

“Consent to subcontract” means the Contracting Officer’s written consent for the prime contractor to enter into a particular subcontract.

“Contractor” means the total contractor organization or a separate entity of it, such as an affiliate, division, or plant that performs the contract.

“Subcontract” means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and changes and modifications to purchase orders.

“Subcontractor” means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.

“Predominate production function” means the primary operation or process (e.g. presswork, bindery work, CD-ROM or microfiche replication) that is required in contract performance.

(b) The predominate production function shall not be subcontracted unless authorized by the terms of the contract.

(c) Production operations other than the predominate production function may be subcontracted unless prohibited by the contract.

(d) Contracting Officers shall indicate in solicitations whenever subcontracting of the predominate production function is to be permitted or whenever production operations other than the predominate production are prohibited from being subcontracted.

(e) Contractors, whose contract does not permit subcontracting, may make a written request to the Contracting Officer for consent to subcontract, justifying the reasons for the request.

(f) Contracting Officers shall consent to subcontracting only if consent is in the best interest of the Government.

(g) *Clause.* The Subcontracts clause in GPO Contract Terms (Pub. 310.2) is included in all contracts by reference.

### 11. Warranties.

(a) *General.* A warranty is a promise or affirmation given by a seller to a purchaser regarding the nature, usefulness, or condition of supplies or performance of services to be furnished. The contract clauses permit GPO to reject supplies which do not meet the specifications or to require correction, at the contractor’s expense, of defects discovered upon inspection. GPO is further protected against latent defects discovered after inspection and acceptance.

(b) *Clause.* The Inspection and Tests and Warranty clauses in GPO Contract Terms (Pub. 310.2) provide for correction or rejection of supplies which do not meet specifications.

### 12. Status Reporting.

(a) *General.* Status reports shall be provided to customer agencies on changes in the delivery schedule and quality defects found during inspections performed by GPO.

(b) *Schedule changes.* The Purchase, Term Contracts, and Contract Management Divisions shall report changes in scheduled shipping dates to Departmental Account Representative Division, Customer Services, on a daily basis. A listing shall be prepared by the Contract Compliance Section in the format shown at exhibit I-1. The cause for the delay, whether contractor delinquency or contract modification, shall be annotated on the form. It is the responsibility of Departmental Account Representative Division to notify customer agencies.

In the RPPO’s, the control clerk shall notify the agencies directly of changes in the scheduled dates, either by telephone or letter.

(c) *Quality defects.* When an inspection of samples reveals quality defects, the Contracting Officer shall notify the contractor of the defects found during inspection and action that is proposed. The ordering agency shall also be notified.

### 13. Contractor Team Arrangements.

(a) *Definition.* “Contractor team arrangement” means an arrangement in which—

(1) Two or more companies form a partnership or joint venture to act as a potential prime contractor; or

(2) A potential prime contractor agrees with one or more other companies to have them act as its subcontractors under a specified Government contract or acquisition program within the scope of the subcontracts clause.

(b) *General.* (1) Contractor team arrangements may be desirable from both a Government and industry standpoint in order to enable the companies involved to (i) complement each other’s unique capabilities and (ii) offer the Government the best combination of performance, cost, and delivery for the system or product being acquired.

(2) The companies involved normally form a contractor team arrangement before submitting an offer or bid. However, they may enter into an arrangement later in the acquisition process, but only on competitively negotiated procurements.

(c) *Policy.* The Government will recognize the integrity and validity of contractor team arrangements for contracts valued in excess of \$25,000; *provided*, the arrangements are identified and company relationships are fully disclosed in an offer or bid or, for arrangements entered into after submission of an offer, before the contract becomes effective. The Government will not normally require or encourage the dissolution of contractor team arrangements.

(d) *Joint Venture Agreement.* Agreements shall be signed by all parties to the joint venture and contain the following before acceptance by the Government:

(1) The written agreement between the parties shall reserve to the Government the right to enforce the terms of the contract both jointly and severably against the coventurers.

(2) The agreement must contain a statement from the attorney for each venturer that the joint venture is within the corporate power of each venturer.

(3) One party to the joint venture must have total control of all phases of contract performance. Control must include delegated authority to fix the responsibilities of the coventurers.

(4) One party to the joint venture must perform the contract primary production function. All other parties must perform at least one of the remaining production functions as described in the solicitation.

(5) The agreement should identify each venturers contribution toward contract completion such as materials, manpower, experience.

(6) Invoices for all phases of contract performance must be submitted by one party to the joint venture. All payments will be made in the name of the joint venture.

(7) The joint venture agreement must be limited solely to the objective of the contract.

(8) A copy of the executed agreement must be submitted with the proposal or bid.

(e) *Limitations.* Nothing in this subsection authorizes contractor team arrangements in violation of antitrust statutes or limits the Government's rights to—

- (1) Require consent to subcontracts;
- (2) Determine, on the basis of the stated contractor team arrangement, the responsibility of the prime contractor;
- (3) Provide to the prime contractor data rights owned or controlled by the Government;
- (4) Pursue its policies on competitive contracting, subcontracting, and component breakout after initial production or at any other time; and
- (5) Hold the prime contractor fully responsible for contract performance, regardless of any team arrangement between the prime contractor and its subcontractors.

(f) *Provision.* The following provision shall be included in solicitations when it is anticipated that contractor team arrangements will be formed. Substitute the words “negotiation” and “offeror” for “sealed bidding” and “bidder” in negotiated contracts.

#### TYPE OF BUSINESS ORGANIZATION—SEALED BIDDING

The bidder, by checking the applicable box, represents that—

(a) It operates as a corporation incorporated under the laws of the State of \_\_\_\_\_,  an individual,  a partnership,  a nonprofit organization,  a joint venture, or

(b) If the bidder is a foreign entity, it operates as  an individual,  partnership,  a nonprofit organization,  a joint venture, or  a corporation, registered for business in \_\_\_\_\_ (country).

## SECTION 5. CONTRACTOR RESPONSIBILITY

**1. General.** Purchases shall be made from, and contracts shall be awarded to, responsible prospective contractors only. The award of a contract solely on the basis of the lowest responsive bid is not to the advantage of the Government if additional procurement or administrative costs could subsequently result.

**2. Responsible Contractor.** A responsible contractor is one who meets the minimum standards set forth in subsection 4 to the extent that such standards are applicable to the specific procurement.

**3. Authority.** The authority for determinations of contractor responsibility/nonresponsibility rests with the Contracting Officer over whose signature the award of a contract is to be made.

**4. Minimum Standards for Responsible Prospective Contractors.** To receive a favorable responsibility rating, a prospective contractor must meet the standards set forth below to the extent applicable to the specific procurement. The prospective contractor shall:

- (a) Have adequate financial resources, or the ability to obtain adequate financial resources to perform the contract;
- (b) be able to comply with the proposed delivery schedules, taking into consideration other existing commitments, commercial as well as governmental;
- (c) have a satisfactory record of performance in regard to both quality and timeliness on previously awarded contracts;
- (d) possess, or have the ability to acquire, the necessary equipment, technical skills, and productive capacity to perform the contract requirement.

(e) have adequate production controls and quality assurance methods to satisfy the quality requirements of the contract;

(f) be able to satisfy any specified special standards of responsibility. Such special standards may be incorporated in specifications where the requirements call for unusual expertise, specialized facilities, or location of facilities; and

(g) be otherwise qualified and eligible to receive an award under applicable laws and regulations.

### 5. Affirmative Responsibility Determinations.

(a) Prospective contractors must affirmatively demonstrate their responsibility. This may be achieved through satisfactory performance on prior similar awards or through the presentation of evidence of their ability to satisfy the contract requirements. A Contracting Officer, prior to making an affirmative responsibility determination, shall be satisfied that the available information sufficiently demonstrates that the prospective contractor meets the minimum standards set forth in subsection 4. This information shall include:

- (1) Any list of debarred, suspended, or ineligible concerns or individuals;
- (2) any current contractor compliance data which indicates the prospective contractor's performance in regard to timeliness, quality, and business integrity;
- (3) the Bidder's Mailing List Application (GPO Form 2524); and
- (4) any other known documentation which will offer assistance in the decisionmaking process (e.g., a recent preaward survey).

(b) If, in the opinion of the Contracting Officer, the available information is sufficient for an affirmative responsibility determination, the Contracting Officer shall so indicate by signing the appropriate award documents. On proposed awards in excess of \$50,000 and requiring CRB approval, Contracting Officers shall indicate their affirmative determination on page 1, Preaward Survey (GPO Form 707, Preaward Survey of Prospective Contractor) or a computer generated version and, where applicable, on the CRB memo itself. In the absence of sufficient evidence of a prospective contractor's capability or in the event of conflicting evidence, the Contracting Officer may request a full preaward survey as prescribed in chapter XI.

**6. Determinations of Nonresponsibility.** The Contracting Officer shall make a determination of nonresponsibility if, after careful consideration of all available information, there is not a clear indication that the prospective contractor meets the minimum requirements set forth in subsection 4. Also, doubt as to the contractor's productive capacity or financial strength which cannot be resolved affirmatively shall require a determination of nonresponsibility.

(a) *Documentation.* (1) Determinations of nonresponsibility, when the proposed award is \$50,000 or more, shall be documented in the form of a D&F.

(2) Nonresponsibility determinations on proposed awards of less than \$50,000 shall be documented on an appropriate form as to the reason for the determination.

(3) Copies of nonresponsibility determinations shall be included in the contract file and contractor compliance file.

(4) Nonresponsibility determinations will be entered by the appropriate compliance activity in PICS screen CC (contractor correspondence) and routinely accessed through contractor inquiry (CI) when making responsibility determinations.