

### 8.405-3

- (c) Agency order number.
- (d) F.o.b. delivery point; i.e., origin or destination.
- (e) Discount terms.
- (f) Delivery time.
- (g) Special item number or national stock number.
- (h) Brief, complete description of each item (when ordering by model number, features and options such as color, finish, and electrical characteristics, if available, must be specified).
- (i) Quantity and any variation in quantity.
- (j) Number of units.
- (k) Unit price.
- (l) Total price of order.
- (m) Points of inspection and acceptance.
- (n) Other pertinent data; e.g., delivery instructions or receiving hours and size-of-truck limitation.
- (o) Marking requirements.
- (p) Level of preservation, packaging, and packing.

[48 FR 42129, Sept. 19, 1983, as amended at 60 FR 34737, July 3, 1995]

### 8.405-3 Inspection and acceptance.

- (a) Consignees shall inspect supplies at destination except when—
  - (1) The schedule provides for the schedule contracting agency to perform source inspection (in this case, the schedule will indicate that mandatory source inspection is required); or
  - (2) A schedule item is covered by a product description, and the ordering office determines that the schedule contracting agency's inspection assistance is needed (inspection assistance may be based on the ordering volume, the complexity of items, or the past performance of the supplier).
- (b) When the schedule contracting agency performs the inspection, as specified in the schedule, the ordering office will provide two copies of the order specifying source inspection to the schedule contracting agency. The schedule contracting agency will notify the ordering office of acceptance or rejection of the supplies.
- (c) Material inspected at source by the schedule contracting agency, and determined to conform with the product description of the schedule, shall not be reinspected for the same purpose. The consignee shall limit inspec-

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tion to quantity and condition on receipt.

- (d) Unless otherwise provided in the schedule, acceptance shall be conclusive except as regards latent defects, fraud, or such gross mistakes as amount to fraud.

### 8.405-4 Delinquent performance.

If the contractor fails to perform on the order, the ordering office may terminate the order for default or give the contractor further opportunity to perform by modifying the order to establish a new delivery date (obtaining consideration as necessary).

[48 FR 42129, Sept. 19, 1983, as amended at 59 FR 53717, Oct. 25, 1994]

### 8.405-5 Termination for default.

(a)(1) An ordering office may terminate any one or more orders for default in accordance with part 49, Termination of Contracts. The schedule contracting office shall be notified of all cases where an ordering office has declared a Federal Supply Schedule contractor in default or fraud is suspected.

(2) Should the contractor claim that the failure was excusable, the ordering office shall promptly refer the matter to the schedule contracting office. In the absence of a decision by the schedule contracting office (or by the head of the schedule contracting agency, on appeal) excusing the failure, the ordering office may charge the contractor with excess costs resulting from repurchase.

(3) Any repurchase shall be made at as reasonable a price as possible considering the quality required by the Government, delivery requirement, and administrative expenses. Copies of all repurchase orders, except the copy furnished to the contractor or any other commercial concern, shall include the notation "Repurchase against the account of \_\_\_\_\_ [insert contractor's name] under Delivery Order \_\_\_\_\_ [insert number] under Contract \_\_\_\_\_ [insert number]".

(4) When excess costs are anticipated, the ordering office may withhold funds due the contractor as offset security. Ordering offices shall minimize excess costs to be charged against the contractor and collect or setoff any excess costs owed.

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(5) If an ordering office is unable to collect excess costs, it shall take the following actions:

(i) Notify the schedule contracting office within 60 days after final payment to the replacement contractor. The notice shall include the following information about the defaulted order:

(A) Name and address of the contractor.

(B) Schedule, contract, and order number.

(C) National stock or special item number(s), and a brief description of the item(s).

(D) Cost of schedule items involved.

(E) Excess costs to be collected.

(F) Other pertinent data.

(ii) In addition to the above, the notice shall include the following information about the replacement contract:

(A) Name and address of the contractor.

(B) Item repurchase cost.

(C) Repurchase order number and date of payment.

(D) Contract number, if any.

(E) Other pertinent data.

(b) Only the schedule contracting officer may terminate for default any or all items covered by the schedule contract. When notified of default action by the schedule contracting officer with respect to defaulted items, ordering offices shall—

(1) Refuse to accept further performance by the contractor;

(2) Not place further orders with the contractor;

(3) Repurchase against the contractor in default from sources designated by the schedule contracting officer; or

(4) Proceed as otherwise directed by the schedule contracting officer.

(c) All actions taken regarding terminations for default shall comply with the applicable requirements in part 49.

[48 FR 42129, Sept. 19, 1983, as amended at 59 FR 53717, Oct. 25, 1994]

### 8.405-6 Termination for convenience.

(a) Ordering offices may terminate individual orders for the convenience of the Government. Only the schedule contracting officer may terminate any or all items covered by the schedule

contract for the convenience of the Government.

(b) Before terminating orders for convenience, the ordering office shall endeavor to enter into a “no cost” cancellation agreement with the contractor.

(c) All actions taken regarding terminations for convenience shall comply with the applicable requirements in part 49.

### 8.405-7 Disputes.

(a) *Disputes pertaining to the performance of orders under a schedule contract.*

(1) Under the Disputes clause of the schedule contract, the ordering office contracting officer may—

(i) Issue final decisions on disputes arising from performance of the order (but see paragraph (b) of this section); or

(ii) Refer the dispute to the schedule contracting officer.

(2) The ordering office contracting officer shall notify the schedule contracting officer promptly of any final decision.

(b) *Disputes pertaining to the terms and conditions of schedule contracts.* The ordering office contracting officer shall refer all disputes that relate to the contract terms and conditions to the schedule contracting officer for resolution under the Disputes clause of the contract and notify the schedule contractor of the referral.

(c) *Appeals.* Contractors may appeal final decisions to either the Board of Contract Appeals servicing the agency that issued the final decision or the U.S. Court of Federal Claims.

(d) *Alternative dispute resolution.* The contracting officer should use the alternative dispute resolution (ADR) procedures, to the maximum extent practicable (see 33.204 and 33.214).

[67 FR 43515, June 27, 2002]

## Subpart 8.5—Acquisition of Helium

SOURCE: 67 FR 13064, Mar. 20, 2002, unless otherwise noted.

### 8.500 Scope of subpart.

This subpart implements the requirements of the Helium Act (50 U.S.C. 167, *et seq.*) concerning the acquisition of