



**Homeland
Security**

MEMORANDUM FOR: Heads of Contracting Activities

FROM: Sarah Green
Deputy Chief Procurement Officer

SUBJECT: FAR Class Deviation (Number 25-02) for FAR Part 37 in Support
of Executive Order on Restoring Common Sense to Federal
Procurement

1. **Purpose.** This memorandum approves a class deviation to Federal Acquisition Regulation (FAR) Part 37 for purposes of implementing the Federal Acquisition Regulatory Council's (the Council's) model deviation text to FAR Part 37.
2. **Background.** [Executive Order \(E.O.\) 14275, Restoring Common Sense to Federal Procurement](#), signed April 15, 2025, mandates a comprehensive review and simplification of the FAR.

The FAR is being updated to:

- Eliminate non-statutory language
- Remove redundant or obsolete language
- Enhance clarity through plain language
- Align with the new FAR framework
- Preserve essential governmentwide acquisition standards

This project is referred to as the Revolutionary FAR Overhaul (RFO) initiative. This initiative will make the FAR more concise, understandable, and focused on core procurement requirements.

3. **Summary of Changes.** FAR Part 37, Service Contracting, has been updated with a new structure that is more logical and easier to follow. The changes focus on two key themes: emphasizing policy priorities and organizing guidance to follow the acquisition lifecycle. Previously, critical topics like Performance-Based Acquisition (PBA), rules on personal services, and the prohibition on contracting for inherently governmental functions were either embedded within broader sections or placed at the end of the part. Now, these topics have been elevated into their own distinct subparts at the very beginning of the regulation. Placing PBA first, for example, is a deliberate signal of policy emphasis.

Additionally, each of these new subparts is organized to mirror parts of the acquisition

process. Sections are now titled “Presolicitation,” “Evaluation and Award,” and “Postaward” where applicable. This turns the regulation into a procedural roadmap, guiding users through the steps at each phase of the acquisition.

Statutory requirements retained in the RFO FAR Part 37 deviation include, but may not be limited to, the following:

- 5 U.S.C. §§ 3101 et seq, Employment Authorities
- 10 U.S.C. § 3133 and 41 U.S.C. § 3902, Severable Services Contracts for Periods Crossing Fiscal Years
- 10 U.S.C. § 3744 and 41 U.S.C. § 4304, Specific Costs not Allowable
- 10 U.S.C. § 4507, Contracts for Professional and Technical Services
- 34 U.S.C. § 20351, Requirement for Background Checks
- 40 U.S.C. §§ 3141 et seq, Wage Rate Requirements
- 41 U.S.C. § 1709, Contracting Functions Performed by Federal Personnel
- 41 U.S.C. § 4105, Advisory and Assistance Services
- 41 U.S.C. §§ 6701 et seq, Service Contract Labor Standards
- Pub. L. 106-398, Sec 821, Improvements in Procurements of Services

Change	Description
Retained	• Section 37.000, “Scope of Part”, is retained and revised for brevity and focus. The legacy text included a detailed list of other applicable FAR parts (35, 36, 39, 47), a statement of precedence for those parts, and a specific reference to the Service Contract Labor Standards. The revised text removes these specific cross- references, retaining only the core statement that the part prescribes policy for service contracts and applies to all such contracts and orders. • Subsection 37.101-1, “Policy”, located under “Presolicitation” for PBA, retains the mandate to use PBA methods to the maximum extent practicable, lists the same exceptions (architect-engineer services, construction, utility services, and incidental services), and retains the required order of precedence for contract types. The language clarifies that this policy applies to acquisitions of commercial services using FAR part 12 procedures. • Subsection 37.102-1, “Procedures”, under “Evaluation and award” for PBA, consolidates and rewrites the content from the legacy sections 37.601, 37.602, and 37.603. It clarifies the relationship between the Performance Work Statement (PWS) and the Statement of Objectives (SOO), stating that the SOO is used to guide PWS development but does not become part of the contract. It also incorporates the requirements for describing work in terms of outcomes and using measurable performance standards. • Subsection 37.201-1, “Policy”, under “Presolicitation” for Personal Services, retains the requirement that agencies must not contract for personal services unless specifically authorized by statute. • The following provisions and clauses are retained with no changes to text: ○ 52.237-1 (Provision), Site Visit ○ 52.237-2 (Clause), Protection of Government Buildings, Equipment, and Vegetation

	○ 52.237-3 (Clause), Continuity of Services ○ 52.237-4 (Clause), Payment by Government to Contractor ○ 52.237-5 (Clause), Payment by Contractor to Government ○ 52.237-6 (Clause), Incremental Payment by Contractor to Government ○ 52.237-10 (Provision), Identification of Uncompensated Overtime
Moved / Updated	● Most of the definitions previously at section 37.101 have been relocated to more relevant areas of the part. The definition of “Service contract” has been updated and moved to a new section at the part level, 37.001, “Definition”. The definitions of “Child care services”, “Adjusted hourly rate (including uncompensated overtime)”, and “Uncompensated overtime” have been relocated to subparts 37.5 and 37.8. ● Subpart 37.1, “Performance-based Acquisition” is a new subpart that represents a major consolidation and elevation of PBA policy. It merges the policy preference for PBA from the former 37.102(a) with the procedural guidance from the entirety of the former Subpart 37.6. Placing all PBA content into a single, high-level subpart streamlines the regulation and makes the guidance significantly easier for contracting personnel to locate and apply. Under the old structure, a user had to read 37.102(a) to understand that PBA was the preferred method and then navigate to the very end of the part to find the implementation details. ● Subpart 37.2, “Personal Services”, is created by consolidating and substantially rewriting the content from the former 37.104. This gives the critical topic of personal services its own dedicated, high-visibility subpart. ○ Subsection 37.201-2, “Characteristics of personal services contracts”, replaces the lengthy, six-factor descriptive guide previously located at 37.104(d). ● Subpart 37.3, “Inherently Governmental Functions”, consolidates policy previously found in two separate locations: the one-sentence prohibition from the former 37.102(c) and the detailed oversight requirements from the former 37.114. The new structure logically groups the presolicitation prohibition with the necessary post-award administration actions, presenting a complete, unified block of guidance. ● Subpart 37.4, “Advisory and Assistance Services (A&AS)”, is the reorganized successor to the former Subpart 37.2. The content has been restructured into the new acquisition lifecycle format. ○ 37.401, “Definition”, relocates the definition of “Covered personnel” from the former 37.201. ○ 37.402-1, “Policy”, provides clarity on the types of A&AS for which agencies may contract. ○ 37.402-3, “A&AS contracts for the evaluation of proposals”, clarifies the timing requirement for the agency head’s determination regarding the availability of personnel for proposal evaluation, stating that the contracting officer must ensure, to the maximum extent practicable, the determination is made prior to issuing the solicitation, or if the need arises later, prior to granting the A&AS contractor access to proposal material. ● Subpart 37.5, “Child Care Services”, is a new subpart created by consolidating the definition of “Child care services” from former 37.101 with the contracting officer’s responsibility for ensuring criminal history background checks from former 37.103(d). This consolidation creates a

	single, easy-to-find location for all rules related to this specific category of service contracts, improving usability and ensuring this important safety requirement is not overlooked. ● Subpart 37.6, “Nonpersonal Health Care Services”, is renumbered and reorganized from the former Subpart 37.4. The content is restructured into the lifecycle format, which clarifies the timing of the contracting officer’s actions regarding medical liability insurance. ○ 37.601-2, “Procedures”, adds a procedural step, explicitly instructing the contracting officer to insert the necessary insurance coverage values into paragraph (a) of the clause at 52.237-7. ● Subpart 37.7, “Dismantling, Demolition, or Removal of Improvements”, is renumbered and reorganized from the former Subpart 37.3. The content is largely the same but is now organized under a single “Presolicitation” section (37.701), as most of the content relates to structuring the solicitation and contract. The language has been slightly revised for clarity and readability. ● Subpart 37.8, “Other Service Considerations”, is a new subpart that acts as a consolidated home for various standalone content that was previously scattered throughout the former Subpart 37.1. The following illustrates this major consolidation effort. ○ Uncompensated Overtime: Content from the former 37.115 and the related definitions previously at 37.101 are consolidated and reorganized into new sections 37.801 (Definitions), 37.802 (Presolicitation), and 37.803 (Evaluation and award). ○ Services of quasi-military armed forces: Content from the former 37.109 is relocated to the new 37.802-2. Note, reference to “Pinkerton Detective agencies” is deleted. ○ Foreign national severance cost limitations: Content from the former 37.113 is relocated and revised in the new 37.802-3. ○ Use of private sector temporaries: Content from the former 37.112 is relocated to the new 37.802-4 ● Solicitation provisions and contract clauses: The list of general service contract clauses from the former 37.110 is relocated to the new 37.802-5. ● Funding and term of service contracts: Content from the former 37.106 is relocated to the new 37.803-2. ● The following provision and clauses are updated to correct cross- references: ○ 52.237-7 (Clause), Indemnification and Medical Liability Insurance ○ 52.237-8 (Provision), Restriction on Severance Payments to Foreign Nationals ○ 52.237-9 (Clause), Waiver of Limitation on Severance Payments to Foreign Nationals ● The FAR Companion is expected to include best practice information on the following moved content that is not statutorily required: ○ Examples of various types of service contracts (formerly at 37.101) ○ Factors that aid in determining whether a contract is for personal services (formerly at 37.104) ○ Strategic inclusion of “continuity of services” and “option to extend services” clauses (formerly at 37.111)
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Removed	• The definition of “Nonpersonal services contract”, previously at section 37.101, is deleted as unnecessary. • Former section 37.604, “Quality Assurance Surveillance Plans”, is removed from part 37. This topic is covered comprehensively in FAR Part 46, and its inclusion in Part 37 was redundant. • Former section 37.102 (paragraphs b, e, f, g, h, i, j). These paragraphs contained general policy statements, such as the directive to rely on the private sector (OMB Circular A-76), obtain services cost-effectively, prevent fraud and abuse, ensure trained officials are available, and limitations on using the lowest price technically acceptable source selection process. These statements were largely high-level policy pronouncements that are covered more authoritatively elsewhere in the part or in other parts of the FAR (e.g., Part 1, Part 7, Part 15) or are considered inherent responsibilities of the acquisition workforce. Their removal streamlines Part 37 to focus on actionable rules specific to service contracting. • Former section 37.103 (Contracting officer responsibility). This general list of contracting officer responsibilities is deleted as a standalone section. The specific duties contained within it have been integrated directly into the new, relevant topical subparts, making the guidance more contextual and direct. • Former sections 37.105, 37.107, 37.108, 37.111. These sections, which addressed competition, Service Contract Labor Standards, Small Business Certificates of Competency, and extension of services, have been deleted. The content of these sections is fully covered elsewhere in the part or in other parts of the FAR (e.g., part 6, part 17, part 19, and part 22, respectively), making their inclusion in Part 37 duplicative. • Former subpart 37.5 (Management Oversight of Service Contracts). This entire subpart, which referenced OFPP Policy Letter 93-1 and the use of “best practices”, has been deleted.
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4. Instructions.

- The Department of Homeland Security (DHS) acquisition workforce shall follow the RFO Part 37 deviation text instead of FAR Part 37 as codified at 48 CFR Chapter 1. The Council’s RFO Part 37 model deviation text is available at <https://www.acquisition.gov/far-overhaul/far-part-deviation-guide/far-overhaul-part-37>, and is incorporated into this deviation.
- For new solicitations or contracts, when using any provisions or clauses that have been revised, utilize the RFO model deviation language in Attachment 1.
- For open solicitations or awarded contracts, the contracting officer has discretion regarding the need to enforce or amend the provisions or clauses. Note that without some of the removed provisions or clauses, the contracting officer may be required to separately address certain aspects in the contract.
- Contracting activities must review templates and related standard operating procedures to align with this class deviation and remove unnecessary processes and steps.

5. **Applicability.** This class deviation applies to all DHS procurements.
6. **Authority.** This class deviation is issued under the authority of E.O. 14275, [OMB M- 25-25](#), 48 CFR 1.4, and RFO FAR 1.304.
7. **Effective Date.** This class deviation is effective November 3, 2025, and remains in effect until rescinded or incorporated into the FAR.
8. **Points of Contact.** Questions regarding this class deviation may be directed to Acquisition Policy and Legislation Branch at Acquisition.Policy@hq.dhs.gov.

Attachment:

1. FAR Part 37 Solicitation Provisions and Contract Clauses Revisions

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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Subpart 52.2—Text of Provisions and Clauses

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52.237-1 Site Visit.

As prescribed in 37.802-5(a), insert the following provision:

Site Visit (Apr 1984)

Offerors or quoters are urged and expected to inspect the site where services are to be performed and to satisfy themselves regarding all general and local conditions that may affect the cost of contract performance, to the extent that the information is reasonably obtainable. In no event shall failure to inspect the site constitute grounds for a claim after contract award.

(End of provision)

52.237-2 Protection of Government Buildings, Equipment, and Vegetation.

As prescribed in 37.802-5(b), insert the following clause in solicitations and contracts for services to be performed on Government installations, unless a construction contract is contemplated:

Protection of Government Buildings, Equipment, and Vegetation (Apr 1984)

The Contractor shall use reasonable care to avoid damaging existing buildings, equipment, and vegetation on the Government installation. If the Contractor's failure to use reasonable care causes damage to any of this property, the Contractor shall replace or repair the damage at no expense to the Government as the Contracting Officer directs. If the Contractor fails or refuses to make such repair or replacement, the Contractor shall be liable for the cost, which may be deducted from the contract price.

(End of clause)

52.237-3 Continuity of Services.

As prescribed in 37.802-5(c), insert the following clause:

Continuity of Services (Jan 1991)

(a) The Contractor recognizes that the services under this contract are vital to the Government and must be continued without interruption and that, upon contract expiration, a successor, either the Government or another contractor, may continue them. The Contractor agrees to-

(1) Furnish phase-in training; and

(2) Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

(b) The Contractor shall, upon the Contracting Officer's written notice, (1) furnish phase-in, phase-out services for up to 90 days after this contract expires and (2) negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the Contracting Officer's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this contract are maintained at the required level of proficiency.

(c) The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

(d) The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations) and a fee (profit) not to exceed a pro rata portion of the fee (profit) under this contract.

(End of clause)

52.237-4 Payment by Government to Contractor.

As prescribed in 37.701-4(a), insert the following clause in solicitations and contracts solely for dismantling, demolition, or removal of improvements whenever the contracting officer determines that the Government shall make payment to the contractor in addition to any title to property that the contractor may receive under the contract:

Payment by Government to Contractor (Apr 1984)

(a) In _____ [insert "full" if Alternate I is used; otherwise insert "partial"] consideration of the performance of the work called for in the Schedule, the Government will pay to the Contractor _____ [fill in amount].

(b) The Government shall make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the Contracting Officer, on estimates approved by the Contracting Officer. Except as provided in paragraph (c) of this clause, in making progress payments the Contracting Officer shall retain 10 percent of the estimated payment until final completion and acceptance of the contract work. However, if the Contracting Officer finds that satisfactory progress was achieved during any period for which a progress payment is to be made, the Contracting Officer may authorize such payment in full, without retaining a percentage. Also, on completion and acceptance of each unit or division for which the price is stated separately, the Contracting Officer may authorize full payment for that unit or division without retaining a percentage.

(c) When the work is substantially completed, the Contracting Officer shall retain an amount considered adequate for the protection of the Government and, at the Contracting Officer's discretion, may release all or a portion of any excess amount.

(d) In further consideration of performance, the Contractor shall receive title to all property to be dismantled or demolished that is not specifically designated as being retained by the Government. The title shall vest in the Contractor immediately upon the Government's issuing the notice of award, or if a performance bond is to be furnished after award, upon the Government's issuance of a notice to proceed with the work. The Government shall not be responsible for the condition of, or any loss or damage to, the property. If the Contractor does not wish to remove from the site any of the property acquired, the Contracting Officer may, upon written request, grant the Contractor permission to leave the property on the premises. As a condition to the granting of this permission, the Contractor agrees to waive any right, title, claim, or interest in and to the property.

(e) Upon completion and acceptance of all work and receipt of a properly executed voucher, the Government shall make final payment of the amount due the Contractor under this contract. If requested, the Contractor shall release all claims against the Government arising under this contract, other than any claims the Contractor specifically excepts, in stated amounts, from operation of this release.

(End of clause)

Alternate I (Apr 1984). If the contracting officer determines that the Government shall retain all material resulting from the dismantling or demolition work, delete paragraph (d) from the basic clause and renumber the remaining paragraphs.

52.237-5 Payment by Contractor to Government.

As prescribed in 37.701-4(b), insert the following clause in solicitations and contracts for dismantling, demolition, or removal of improvements whenever the contractor is to receive title to dismantled or demolished property and a net amount of compensation is due to the Government, except if the contracting officer determines that it would be advantageous to the

Government for the contractor to pay in increments and the Government to transfer title to the contractor for increments of property only upon receipt of those payments:

Payment by Contractor to Government (Apr 1984)

(a) The Contractor shall receive title to all property to be dismantled, demolished, or removed under this contract and not specifically designated in the Schedule as being retained by the Government. The title shall vest in the Contractor immediately upon the Government's issuing the notice of award, or if a performance bond is to be furnished, upon the Government's issuing a notice to proceed with the work. The Government shall not be responsible for the condition of, or any loss or damage to, the property.

(b) The Contractor shall promptly remove from the site all property acquired by the Contractor. The Government shall not permit storage of property on the site beyond the completion date. If the Contractor does not wish to remove from the site any of the property acquired, the Contracting Officer may, upon written request, grant the Contractor permission to leave the property on the premises. As a condition of the granting of the permission, the Contractor agrees to waive any right, title, claim, or interest in and to the property.

(c) The Contractor shall perform the work called for under this contract and within _____ days of receipt of notice of award, unless otherwise provided in the Schedule and before proceeding with the work, shall pay _____ [fill in amount]. Checks shall be made payable to the office designated in the contract and shall be forwarded to the Contracting Officer.

(End of clause)

52.237-6 Incremental Payment by Contractor to Government.

As prescribed in 37.701-4(c), insert the following clause in solicitations and contracts for dismantling, demolition, or removal of improvements (a) if the Contractor is to receive title to dismantled or demolished property and a net amount of compensation is due the Government; and (b) if the Contracting Officer determines that it would be advantageous to the Government for the Contractor to pay in increments, and for the Government to transfer title to the Contractor for increments of property, only upon receipt of those payment:

Incremental Payment by Contractor to Government (Apr 1984)

(a) The Contractor shall perform the work called for under this contract and within _____ days of receipt of notice of award, unless otherwise provided in the Schedule, and before proceeding with the work, shall pay _____ [fill in amount]. Thereafter, the Contractor shall make payment to the Government in the amount and frequency specified in the Schedule. Checks shall be made payable to the office designated in the contract and shall be forwarded to the Contracting Officer.

(b) Upon the Government's receipt of each increment of payment, the Contractor shall receive title to such property as the Contracting Officer determines to be fair and reasonable for that

increment of payment. Upon receipt of the Contractor's final payment, all title that has not passed to the Contractor shall vest in the Contractor, unless specifically designated in the Schedule as being retained by the Government. The Government shall not be responsible for the condition of, or any loss or damage to, the property.

(c) The Contractor shall promptly remove from the site all property acquired by the Contractor. The Government will not permit storage of property on the site beyond the completion date. If the Contractor does not wish to remove from the site any of the property acquired, the Contracting Officer may, upon written request, grant the Contractor permission to leave the property on the premises. As a condition of the granting of this permission, the Contractor agrees to waive any right, title, claim, or interest in and to the property.

(End of clause)

52.237-7 Indemnification and Medical Liability Insurance.

As prescribed in **37.601-3**, insert the following clause:

Indemnification and Medical Liability Insurance (OCT 2025) (DEVIATION 26-02) (effective November 3, 2025)

(a) It is expressly agreed and understood that this is a nonpersonal services contract, under which the professional services rendered by the Contractor are rendered in its capacity as an independent contractor. The Government may evaluate the quality of professional and administrative services provided, but retains no control over professional aspects of the services rendered, including by example, the Contractor's professional medical judgment, diagnosis, or specific medical treatments. The Contractor shall be solely liable for and expressly agrees to indemnify the Government with respect to any liability producing acts or omissions by it or by its employees or agents. The Contractor shall maintain during the term of this contract liability insurance issued by a responsible insurance carrier of not less than the following amount(s) per specialty per occurrence: _____.

(b) An apparently successful offeror, upon request by the Contracting Officer, shall furnish prior to contract award evidence of its insurability concerning the medical liability insurance required by paragraph (a) of this clause.

(c) Liability insurance may be on either an occurrences basis or on a claims-made basis. If the policy is on a claims-made basis, an extended reporting endorsement (tail) for a period of not less than 3 years after the end of the contract term must also be provided.

(d) Evidence of insurance documenting the required coverage for each health care provider who will perform under this contract shall be provided to the Contracting Officer prior to the commencement of services under this contract. If the insurance is on a claims-made basis and evidence of an extended reporting endorsement is not provided prior to the commencement of services, evidence of such endorsement shall be provided to the Contracting Officer prior to the

expiration of this contract. Final payment under this contract shall be withheld until evidence of the extended reporting endorsement is provided to the Contracting Officer.

(e) The policies evidencing required insurance shall also contain an endorsement to the effect that any cancellation or material change adversely affecting the Government's interest shall not be effective until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer. If during the performance period of the contract the Contractor changes insurance providers, the Contractor must provide evidence that the Government will be indemnified to the limits specified in paragraph (a) of this clause, for the entire period of the contract, either under the new policy, or a combination of old and new policies.

(f) The Contractor shall insert the substance of this clause, including this paragraph (f), in all subcontracts under this contract for health care services and shall require such subcontractors to provide evidence of and maintain insurance in accordance with paragraph (a) of this clause. At least 5 days before the commencement of work by any subcontractor, the Contractor shall furnish to the Contracting Officer evidence of such insurance.

(End of clause)

52.237-8 Restriction on Severance Payments to Foreign Nationals.

As prescribed in 37.113-2(a), use the following provision:

Restriction on Severance Payments to Foreign Nationals (OCT 2025) (DEVIATION 26-02) (effective November 3, 2025)

(a) The Federal Acquisition Regulation (FAR), at 31.205-6(f)(6), limits the cost allowability of severance payments to foreign nationals employed under a service contract performed outside the United States unless the agency grants a waiver pursuant to FAR 37.802-3 before contract award.

(b) In making the determination concerning the granting of a waiver, the agency will determine that—

(1) The application of the severance pay limitations to the contract would adversely affect the continuation of a program, project, or activity that provides significant support services for (i) members of the armed forces stationed or deployed outside the United States, or (ii) employees of an executive agency posted outside the United States;

(2) The Contractor has taken (or has established plans to take) appropriate actions within its control to minimize the amount and number of incidents of the payment of severance pay to employees under the contract who are foreign nationals; and

(3) The payment of severance pay is necessary in order to comply with a law that is generally applicable to a significant number of businesses in the country in which the

foreign national receiving the payment performed services under the contract, or is necessary to comply with a collective bargaining agreement.

(End of provision)

52.237-9 Waiver of Limitation on Severance Payments to Foreign Nationals.

As prescribed in 37.802-5(e), use the following clause:

Waiver of Limitation on Severance Payments to Foreign Nationals (OCT 2025) (DEVIATION 26-02) (effective November 3, 2025)

(a) Pursuant to 10 U.S.C. 3744(b) or 41 U.S.C. 4304(b)(1), as applicable, the cost allowability limitations in FAR 31.205-6(f)(6) are waived.

(b) This clause may be incorporated into subcontracts issued under this contract, if approved by the Contracting Officer.

(End of clause)

52.237-10 Identification of Uncompensated Overtime.

As prescribed in 37.802-5(f), insert the following provision:

Identification of Uncompensated Overtime (Mar 2015)

(a) *Definitions.* As used in this provision-

Adjusted hourly rate (including uncompensated overtime) is the rate that results from multiplying the hourly rate for a 40-hour work week by 40, and then dividing by the proposed hours per week which includes uncompensated overtime hours over and above the standard 40-hour work week. For example, 45 hours proposed on a 40-hour work week basis at \$20 per hour would be converted to an uncompensated overtime rate of \$17.78 per hour ($\20.00×40 divided by 45 = \$17.78).

Uncompensated overtime means the hours worked without additional compensation in excess of an average of 40 hours per week by direct charge employees who are exempt from the Fair Labor Standards Act. Compensated personal absences such as holidays, vacations, and sick leave shall be included in the normal work week for purposes of computing uncompensated overtime hours.

(b)(1) Whenever there is uncompensated overtime, the adjusted hourly rate (including uncompensated overtime), rather than the hourly rate, shall be applied to all proposed hours, whether regular or overtime hours.

- (2) All proposed labor hours subject to the adjusted hourly rate (including uncompensated overtime) shall be identified as either regular or overtime hours, by labor categories, and described at the same level of detail. This is applicable to all proposals whether the labor hours are at the prime or subcontract level. This includes uncompensated overtime hours that are in indirect cost pools for personnel whose regular hours are normally charged direct.
- (c) The offeror's accounting practices used to estimate uncompensated overtime must be consistent with its cost accounting practices used to accumulate and report uncompensated overtime hours.
- (d) Proposals that include unrealistically low labor rates, or that do not otherwise demonstrate cost realism, will be considered in a risk assessment and will be evaluated for award in accordance with that assessment.
- (e) The offeror shall include a copy of its policy addressing uncompensated overtime with its proposal.

(End of provision)