payments.

Authority: 41 CFR 1-1.008.

§ 44-30.000 Scope of part.

This part sets forth policies and procedures concerning advance payments on prime contracts.

Subpart 30.4—Advance Payments

§ 44-30.400 Scope of subpart.

This subpart covers policies and procedures concerning authority to make advance payments and the letter of credit method of financing and sets forth clauses to be used in contract where advance payment has been authorized.

§ 44-30.406 Responsibility—delegation of authority.

The responsibility and authority for making findings and determinations with respect to advance payments and in each case for approval of contract provisions for advanced payments, or for approval of terms and conditions thereof, shall be vested in the head of the procuring activity. Prior to committing FEMA to the making of an advance payment, the head of the

procuring activity shall obtain the advice and concurrence of the Director, Division of Budget and Finance concerning such advance payment.

§ 44-30.408-1 Use of letter of credit method of financing.

Letters of credit for contracts shall be established and administered in accordance with FEMA procedures established for all Letter of Credit transactions.

§ 44-30.414-2 Contract provisions for advance payments.

The clause set forth in 41 CFR 1-30.414-2 shall be included in all contracts for which advance funding has been authorized, but for which the letter of credit method of providing advance funding is not appropriate. The clause set forth in FEMAPR 44-7.5002-12 shall be included in all contracts for which advance funding has been authorized and the letter of credit method of providing such advance funding is appropriate.

[FR Doc. 79-37536 Filed 12-5-79; 8:45 am]

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Federal Register

Vol. 44, No. 236

Thursday, December 6, 1979

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- 202-783-3238 Subscription orders (GPO)
- 202-275-3054 Subscription problems (GPO)
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 - 213-688-6694 Los Angeles, Calif.
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 - 523-5240 Photo copies of documents appearing in the Federal Register
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- 523-3419
- 523-3517
- 523-5227 Finding Aids

Presidential Documents:

- 523-5233 Executive Orders and Proclamations
- 523-5235 Public Papers of the Presidents, and Weekly Compilation of Presidential Documents

Public Laws:

- 523-5266 Public Law Numbers and Dates, Slip Laws, U.S. -5282 Statutes at Large, and Index
- 275-3030 Slip Law Orders (GPO)

Other Publications and Services:

- 523-5239 TTY for the Deaf
- 523-5230 U.S. Government Manual
- 523-3408 Automation
- 523-4534 Special Projects
- 523-3517 Privacy Act Compilation

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY*	USDA/ASCS		DOT/SECRETARY*	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/FHWA	USDA/FSQS		DOT/FHWA	USDA/FSQS
DOT/FRA	USDA/REA		DOT/FRA	USDA/REA
DOT/NHTSA	MSPB/OPM		DOT/NHTSA	MSPB/OPM
DOT/RSPA	LABOR		DOT/RSPA	LABOR
DOT/SLSDC	HEW/FDA		DOT/SLSDC	HEW/FDA
DOT/UMTA			DOT/UMTA	
CSA			CSA	

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

*NOTE: As of July 2, 1979, all agencies in the Department of Transportation, will publish on the Monday/Thursday schedule.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.

Rules Going Into Effect Today

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

- 64196 11-6-79 / Low-income housing; modernization program—PHA-owned projects
- 64072 11-6-79 / Mobile home loans; down payments
Federal Housing Commissioner—Office of Assistant Secretary for Housing—
- 64204 11-6-79 / Indian housing

INTERIOR DEPARTMENT

- Fish and Wildlife Service—
- 64247 11-6-79 / *Coryphantha ramosa* (bunched cory cactus) et al.; endangered species
- 64250 11-6-79 / Endangered and threatened species; arctomecon humulis (dwarf bear—poppy)
- 64246 11-6-79 / endangered and threatened species; berberis sonnei (truckee barberry)

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last Listing December 5, 1979

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

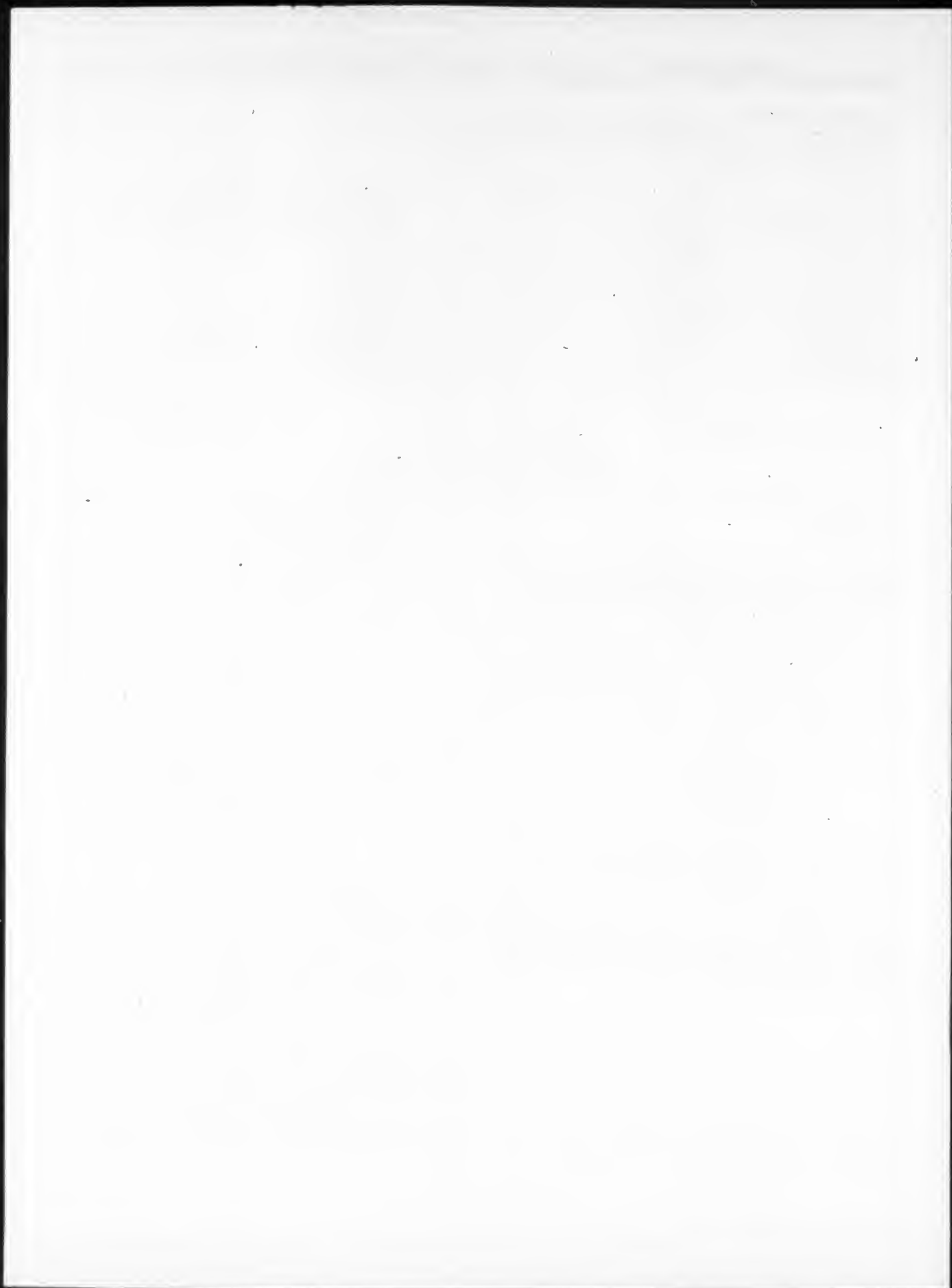
- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 2½ hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
 2. The relationship between Federal Register and the Code of Federal Regulations.
 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them, as part of the General Services Administration's efforts to encourage public participation in Government actions. There will be no discussion of specific agency regulations.

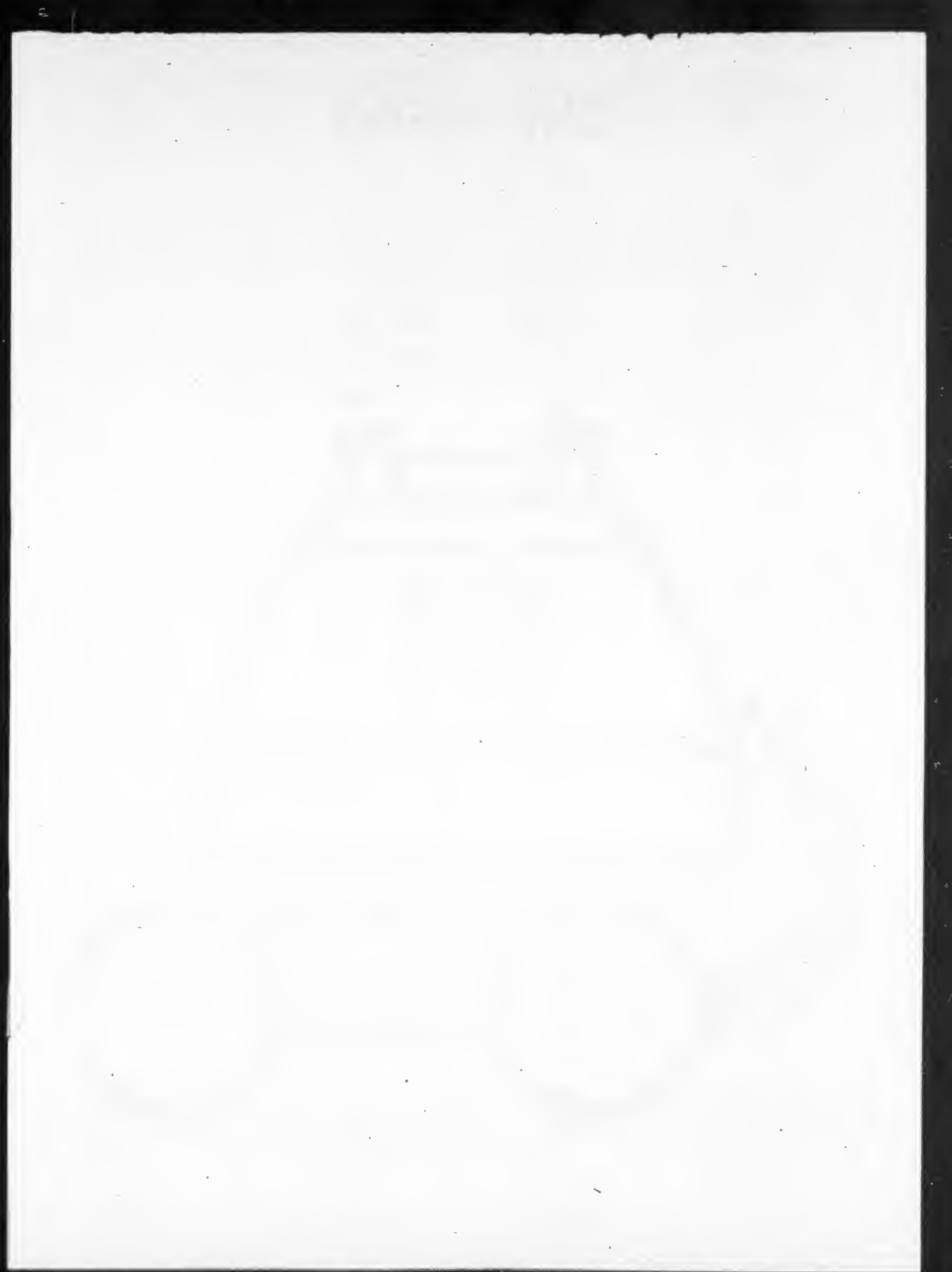
WASHINGTON, D.C.

- WHEN:** Jan. 11 and 25; at 9 a.m. (identical sessions)
- WHERE:** Office of the Federal Register, Room 9409, 1100 L Street N.W., Washington, D.C.
- RESERVATIONS:** Call Mike Smith, Workshop Coordinator, 202-523-5235 or Gwendolyn Henderson, Assistant Coordinator, 202-523-5234.

DALLAS, TEXAS

- WHEN:** December 8, 1979 at 9:30 a.m.
- WHERE:** Dunfey Dallas Hotel
3800 West Northwest Highway
Dallas, Texas
- RESERVATIONS:** Call Mary Peters (214) 445-0855





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