

FAR Clause 52.212-1
INSTRUCTIONS TO OFFERORS COMMERCIAL ITEMS (ARIL 2014)

- (a) *North American Industry Classification System (NAICS) code, and small business size standard.* The NAICS code and small business size standard for this acquisition appear in Block 10 of the solicitation cover sheet (SF 1449). However, the small business size standard for a concern which submits an offer in its own name, but which proposes to furnish an item which it did not itself manufacture, is 500 employees.
- (b) *Submission of Offers.* Submit signed and dated offers to the office specified in this solicitation at or before the exact time specified in this solicitation. Offers may be submitted on the SF 1449, letterhead stationery, or as otherwise specified in the solicitation. As a minimum, offers must show---
- (1) The solicitation number;
 - (2) The time specified in the solicitation for receipt of offers;
 - (3) The name, address, and telephone number of the offeror;
 - (4) A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary;
 - (5) Terms of any express warranty;
 - (6) Price and any discount terms;
 - (7) "Remit to" address, if different than mailing address;
 - (8) A completed copy of the representations and certifications at FAR 52.212-3 (see FAR 52.212-3(b) for those representations and certifications that the offeror shall complete electronically);
 - (9) Acknowledgment of Solicitation Amendments;
 - (10) Past performance information, when included as an evaluation factor to include recent and relevant contracts for the same or similar items and other references (including contract numbers, points of contact with telephone numbers and other relevant information); and
 - (11) If the offer is not submitted on the SF 1449, include a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offers that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.
- (c) *Period for acceptance of offers.* The offeror agrees to hold the prices in its offer firm for 30 calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.
- (d) *Product samples.* When required by the solicitation, product samples shall be submitted at or prior to the time specified for receipt of offers. Unless otherwise specified in this solicitation, these samples shall be submitted at no expense to the Government and returned at the sender's request and expense, unless they are destroyed during preaward testing.
- (e) *Multiple offers.* Offerors are encouraged to submit multiple offers presenting alternative terms and conditions or commercial items for satisfying the requirements of this solicitation. Each offer submitted shall be evaluated separately.
- (f) *Late submissions, modifications, revisions, and withdrawals of offers.*
- (1) Offerors are responsible for submitting offers, and any modifications, revisions, or withdrawals, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time,

for the designated Government office on the date that offers or revisions are due.

- (2) (i) Any offer, modification, revision, or withdrawal of an offer received at the Government office designated in the solicitation after the exact time specified for receipt of offers is “late” and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and—
 - (A) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of offers; or
 - (B) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government's control prior to the time set for receipt of offers; or
 - (C) If this solicitation is a request for proposals, it was the only proposal received.
 - (ii) However, a late modification of an otherwise successful offer, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.
 - (3) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the offer wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.
 - (4) If an emergency or unanticipated event interrupts normal Government processes so that offers cannot be received at the Government office designated for receipt of offers by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.
 - (5) Offers may be withdrawn by written notice received at any time before the exact time set for receipt of offers. Oral offers in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for receipt of offers, subject to the conditions specified in the solicitation concerning facsimile offers. An offer may be withdrawn in person by an offeror or its authorized representative if, before the exact time set for receipt of offers, the identity of the person requesting withdrawal is established and the person signs a receipt for the offer.
- (g) *Contract award (not applicable to Invitation for Bids).* The Government intends to evaluate offers and award a contract without discussions with offerors. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary. The Government may reject any or all offers if such action is in the public interest; accept other than the lowest offer; and waive informalities and minor irregularities in offers received.
- (h) *Multiple awards.* The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule, offers

may not be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.

(i) *Availability of requirements documents cited in the solicitation.*

- (1) (i) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29, and copies of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained for a fee by submitting a request to-- GSA Federal Supply Service Specifications Section, Suite 8100, 470 East L'Enfant Plaza, SW, Washington, DC 20407, Telephone (202) 619-8925, Facsimile (202) 619-8978.
 - (ii) If the General Services Administration, Department of Agriculture, or Department of Veterans Affairs issued this solicitation, a single copy of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained free of charge by submitting a request to the addressee in paragraph (i)(1)(i) of this provision. Additional copies will be issued for a fee.
- (2) Most unclassified Defense specifications and standards may be downloaded from the following ASSIST websites:
- (i) [ASSIST](#)
 - (ii) [Quick Search](#)
 - (iii) [ASSISTdocs.com](#)
- (3) Documents not available from ASSIST may be ordered from the Department of Defense Single Stock Point (DoDSSP) by--
- (i) Using the [ASSIST Shopping Wizard](#)
 - (ii) Phoning the DoDSSP Customer Service Desk (215) 697-2179, Mon-Fri, 0730 to 1600 EST; or
 - (iii) Ordering from DoDSSP, Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111 5094, Telephone (215) 697-2667/2179, Facsimile (215) 697-1462.
- (4) Nongovernment (voluntary) standards must be obtained from the organization responsible for their preparation, publication, or maintenance.

(j) *Data Universal Numbering System (DUNS) Number.* (Applies to all offers exceeding \$3,000, and offers of \$3,000 or less if the solicitation requires the Contractor to be registered in the System for Award Management (SAM) database. The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" or "DUNS +4" followed by the DUNS or DUNS+4 number that identifies the offeror's name and address. The DUNS +4 is the DUNS number plus a 4-character suffix that may be assigned at the discretion of the offeror to establish additional SAM records for identifying alternative Electronic Funds Transfer (EFT) accounts (see FAR Subpart 32.11) for the same concern. If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one. An offeror within the United States may contact [Dun and Bradstreet](#) by calling 1-866-705-5711 or via the internet. An offeror located outside the United States must contact the local Dun and Bradstreet office for a DUNS number. The offeror should indicate that it is an offeror for a Government contract when contacting the local Dun and Bradstreet office.

(k) *System for Award Management.* Unless exempted by an addendum to this solicitation, by submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the SAM database prior to award, during performance and through final payment of any contract

resulting from this solicitation. If the Offeror does not become registered in the SAM database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror. Offerors may obtain information on registration and annual confirmation requirements via the [SAM database](#) or by calling 1-888-227-2423 or 269-961-5757.

(l) *Debriefing.* If a post-award debriefing is given to requesting offerors, the Government shall disclose the following information, if applicable:

- (1) The agency's evaluation of the significant weak or deficient factors in the debriefed offeror's offer.
- (2) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror.
- (3) The overall ranking of all offerors, when any ranking was developed by the agency during source selection.
- (4) A summary of the rationale for award;
- (5) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.
- (6) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

FAR Clause 52.212-2
EVALUATION-COMMERCIAL ITEMS (JANUARY 1999)

- (a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government, price and other factors considered. The following factors shall be used to evaluate offers:

[Contracting Officer shall insert the significant evaluation factors such as (i) technical capability of the item offered to meet the Government requirement; (ii) price; (iii) past performance (see FAR 15.304); (iv) small disadvantaged business participation; and include them in the relative order of importance of the evaluation factors, such as in descending order of importance.]

Technical and past performance when combined, are _____ *[Contracting Officer state, in accordance with FAR 15.304, the relative importance of all other evaluation factors, when combined, when compared to price.]*

- (b) *Options.* The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).
- (c) A written notice of award or acceptance of an offer mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

(End of provision)

OFFEROR REPRESENTATIONS AND CERTIFICATIONS – COMMERCIAL ITEMS

The offeror makes the following Representations and Certifications as part of its proposal (*check/complete all appropriate boxes or blanks on the following pages*).

(Name of Offeror)

(Signature of Authorized Individual)

(Date)

(Typed Name of Authorized Individual)

Note: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

FAR Clause 52.212-3

OFFEROR REPRESENTATIONS AND CERTIFICATIONS – COMMERCIAL ITEMS (MAY 2014)

An offeror shall complete only paragraph (b) of this provision if the offeror has completed the annual representations and certifications electronically. If an offeror has not completed the annual representations and certifications electronically at the [System for Award Management \(SAM\)](#) website, the offeror shall complete only paragraphs (c) through (o) of this provision.

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

Economically disadvantaged women-owned small business (EDWOSB) concern means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States and who are economically disadvantaged in accordance with 13 CFR part 127. It automatically qualifies as a women-owned small business eligible under the WOSB Program.

Forced or indentured child labor means all work or service—

- (1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or
- (2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

Inverted domestic corporation, as used in this section, means a foreign incorporated entity which is treated as an inverted domestic corporation under 6 U.S.C. 395(b), i.e., a corporation that used to be incorporated in the United States, or used to be a partnership in the United States, but now is incorporated in a foreign country, or is a subsidiary whose parent corporation is incorporated in a foreign country, that meets the criteria specified in 6 U.S.C. 395(b), applied in accordance with the rules and definitions of 6 U.S.C. 395(c). An inverted domestic corporation as herein defined does not meet the definition of an inverted domestic corporation as defined by the Internal Revenue Code at 26 U.S.C. 7874.

Manufactured end product means any end product in Federal Supply Classes (FSC) 1000-9999, except—

- (1) FSC 5510, Lumber and Related Basic Wood Materials;
- (2) Federal Supply Group (FSG) 87, Agricultural Supplies;
- (3) FSG 88, Live Animals;

- (4) FSG 89, Food and Related Consumables;
- (5) FSC 9410, Crude Grades of Plant Materials;
- (6) FSC 9430, Miscellaneous Crude Animal Products, Inedible;
- (7) FSC 9440, Miscellaneous Crude Agricultural and Forestry Products;
- (8) FSC 9610, Ores;
- (9) FSC 9620, Minerals, Natural and Synthetic; and
- (10) FSC 9630, Additive Metal Materials.

Place of manufacture means the place where an end product is assembled out of components, or otherwise made or processed from raw materials into the finished product that is to be provided to the Government. If a product is disassembled and reassembled, the place of reassembly is not the place of manufacture.

Restricted business operations means business operations in Sudan that include power production activities, mineral extraction activities, oil-related activities, or the production of military equipment, as those terms are defined in the Sudan Accountability and Divestment Act of 2007 (Pub. L. 110-174). Restricted business operations do not include business operations that the person (as that term is defined in Section 2 of the Sudan Accountability and Divestment Act of 2007) conducting the business can demonstrate—

- (1) Are conducted under contract directly and exclusively with the regional government of southern Sudan;
- (2) Are conducted pursuant to specific authorization from the Office of Foreign Assets Control in the Department of the Treasury, or are expressly exempted under Federal law from the requirement to be conducted under such authorization;
- (3) Consist of providing goods or services to marginalized populations of Sudan;
- (4) Consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization;
- (5) Consist of providing goods or services that are used only to promote health or education; or
- (6) Have been voluntarily suspended.

Sensitive technology--

- (1) Means hardware, software, telecommunications equipment, or any other technology that is to be used specifically—
 - (i) To restrict the free flow of unbiased information in Iran; or
 - (ii) To disrupt, monitor, or otherwise restrict speech of the people of Iran; and
- (2) Does not include information or informational materials the export of which the President does not have the authority to regulate or prohibit pursuant to section 203(b)(3) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)(3)).

Service-disabled veteran-owned small business concern--

- (1) Means a small business concern--
 - (i) Not less than 51 percent of which is owned by one or more service--disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and
 - (ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

(2) *Service-disabled veteran* means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).

Small business concern means a concern, including its affiliates that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR Part 121 and size standards in this solicitation.

Subsidiary means an entity in which more than 50 percent of the entity is owned—

- (1) Directly by a parent corporation; or
- (2) Through another subsidiary of a parent corporation.

Veteran-owned small business concern means a small business concern--

- (1) Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and
- (2) The management and daily business operations of which are controlled by one or more veterans.

Women-owned business concern means a concern which is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

Women-owned small business concern means a small business concern--

- (1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and
- (2) Whose management and daily business operations are controlled by one or more women.

Women-owned small business (WOSB) concern eligible under the WOSB Program (in accordance with 13 CFR part 127), means a small business concern that is at least 51 percent directly and unconditionally owned by, and the management and daily business operations of which are controlled by, one or more women who are citizens of the United States.

(b) (1) Annual Representations and Certifications. Any changes provided by the offeror in paragraph (b)(2) of this provision do not automatically change the representations and certifications posted on the SAM website.

(2) The offeror has completed the annual representations and certifications electronically via the [SAM](#) website. After reviewing the SAM database information, the offeror verifies by submission of this offer that the representations and certifications currently posted electronically at FAR 52.212-3, Offeror Representations and Certifications--Commercial Items, have been entered or updated in the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR 4.1201), except for paragraphs

[Offeror to identify the applicable paragraphs at (c) through (o) of this provision that the offeror has completed for the purposes of this solicitation only, if any.

These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

Any changes provided by the offeror are applicable to this solicitation only, and do not result in an

update to the representations and certifications posted electronically on SAM.]

(c) Offerors must complete the following representations when the resulting contract is to be performed in the United States or its outlying areas. Check all that apply.

- (1) *Small Business concern.* The offeror represents as part of its offer that it is, is not a small business concern.
- (2) *Veteran-owned small business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents as part of its offer that it is, is not a veteran-owned small business concern.
- (3) *Service-disabled veteran-owned small business concern.* [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(2) of this provision.] The offeror represents as part of its offer that it is, is not a service-disabled veteran-owned small business concern.
- (4) *Small disadvantaged business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.]

The offeror represents, for general statistical purposes, that it is, is not a small disadvantaged business concern as defined in 13 CFR 124.1002.

- (5) *Women-owned small business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.]

The offeror represents that it is, is not a women-owned small business concern.

NOTE: Complete paragraphs (c)(8) and (c)(9) only if this solicitation is expected to exceed the simplified acquisition threshold.

- (6) WOSB concern eligible under the WOSB Program. [Complete only if the offeror represented itself as a women-owned small business concern in paragraph (c)(5) of this provision.] The offeror represents that—

- (i) It is, is not a WOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and
- (ii) It is, is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (c)(6)(i) of this provision is accurate for each WOSB concern eligible under the WOSB Program participating in the joint venture. *[The offeror shall enter the name or names of the WOSB concern eligible under the WOSB Program and other small businesses that are participating in the joint venture:_____.]* Each WOSB concern eligible under the WOSB Program participating in the joint venture shall submit a separate signed copy of the WOSB representation.

(7) Economically disadvantaged women-owned small business (EDWOSB) concern. [Complete only if the offeror represented itself as a WOSB concern eligible under the WOSB Program in (c)(6) of this provision.] The offeror represents that—

- (i) It is, is not an EDWOSB concern, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and
- (ii) It is, is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (c)(7)(i) of this provision is accurate for each EDWOSB concern participating in the joint venture. [*The offeror shall enter the name or names of the EDWOSB concern and other small businesses that are participating in the joint venture:_____.*] Each EDWOSB concern participating in the joint venture shall submit a separate signed copy of the EDWOSB representation.

(8) *Women-owned business concern (other than small business concern).* [Complete only if the offeror is a women-owned business concern and did not represent itself as a small business concern in paragraph (c)(1) of this provision.]

The offeror represents that it is a women-owned business concern.

(9) *Tie bid priority for labor surplus area concerns.* If this is an invitation for bid, small business offerors may identify the labor surplus areas in which costs to be incurred on account of manufacturing or production (by offeror or first-tier subcontractors) amount to more than 50 percent of the contract price:

(10) *(Complete only if the solicitation contains the clause at FAR 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns, or FAR 52.219-25, Small Disadvantaged Business Participation Program—Disadvantaged Status and Reporting, and the offeror desires a benefit based on its disadvantaged status.)*

(i) *General.* The offeror represents that either—

- (A) It is, is not certified by the Small Business Administration as a small disadvantaged business concern and identified, on the date of this representation, as a certified small disadvantaged business concern in the SAM Dynamic Small Business Search database maintained by the Small Business Administration, and that no material change in disadvantaged ownership and control has occurred since its certification, and, where the concern is owned by one or more individuals claiming disadvantaged status, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); or
- (B) It has, has not submitted a completed application to the Small Business Administration or a Private Certifier to be certified as a small disadvantaged business concern in accordance with 13 CFR 124, Subpart B, and a decision on that application is pending, and that no material change in disadvantaged ownership and control has occurred since its application was submitted.

(ii) *Joint Ventures under the Price Evaluation Adjustment for Small Disadvantaged Business Concerns.* The offeror represents, as part of its offer, that it is a joint venture that complies with the

requirements in 13 CFR 124.1002(f) and that the representation in paragraph (c)(10)(i) of this provision is accurate for the small disadvantaged business concern that is participating in the joint venture. *[The offeror shall enter the name of the small disadvantaged business concern that is participating in the joint venture: _____.]*

(11) *HUBZone small business concern. [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.]* The offeror represents, as part of its offer, that—

(i) It is, is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material change in ownership and control, principal office, or HUBZone employee percentage have occurred since it was certified in accordance with 13 CFR part 126; and

(ii) It is, is not a joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (c)(11)(i) of this provision is accurate for each HUBZone small business concern participating in the HUBZone joint venture. *[The offeror shall enter the names of each of the HUBZone small business concerns participating in the HUBZone joint venture:_____.]* Each HUBZone small business concern participating in the HUBZone joint venture shall submit a separate signed copy of the HUBZone representation.

(d) Representations required to implement provisions of Executive Order 11246--

(1) *Previous Contracts and Compliance.* The offeror represents that—

(i) It has, has not participated in a previous contract or subcontract subject to the Equal Opportunity clause of this solicitation; and

(ii) It has, has not filed all required compliance reports.

(2) *Affirmative Action Compliance.* The offeror represents that—

(i) It has developed and has on file, has not developed and does not have on file, at each establishment, affirmative action programs required by rules and regulations of the Secretary of Labor (41 CFR Parts 60-1 and 60-2), or

(ii) It has not previously had contracts subject to the written affirmative action programs requirement of the rules and regulations of the Secretary of Labor.

(e) *Certification Regarding Payments to Influence Federal Transactions (31 U.S.C. 1352).* (Applies only if the contract is expected to exceed \$150,000.) By submission of its offer, the offeror certifies to the best of its knowledge and belief that no Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any resultant contract. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The offeror need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(f) *Buy American Certificate. (Applies only if the clause at Federal Acquisition Regulation (FAR) 52.225-1, Buy*

American--Supplies, is included in this solicitation.)

(1) The offeror certifies that each end product, except those listed in paragraph (f)(2) of this provision, is a domestic end product and that for other than COTS items, the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The offeror shall list as foreign end products those end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of "domestic end product." The terms "commercially available off-the-shelf (COTS) item," "component," "domestic end product," "end product," "foreign end product," and "United States" are defined in the clause of this solicitation entitled "Buy American--Supplies."

(2) Foreign End Products:

Line Item No.: _____

Country of Origin: _____

(List as necessary)

(3) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(g) (1) Buy American--Free Trade Agreements--Israeli Trade Act Certificate. *(Applies only if the clause at FAR 52.225-3, Buy American--Free Trade Agreements--Israeli Trade Act, is included in this solicitation.)*

(i) The offeror certifies that each end product, except those listed in paragraph (g)(1)(ii) or (g)(1)(iii) of this provision, is a domestic end product and that for other than COTS items, the offeror has considered components of unknown origin to have been mined, produced, or manufactured outside the United States. The terms "Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end product," "commercially available off-the-shelf (COTS) item," "component," "domestic end product," "end product," "foreign end product," "Free Trade Agreement country," "Free Trade Agreement country end product," "Israeli end product," and "United States" are defined in the clause of this solicitation entitled "Buy American-Free Trade Agreements-Israeli Trade Act."

(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian, Moroccan, Omani, Panamanian, or Peruvian end products) or Israeli end products as defined in the clause of this solicitation entitled "Buy American--Free Trade Agreements--Israeli Trade Act":

Free Trade Agreement Country End Products (Other than Bahrainian, Moroccan, Omani, Panamanian or Peruvian End Products) or Israeli End Products:

Line Item No.

Country of Origin

(List as necessary)

(iii) The offeror shall list those supplies that are foreign end products (other than those listed in paragraph (g)(1)(ii) of this provision) as defined in the clause of this solicitation entitled, "Buy American--Free Trade Agreements--Israeli Trade Act." The offeror shall list as other foreign end products those end products manufactured in the United States that do not qualify as domestic end products, i.e., an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of "domestic end product."

Other Foreign End Products

Line Item No.: _____

Country of Origin: _____

(List as necessary)

(iv) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25.

(2) *Buy American--Free Trade Agreements--Israeli Trade Act Certificate, Alternate I.* If Alternate I to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g) (1) (ii) The offeror certifies that the following supplies are Canadian end products as defined in the clause of this solicitation, entitled "Buy American--Free Trade Agreements--Israeli Trade Act:"

Canadian End Products

Line Item No.: _____

(List as necessary)

(3) *Buy American--Free Trade Agreements--Israeli Trade Act Certificate, Alternate II.* If Alternate II to the clause at FAR 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g) (1) (ii) The offeror certifies that the following supplies are Canadian end products or Israeli end products as defined in the clause of this solicitation entitled, "Buy American--Free Trade Agreements--Israeli Trade Act:"

Canadian or Israeli End Products

Line Item No.: _____

Country of Origin: _____

(List as necessary)

(4) *Buy American--Free Trade Agreements--Israeli Trade Act Certificate, Alternate III.* If Alternate III to the clause at 52.225-3 is included in this solicitation, substitute the following paragraph (g)(1)(ii) for paragraph (g)(1)(ii) of the basic provision:

(g)(1)(ii) The offeror certifies that the following supplies are Free Trade Agreement country end products (other than Bahrainian, Korean, Moroccan, Omani, Panamanian, or Peruvian end products) or Israeli end products as defined in the clause of this solicitation entitled "Buy American--Free Trade Agreements--Israeli Trade Act:"

Free trade Agreement Country End Products (Other than Bahrainian, Korean, Moroccan, Omani, Panamanian, or Peruvian End Products) or Israeli End Products:

Line Item No.

Country of Origin

(5) *Trade Agreements Certificate.* (Applies only if the clause at FAR 52.225-5, Trade Agreements, is

included in this solicitation.)

- (i) The offeror certifies that each end product, except those listed in paragraph (g)(5)(ii) of this provision, is a U.S.-made or designated country end product, as defined in the clause of this solicitation entitled, "Trade Agreements."
- (ii) The offeror shall list as other end products those end products that are not U.S.-made or designated country end products.

Other End Products

Line Item No.: _____

Country of Origin: _____

(List as necessary)

- (iii) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25. For line items covered by the WTO GPA, the Government will evaluate offers of U.S.-made or designated country end products without regard to the restrictions of the Buy American statute. The Government will consider for award only offers of U.S.-made or designated country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for such products are insufficient to fulfill the requirements of the solicitation.
- (h) Certification Regarding Responsibility Matters (*Executive Order 12689*). (Applies only if the contract value is expected to exceed the simplified acquisition threshold.) The offeror certifies, to the best of its knowledge and belief, that the offeror and/or any of its principals—
- (1) Are, are not presently not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;
 - (2) Have, have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property;
 - (3) Are are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses enumerated in paragraph (h)(2) of this clause; and
 - (4) Have, have not, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.
- (i) Taxes are considered delinquent if both of the following criteria apply:
 - (A) The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.
 - (B) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not

delinquent in cases where enforced collection action is precluded.

- (ii) Examples. (A) The taxpayer has received a statutory notice of deficiency, under I.R.C. Sec. 6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.
 - (B) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. Sec. 6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.
 - (C) The taxpayer has entered into an installment agreement pursuant to I.R.C. Sec. 6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.
 - (D) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).

(i) Certification Regarding Knowledge of Child Labor for Listed End Products (Executive Order 13126). [The Contracting Officer must list in paragraph (i)(1) any end products being acquired under this solicitation that are included in the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, unless excluded at 22.1503(b).]

(1) Listed end products.

Listed End Product	Listed Countries of Origin
_____	_____
_____	_____

(2) *Certification*. [If the Contracting Officer has identified end products and countries of origin in paragraph (i)(1) of this provision, then the offeror must certify to either (i)(2)(i) or (i)(2)(ii) by checking the appropriate block.]

- (i) The offeror will not supply any end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.
- (ii) The offeror may supply an end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product. The offeror certifies that it has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any such end product furnished under this contract. On the basis of those efforts, the offeror certifies that it is not aware of any such use of child labor.

(j) Place of manufacture. (Does not apply unless the solicitation is predominantly for the acquisition of manufactured end products.) For statistical purposes only, the offeror shall indicate whether the place of

manufacture of the end products it expects to provide in response to this solicitation is predominantly—

(1) In the United States (Check this box if the total anticipated price of offered end products manufactured in the United States exceeds the total anticipated price of offered end products manufactured outside the United States); or

(2) Outside the United States.

(k) Certificates regarding exemptions from the application of the Service Contract Labor Standards.

(Certification by the offeror as to its compliance with respect to the contract also constitutes its certification as to compliance by its subcontractor if it subcontracts out the exempt services.)

[The contracting officer is to check a box to indicate if paragraph (k)(1) or (k)(2) applies.]

(1) Maintenance, calibration, or repair of certain equipment as described in FAR 22.1003-4(c)(1).

The offeror does does not certify that--

- (i) The items of equipment to be serviced under this contract are used regularly for other than Governmental purposes and are sold or traded by the offeror (or subcontractor in the case of an exempt subcontract) in substantial quantities to the general public in the course of normal business operations;
- (ii) The services will be furnished at prices which are, or are based on, established catalog or market prices (see FAR 22.1003-4(c)(2)(ii)) for the maintenance, calibration, or repair of such equipment; and
- (iii) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract will be the same as that used for these employees and equivalent employees servicing the same equipment of commercial customers.

(2) Certain services as described in FAR 22.1003-4(d)(1).

The offeror does does not certify that--

- (i) The services under the contract are offered and sold regularly to non-Governmental customers, and are provided by the offeror (or subcontractor in the case of an exempt subcontract) to the general public in substantial quantities in the course of normal business operations;
- (ii) The contract services will be furnished at prices that are, or are based on, established catalog or market prices (see FAR 22.1003-4(d)(2)(iii));
- (iii) Each service employee who will perform the services under the contract will spend only a small portion of his or her time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the Government contract; and
- (iv) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract is the same as that used for these employees and equivalent employees servicing commercial customers.

(3) If paragraph (k)(1) or (k)(2) of this clause applies—

- (i) If the offeror does not certify to the conditions in paragraph (k)(1) or (k)(2) and the Contracting officer did not attach a Service Contract Labor Standards wage determination to the solicitation, the offeror shall notify the Contracting Officer as soon as possible; and
- (ii) The Contracting Officer may not make an award to the offeror if the offeror fails to execute the certification in paragraph (k)(1) or (k)(2) of this clause or to contact the Contracting Officer as required in paragraph (k)(3)(i) of this clause.

(l) Taxpayer Identification Number (TIN) (26 U.S.C. 6109, 31 U.S.C. 7701). (Not applicable if the offeror is required to provide this information to the SAM database to be eligible for award.)

- (1) All offerors must submit the information required in paragraphs (l)(3) through (l)(5) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the Internal Revenue Service (IRS).
- (2) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(3) *Taxpayer Identification Number (TIN).*

TIN: _____.

TIN has been applied for.

TIN is not required because:

Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;

Offeror is an agency or instrumentality of a foreign government;

Offeror is an agency or instrumentality of the Federal Government.

(4) *Type of organization.*

Sole proprietorship;

Partnership;

Corporate entity (not tax-exempt);

Corporate entity (tax-exempt);

Government entity (Federal, State, or local);

Foreign government;

International organization per 26 CFR 1.6049-4;

Other _____.

(5) *Common parent.*

Offeror is not owned or controlled by a common parent;

Name and TIN of common parent:

Name _____.

TIN _____.

(m) Restricted business operations in Sudan. By submission of its offer, the offeror certifies that the offeror does not conduct any restricted business operations in Sudan.

(n) Prohibition on Contracting with Inverted Domestic Corporations--(1) Relation to Internal Revenue Code. An

inverted domestic corporation as herein defined does not meet the definition of an inverted domestic corporation as defined by the Internal Revenue Code 25 U.S.C. 7874.

- (2) Representation. By submission of its offer, the offeror represents that—
- (i) It is not an inverted domestic corporation; and
 - (ii) It is not a subsidiary of an inverted domestic corporation.

(o) Prohibition on contracting with entities engaging in certain activities or transactions relating to Iran. (1) The offeror shall email questions concerning sensitive technology to the Department of State at CISADA106@state.gov.

- (2) Representation and Certification. Unless a waiver is granted or an exception applies as provided in paragraph (o)(3) of this provision, by submission of its offer, the offeror--
- (i) Represents, to the best of its knowledge and belief, that the offeror does not export any sensitive technology to the government of Iran or any entities or individuals owned or controlled by, or acting on behalf or at the direction of, the government of Iran;
 - (ii) Certifies that the offeror, or any person owned or controlled by the offeror, does not engage in any activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act; and
 - (iii) Certifies that the offeror, and any person owned or controlled by the offeror, does not knowingly engage in any transaction that exceeds \$3,000 with Iran's Revolutionary Guard Corps or any of its officials, agents, or affiliates, the property and interests in property of which are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (see [OFAC's Specially Designated Nationals and Blocked Persons List](#)).

- (3) The representation and certification requirements of paragraph (o)(2) of this provision do not apply if--
- (i) This solicitation includes a trade agreements certification (e.g., 52.212-3(g) or a comparable agency provision); and
 - (ii) The offeror has certified that all the offered products to be supplied are designated country end products.

(End of provision)

Alternate II (Jan 2012). As prescribed in 12.301(b)(2), add the following paragraph (c)(10)(iii) to the basic provision:

(Note: Applicable when small disadvantaged business procurement mechanisms are authorized on a regional basis. Applicable regions by SIC Major Category are located at: <http://www.acquisition.gov/References/sdbadjustments.htm>.)

- (iii) Address. The offeror represents that its address _____ is, _____ is not in a region for which a small disadvantaged business procurement mechanism is authorized and its address has not changed since its certification as a small disadvantaged business concern or submission of its application for certification. The list of authorized small disadvantaged business procurement mechanisms and regions is posted at <http://www.acquisition.gov/References/sdbadjustments.htm>. The offeror shall use the list in effect on the date of this solicitation. "Address," as used in this provision, means the address of the offeror as listed on the Small Business Administration's register of small disadvantaged business concerns or the address on the completed application that the concern has submitted to the Small Business Administration or a Private Certifier in accordance with 13 CFR part 124, subpart B. For joint ventures, "address" refers to the address of the small disadvantaged*

business concern that is participating in the joint venture.

Addenda to FAR Clause 52.212-3

1. Representation By Corporations Regarding an Unpaid Delinquent Tax Liability or a Felony Conviction Under Any Federal Law

The Consolidated Appropriations Act, 2012 Pub. L 112-74 and the Consolidated and Further Continuing Appropriations Act, Pub. L 112-55 prohibit covered agencies from using funds to enter into contracts with corporations with have unpaid federal tax delinquencies or certain felony convictions unless certain conditions are met.

(a) The Offeror represents that —

- (1) It is is not a corporation that was convicted of a felony criminal violation under a Federal or State law within the preceding 24 months.
- (2) It is is not a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

(End of provision)

2. FAR Clause 52.204-6 Data Universal Numbering System (DUNS) Number (July 2013)

- (a) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "DUNS" or "DUNS+4" followed by the DUNS number or "DUNS+4" that identifies the offeror's name and address exactly as stated in the offer. The DUNS number is a nine-digit number assigned by Dun and Bradstreet, Inc. The DUNS+4 is the DUNS number plus a 4-character suffix that may be assigned at the discretion of the offeror to establish additional System for Award Management records for identifying alternative Electronic Funds Transfer (EFT) accounts (see Subpart 32.11) for the same concern.
- (b) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.
 - (1) An offeror may obtain a DUNS number--
 - (i) Via the [Internet](#) or if the offeror does not have internet access, it may call Dun and Bradstreet at 1-866-705-5711 if located within the United States; or
 - (ii) If located outside the United States, by contacting the local Dun and Bradstreet office. The offeror should indicate that it is an offeror for a U.S. Government contract when contacting the local Dun and Bradstreet office.
 - (2) The offeror should be prepared to provide the following information:
 - (i) Company legal business name.

- (ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.
- (iii) Company physical street address, city, state and Zip Code.
- (iv) Company mailing address, city, state and Zip Code (if separate from physical).
- (v) Company telephone number.
- (vi) Date the company was started.
- (vii) Number of employees at your location.
- (viii) Chief executive officer/key manager.
- (ix) Line of business (industry).
- (x) Company Headquarters name and address (reporting relationship within your entity).

(End of provision)

FAR Clause 52.212-4
CONTRACT TERMS AND CONDITIONS – COMMERCIAL ITEMS (MAY 2014)

- (a) *Inspection/Acceptance.* The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights (1) within a reasonable time after the defect was discovered or should have been discovered; and (2) before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.
- (b) *Assignment.* The Contractor or its assignee may assign rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C. 3727). However, when a third party makes payment (e.g. use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.
- (c) *Changes.* Changes in the terms and conditions of this contract may be made only by written agreement of the parties.
- (d) *Disputes.* This contract is subject to, 41 U.S.C. chapter 71, Contract Disputes. Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.
- (e) *Definitions.* The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.
- (f) *Excusable delays.* The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
- (g) *Invoice.* (1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized), to the address designated in the contract to receive invoices. An invoice must include—
- (i) Name and address of the Contractor;
 - (ii) Invoice date and number;
 - (iii) Contract number, contract line item number and, if applicable, the order number;
 - (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
 - (v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;
 - (vi) Terms of any discount for prompt payment offered;
 - (vii) Name and address of official to whom payment is to be sent;

- (viii) Name, title, and phone number of person to notify in event of defective invoice; and
 - (ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.
 - (x) Electronic Funds transfer (EFT) banking information.
 - (A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.
 - (B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer-System for Award Management, or 52.232-34, Payment by Electronic Funds Transfer-Other Than System for Award Management), or applicable agency procedures.
 - (C) EFT banking information is not required if the Government waived the requirement to pay by EFT.
- (2) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR part 1315.
- (h) *Patent indemnity.* The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.
- (i) *Payment.* (1) *Items accepted.* Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.
- (2) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and OMB prompt payment regulations at 5 CFR part 1315.
- (3) *Electronic Funds Transfer (EFT).* If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.
- (4) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.
- (5) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—
- (i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—
 - (A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);
 - (B) Affected contract number and delivery order number, if applicable;
 - (C) Affected contract line item or subline item, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6) *Interest.*

(i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) *Final decisions.* The Contracting Officer will issue a final decision as required by 33.211 if—

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall immediately notify the Contracting Officer and request instructions for

disposition of the overpayment.

- (j) *Risk of loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:
 - (1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
 - (2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

- (k) *Taxes.* The contract price includes all applicable Federal, State, and local taxes and duties.

- (l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

- (m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

- (n) *Title.* Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

- (o) *Warranty.* The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

- (p) *Limitation of liability.* Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

- (q) *Other compliances.* The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

- (r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18

U.S.C. 431 relating to officials not to benefit; 40 U.S.C. chapter 37, Contract Work Hours and Safety Standards; 41 U.S.C. chapter 87, Kickbacks; 41 U.S.C. 4712 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. chapter 21 relating to procurement integrity.

(s) *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order: (1) the schedule of supplies/services; (2) the Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Contracts, and Unauthorized Obligations paragraphs of this clause; (3) the clause at 52.212-5; (4) addenda to this solicitation or contract, including any license agreements for computer software; (5) solicitation provisions if this is a solicitation; (6) other paragraphs of this clause; (7) the Standard Form 1449; (8) other documents, exhibits, and attachments; and (9) the specification.

(t) *System for Award Management (SAM).*

(1) Unless exempted by an addendum to this contract, the Contractor is responsible during performance and through final payment of any contract for the accuracy and completeness of the data within the SAM database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the SAM database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the SAM database to ensure it is current, accurate and complete. Updating information in the SAM does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(2) (i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in FAR subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to (A) change the name in the SAM database; (B) comply with the requirements of subpart 42.12; and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (t)(2)(i) of this clause, or fails to perform the agreement at paragraph (t)(2)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the SAM information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(3) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the SAM record to reflect an assignee for the purpose of assignment of claims (see Subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the SAM database. Information provided to the Contractor's SAM record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(4) Offerors and Contractors may obtain information on registration and annual confirmation requirements via [SAM](#).

(u) Unauthorized Obligations.

(1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

- (i) Any such clause is unenforceable against the Government.
- (ii) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an “I agree” click box or other comparable mechanism (*e.g.*, “click-wrap” or “browse-wrap” agreements), execution does not bind the Government or any Government authorized end user to such clause.
- (iii) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(2) Paragraph (u)(1) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(End of clause)

Alternate I (MAY 2014). When a time-and-materials or labor-hour contract is contemplated, substitute the following paragraphs (a), (e), (i), (l) and (m) for those in the basic clause.

- (a) *Inspection/Acceptance.* (1) The Government has the right to inspect and test all materials furnished and services performed under this contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government may also inspect the plant or plants of the Contractor or any subcontractor engaged in contract performance. The Government will perform inspections and tests in a manner that will not unduly delay the work.
- (2) If the Government performs inspection or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (3) Unless otherwise specified in the contract, the Government will accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they will be presumed accepted 60 days after the date of delivery, unless accepted earlier.
- (4) At any time during contract performance, but not later than 6 months (or such other time as may be specified in the contract) after acceptance of the services or materials last delivered under this contract, the Government may require the Contractor to replace or correct services or materials that at time of delivery failed to meet contract requirements. Except as otherwise specified in paragraph (a)(6) of this clause, the cost of replacement or correction shall be determined under paragraph (i) of this clause, but the “hourly rate” for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. Unless otherwise specified below,

the portion of the "hourly rate" attributable to profit shall be 10 percent. The Contractor shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken. *[Insert portion of labor rate attributable to profit.]*

- (5) (i) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or the ceiling price as increased by the Government), the Government may—
 - (A) By contract or otherwise, perform the replacement or correction, charge to the Contractor any increased cost, or deduct such increased cost from any amounts paid or due under this contract; or
 - (B) Terminate this contract for cause.
 - (ii) Failure to agree to the amount of increased cost to be charged to the Contractor shall be a dispute under the Disputes clause of the contract.
 - (6) Notwithstanding paragraphs (a)(4) and (5) above, the Government may at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract, if the failure is due to—
 - (i) Fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel; or
 - (ii) The conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.
 - (7) This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this contract.
 - (8) The Contractor has no obligation or liability under this contract to correct or replace materials and services that at time of delivery do not meet contract requirements, except as provided in this clause or as may be otherwise specified in the contract.
 - (9) Unless otherwise specified in the contract, the Contractor's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.
- (e) *Definitions.* (1) The clause at FAR 52.202-1, Definitions, is incorporated herein by reference. As used in this clause--
- (i) *Direct materials* means those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product or service.
 - (ii) *Hourly rate* means the rate(s) prescribed in the contract for payment for labor that meets the labor category qualifications of a labor category specified in the contract that are--
 - (A) Performed by the contractor;
 - (B) Performed by the subcontractors; or
 - (C) Transferred between divisions, subsidiaries, or affiliates of the contractor under a common control.

(iii) *Materials* means--

- (A) Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of the contractor under a common control;
- (B) Subcontracts for supplies and incidental services for which there is not a labor category specified in the contract;
- (C) Other direct costs (e.g., incidental services for which there is not a labor category specified in the contract, travel, computer usage charges, etc.);
- (D) The following subcontracts for services which are specifically excluded from the hourly rate: [*Insert any subcontracts for services to be excluded from the hourly rates prescribed in the schedule.*]; and
- (E) Indirect costs specifically provided for in this clause.

(iv) *Subcontract* means any contract, as defined in FAR Subpart 2.1, entered into with a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract including transfers between divisions, subsidiaries, or affiliates of a contractor or subcontractor. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(i) *Payments.* (1) *Work Performed.* The Government will pay the Contractor as follows upon the submission of commercial invoices approved by the Contracting Officer:

(i) *Hourly rate.*

- (A) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the contract by the number of direct labor hours performed. Fractional parts of an hour shall be payable on a prorated basis.
- (B) The rates shall be paid for all labor performed on the contract that meets the labor qualifications specified in the contract. Labor hours incurred to perform tasks for which labor qualifications were specified in the contract will not be paid to the extent the work is performed by individuals that do not meet the qualifications specified in the contract, unless specifically authorized by the Contracting Officer.
- (C) Invoices may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer) to the Contracting Officer or the authorized representative.
- (D) When requested by the Contracting Officer or the authorized representative, the Contractor shall substantiate invoices (including any subcontractor hours reimbursed at the hourly rate in the schedule) by evidence of actual payment, individual daily job timecards, records that verify the employees meet the qualifications for the labor categories specified in the contract, or other substantiation specified in the contract.
- (E) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis.

- (1) If no overtime rates are provided in the Schedule and the Contracting Officer approves overtime work in advance, overtime rates shall be negotiated.
- (2) Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of this contract.
- (3) If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contracting Officer.

(ii) *Materials.*

- (A) If the Contractor furnishes materials that meet the definition of a commercial item at FAR

2.101, the price to be paid for such materials shall be the contractor's established catalog or market price, adjusted to reflect the—

- (1) Quantities being acquired; and
 - (2) Any modifications necessary because of contract requirements.
- (B) Except as provided for in paragraph (i)(1)(ii)(A) and (D)(2) of this clause, the Government will reimburse the Contractor the actual cost of materials (less any rebates, refunds, or discounts received by the contractor that are identifiable to the contract) provided the Contractor—
- (1) Has made payments for materials in accordance with the terms and conditions of the agreement or invoice; or
 - (2) Makes these payments within 30 days of the submission of the Contractor's payment request to the Government and such payment is in accordance with the terms and conditions of the agreement or invoice.
- (C) To the extent able, the Contractor shall—
- (1) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and
 - (2) Give credit to the Government for cash and trade discounts, rebates, scrap, commissions, and other amounts that are identifiable to the contract.
- (D) *Other Costs.* Unless listed below, other direct and indirect costs will not be reimbursed.
- (1) *Other Direct Costs.* The Government will reimburse the Contractor on the basis of actual cost for the following, provided such costs comply with the requirements in paragraph (i)(1)(ii)(B) of this clause: [Insert each element of other direct costs (*e.g.*, travel, computer usage charges, etc. Insert "None" if no reimbursement for other direct costs will be provided. If this is an indefinite delivery contract, the Contracting Officer may insert "Each order must list separately the elements of other direct charge(s) for that order or, if no reimbursement for other direct costs will be provided, insert 'None'."]
 - (2) *Indirect Costs (Material Handling, Subcontract Administration, etc.).* The Government will reimburse the Contractor for indirect costs on a pro-rata basis over the period of contract performance at the following fixed price: [Insert a fixed amount for the indirect costs and payment schedule. Insert "\$0" if no fixed price reimbursement for indirect costs will be provided. (If this is an indefinite delivery contract, the Contracting Officer may insert "Each order must list separately the fixed amount for the indirect costs and payment schedule or, if no reimbursement for indirect costs, insert 'None'.")]
- (2) *Total cost.* It is estimated that the total cost to the Government for the performance of this contract shall not exceed the ceiling price set forth in the Schedule and the Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the Schedule, the Contractor shall notify the Contracting Officer giving a revised estimate of the total price to the Government for performing this contract with supporting reasons and documentation. If at any time during the performance of this contract, the Contractor has reason to believe that the total price

to the Government for performing this contract will be substantially greater or less than the then stated ceiling price, the Contractor shall so notify the Contracting Officer, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during performance of this contract, the Government has reason to believe that the work to be required in performing this contract will be substantially greater or less than the stated ceiling price, the Contracting Officer will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the contract.

- (3) *Ceiling price.* The Government will not be obligated to pay the Contractor any amount in excess of the ceiling price in the Schedule, and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until the Contracting Officer notifies the Contractor in writing that the ceiling price has been increased and specifies in the notice a revised ceiling that shall constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.
- (4) *Access to records.* At any time before final payment under this contract, the Contracting Officer (or authorized representative) will have access to the following (access shall be limited to the listing below unless otherwise agreed to by the Contractor and the Contracting Officer):
- (i) Records that verify that the employees whose time has been included in any invoice meet the qualifications for the labor categories specified in the contract;
 - (ii) For labor hours (including any subcontractor hours reimbursed at the hourly rate in the schedule), when timecards are required as substantiation for payment—
 - (A) The original timecards (paper-based or electronic);
 - (B) The Contractor's timekeeping procedures;
 - (C) Contractor records that show the distribution of labor between jobs or contracts; and
 - (D) Employees whose time has been included in any invoice for the purpose of verifying that these employees have worked the hours shown on the invoices.
 - (iii) For material and subcontract costs that are reimbursed on the basis of actual cost--
 - (A) Any invoices or subcontract agreements substantiating material costs; and
 - (B) Any documents supporting payment of those invoices.
- (5) *Overpayments/Underpayments.* Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices, that are found by the Contracting Officer not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. The Contractor shall promptly pay any such reduction within 30 days unless the parties agree otherwise. The Government within 30 days will pay any such increases, unless the parties agree otherwise. The Contractor's payment will be made by check. If the Contractor becomes aware of a duplicate invoice payment or that the Government has otherwise overpaid on an invoice payment, the Contractor shall--
- (i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—
 - (A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment,

- liquidation errors, date(s) of overpayment);
- (B) Affected contract number and delivery order number, if applicable;
- (C) Affected contract line item or subline item, if applicable; and
- (D) Contractor point of contact.

(6) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(i) All amounts that become payable by the Contractor to the Government under this Contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury, as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, and then at the rate applicable for each six month period as established by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) *Final Decisions.* The Contracting Officer will issue a final decision as required by 33.211 if—

- (A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt in a timely manner;
- (B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or
- (C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see FAR 32.607-2).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

- (A) The date fixed under this contract.
- (B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

- (A) The date on which the designated office receives payment from the Contractor;
- (B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or
- (C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

(viii) Upon receipt and approval of the invoice designated by the Contractor as the “completion invoice” and supporting documentation, and upon compliance by the Contractor with all terms of this contract, any outstanding balances will be paid within 30 days unless the parties agree otherwise. The completion invoice, and supporting documentation, shall be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but

in no event later than 1 year (or such longer period as the Contracting Officer may approve in writing) from the date of completion.

- (7) *Release of claims.* The Contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and 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 if the amounts are not susceptible to exact statement by the Contractor.
 - (ii) Claims, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing this contract, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the Contracting Officer not more than 6 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.
 - (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 incidental expenses, incurred by the Contractor under the terms of this contract relating to patents.
- (7) Notwithstanding paragraphs (a)(4) and (5) above, the Government may at any time require the contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract, if the failure is due to—
- (i) Fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel; or
 - (ii) The conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.
- (8) This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this contract.
- (9) The Contractor has no obligation or liability under this contract to correct or replace materials and services that at time of delivery do not meet contract requirements, except as provided in this clause or as may be otherwise specified in the contract.
- (10) Unless otherwise specified in the contract, the Contractor's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.
- (l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid an amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the contract, less any hourly rate payments already made to the Contractor plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system that have resulted from the termination. The Contractor shall not be required to comply with the

cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

- (m) *Termination for Cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon written request, with adequate assurances of future performance. Subject to the terms of this contract, the Contractor shall be paid an amount computed under paragraph (i) Payments of this clause, but the “hourly rate” for labor hours expended in furnishing work not delivered to or accepted by the Government shall be reduced to exclude that portion of the rate attributable to profit. Unless otherwise specified in paragraph (a)(4) of this clause, the portion of the “hourly rate” attributable to profit shall be 10 percent. In the event of termination for cause, the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

Addenda to FAR 52.212-4

1. Stop Work Order, FAR Clause 52.242-15 (August 1989)

[In accordance with FAR 42.1305 (b)(1) and FAR 12.302, the clause at FAR 52.242-15, Stop Work Order is incorporated herein. This clause is not applicable to fixed-price construction or Architect & Engineering contracts.]

- (a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately 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 stoppage. Within a period of 90 days after a stop-work 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 stop-work order; or
 - (2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.
- (b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if—
- (1) The stop-work order 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 its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the

Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.

- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

(End of clause)

2. Year 2000 Warranty -- Commercial Supply Items (July 1997)

The Contractor warrants that each hardware, software, and firmware product delivered under this contract and listed below shall be able to accurately process date data (including, but not limited to, calculating, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries and the Year 1999 and the Year 2000 and leap year calculations, when used in accordance with the product documentation provided by the contractor, provided that all listed or unlisted products (e.g., hardware, software, firmware) used in combination with such listed product properly exchange date data with it. If the contract requires that specific listed products must perform as a system in accordance with the foregoing warranty, then that warranty shall apply to those listed products as a system. The duration of this warranty and the remedies available to the Government for breach of this warranty shall be as defined in, and subject to, the terms and limitations of the contractor's standard commercial warranty or warranties contained in this contract, provided that notwithstanding any provision to the contrary in such commercial warranty or warranties, the remedies available to the Government under this warranty shall include repair or replacement of any listed product whose noncompliance is discovered and made known to the contractor in writing within ninety (90) days after acceptance. Nothing in this warranty shall be construed to limit any rights or remedies the Government may otherwise have under this contract with respect to defects other than Year 2000 performance.

Year 2000 Compliant Items

(End of Clause)

[Note to Contractor: When the contract/order is awarded using the SF-1449 as its face page, Block 27a is checked as applicable.]

FAR Clause 52.212-5

**CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS –
COMMERCIAL ITEMS (JULY 2014)**

- (a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:
- (1) 52.222-50, Combating Trafficking in Persons (FEB 2009) (22 U.S.C. 7104(g)).
___ Alternate I (AUG 2007) of 52.222-50 (22 U.S.C. 7104(g)).
 - (2) 52.233-3, Protest after Award (AUG 1996) (31 U.S.C. 3553).
 - (3) 52.233-4, Applicable Law for Breach of Contract Claim (OCT 2004) (Public Laws 108-77 and 108-78 (19 U.S.C. 3805 note)).
- (b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items: *[Contracting Officer check as appropriate.]*
- (1) 52.203-6, Restrictions on Subcontractor Sales to the Government (SEP 2006), with Alternate I (OCT 1995) (41 U.S.C. 4704 and 10 U.S.C. 2402).
 - (2) 52.203-13, Contractor Code of Business Ethics and Conduct (APR 2010) (41 U.S.C. 3509).
 - (3) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (JUN 2010) (Section 1553 of Pub.L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009).
 - (4) 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards (JUL 2013) (Pub.L. 109-282) (31 U.S.C. 6101 note).
 - (5) [Reserved]
 - (6) 52.204-14, Service Contract Reporting Requirements (JAN 2014) (Pub. L. 111-117, section 743 of Div. C).
 - (7) 52.204-15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts (JAN 2014) (Pub. L. 111-117, section 743 of Div. C).
 - (8) 52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (AUG 2013) (31 U.S.C. 6101 note).
 - (9) 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters (JUL 2013) (41 U.S.C. 2313).
 - (10) 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations (MAY 2012) (section 738 of Division C Pub. L. 112-74, section 740 of Division C of Public Law 111-117, section 743 of Division D of Public Law 111-8, and section 745 of Division D of Public Law 110-161).
 - (11) 52.219-3, Notice of HUBZone Set-Aside or Sole-Source Award (NOV 2011) (15 U.S.C. 657a).
 - (12) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (JAN 2011) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).
 - (13) [Reserved]
 - (14) (i) 52.219-6, Notice of Total Small Business Set-Aside (NOV 2011) (15 U.S.C. 644).
(ii) Alternate I (NOV 2011).
(iii) Alternate II (NOV 2011).

- ___ (15) (i) 52.219-7, Notice of Partial Small Business Set-Aside (JUNE 2003) (15 U.S.C. 644).
- ___ (ii) Alternate I (OCT 1995) of 52.219-7.
- ___ (iii) Alternate II (MAR 2004) of 52.219-7.
- ___ (16) 52.219-8, Utilization of Small Business Concerns (MAY 2014) (15 U.S.C. 637 (d) (2) and (3)).
- ___ (17) (i) 52.219-9, Small Business Subcontracting Plan (JUL 2013) (15 U.S.C. 637(d) (4)).
- ___ (ii) Alternate I (OCT 2001) of 52.219-9.
- ___ (iii) Alternate II (OCT 2001) of 52.219-9.
- ___ (iv) Alternate III (JUL 2010) of 52.219-9.
- ___ (18) 52.219-13, Notice of Set-Aside of Orders (NOV 2011) (15 U.S.C. 644(r)).
- ___ (19) 52.219-14, Limitations on Subcontracting (NOV 2011) (15 U.S.C. 637(a) (14)).
- ___ (20) 52.219-16, Liquidated Damages--Subcontracting Plan (JAN 1999) (15U.S.C. 637(d) (4) (F) (i)).
- ___ (21) (i) 52.219-23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (OCT 2008) (10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).
- ___ (ii) Alternate I (JUNE 2003) of 52.219-23.
- ___ (22) 52.219-25, Small Disadvantaged Business Participation Program--Disadvantaged Status and Reporting (JUL 2013) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- ___ (23) 52.219-26, Small Disadvantaged Business Participation Program--Incentive Subcontracting (OCT 2000) (Pub. L. 103-355, section 7102, and 10 U.S.C. 2323).
- ___ (24) 52.219-27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (NOV 2011) (15 U.S.C 657f).
- ___ (25) 52.219-28, Post Award Small Business Program Rerepresentation (JUL 2013) (15 U.S.C. 632(a) (2)).
- ___ (26) 52.219-29 Notice of Set-Aside for Economically Disadvantaged Women-Owned Small Business (EDWOSB) Concerns (JUL 2013) (15 U.S.C. 637(m)).
- ___ (27) 52.219-30 Notice of Set-Aside for Women-Owned Small Business (WOSB) Concerns Eligible Under the WOSB Program (JUL 2013) (15 U.S.C. 637(m)).
- ___ (28) 52.222-3, Convict Labor (JUNE 2003) (E.O. 11755).
- ___ (29) 52.222-19, Child Labor--Cooperation with Authorities and Remedies (JAN 2014) (E.O. 13126).
- ___ (30) 52.222-21, Prohibition of Segregated Facilities (FEB 1999).
- ___ (31) 52.222-26, Equal Opportunity (MAR 2007) (E.O. 11246).
- ___ (32) 52.222-35, Equal Opportunity for Veterans (JUL 2014) (38 U.S.C. 4212).
- ___ (33) 52.222-36, Equal Opportunity for Workers with Disabilities (JUL 2014) (29 U.S.C. 793).
- ___ (34) 52.222-37, Employment Reports on Veterans (JUL 2014) (38 U.S.C. 4212).
- ___ (35) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496)
- ___ (36) 52.222-54, Employment Eligibility Verification (AUG 2013). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in 22.1803.)
- ___ (37) (i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Items (MAY 2008) (42 U.S.C. 6962(c) (3) (A) (ii)). (Not applicable to the acquisition of commercially available off-the-shelf items.)
- ___ (ii) Alternate I (MAY 2008) of 52.223-9 (42 U.S.C. 6962(i) (2) (C)). (Not applicable to the acquisition of commercially available off-the-shelf items.)
- ___ (38) (i) 52.223-13, Acquisition of EPEAT® -Registered Imaging Equipment (Jun 2014) (E.O. 13423 and 13514)
- ___ (ii) Alternate I (Jun 2014) of 52.223-13.
- ___ (39) (i) 52.223-14, Acquisition of EPEAT® -Registered Televisions (Jun 2014) (E.O.s 13423 and 13514).
- ___ (ii) Alternate I (Jun 2014) of 52.223-14.

- ___ (40) 52.223-15, Energy Efficiency in Energy-Consuming Products (Dec 2007) (42 U.S.C. 8259b).
- ___ (41) (i) 52.223-16, Acquisition of EPEAT® -Registered Personal Computer Products (Jun 2014) (E.O. 13423 and 13514).
 - ___ (ii) Alternate I (Jun 2014) of 52.223-16.
- ___ (42) 52.223-18, Encouraging Contractor Policies to Ban Text Messaging While Driving (AUG 2011)(E.O. 13513).
- ___ (43) 52.225-1, Buy American --Supplies (MAY 2014) (41 U.S.C. chapter 83).
- ___ (44) (i) 52.225-3, Buy American--Free Trade Agreements--Israeli Trade Act (MAY 2014) (41 U.S.C. chapter 83, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, 19 U.S.C. 4001 note, Pub. L. 103-182, Pub. L. 108-77, 108-78, 108-286, 108-302 109-53, 109-169, 109-283, 110-138, Pub. L.112-41, 112-42 and 112-43).
 - ___ (ii) Alternate I (MAY 2014) of 52.225-3.
 - ___ (iii) Alternate II (MAY 2014) of 52.225-3.
 - ___ (iv) Alternate III (MAY 2014) of 52.225-3.
- ___ (45) 52.225-5, Trade Agreements (NOV 2013) (19 U.S.C. 2501, *et seq.*, 19 U.S.C. 3301 note).
- ___ (46) 52.225-13, Restrictions on Certain Foreign Purchases (JUN 2008) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).
- ___ (47) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Jul 2013) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note.)
- ___ (48) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) (42 U.S.C. 5150).
- ___ (49) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) (42 U.S.C. 5150).
- ___ (50) 52.232-29, Terms for Financing of Purchases of Commercial Items (FEB 2002) (41 U.S.C. 4505, 10 U.S.C. 2307(f)).
- ___ (51) 52.232-30, Installment Payments for Commercial Items (OCT 1995) (41 U.S.C. 4505, 10 U.S.C. 2307(f)).
- ___ (52) 52.232-33, Payment by Electronic Funds Transfer—System for Award Management (JUL 2013) (31 U.S.C. 3332).
- ___ (53) 52.232-34, Payment by Electronic Funds Transfer--Other than System for Award Management (JUL 2013) (31 U.S.C. 3332).
- ___ (54) 52.232-36, Payment by Third Party (MAY 2014) (31 U.S.C. 3332).
- ___ (55) 52.239-1, Privacy or Security Safeguards (AUG 1996) (5 U.S.C. 552a).
 - ___ (ii) Alternate I (DEC 2007) of 52.223-16.
- ___ (56) (i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) (46 U.S.C. Appx 1241(b) and 10 U.S.C. 2631).
 - ___ (ii) Alternate I (APR 2003) of 52.247-64.

(c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:
[Contracting Officer check as appropriate.]

- ___ (1) 52.222-41, Service Contract Labor Standards (May 2014) (41 U.S.C. chapter 67).
- ___ (2) 52.222-42, Statement of Equivalent Rates for Federal Hires (MAY 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).
- ___ (3) 52.222-43, Fair Labor Standards Act and Service Contract Labor Standards--Price Adjustment (Multiple Year and Option Contracts) (MAY 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).

- __ (4) 52.222-44, Fair Labor Standards Act and Service Contract Labor Standards--Price Adjustment (MAY 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).
- __ (5) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment--Requirements (MAY 2014) (41 U.S.C. chapter 67).
- __ (6) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services--Requirements (MAY 2014) (41 U.S.C. chapter 67)
- __ (7) 52.222-17, Nondisplacement of Qualified Workers (MAY 2014) (E.O.13495).
- __ (8) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations. (MAY 2014) (42 U.S.C. 1792).
- __ (9) 52.237-11, Accepting and Dispensing of \$1 Coin (SEP 2008) (31 U.S.C. 5112(p) (1)).

(d) *Comptroller General Examination of Record.* The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records-Negotiation.

- (1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.
- (2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.
- (3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e) (1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e)(i) in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

- (i) 52.203-13, Contractor Code of Business Ethics and Conduct (APR 2010) (41 U.S.C. 3509).
- (ii) 52.219-8, Utilization of Small Business Concerns (MAY 2014) (15 U.S.C. 637(d) (2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$650,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
- (iii) 52.222-17, Nondisplacement of Qualified Workers (MAY 2014) (E.O.13495). Flow down

required in accordance with paragraph (l) of FAR clause 52.222-17.

- (iv) 52.222-26, Equal Opportunity (MAR 2007) (E.O. 11246).
- (v) 52.222-35, Equal Opportunity for Veterans (JUL 2014) (38 U.S.C. 4212).
- (vi) 52.222-36, Equal Opportunity for Workers with Disabilities (JUL 2014) (29 U.S.C. 793).
- (vii) 52.222-37, Employment Reports on Veterans (JUL 2014) (38.U.S.C. 4212)
- (viii) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.
- (ix) 52.222-41, Service Contract Labor Standards, (MAY 2014), (41 U.S.C. chapter 67).
- (x) 52.222-50, Combating Trafficking in Persons (FEB 2009) (22 U.S.C. 7104(g)).
— Alternate I (AUG 2007) of 52.222-50 (22 U.S.C. 7104(g)).
- (xi) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment--Requirements (MAY 2014) (41 U.S.C. chapter 67).
- (xii) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services--Requirements (MAY 2014) (41 U.S.C. chapter 67).
- (xiii) 52.222-54, Employment Eligibility Verification (AUG 2013).
- (xiv) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Jul 2013) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note.)
- (xv) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations. (MAY 2014) (42 U.S.C. 1792). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.
- (xvi) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) (46 U.S.C. Appx 1241(b) and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

- (2) While not required, the contractor May include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

(End of Clause)

***** (Note: Include the following only if the Head of the Agency has waived the examination of records by the Comptroller General. If this is not the case, DELETE Alternate I, below, before including in any contract.) *****

Alternate I (Feb 2000).

As prescribed in 12.301(b)(4)(i), delete paragraph (d) from the basic clause, redesignate paragraph (e) as paragraph (d), and revise the reference to “paragraphs (a), (b), (c), or (d) of this clause” in the redesignated

paragraph (d) to read “paragraphs (a), (b), and (c) of this clause.”

***** (Note: If this acquisition will use funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009 (Pub.L. 111-5), the following Alternate II is required. Additionally, Alternate I of this clause may not be used when Alternate II is applicable.) *****

Alternate II (JUL 2014)

As prescribed in 12.301(b) (4) (ii), substitute the following paragraphs (d) (1) and (e) (1) for paragraphs (d) (1) and (e) (1) of the basic clause as follows:

(d)(1) The Comptroller General of the United States, an appropriate Inspector General appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), or an authorized representative of either of the foregoing officials shall have access to and right to—

- (i) Examine any of the Contractor's or any subcontractors' records that pertain to, and involve transactions relating to, this contract; and
- (ii) Interview any officer or employee regarding such transactions.

(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), and (c), of this clause, the Contractor is not required to flow down any FAR clause in a subcontract for commercial items, other than—

- (i) *Paragraph (d) of this clause.* This paragraph flows down to all subcontracts, except the authority of the Inspector General under paragraph (d)(1)(ii) does not flow down; and
- (ii) *Those clauses listed in this paragraph (e) (1).* Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

(A) 52.203-13, Contractor Code of Business Ethics and Conduct (Apr 2010) (41 U.S.C. 3509).

(B) 52.203-15, Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (JUN 2010) (Section 1553 of Pub. L. 111-5).

(C) 52.219-8, Utilization of Small Business Concerns (MAY 2014) (15 U.S.C. 637(d) (2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$650,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.

(D) 52.222-26, Equal Opportunity (Mar 2007) (E.O. 11246).

(E) 52.222-35, Equal Opportunity for Veterans (JUL 2014) (38 U.S.C. 4212).

(F) 52.222-36, Equal Opportunity for Workers with Disabilities (JUL 2014) (29 U.S.C. 793).

(G) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.

(H) 52.222-41, Service Contract Labor Standards (MAY 2014) (41 U.S.C. chapter 67).

(I) 52.222-50, Combating Trafficking in Persons (FEB 2009) (22 U.S.C. 7104(g)).

(J) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (MAY 2014) (41 U.S.C. chapter 67).

(K) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services--Requirements (MAY 2014) (41 U.S.C. chapter 67).

(L) 52.222-54, Employment Eligibility Verification (AUG 2013).

(M) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations. (MAY 2014) (42 U.S.C. 1792). Flow down required in accordance with paragraph (e) of FAR Clause 52.226-6.

(N) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2012)(46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

Health and Human Services Acquisition Regulations (HHSAR Clauses)

The Contractor shall comply with the following Department of Health and Human Services Acquisition Regulation/Public Health Service Acquisition Regulation (HHSAR/PHSAR) (48 CFR CHAPTER 3) Clauses, incorporated by reference, when the applicable circumstances apply:

- HHS 352.201-70 **Paperwork Reduction Act** (Jan 06) (applicable to all contracts.)
- HHS 352.202-1 **Definitions** (Jan 06)
- HHS 352.203-70 **Anti-Lobbying** (Mar 12)
- HHS 352.204-16 **Prevention and Public Health Fund—Reporting Requirements** (Mar 12) (applicable for all solicitations and contracts funded in whole or in part with PPHF funds. Clause included in full text as attachment to this document.)
- HHS 352.222-70 **Contractor Cooperation in Equal Employment Opportunity Investigations** (Jan 10)
- HHS 352.223-70 **Safety and Health** (Jan 06) (applicable to services involving hazardous materials or operations)
- HHS 352.224-70 **Privacy Act** (Jan 06) (applicable when records on individuals will be designed, developed or operated.)
- HHS 352.227-70 **Publication and Publicity** (Jan 06) (applicable to all contracts.)
- HHS 352-231-70 **Salary Rate Limitation** (AUG 12) (applicable for all extramural contracts & orders, including R&D support EXCEPT fixed-price completion contracts & orders)
- HHS 352.231-71 **Pricing of Adjustments** (Jan 01) (applicable for fixed-price contracts)
- HHS 352.233-70 **Choice of Law (Overseas)** (Jan 10)
- HHS 352.237-70 **Pro-Children Act** (Jan 06) (applicable with kindergarten, elementary or secondary education or library services or health or day care services provided to children under 18 yrs.)
- HHS 352.237-71 **Crime Control Act—Reporting of Child Abuse** (Jan 06) (applicable when performance will take place on Federal land or at a federally-operated facility involving professions/ activities including but not limited to physicians, nurses, and others specified in the Crime Control Act of 1990.)
- HHS 352.237-72 **Crime Control Act—Requirement for Background Checks** (Jan 06) (applicable for all child care services to children under age 18, including social services, health, mental health care, education and rehab programs covered under the Crime Control Act of 1990.)
- HHS 352.237-73 **Non-Discrimination in Service Delivery** (Mar 12) (applicable in solicitations, contracts & orders to deliver services under HHS' programs directly to the public. Clause included in full text as attachment to this document.)
- HHS 352.239-70 **Standard for Security Configurations** (Jan 10) (applicable for operation or acquisition of an information technology system)
- HHS 352.239-71 **Standard for Encryption Language** (Jan 10) (applicable for acquisition or lease of, or requirement to use desktop, laptop computers, mobile devices or portable media to store or process HHS sensitive information categorized as "moderate" or "high.")
- HHS 352.239-72 **Security Requirements** (Jan 10) (applicable when Federal information or information systems will be accessed.)
- HHS 352-239-73 **Electronic and Information Technology Accessibility** (Jan 10) (applicable when EIT will be developed, purchased, maintained, or used.)
- HHS 352.242-70 **Key Personnel** (Jan 06)
- HHS 352-242-71 **Tobacco-free Facilities** (Jan 06) (applicable when some or all of contractor's performance will take place on HHS property.)
- HHS 352.270-1 **Accessibility of Meetings, Conferences and Seminars to Persons with Disabilities** (Jan 01) (applicable for conduct of meetings, conferences, or seminars open to the public or DHHS)

employees.)

HHS 352.270-4(b) **Protection of Human Subjects** (Jan 06) (applicable when human subjects will be used as research subjects)

HHS 352.270-5(b) **Care of Live Vertebrate Animals** (Oct 09) (Applicable to services involving live vertebrate animals.)

HHS 352.270-6 **Restriction on Use of Human Subjects** (Jan 06) (applicable when project is awaiting IRB approval.)

HHS 352.270-7 **Conference Sponsorship Request and Conference Materials Disclaimer** (Jan 10) (applicable when funding, in whole or in part, support a conference.)

HHS 352.270-8 **Prostitution and Related Activities** (Jan 10) (applicable for HIV/AIDS programs or where funding under U.S. Leadership against HIV/AIDS, tuberculosis and Malaria Act of 2003.)

(a) The Offeror shall comply with the following Federal Acquisition Regulation (FAR) and Department of Health and Human Services Acquisition Regulation (HHSAR) provisions, incorporated by reference, when the applicable circumstances apply:

52.204-7 **System for Award Management** (Jun 2013)(applicable when contractor is required to register in the System for Award Management (SAM) database.)

52.204-6 **Data Universal Numbering System Number** (Jul 2013)(applicable when contractor is exempt from registering in the System for Award Management (SAM) database.)

52.214-34 **Submission of Offers in the English Language** (Apr 91) (applicable when contract will be subject to NAFTA or contracting officer specifies its use.)

52.214-35 **Submission of Offers in U.S. Currency** (Apr 91) (applicable when contract will be subject to NAFTA or contracting officer specifies its use.)

52.223-4 **Recovered Material Certification** (May 08) (Certification established by order acceptance.)

52.237-1 **Site Visit** (Apr 84) (applicable for services to be performed on Government installations.)

HHS 352.270-4a **Notice to Offerors of Requirements of 45 CFR Part 46, Protection of Human Subjects** (Jan 06)

HHS 352.270-5a **Notice to Offerors of Requirement for Adequate Assurance of Protection Of Vertebrate Animal Subjects** (Jan 06)

HHS 352.270-9 **Nondiscrimination for Conscience** (Jan 10) (applicable over micro-purchase threshold.)

(End of Clause)

IV. Providing Accelerated Payment to Small Business Subcontractors, FAR 52.232-40 (December 2013)

- a. Upon receipt of accelerated payments from the Government, the Contractor shall make accelerated payments to its small business subcontractors under this contract, to the maximum extent practicable and prior to when such payment is otherwise required under the applicable contract or subcontract, after receipt of a proper invoice and all other required documentation from the small business subcontractor.
- b. The acceleration of payments under this clause does not provide any new rights under the prompt Payment Act.
- c. Include the substance of this clause, include this paragraph c, in all subcontracts with small business concerns, including subcontracts with small business concerns for the acquisition of commercial items.

(End of Clause)

YEAR 2000 COMPLIANCE

In accordance with FAR 39.106, Information Technology acquired under this contract must be Year 2000 compliant as set forth in the following clause(s):

Services Involving the Use of Information Technology (applicable when acquiring services involving the use of computer items in the performance of the requirement.)

YEAR 2000 COMPLIANCE--SERVICE INVOLVING THE USE OF INFORMATION TECHNOLOGY

The Contractor agrees that each item of hardware, software, and firmware used under this contract shall be able to accurately process date data (including, but not limited to, calculating, comparing and sequencing) from, into and between the twentieth and twenty-first centuries and the Year 1999 and the Year 2000 and leap year calculations.

(End of Clause)

Noncommercial Supply Items Warranty (applicable when acquiring custom computer items (e.g., hardware, software and systems). NOTE: The words "listed below" in the clause refer to products that the offeror has identified as being Year 2000 compliant in response to the procuring agency's specifications.

YEAR 2000 WARRANTY--NONCOMMERCIAL SUPPLY ITEMS

The contractor warrants that each noncommercial item of hardware, software, and firmware delivered or developed under this contract and listed below shall be able to accurately process date data (including, but not limited to, calculating, comparing and sequencing) from, into and between the twentieth and twenty-first centuries and the Year 1999 and the Year 2000 and leap year calculations, when used in accordance with the item documentation provided by the contractor, provided that all listed or unlisted items (e.g., hardware, software and firmware) used in combination with such listed item properly exchange date data with it. If the contract requires that specific listed items must perform as a system in accordance with the foregoing warranty, then that warranty shall apply to those listed items as a system. The duration of this warranty and the remedies available to the Government for breach of this warranty shall be as defined in, and subject to, the terms and limitations of any general warranty provisions of this contract provided that notwithstanding any provision to the contrary in such warranty provision(s), or in the absence of any such warranty provision(s), the remedies available to the Government under this warranty shall include repair or replacement of any listed item whose noncompliance is discovered and made known to the contractor in writing within ninety (90) days after acceptance. Nothing in this warranty shall be construed to limit any rights or remedies the Government may otherwise have under this contract with respect to defects other than Year 2000 performance.

YEAR 2000 COMPLIANT ITEMS:

(End of clause)

Commercial Supply Products Warranty (applicable when acquiring Year 2000 Compliant Software, Hardware and Systems comprised of Commercial Information Technology Products. NOTE: The words "listed below" in the clause refer to products that the offeror has identified as being Year 2000 compliant in response to the procuring agency's specifications.

YEAR 2000 WARRANTY--COMMERCIAL SUPPLY ITEMS

The contractor warrants that each hardware, software and firmware product delivered under this contract and listed below shall be able to accurately process date data (including, but not limited to, calculating,

comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries and the Year 1999 and the Year 2000 and leap year calculations, when used in accordance with the product documentation provided by the contractor, provided that all listed or unlisted products (e.g., hardware, software, firmware) used in combination with such listed product properly exchange date data with it. If the contract requires that specific listed products must perform as a system in accordance with the foregoing warranty, then that warranty shall apply to those listed products as a system. The duration of this warranty and the remedies available to the Government for breach of this warranty shall be as defined in, and subject to, the terms and limitations of the contractor's standard commercial warranty or warranties contained in this contract, provided that notwithstanding any provision to the contrary in such commercial warranty or warranties, the remedies available to the Government under this warranty shall include repair or replacement of any listed product whose non-compliance is discovered and made known to the contractor in writing within ninety (90) days after acceptance. Nothing in this warranty shall be construed to limit any rights or remedies the Government may otherwise have under this contract with respect to defects other than Year 2000 performance.

YEAR 2000 COMPLIANT ITEMS:

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(End of clause)

Promoting Efficient Spending

In accordance with the OMB Memorandum M-11-35 Eliminating Excess Conference Spending and Promoting Efficiency in Government dated September 21, 2011; and HHS Memorandum HHS Policy on Promoting Efficient Spending: Use of Appropriated Funds for Conferences and Meetings, Food, Promotional Items, and Printing and Publications dated January 3, 2012 (Revised June 7, 2012); and NIH Memorandum NIH Guidance Related to the HHS Policy on Promoting Efficient Spending: Use of Appropriated Funds for Conferences and Meetings, Food, Promotional Items, and Printing and Publications dated January 30, 2012 (Amended June 15, 2012), the following addendum is to be incorporated into all applicable award documents and any modifications issued after January 3, 2012:

Conferences and Meetings

The Contractor shall not use contract funds, (direct or indirect), to conduct meetings or conferences without prior written Contracting Officer approval.

Food including Meals, Light Refreshments and Beverages

The Contractor shall not use contract funds to conduct meetings or conferences without prior written Contracting Officer approval.

The use of contract funds to purchase food for meals, light refreshments, or beverages is expressly prohibited. Registration fees cannot be used to acquire food, light refreshments or beverages for NIH sponsored conferences or meetings.

NIH solicitations, funding opportunity announcements, contracts, and purchase orders for conferences or meeting space must specifically prohibit the inclusion of food and meals and state that food and meals are not to be provided and are an unallowable expense. In effect, when acquiring space to conduct conference meetings, the government may not accept food even if the space being offered would be the same cost with or without the food.

Promotional Items

The Contractor shall not use contract funds to purchase promotional items. Promotional items include, but are not limited to clothing and commemorative items such as pens, mugs/cups, folders/folios, lanyards, and conference bags that are sometimes provided to visitors, employees, grantees, or conference attendees. This includes items or tokens given to individuals as these are considered personal gifts for which contract funds may not be expended.

Printing and Publications

It is NIH's policy that printing and publication of hard copy materials be consistent with HHS and NIH missions, objectives and existing policies; represent the efficient and effective use of taxpayer funds; and withstand public scrutiny, while not creating barriers for the public in obtaining NIH information. Information should now be presumed to be provided in an electronic form, whenever practicable, permitted by law, and consistent with applicable records and retention requirements. The contractor should therefore limit the publication and printing of hard copy documents for internal and external use. This policy is in addition to existing statutory and regulatory requirements for Printing and Publications.

When the printing of hard copy documents is required in performance of the contract, the contractor shall adhere to the requirements of FAR Clause 52.204-4 Printed or Copied Double-Sided on Postconsumer Fiber Content Paper (May 2011) in solicitations and contracts.

Clauses Included in Full Text

1. HHSAR Clause 352.204-16, Prevention and Public Health Fund--Reporting Requirements (March 2012)
(*applicable for all solicitations and contracts funded in whole or in part with PPHF funds.*)

(a) Pursuant to Public Law 112-74, FY2012 Labor, HHS and Education Appropriations Act, Sec. 220, this contract requires the contractor to provide products and/or services that are funded from the Prevention and Public Health Fund (PPHF), Public Law 111-148, sec. 4002. Section 220(a)(5) requires each contractor to report on its use of these funds under this contract. These reports will be made available to the public.

(b) Semi-annual reports from the Contractor for all work funded, in whole or in part, by the PPHF, are due no later than 20 days following the end of each six-month period. The six-month reporting periods are January through June and July through December. The first report is due no later than 20 days after the end of the six-month period following contract award. Subsequent reports are due no later than 20 days after the end of each reporting period. If applicable, the Contractor shall submit its final report for the remainder of the contract period no later than 20 days after the end of the reporting period in which the contract ended.

(c) The Contractor shall provide the following information in an electronic and 508 compliant format to the Contracting Officer.

(1) The Government contract and order number, as applicable.

(2) The amount of PPHF funds invoiced by the contractor for the reporting period and the cumulative amount invoiced for the contract or order period.

(3) A list of all significant services performed or supplies delivered, including construction, for which the contractor invoiced in the reporting period.

(4) Program or project title, if any.

(5) The Contractor shall report any subcontract funded in whole or in part with PPHF funding, that is valued at \$25,000 or more. The Contractor shall advise the subcontractor that the information will be made available to the public. The Contractor shall report:

(i) Name and address of the subcontractor.

(ii) Amount of the subcontract award.

(iii) Date of the subcontract award.

(iv) A description of the products or services (including construction) being provided under the subcontract.

(End of clause)

2. HHSAR Clause **352.237-73, Non-Discrimination in Service Delivery** (March 2012).
(applicable in solicitations, contracts & orders to deliver services under HHS' programs directly to the public.)

It is the policy of the Department of Health and Human Services that no person otherwise eligible will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of HHS programs and services based on non-merit factors such as race, color, national origin, religion, sex, gender identity, sexual orientation, or disability (physical or mental). By acceptance of this contract, the contractor agrees to comply with this policy in supporting the program and in performing the services called for under this contract. The contractor shall include this clause in all subcontracts awarded under this contract for supporting or performing the specified program and services. Accordingly, the contractor shall ensure that each of its employees, and any sub-contractor staff, is made aware of, understands, and complies with this policy.

(End of Clause)

**Invoice and Payment Instructions
for Contracts and Awards Above the Micro-Purchase Threshold (MPT)
to be Paid via Governmentwide Commercial Purchase Card (GCPC)**

The following is applicable to all contracts and awards above the micro-purchase threshold where the Governmentwide Commercial Purchase Card (GCPC) will be used as the payment mechanism. All such awards will have an 18 digit award number and end in the letters "PC".

I. Invoice Requirements

- A. An invoice is the Contractor's bill or written request for payment under the contract for supplies delivered or services performed. Payment will be based on receipt of a proper invoice and satisfactory contract performance. A proper invoice must include the items listed in paragraphs A (1) through A (7) below. If the invoice does not comply with these requirements, the Contracting Officer will return it within 7 days after receipt (3 days for meat, meat food products, or fish; 5 days for perishable agricultural commodities, dairy products, edible fats or oils, and food products prepared from edible fats or oils), with the reasons why it is not a proper invoice.
1. Name and address of the contractor
 2. Invoice date and invoice number (Contractors should date invoices as close as possible to the date of mailing or transmission)
 3. Contract number or other authorization for supplies, delivered or services performed (including order number and contract line item number)
 4. Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed
 5. Shipping and payment terms (e.g., shipment number and date of shipment, discount for prompt payment terms) must be invoiced as stated on the award document
 6. Name (where practicable), title, phone number, mailing address and email address of person to notify in the event of a defective invoice.
 7. Name, mailing address, telephone number, and email address of contractor official to whom payment information (Governmentwide Commercial Purchase Card number) will be transmitted. Failure to provide this information may delay or prevent payment.
- B. Shipping costs will be reimbursed only if authorized by the contract. If authorized, shipping costs must be itemized. Where shipping costs exceed \$10.00, (except for shipments via USPS) the invoice must be supported by a bill of lading or a paid carrier's receipt.
- C. Submit an original itemized invoice to the Contracting Officer shown in Block 21 on the OF-347, or Block 18a on the SF-1449, or as specified in the order.
- D. The Contractor shall not process a charge to the Governmentwide Commercial Purchase Card until 1) the supplies have been shipped or the services performed; 2) the contractor has submitted an invoice; and 3) the Government cardholder has authorized payment in accordance with Block 16 on the OF-347 or Block 12 on the SF-1449.

- E. Do not include any purchase card information on any shipping documents/delivery tickets or other correspondence.

II. Invoice Payment

- A. The due date for making invoice payments by the designated payment office shall be the later of the following two events:
 - 1. The 30th day after the designated billing office has received a proper invoice.
 - 2. The 30th day after Government acceptance of supplies delivered or services performed.
- B. The due date for making invoice payments for meat and meat food products, fish, perishable agricultural commodities, dairy products, and edible fats or oils, shall be in accordance with the Prompt Payment Act, as amended.
- C. Agencies are encouraged to make payments to small businesses and all prime contractors as soon as practicable, with a goal of paying them within 15 days of receipt of a proper invoice. This temporary policy expires December 31, 2016 in accordance with OMB Memorandums M-12-16, M-13-15 and M-14-10 "Extension of Policy to Provide Accelerated Payment to Small Business Subcontractors".

III. FAR 52.232-40 - Providing Accelerated Payment to Small Business Subcontractors (December 2013)

- (a) Upon receipt of accelerated payments from the Government, the Contractor shall make accelerated payments to its small business subcontractors under this contract, to the maximum extent practicable and prior to when such payment is otherwise required under the applicable contract or subcontract, after receipt of a proper invoice and all other required documentation from the small business subcontractor.
- (b) The acceleration of payments under this clause does not provide any new rights under the Prompt Payment Act.
- (c) Include the substance of this clause; including this paragraph (c), in all subcontracts with small business concerns, including subcontracts with small business concerns for the acquisition of commercial items.

IV. FAR 52.232-36 - Payment by Third Party (May 2014)

(a) General.

- (1) Except as provided in paragraph (a)(2) of this clause, the Contractor agrees to accept payments due under this contract, through payment by a third party in lieu of payment directly from the Government, in accordance with the terms of this clause. The third party and, if applicable, the particular Governmentwide commercial purchase card to be used are identified elsewhere in this contract.

(2) The Governmentwide commercial purchase card is not authorized as a method of payment during any period the System for Award Management (SAM) indicates that the Contractor has delinquent debt that is subject to collection under the [Treasury Offset Program \(TOP\)](#). If the SAM subsequently indicates that the Contractor no longer has delinquent debt, the Contractor may request the Contracting Officer to authorize payment by Governmentwide commercial purchase card.

(b) Contractor payment request.

(1) Except as provided in paragraph (b)(2) of this clause, the Contractor shall make payment requests through a charge to the Government account with the third party, at the time and for the amount due in accordance with those clauses of this contract that authorize the Contractor to submit invoices, contract financing requests, other payment requests, or as provided in other clauses providing for payment to the Contractor.

(2) When the Contracting Officer has notified the Contractor that the Governmentwide commercial purchase card is no longer an authorized method of payment, the Contractor shall make such payment requests in accordance with instructions provided by the Contracting Officer during the period when the purchase card is not authorized.

(c) Payment. The Contractor and the third party shall agree that payments due under this contract shall be made upon submittal of payment requests to the third party in accordance with the terms and conditions of an agreement between the Contractor, the Contractor's financial agent (if any), and the third party and its agents (if any). No payment shall be due the Contractor until such agreement is made. Payments made or due by the third party under this clause are not payments made by the Government and are not subject to the Prompt Payment Act or any implementation thereof in this contract.

(d) Documentation. Documentation of each charge against the Government's account shall be provided to the Contracting Officer upon request.

(e) Assignment of claims. Notwithstanding any other provision of this contract, if any payment is made under this clause, then no payment under this contract shall be assigned under the provisions of the assignment of claims terms of this contract or the Assignment of Claims Act of 1940 (31 U.S.C. 3727, 41 U.S.C. 6305).

(f) Other payment terms. The other payment terms of this contract shall govern the content and submission of payment requests. If any clause requires information or documents in or with the payment request, that is not provided in the third party agreement referenced in paragraph (c) of this clause, the Contractor shall obtain instructions from the Contracting Officer before submitting such a payment request.