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\*\*\*\*(USE BELOW IN ALL CONTRACTS.)\*\*\*\*

#### ARTICLE I.4. ADDITIONAL FAR CONTRACT CLAUSES INCLUDED IN FULL TEXT

This contract incorporates the following clauses in full text.

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\*\*\*\*(USE BELOW IN ALL SOLICITATIONS AND CONTRACTS.)\*\*\*\*

##### a. FEDERAL ACQUISITION REGULATION (FAR) (48 CFR CHAPTER 1) CLAUSES

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\*\*\*\*(USE BELOW IN SOLICITATIONS AND CONTRACTS WHEN THE CONTRACTOR OR A SUBCONTRACTOR AT ANY TIER MAY HAVE FEDERAL CONTRACT INFORMATION RESIDING IN OR TRANSITING THROUGH ITS INFORMATION SYSTEM.)\*\*\*\*

#### 1. FAR Clause 52.204-21, **Basic Safeguarding of Covered Contractor Information Systems** (Nov 2021)

##### a. *Definitions.* As used in this clause--

"Covered Contractor information system" means an information system that is owned or operated by a Contractor that processes, stores, or transmits Federal contract information.

"Federal contract information" means information, not intended for public release, that is provided by or generated for the Government under a contract to develop or deliver a product or service to the Government, but not including information provided by the Government to the public (such as on public Web sites) or simple transactional information, such as necessary to process payments.

"Information" means any communication or representation of knowledge such as facts, data, or opinions, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual (Committee on National Security Systems Instruction (CNSSI) 4009).

"Information system" means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information (44 U.S.C. 3502).

"Safeguarding" means measures or controls that are prescribed to protect information systems.

b. Safeguarding requirements and procedures.

1. The Contractor shall apply the following basic safeguarding requirements and procedures to protect covered Contractor information systems. Requirements and procedures for basic safeguarding of covered Contractor information systems shall include, at a minimum, the following security controls:

i. Limit information system access to authorized users, processes acting on behalf of authorized users, or devices (including other information systems).

ii. Limit information system access to the types of transactions and functions that authorized users are permitted to execute.

iii. Verify and control/limit connections to and use of external information systems.

iv. Control information posted or processed on publicly accessible information systems.

v. Identify information system users, processes acting on behalf of users, or devices.

vi. Authenticate (or verify) the identities of those users, processes, or devices, as a prerequisite to allowing access to organizational information systems.

vii. Sanitize or destroy information system media containing Federal Contract Information before disposal or release for reuse.

viii. Limit physical access to organizational information systems, equipment, and the respective operating environments to authorized individuals.

ix. Escort visitors and monitor visitor activity; maintain audit logs of physical access; and control and manage physical access devices.

x. Monitor, control, and protect organizational communications (i.e., information transmitted or received by organizational information systems) at the external boundaries and key internal boundaries of the information systems.

xi. Implement subnetworks for publicly accessible system components that are physically or logically separated from internal networks.

xii. Identify, report, and correct information and information system flaws in a timely manner.

xiii. Provide protection from malicious code at appropriate locations within organizational information systems.

xiv. Update malicious code protection mechanisms when new releases are available.

xv. Perform periodic scans of the information system and real-time scans of files from external sources as files are downloaded, opened, or executed.

2. *Other requirements.* This clause does not relieve the Contractor of any other specific safeguarding requirements specified by Federal agencies and departments relating to covered Contractor information systems generally or other Federal safeguarding requirements for controlled unclassified information (CUI) as established by Executive Order 13556.

c. *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (c), in subcontracts under this contract (including subcontracts for the acquisition of commercial products, other than commercially available off-the-shelf items), in which the subcontractor may have Federal contract information residing in or transiting through its information system.

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\*\*\*\*(USE BELOW IN:

1. **SOLICITATIONS:** WHERE THE RESULTANT CONTRACT IS EXPECTED TO EXCEED \$500,000 AND
2. **CONTRACTS:** WHEN THE OFFEROR HAS CHECKED "**HAS**" CURRENT ACTIVE FEDERAL CONTRACTS AND GRANTS WITH A TOTAL VALUE GREATER THAN \$10,000,000 IN PARAGRAPH "b" OF THE PROVISION 52.209-7, Information Regarding Responsibility Matters.)\*\*\*\*

2. FAR Clause **52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters** (Oct 2018)

As prescribed in 9.104-7(c), insert the following clause:

- a) The Contractor shall update the information in the Federal Awardee Performance and Integrity Information System (FAPIIS) on a semi-annual basis, throughout the life of the contract, by posting the required

information in the System for Award Management (SAM) database at <https://sam.gov/content/home> .

- b) As required by section 3010 of the Supplemental Appropriations Act, 2010 (Pub. L. 111-212), all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available. FAPIIS consists of two segments--
1. The non-public segment, into which Government officials and the Contractor post information, which can only be viewed by--
    - i. Government personnel and authorized users performing business on behalf of the Government; or
    - ii. The Contractor, when viewing data on itself; and
  2. The publicly-available segment, to which all data in the non-public segment of FAPIIS is automatically transferred after a waiting period of 14 calendar days, except for--
    - i. Past performance reviews required by subpart 42.15;
    - ii. Information that was entered prior to April 15, 2011; or
    - iii. Information that is withdrawn during the 14-calendar-day waiting period by the Government official who posted it in accordance with paragraph (c)(1) of this clause.
- c) The Contractor will receive notification when the Government posts new information to the Contractor's record.
1. If the Contractor asserts in writing within 7 calendar days, to the Government official who posted the information, that some of the information posted to the non-public segment of FAPIIS is covered by a disclosure exemption under the Freedom of Information Act, the Government official who posted the information must within 7 calendar days remove the posting from FAPIIS and resolve the issue in accordance with agency Freedom of Information procedures, prior to reposting the releasable information. The Contractor must cite 52.209-9 and request removal within 7 calendar days of the posting to FAPIIS.
  2. The Contractor will also have an opportunity to post comments regarding information that has been posted by the Government. The comments will be retained as long as the associated information is retained, i.e., for a total period of 6 years. Contractor comments will remain a part of the record unless the Contractor revises them.
  3. As required by section 3010 of Pub. L. 111-212, all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available.

- d) Public requests for system information posted prior to April 15, 2011, will be handled under Freedom of Information Act procedures, including, where appropriate, procedures promulgated under E.O. 12600.

(End of clause)

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\*\*\*USE BELOW IN ALL SOLICITATIONS\*\*\*

3. FAR Clause **52.204-26, Covered Telecommunications Equipment or Services-Representation** (Oct 2020)

(a) *Definitions.* As used in this provision, "covered telecommunications equipment or services" and "reasonable inquiry" have the meaning provided in the clause [52.204-25](#), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) *Procedures.* The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (<https://www.sam.gov>) for entities excluded from receiving federal awards for "covered telecommunications equipment or services".

(c) (1) *Representation.* The Offeror represents that it  does,  does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument.

(2) After conducting a reasonable inquiry for purposes of this representation, the offeror represents that it  does,  does not use covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services.

(End of provision)

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\*\*\*\*(USE BELOW IN FIXED PRICE SUPPLY AND INDEFINITE DELIVERY NEGOTIATED SOLICITATIONS AND CONTRACTS WHEN THE CONDITIONS SPECIFIED IN 16.203-4(a)(1)(i) - (iii) APPLY [BUT SEE 16.203-4(a)(2)]. THE CLAUSE MAY BE MODIFIED BY INCREASING THE 10% LIMIT ON AGGREGATE INCREASES SPECIFIED IN SUBPARAGRAPH (c)(1), UPON APPROVAL OF THE CHIEF OF THE CONTRACTING OFFICE.)\*\*\*\*

4. FAR Clause **52.216-2, Economic Price Adjustment--Standard Supplies** (Nov 2021).
- a) The Contractor warrants that the unit price stated in the Schedule for \_\_\_\_\_ [offeror insert Schedule line item number] is not in excess of the Contractor's applicable established price in effect on the contract date for like quantities of the same item. The term "unit price" excludes any part of the price directly resulting from requirements for preservation, packaging, or packing beyond standard commercial practice. The term "established price" means a price that--
    - 1. Is an established catalog or market price for a commercial product sold in substantial quantities to the general public; and
    - 2. Is the net price after applying any standard trade discounts offered by the Contractor.
  - b) The Contractor shall promptly notify the Contracting Officer of the amount and effective date of each decrease in any applicable established price. Each corresponding contract unit price shall be decreased by the same percentage that the established price is decreased. The decrease shall apply to those items delivered on and after the effective date of the decrease in the Contractor's established price, and this contract shall be modified accordingly.
  - c) If the Contractor's applicable established price is increased after the contract date, the corresponding contract unit price shall be increased, upon the Contractor's written request to the Contracting Officer, by the same percentage that the established price is increased, and the contract shall be modified accordingly, subject to the following limitations:
    - 1. The aggregate of the increases in any contract unit price under this clause shall not exceed 10 percent of the original contract unit price.
    - 2. The increased contract unit price shall be effective--
      - i. On the effective date of the increase in the applicable established price if the Contracting Officer receives the Contractor's written request within 10 days thereafter; or
      - ii. If the written request is received later, on the date the Contracting Officer receives the request.
    - 3. The increased contract unit price shall not apply to quantities scheduled under the contract for delivery before the effective date of the increased contract unit price, unless failure to deliver before that date results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the Default clause.

4. No modification increasing a contract unit price shall be executed under this paragraph (c) until the Contracting Officer verifies the increase in the applicable established price.
  5. Within 30 days after receipt of the Contractor's written request, the Contracting Officer may cancel, without liability to either party, any undelivered portion of the contract items affected by the requested increase.
- d) During the time allowed for the cancellation provided for in paragraph (c)(5) of this clause, and thereafter if there is no cancellation, the Contractor shall continue deliveries according to the contract delivery schedule, and the Government shall pay for such deliveries at the contract unit price, increased to the extent provided by paragraph (c) of this clause.

(End of clause)

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\*\*\*\*(USE BELOW IN FIXED PRICE SUPPLY NEGOTIATED SOLICITATIONS AND CONTRACTS WHEN THE CONDITIONS SPECIFIED IN 16.203-4(b)(1)(i) - (iii) APPLY [BUT SEE 16.203-4(b)(1)(i)]. THE CLAUSE MAY BE MODIFIED BY INCREASE THE 10% LIMIT ON AGGREGATE INCREASE SPECIFIED IN SUBPARAGRAPH (c)(1), UPON APPROVAL OF THE CHIEF OF THE CONTRACTING OFFICE.)\*\*\*\*

5. FAR Clause **52.216-3, Economic Price Adjustment--Semistandard Supplies**  
(Nov 2021)
- a) The Contractor warrants that the supplies identified as line items \_\_\_\_\_ [offeror insert Schedule line item number] in the Schedule are, except for modifications required by the contract specifications, supplies for which it has an established price. The term "established price" means a price that (1) is an established catalog or market price for a commercial product sold in substantial quantities to the general public, and (2) is the net price after applying any standard trade discounts offered by the Contractor. The Contractor further warrants that, as of the date of this contract, any difference between the unit prices stated in the contract for these line items and the Contractor's established prices for like quantities of the nearest commercial equivalents are due to compliance with contract specifications and with any contract requirements for preservation, packaging, and packing beyond standard commercial practice.
  - b) The Contractor shall promptly notify the Contracting Officer of the amount and effective date of each decrease in any applicable established price. Each corresponding contract unit price (exclusive of any part of the unit price that

reflects modifications resulting from compliance with specifications or with requirements for preservation, packaging, and packing beyond standard commercial practice) shall be decreased by the same percentage that the established price is decreased. The decrease shall apply to those items delivered on and after the effective date of the decrease in the Contractor's established price, and this contract shall be modified accordingly.

- c) If the Contractor's applicable established price is increased after the contract date, the corresponding contract unit price (exclusive of any part of the unit price resulting from compliance with specifications or with requirements for preservation, packaging, and packing beyond standard commercial practice) shall be increased, upon the Contractor's written request to the Contracting Officer, by the same percentage that the established price is increased, and the contract shall be modified accordingly, subject to the following limitations:
1. The aggregate of the increases in any contract unit price under this clause shall not exceed 10 percent of the original contract unit price.
  2. The increased contract unit price shall be effective--
    - i. On the effective date of the increase in the applicable established price if the Contracting Officer receives the Contractor's written request within 10 days thereafter; or
    - ii. If the written request is received later, on the date the Contracting Officer receives the request.
  3. The increased contract unit price shall not apply to quantities scheduled under the contract for delivery before the effective date of the increased contract unit price, unless failure to deliver before that date results from causes beyond the control and without the fault or negligence of the Contractor, within the meaning of the Default clause.
  4. No modification increasing a contract unit price shall be executed under this paragraph (c) until the Contracting Officer verifies the increase in the applicable established price.
  5. Within 30 days after receipt of the Contractor's written request, the Contracting Officer may cancel, without liability to either party, any undelivered portion of the contract items affected by the requested increase.



- d) During the time allowed for the cancellation provided for in paragraph (c)(5) of this clause, and thereafter if there is no cancellation, the Contractor shall continue deliveries according to the contract delivery schedule, and the Government shall pay for such deliveries at the contract unit price, increased to the extent provided by paragraph (c) of this clause.

(End of clause)

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\*\*\*\*(USE BELOW IN INDEFINITE DELIVERY, DEFINITE-QUANTITY, REQUIREMENTS, OR INDEFINITE-QUANTITY RFPs AND CONTRACTS.

**ADDITIONAL INFORMATION TO COMPLETE THIS ITEM:**

- **Subparagraph a:** Insert the dates for the timeframe that orders may be issued under the contract. Note: In accordance with FAR 16.505(a)(2) orders can only be issued within the period of performance of the contract.)\*\*\*\*

6. FAR Clause **52.216-18, Ordering** (Aug 2020).

- a) Any supplies and services to be furnished under this contract shall be ordered by issuance of delivery orders or task orders by the individuals or activities designated in the Schedule. Such orders may be issued from \_\_\_\_\_ through \_\_\_\_\_ .
- b) All delivery orders or task orders are subject to the terms and conditions of this contract. In the event of conflict between a delivery order or task order and this contract, the contract shall control.
- c) If mailed, a delivery order or task order is considered "issued" when the Government deposits the order in the mail. Orders may be issued orally, by facsimile, or by electronic commerce methods only if authorized in the Schedule.

(End of clause)

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\*\*\*\*(USE BELOW [OR WORDS SUBSTANTIALLY THE SAME] IN INDEFINITE DELIVERY, DEFINITE-QUANTITY, REQUIREMENTS, OR INDEFINITE-QUANTITY SOLICITATIONS AND CONTRACTS.)\*\*\*\*

7. FAR Clause **52.216-19, Order Limitations** (Oct 1995)

- a) **Minimum Order.** When the Government requires supplies or services covered by this contract in an amount of less than \_\_\_\_\_ [insert dollar figure or quantity], the Government is not obligated to purchase, nor is

the Contractor obligated to furnish, those supplies or services under the contract.

- b) **Maximum Order.** The Contractor is not obligated to honor--
1. Any order for a single item in excess of \_\_\_\_\_ [insert dollar figure or quantity].
  2. Any order for a combination of items in excess of \_\_\_\_\_ [insert dollar figure or quantity]; or
  3. A series of orders from the same ordering office within \_ days that together call for quantities exceeding the limitation in subparagraph (1) or (2) above.
- c) If this is a requirements contract (i.e., includes the Requirements clause at subsection 52.216-21 of the Federal Acquisition Regulation (FAR)), the Government is not required to order a part of any one requirement from the Contractor if that requirement exceeds the maximum-order limitations in paragraph (b) above.
- d) Notwithstanding paragraphs (b) and (c) above, the Contractor shall honor any order exceeding the maximum order limitations in paragraph (b), unless that order (or orders) is returned to the ordering office within \_ days after issuance, with written notice stating the Contractor's intent not to ship the item (or items) called for and the reasons. Upon receiving this notice, the Government may acquire the supplies or services from another source.

(End of clause)

\*\*\*\*(USE BELOW IN INDEFINITE DELIVERY, REQUIREMENTS SOLICITATIONS AND CONTRACTS.

**ADDITIONAL INFORMATION TO COMPLETE THIS ITEM:**

- **Subparagraph f:** Insert an end date for required Contractor deliveries.
- **Note:** *Make sure allow sufficient time for the Government to receive all deliverables from orders issued within the period of performance of the contract .*

**ADDITIONAL INFORMATION ABOUT THIS ITEM:**

1. **Use with Alternate I:** If the contract is for nonpersonal services and related supplies and covers estimated requirements that exceed a specific Government activity's internal capability to produce or perform.
2. **Use with Alternate II:** If the contract includes subsistence for both Government use and resale in the same Schedule, and similar products may be acquired on a brand-name basis.
3. **Use with Alternate III:** If the contract involves a partial small business set-aside.
4. **Use with Alternate IV:** If the contract includes subsistence for both Government use and resale in the same schedule and similar products may be acquired on a brand-name basis and involves a partial small business set aside.)\*\*\*\*

8. FAR Clause **52.216-21, Requirements** (Oct 1995).

- a) This is a requirements contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies or services specified in the Schedule are estimates only and are not purchased by this contract. Except as this contract may otherwise provide, if the Government's requirements do not result in orders in the quantities described as "estimated" or "maximum" in the Schedule, that fact shall not constitute the basis for an equitable price adjustment.
- b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. Subject to any limitations in the Order Limitations clause or elsewhere in this contract, the Contractor shall furnish to the Government all supplies or services specified in the Schedule and called for by orders issued in accordance with the Ordering clause. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.
- c) Except as this contract otherwise provides, the Government shall order from the Contractor all the supplies or services specified in the Schedule that are required to be purchased by the Government activity or activities specified in the Schedule.

- d) The Government is not required to purchase from the Contractor requirements in excess of any limit on total orders under this contract.
- e) If the Government urgently requires delivery of any quantity of an item before the earliest date that delivery may be specified under this contract, and if the Contractor will not accept an order providing for the accelerated delivery, the Government may acquire the urgently required goods or services from another source.
- f) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after \_\_\_\_\_.

(End of clause)

**Alternate I** (Apr 1984) [is not/is] applicable to this contract.

**Alternate II** (Apr 1984) [is not/not] applicable to this contract.

**Alternate III** (Oct1995) [is not/is] applicable to this contract.

**Alternate IV** (Oct 1995) [is not/is] applicable to this contract.

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\*\*\*\*(USE BELOW IN INDEFINITE DELIVERY, INDEFINITE QUANTITY SOLICITATIONS AND CONTRACTS.

**ADDITIONAL INFORMATION TO COMPLETE THIS ITEM:**

- **Subparagraph d:** Insert an end date for required Contractor deliveries.
  - **Note:** *Make sure allow sufficient time for the Government to receive all deliverables from orders issued within the period of performance of the contract*
- .)\*\*\*\*

9. FAR Clause **52.216-22, Indefinite Quantity** (Oct 1995)

- a) This is an indefinite-quantity contract for the supplies or services specified, and effective for the period stated, in the Schedule. The quantities of supplies and services specified in the Schedule are estimates only and are not purchased by this contract.
- b) Delivery or performance shall be made only as authorized by orders issued in accordance with the Ordering clause. The Contractor shall

furnish to the Government, when and if ordered, the supplies or services specified in the Schedule up to and including the quantity designated in the Schedule as the "maximum." The Government shall order at least the quantity of supplies or services designated in the Schedule as the "minimum."

- c) Except for any limitations on quantities in the Order Limitations clause or in the Schedule, there is no limit on the number of orders that may be issued. The Government may issue orders requiring delivery to multiple destinations or performance at multiple locations.
- d) Any order issued during the effective period of this contract and not completed within that period shall be completed by the Contractor within the time specified in the order. The contract shall govern the Contractor's and Government's rights and obligations with respect to that order to the same extent as if the order were completed during the contract's effective period; provided, that the Contractor shall not be required to make any deliveries under this contract after \_\_\_\_\_ .

(End of clause)

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\*\*\*\*(USE BELOW WHEN THE CONTRACT INCLUDES AN OPTION AND IT IS NECESSARY TO INCLUDE: 1) A REQUIREMENT THAT THE GOVERNMENT SHALL GIVE THE CONTRACTOR A PRELIMINARY WRITTEN NOTICE OF ITS INTENT TO EXTEND THE CONTRACT; 2) A STIPULATION THAT AN EXTENSION OF THE OPTION; AND/OR, 3) A SPECIFIED LIMITATION ON THE TOTAL DURATION OF THE CONTRACT.

**ADDITIONAL INFORMATION TO COMPLETE THIS ITEM:**

- **Subparagraph a:**
  - **First text box:** Insert the period of time within which the Contracting Officer may exercise the option.
  - **Second text box:** If you intend to notify the Contractor of the Government's intent to exercise its option 60 days prior to contract expiration, leave this box blank, otherwise insert the number of days you intend to notify the contractor.
- **Subparagraph c:** Insert the number of months or years (as applicable) of total duration of the contract, including the exercise of any options.)\*\*\*\*

10. FAR Clause **52.217-9, Option to Extend the Term of the Contract** (Mar 2000).

- a) The Government may extend the term of this contract by written notice to the Contractor within \_\_\_\_\_ [INSERT THE PERIOD OF TIME WITHIN

WHICH THE CONTRACTING OFFICER MAY EXERCISE THE OPTION]; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least \_\_\_\_\_ days [60 days unless a different number of days is inserted] before the contract expires. The preliminary notice does not commit the Government to an extension.

- b) If the Government exercises this option, the extended contract shall be considered to include this option clause.
- c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed \_\_\_\_\_ [MONTHS/YEARS].

(End of clause)

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\*\*\*\*(USE BELOW IN SOLICITATIONS AND CONTRACTS FOR SUPPLIES WHICH ARE, OR WHICH CONTAIN:

- RADIOACTIVE MATERIAL REQUIRING SPECIFIC LICENSING UNDER REGULATIONS ISSUED PURSUANT TO THE ATOMIC ENERGY ACT OF 1954; OR
- RADIOACTIVE MATERIAL NOT REQUIRING SPECIFIC LICENSING IN WHICH THE SPECIFIC ACTIVITY IS GREATER THAN 0.002 MICROCURIES PER GRAM OR THE ACTIVITY PER ITEM EQUALS OR EXCEEDS 0.01 MICROCURIES.

SUCH SUPPLIES INCLUDE, BUT ARE NOT LIMITED TO, AIRCRAFT, AMMUNITION, MISSILES, VEHICLES, ELECTRONIC TUBES, INSTRUMENT PANEL GAUGES, COMPASSES AND IDENTIFICATION MARKERS.

**ADDITIONAL INSTRUCTIONS TO COMPLETE THIS ITEM :**

- **Subparagraph a:** The Contracting Officer shall insert the number of days required in advance of delivery of the item or completion of the servicing to assure that required licenses are obtained and appropriate personnel are notified to institute any necessary safety and health precautions. See FAR 23.601(d).\*\*\*\*

11. FAR Clause **52.223-7, Notice of Radioactive Materials** (Jan 1997)

- a) The Contractor shall notify the Contracting Officer or designee, in writing, \_\_\_\_\_ days prior to completion of any servicing required by this contract of, items containing either (1) radioactive material requiring specific licensing under the regulations issued pursuant to the Atomic Energy Act of 1954, as amended, as set forth in Title 10 of the Code of Federal Regulations, in effect on the date of this contract, or (2) other radioactive material not requiring specific licensing in which the specific activity is greater than 0.002 microcuries per gram or the activity per item

equals or exceeds 0.01 microcuries. Such notice shall specify the part or parts of the items which contain radioactive materials, a description of the materials, the name and activity of the isotope, the manufacturer of the materials, and any other information known to the Contractor which will put users of the items on notice as to the hazards involved (OMB No. 9000-0107).

- b) If there has been no change affecting the quantity of activity, or the characteristics and composition of the radioactive material from deliveries under this contract or prior contracts, the Contractor may request that the Contracting Officer or designee waive the notice requirement in paragraph (a) of this clause. Any such request shall-
  - 1. Be submitted in writing;
  - 2. State that the quantity of activity, characteristics, and composition of the radioactive material have not changed; and
  - 3. Cite the contract number on which the prior notification was submitted and the contracting office to which it was submitted.
- c) All items, parts, or subassemblies which contain radioactive materials in which the specific activity is greater than 0.002 microcuries per gram or activity per item equals or exceeds 0.01 microcuries, and all containers in which such items, parts or subassemblies are delivered to the Government shall be clearly marked and labeled as required by the latest revision of MIL-STD 129 in effect on the date of the contract.
- d) This clause, including this paragraph (d), shall be inserted in all subcontracts for radioactive materials meeting the criteria in paragraph (a) of this clause.

(End of clause)

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****(USE BELOW IN SOLICITATIONS AND CONTRACTS EXCEEDING \$150,000 THAT ARE FOR, OR SPECIFY THE USE OF EPA DESIGNATED ITEMS CONTAINING RECOVERED MATERIALS.)****
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**13. FAR Clause 52.223-9, Estimate of Percentage of Recovered Material Content for EPA Designated Items (May 2008)**

- a) *Definitions.* As used in this clause --  
*Postconsumer material* means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Postconsumer material is a part of the broader category of "recovered material."

*Recovered material* means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process.

- b) The Contractor, on completion of this contract, shall--
1. Estimate the percentage of the total recovered material content for EPA-designated item(s) delivered and/or used in contract performance, including, if applicable, the percentage of post-consumer material content; and
  2. Submit this estimate to \_\_\_\_\_ [ *Contracting Officer complete in accordance with agency procedures* ].

(End of clause)

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\*\*\*\*(USE BELOW IN SOLICITATIONS AND CONTRACTS THAT CONTAIN FAR Clause 52.223-9, ABOVE, IF TECHNICAL PERSONNEL ADVISE THAT ESTIMATES CAN BE VERIFIED.)\*\*\*\*

13. **Alternate I** (May 2008), FAR Clause 52.223-9, **Estimate of Percentage of Recovered Material Content for EPA-Designated Items** (May 2008).

As prescribed in 23.406(d), redesignate paragraph (b) of the basic clause as paragraph (c) and add the following paragraph (b) to the basic clause:

b) The Contractor shall execute the following certification required by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6962(i)(2)(C)):

**Certification**

I, \_\_\_\_\_ (name of certifier), am an officer or employee responsible for the performance of this contract and hereby certify that the percentage of recovered material content for EPA-designated items met the applicable contract specifications or other contractual requirements.

\_\_\_\_\_  
(Signature of the Officer or Employee)

\_\_\_\_\_  
(Typed Name of the Officer or Employee)



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(Title)

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(Name of Company, Firm, or Organization)

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(Date)

(End of certification)

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\*\*\*\* (USE BELOW WHEN THE SOLICITATIONS AND CONTRACTS, *EXCEPT FOR CONTRACTS FOR SUPPLIES THAT WILL BE DELIVERED OUTSIDE OF THE UNITED STATES AND ITS OUTLYING AREAS, OR CONTRACTS FOR SERVICES THAT WILL BE PERFORMED OUTSIDE OF THE UNITED STATES AND ITS OUTLYING AREAS* FOR REFRIGERATION EQUIPMENT; AIR CONDITIONING EQUIPMENT; CLEAN AGENT FIRE SUPPRESSION SYSTEMS/EQUIPMENT; BULK REFRIGERANTS AND FIRE SUPPRESSANTS; SOLVENTS, DUSTERS, FREEZING COMPOUNDS, MOLD RELEASE AGENTS, AND ANY OTHER MISCELLANEOUS CHEMICAL SPECIALTY THAT MAY CONTAIN CONTEMPLATING SUBSTANCES OR HIGH GLOBAL WARMING POTENTIAL HYDROFLUOROCARBONS; CORROSION PREVENTION COMPOUNDS, FOAM SEALANTS, AEROSOL MOLD RELEASE AGENTS, AND ANY OTHER PRESERVATIVE OR SEALING COMPOUND THAT MAY CONTAIN CONTEMPLATING SUBSTANCES OR HIGH GLOBAL WARMING POTENTIAL HYDROFLUOROCARBONS; FLUOROCARBON LUBRICANTS (PRIMARILY AEROSOLS); AND ANY OTHER MANUFACTURED END PRODUCTS THAT MAY CONTAIN OR BE MANUFACTURED WITH CONTEMPLATING SUBSTANCES.\*\*\*\*

15. FAR Clause **52.223-11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons** (Jun 2016).

a) Definitions. As used in this clause--

"Global warming potential" means how much a given mass of a chemical contributes to global warming over a given time period compared to the same mass of carbon dioxide. Carbon Dioxide's global warming potential is defined as 1.0.

"High global warming potential hydrofluorocarbons" means any hydrofluorocarbons in a particular end use for which EPA's Significant New Alternatives Policy (SNAP) program has identified other acceptable alternatives that have lower global warming potential. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables of alternatives available at (<http://www.epa.gov/snap/>).

"Hydrofluorocarbons" means compounds that only contain hydrogen, fluorine, and carbon.

"Ozone-depleting substance" means any substance the Environmental Protection Agency designates in 40 CFR Part 82 as--

1. Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or
2. Class II, including, but not limited to hydrochlorofluorocarbons.

- b) The Contractor shall label products which contain or are manufactured with ozone-depleting substances in the manner and to the extent required by 42 U.S.C. 7671j (b), (c), (d), and (e) and 40 CFR Part 82, Subpart E, as follows:

Warning

Contains (or manufactured with, if applicable) \* \_\_\_\_\_, a substance(s) which harm(s) public health and environment by destroying ozone in the upper atmosphere.

\* The Contractor shall insert the name of the substance(s).

- c) *Reporting* . For equipment and appliances that normally each contain 50 or more pounds of hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons, the Contractor shall-
1. Track on an annual basis, between October 1 and September 30, the amount in pounds of hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons contained in the equipment and appliances delivered to the Government under this contract by-
    - i. Type of hydrofluorocarbon (e.g., HFC-134a, HFC-125, R-410A, R-404A, etc.);
    - ii. Contract number; and
    - iii. Equipment/appliance;
  2. Report that information to the Contracting Officer for FY16 and to <https://sam.gov/content/home> , for FY17 and after -
    - i. Annually by November 30 of each year during contract performance; and
    - ii. At the end of contract performance.
- d) The Contractor shall refer to EPA's SNAP program (available at <http://www.epa.gov/snap> ) to identify alternatives. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables available at <http://www.epa.gov/snap> .

(End of clause)

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\*\*\*\*(USE BELOW IN SOLICITATIONS AND CONTRACTS, EXCEPT FOR CONTRACTS FOR SUPPLIES THAT WILL BE DELIVERED OUTSIDE OF THE UNITED STATES AND ITS OUTLYING AREAS, OR CONTRACTS FOR SERVICES THAT WILL BE PERFORMED OUTSIDE OF THE UNITED STATES AND ITS OUTLYING AREAS, FOR PRODUCTS THAT MAY CONTAIN HIGH GLOBAL WARMING POTENTIAL HYDROFLUOROCARBONS AS A PROPELLANT, OR AS A SOLVENT; OR THAT INVOLVE MAINTENANCE OR REPAIR OF ELECTRONIC OR MECHANICAL DEVICES.)\*\*\*\*

15. FAR Clause **52.223-20, Aerosols** (Jun 2016).

a. *Definitions* . As used in this clause--

"Global warming potential" means how much a given mass of a chemical contributes to global warming over a given time period compared to the same mass of carbon dioxide. Carbon dioxide's global warming potential is defined as 1.0.

"High global warming potential hydrofluorocarbons" means any hydrofluorocarbons in a particular end use for which EPA's Significant New Alternatives Policy (SNAP) program has identified other acceptable alternatives that have lower global warming potential. The SNAP list of alternatives is found at 40 CFR part 82, subpart G. with supplemental tables of alternatives available at <http://www.epa.gov/snap/>.

"Hydrofluorocarbons" means compounds that contain only hydrogen, fluorine, and carbon.

b. Unless otherwise specified in the contract, the Contractor shall reduce its use, release, or emissions of high global warming potential hydrofluorocarbons, when feasible, from aerosol propellants or solvents under this contract. When determining feasibility of using a particular alternative, the Contractor shall consider environmental, technical, and economic factors such as--

1. In-use emission rates, energy efficiency;
2. Safety, such as flammability or toxicity;
3. Ability to meet technical performance requirements; and

4. Commercial availability at a reasonable cost.

c. The Contractor shall refer to EPA's SNAP program to identify alternatives. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables available at <http://www.epa.gov/snap/> .

(End of clause)

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\*\*\*\*(USE BELOW IN SOLICITATIONS AND CONTRACTS, EXCEPT FOR CONTRACTS FOR SUPPLIES THAT WILL BE DELIVERED OUTSIDE OF THE UNITED STATES AND ITS OUTLYING AREAS, OR CONTRACTS FOR SERVICES THAT WILL BE PERFORMED OUTSIDE OF THE UNITED STATES AND ITS OUTLYING AREAS, FOR PRODUCTS THAT MAY CONTAIN HIGH GLOBAL WARMING POTENTIAL HYDROFLUOROCARBONS OR REFRIGERANT BLENDS CONTAINING HYDROFLUOROCARBONS AS A FOAM BLOWING AGENT.)\*\*\*\*

16. FAR Clause **52.223-21, Foams** (Jun 2016)

a. *Definitions.* As used in this clause--

"Global warming potential" means how much a given mass of a chemical contributes to global warming over a given time period compared to the same mass of carbon dioxide. Carbon dioxide's global warming potential is defined as 1.0.

"High global warming potential hydrofluorocarbons" means any hydrofluorocarbons in a particular end use for which EPA's Significant New Alternatives Policy (SNAP) program has identified other acceptable alternatives that have lower global warming potential. The SNAP list of alternatives is found at 40 CFR part 82, subpart G. with supplemental tables of alternatives available at <http://www.epa.gov/snap/>.

"Hydrofluorocarbons" means compounds that contain only hydrogen, fluorine, and carbon.

b. Unless otherwise specified in the contract, the Contractor shall reduce its use, release, and emissions of high global warming potential hydrofluorocarbons and refrigerant blends containing hydrofluorocarbons, when feasible, from foam blowing agents, under this contract. When determining feasibility of using a particular alternative, the Contractor shall consider environmental, technical, and economic factors such as--

1. In-use emission rates, energy efficiency, and safety;
2. Ability to meet performance requirements; and;
3. Commercial availability at a reasonable cost.

c. The Contractor shall refer to EPA's SNAP program to identify alternatives. The SNAP list of alternatives is found at 40 CFR part 82, subpart G, with supplemental tables available at <http://www.epa.gov/snap/>.

(End of clause)

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**** (USE BELOW IN SOLICITATIONS AND CONTRACTS ABOVE THE MICRO-PURCHASE THRESHOLD. <b>Note:</b> <i>The Contracting Officer must include in contracts via bi-lateral modification.</i> )****
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17. FAR Clause 52.223-99, **ENSURING ADEQUATE COVID-19 SAFETY PROTOCOLS FOR FEDERAL CONTRACTORS (DEVIATION)** (Oct 2021)

(a) *Definition.* As used in this clause –

*United States or its outlying areas* means—

- (1) The fifty States;
- (2) The District of Columbia;
- (3) The commonwealths of Puerto Rico and the Northern Mariana Islands;
- (4) The territories of American Samoa, Guam, and the United States Virgin Islands; and
- (5) The minor outlying islands of Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Palmyra Atoll, and Wake Atoll.

(b) *Authority.* This clause implements Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors, dated September 9, 2021 (published in the *Federal Register* on September 14, 2021, 86 FR 50985).

(c) *Compliance.* The Contractor shall comply with all guidance, including guidance conveyed through Frequently Asked Questions, as amended during the performance of this contract, for Contractor or subcontractor workplace locations

published by the Safer Federal Workforce Task Force (Task Force Guidance) at <https://www.saferfederalworkforce.gov/contractors/> .

(d) *Subcontracts*. The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts at any tier that exceed the simplified acquisition threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award, and are for services, including construction, performed in whole or in part within the United States or its outlying areas.

(End of clause)

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\*\*\*\*(WHEN USING FUNDS **OTHER THAN** RECOVERY ACT FUNDS, USE BELOW IN SOLICITATIONS AND CONTRACTS FOR CONSTRUCTION PERFORMED IN THE UNITED STATES AND VALUED AT LESS THAN \$7,008,000. **Note:** *The Contracting Officer must list all foreign construction material excepted from the requirements of the Buy American statute in paragraph (b)(2) .*\*\*\*\*

18. FAR Clause **52.225-9, Buy American--Construction Materials** (Nov 2021)

(a) *Definitions*. As used in this clause—

*Commercially available off-the-shelf (COTS) item—*

(1) Means any item of supply (including construction material) that is—

(i) A commercial product (as defined in paragraph (1) of the definition of “commercial product” at Federal Acquisition Regulation (FAR) [2.101](#));

(ii) Sold in substantial quantities in the commercial marketplace; and

(iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and

(2) Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

"Construction material" means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation

systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

*Cost of components means—*

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

*Domestic construction material means—*

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both-

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if-

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of foreign iron and steel constitutes less than 5 percent of the cost of all components used in such construction material. The cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the construction material and a good faith

estimate of the cost of all foreign iron or steel components excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of "cost of components".

*Fastener* means a hardware device that mechanically joins or affixes two or more objects together. Examples of fasteners are nuts, bolts, pins, rivets, nails, clips, and screws.

*Foreign construction material* means a construction material other than a domestic construction material.

*Foreign iron and steel* means iron or steel products not produced in the United States. Produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, from the initial melting stage through the application of coatings, except metallurgical processes involving refinement of steel additives. The origin of the elements of the iron or steel is not relevant to the determination of whether it is domestic or foreign.

*Predominantly of iron or steel or a combination of both* means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

*Steel* means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

"United States" means the 50 States, the District of Columbia, and outlying areas.

b) Domestic preference. (1) This clause implements [41 U.S.C. chapter 83](#), Buy American, by providing a preference for domestic construction material. In accordance with [41 U.S.C. 1907](#), the domestic content test of the Buy American statute is waived for construction material that is a COTS item, except that for construction material that consists wholly or predominantly of iron or steel or a combination of both, the domestic content test is applied only to the iron and steel content of the construction materials, excluding COTS fasteners. (See FAR [12.505\(a\)\(2\)](#)). The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraphs (b)(2) and (b)(3) of this clause.



(2) This requirement does not apply to information technology that is a commercial product or to the construction materials or components listed by the Government as follows:

\_\_\_\_\_ [Contracting Officer  
to list applicable excepted materials or indicate "none"]

(3) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(2) of this clause if the Government determines that-

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the requirements of the Buy American statute is unreasonable when the cost of such material exceeds the cost of foreign material by more than 20 percent;

(ii) The application of the restriction of the Buy American statute to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American statute.  
(1) (i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(3) of this clause shall include adequate information for Government evaluation of the request, including-

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American statute applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(3)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American statute applies, use of foreign construction material is noncompliant with the Buy American statute.

(d) *Data*. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

**FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON**

<b>Construction Material Description</b>	<b>Unit of Measure</b>	<b>Quantity</b>	<b>Price (dollars)*</b>
Item 1			
Foreign construction material			
Domestic construction material			
Item 2			
Foreign construction material			

Construction Material Description	Unit of Measure	Quantity	Price (dollars)*
Domestic construction material			

[\* Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued)].

[List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

(End of clause)

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\*\*\*\*(WHEN USING FUNDS **OTHER THAN** RECOVERY ACT FUNDS, USE BELOW IN SOLICITATIONS AND CONTRACTS FOR CONSTRUCTION PERFORMED IN THE UNITED STATES AND VALUED AT \$7,008,000 OR MORE. **Note:** *The Contracting Officer must list in paragraph (b)(3) of the clause, all foreign construction material excepted from the requirements of the Buy American statute, other than designated country construction material .*)\*\*\*\*

19. FAR Clause **52.225-11, Buy American--Construction Materials Under Trade Agreements** (Nov 2021)

(a) *Definitions.* As used in this clause—

*Caribbean Basin country construction material* means a construction material that—

- (1) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different construction material distinct from the materials from which it was transformed.

*Commercially available off-the-shelf (COTS) item*—

- (1) Means any item of supply (including construction material) that is—
  - (i) A commercial product (as defined in paragraph (1) of the definition at Federal Acquisition Regulation (FAR) [2.101](#));

- (ii) Sold in substantial quantities in the commercial marketplace; and
  - (iii) Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
- (2) Does not include bulk cargo, as defined in [46 U.S.C.40102\(4\)](#), such as agricultural products and petroleum products.

*Component* means an article, material, or supply incorporated directly into a construction material.

*Construction material* means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site. Materials purchased directly by the Government are supplies, not construction material.

*Cost of components* means—

(1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the construction material (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or

(2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the construction material.

*Designated country* means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, Ukraine, or United Kingdom);

(2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

"Designated country construction material" means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

*Domestic construction material* means—

(1) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both-

(i) An unmanufactured construction material mined or produced in the United States; or

(ii) A construction material manufactured in the United States, if—

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 55 percent of the cost of all its components. Components of foreign origin of the same class or kind for which nonavailability determinations have been made are treated as domestic. Components of unknown origin are treated as foreign; or

(B) The construction material is a COTS item; or

(2) For construction material that consists wholly or predominantly of iron or steel or a combination of both, a construction material manufactured in the United States if the cost of foreign iron and steel constitutes less than 5 percent of the cost of all components used in such construction material. The cost of foreign iron and steel includes but is not limited to the cost of foreign iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the construction material and a good faith estimate of

the cost of all foreign iron or steel components excluding COTS fasteners. Iron or steel components of unknown origin are treated as foreign. If the construction material contains multiple components, the cost of all the materials used in such construction material is calculated in accordance with the definition of "cost of components".

*Fastener* means a hardware device that mechanically joins or affixes two or more objects together. Examples of fasteners are nuts, bolts, pins, rivets, nails, clips, and screws.

*Foreign construction material* means a construction material other than a domestic construction material.

*Foreign iron and steel* means iron or steel products not produced in the United States. Produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, from the initial melting stage through the application of coatings, except metallurgical processes involving refinement of steel additives. The origin of the elements of the iron or steel is not relevant to the determination of whether it is domestic or foreign.

*Free Trade Agreement country construction material* means a construction material that-

(1) Is wholly the growth, product, or manufacture of a Free Trade Agreement (FTA) country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a FTA country into a new and different construction material distinct from the materials from which it was transformed.

*Least developed country construction material* means a construction material that-

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

*Predominantly of iron or steel or a combination of both* means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components excluding COTS fasteners.

*Steel* means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

*United States* means the 50 States, the District of Columbia, and outlying areas.

*WTO GPA country construction material* means a construction material that-

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) Construction materials. (1) This clause implements [41 U.S.C. chapter 83](#), Buy American, by providing a preference for domestic construction material. In accordance with [41 U.S.C. 1907](#), the domestic content test of the Buy American statute is waived for construction material that is a COTS item, except that for construction material that consists wholly or predominantly of iron or steel or a combination of both, the domestic content test is applied only to the iron and steel content of the construction material, excluding COTS fasteners. (See FAR [12.505\(a\)\(2\)](#)). In addition, the Contracting Officer has determined that the WTO GPA and Free Trade Agreements (FTAs) apply to this acquisition. Therefore, the Buy American restrictions are waived for designated country construction materials.

(2) The Contractor shall use only domestic or designated country construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to information technology that is a commercial product or to the construction materials or components listed by the Government as follows:

*[Contracting Officer to list applicable excepted materials or indicate "none"]*

(4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that-

(i) The cost of domestic construction material would be unreasonable. The cost of a particular domestic construction material subject to the restrictions of the Buy American statute is unreasonable when the cost of such material exceeds the cost of foreign material by more than 20 percent;

(ii) The application of the restriction of the Buy American Act to a particular construction material would be impracticable or inconsistent with the public interest; or

(iii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(c) Request for determination of inapplicability of the Buy American statute. (1) (i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including-

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Price;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(3) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed price comparison table in the format in paragraph (d) of this clause.

(iii) The price of construction material shall include all delivery costs to the construction site and any applicable duty (whether or not a duty-free certificate may be issued).

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to the Buy American statute applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable price of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to the Buy American statute applies, use of foreign construction material is noncompliant with the Buy American statute.



(d) *Data*. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

**Foreign and Domestic Construction Material**

<b>Construction Material Description</b>	<b>Unit of Measure</b>	<b>Quantity</b>	<b>Price (dollars)*</b>
Item 1			
Foreign construction material			
Domestic construction material			
Item 2			
Foreign construction material			
Domestic construction material			

[\* *Include all delivery costs to the construction site and any applicable duty (whether or not a duty-free entry certificate is issued)*].

[ *List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.* ]

[ *Include other applicable supporting information.* ]

(End of clause)

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\*\*\*\*(WHEN USING FUNDS **OTHER THAN** RECOVERY ACT FUNDS, USE BELOW IN SOLICITATIONS AND CONTRACTS FOR CONSTRUCTION PERFORMED IN THE UNITED STATES AND VALUED AT \$7,008,000 OR MORE, BUT LESS THAN \$10,802,884.  
**Note:** *The Contracting Officer must list in paragraph (b)(3) of the clause, all foreign construction material excepted from the requirements of the Buy American statute, unless the excepted foreign construction material is from a designated country other than Bahrain, Mexico, and Oman .)*\*\*\*\*

20. **Alternate I** (Jan 2021), FAR Clause **52.225-11, Buy American--Construction Materials Under Trade Agreements** (Nov 2021).

As prescribed in 25.1102(c)(3), add the following definition of "Bahrainian, Mexican, or Omani construction material" to paragraph (a) of the basic clause, and substitute the following paragraphs (b)(1) and (b)(2) for paragraphs (b)(1) and (b)(2) of the basic clause:

Bahrainian, Mexican, or Omani construction material means a construction material that--

- (1) Is wholly the growth, product, or manufacture of Bahrain, Mexico, or Oman; or
- (2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain, Mexico, or Oman into a new and different construction material distinct from the materials from which it was transformed.

b) Construction materials. (1) Construction materials. (1) This clause implements the Buy American (41 U.S.C. chapter 83) by providing a preference for domestic construction material. In accordance with 41 U.S.C. 1907, the component test of the Buy American statute is waived for construction material that is a COTS item (See FAR 12.505(a)(2)). In addition, the Contracting Officer has determined that the WTO GPA and all the Free Trade Agreements except the Bahrain FTA, NAFTA, and the Oman FTA apply to this acquisition. Therefore, the Buy American statute restrictions are waived for designated country construction materials other than Bahrainian, Mexican, or Omani construction materials.

- (2) The Contractor shall use only domestic or designated country construction material other than Bahrainian, Mexican, or Omani construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

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\*\*\*\* (WHEN USING RECOVERY ACT FUNDS, USE BELOW IN SOLICITATIONS AND CONTRACTS FOR CONSTRUCTION PERFORMED IN THE UNITED STATES AND VALUED AT LESS THAN \$7,008,000.

*Note: The Contracting Officer must list all foreign construction material excepted from the requirements of the Buy American statute in paragraph (b)(3). ) \*\*\*\**

21. FAR Clause **52.225-21, Required Use of American Iron, Steel, and Manufactured Goods-Buy American Statute--Construction Materials** (Jan 2021).

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

*Component* means an article, material, or supply incorporated directly into a construction material.

*Construction material* means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site.

*Domestic construction material* means the following-

(1) An unmanufactured construction material mined or produced in the United States. (The Buy American statute applies.)

(2) A manufactured construction material that is manufactured in the United States and, if the construction material consists wholly or predominantly of iron or steel, the iron or steel was produced in the United States. (Section 1605 of the Recovery Act applies.)

*Foreign construction material* means a construction material other than a domestic construction material.

*Manufactured construction material* means any construction material that is not unmanufactured construction material.

*Steel* means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

*United States* means the 50 States, the District of Columbia, and outlying areas.

*Unmanufactured construction material* means raw material brought to the construction site for incorporation into the building or work that has not been-

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

(b) Domestic preference. (1) This clause implements-

(i) Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111-5), by requiring, unless an exception applies, that all manufactured construction material in the project is manufactured in the United States and, if the construction material consists wholly or predominantly of iron or steel, the iron or steel was produced in the United States (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives); and

(ii) [41 U.S.C chapter 83](#), Buy American, by providing a preference for unmanufactured construction material mined or produced in the United States over unmanufactured construction material mined or produced in a foreign country.

(2) The Contractor shall use only domestic construction material in performing this contract, except as provided in paragraph (b)(3) and (b)(4) of this clause.

(3) This requirement does not apply to the construction material or components listed by the Government as follows:

\_\_\_\_\_ *[Contracting Officer to list applicable excepted materials or indicate "none"]*

(4) The Contracting Officer may add other foreign construction material to the list in paragraph (b)(3) of this clause if the Government determines that-

(i) The cost of domestic construction material would be unreasonable;

(A) The cost of domestic manufactured construction material, when compared to the cost of comparable foreign manufactured construction material, is unreasonable when the cumulative cost of such material will increase the cost of the contract by more than 25 percent;

(B) The cost of domestic unmanufactured construction material is unreasonable when the cost of such material exceeds the cost of comparable foreign unmanufactured construction material by more than 20 percent;

(ii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality;

(iii) The application of the restriction of section 1605 of the Recovery Act to a particular manufactured construction material would be inconsistent with the public interest or the application of the Buy American statute to a particular unmanufactured construction material would be impracticable or inconsistent with the public interest.

(c) *Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American statute.* (1) (i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including-

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(4) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this clause.

(iii) The cost of construction material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to section 1605 of the Recovery Act or the Buy American statute applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable cost of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to section 1605 of the Recovery Act or the Buy American statute applies, use of foreign construction material is noncompliant with section 1605 of the American Recovery and Reinvestment Act or the Buy American statute.

(d) *Data*. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

**FOREIGN AND DOMESTIC CONSTRUCTION MATERIALS PRICE COMPARISON**

<b>Construction Material Description</b>	<b>Unit of Measure</b>	<b>Quantity</b>	<b>Price (dollars)*</b>
Item 1			
Foreign construction material			
Domestic construction material			
Item 2			
Foreign construction material			
Domestic construction material			

*[ List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]*

*[ Include other applicable supporting information.]*

*[\* Include all delivery costs to the construction site.]*

(End of clause)

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\*\*\*\*(WHEN USING RECOVERY ACT FUNDS, USE BELOW IN SOLICITATIONS AND CONTRACTS FOR CONSTRUCTION PERFORMED IN THE UNITED STATES AND VALUED AT \$7,008,000 OR MORE. **Note:** *The Contracting Officer must list, in paragraph (b)(3) of the clause, all foreign construction material excepted from the Buy American statute or section 1605 of the Recovery Act, other than Recovery Act designated country construction material. )\*\*\*\**

22. FAR Clause **52.225-23, Required Use of American Iron, Steel, and Manufactured Goods--Buy American Statute--Construction Materials Under Trade Agreements** (Jan 2021).

(a) *Definitions.* As used in this clause—

*Component* means an article, material, or supply incorporated directly into a construction material.

*Construction material* means an article, material, or supply brought to the construction site by the Contractor or subcontractor for incorporation into the building or work. The term also includes an item brought to the site preassembled from articles, materials, or supplies. However, emergency life safety systems, such as emergency lighting, fire alarm, and audio evacuation systems, that are discrete systems incorporated into a public building or work and that are produced as complete systems, are evaluated as a single and distinct construction material regardless of when or how the individual parts or components of those systems are delivered to the construction site.

*Designated country* means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, Ukraine, or United Kingdom);

(2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore);

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia); or

(4) A Caribbean Basin country (Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bonaire, British Virgin Islands, Curacao, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, Saba, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Sint Eustatius, Sint Maarten, or Trinidad and Tobago).

*Designated country construction material* means a construction material that is a WTO GPA country construction material, an FTA country construction material, a least developed country construction material, or a Caribbean Basin country construction material.

*Domestic construction material* means the following:

(1) An unmanufactured construction material mined or produced in the United States. (The Buy American statute applies.)

(2) A manufactured construction material that is manufactured in the United States and, if the construction material consists wholly or predominantly of iron or steel, the iron or steel was produced in the United States. (Section 1605 of the Recovery Act applies.)

*Foreign construction material* means a construction material other than a domestic construction material.

*Free trade agreement (FTA) country construction material* means a construction material that-

(1) Is wholly the growth, product, or manufacture of an FTA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in an FTA country into a new and different construction material distinct from the materials from which it was transformed.

*Least developed country construction material* means a construction material that-

(1) Is wholly the growth, product, or manufacture of a least developed country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed



in a least developed country into a new and different construction material distinct from the materials from which it was transformed.

*Manufactured construction material* means any construction material that is not unmanufactured construction material.

*Nondesignated country* means a country other than the United States or a designated country.

*Recovery Act designated country* means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, Ukraine, or United Kingdom);

(2) A Free Trade Agreement country (FTA) (Australia, Bahrain, Canada, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Korea (Republic of), Mexico, Morocco, Nicaragua, Oman, Panama, Peru, or Singapore); or

(3) A least developed country (Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Comoros, Democratic Republic of Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, Laos, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Nepal, Niger, Rwanda, Samoa, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, Tanzania, Timor-Leste, Togo, Tuvalu, Uganda, Vanuatu, Yemen, or Zambia).

*Recovery Act designated country construction material* means a construction material that is a WTO GPA country construction material, an FTA country construction material, or a least developed country construction material.

*Steel* means an alloy that includes at least 50 percent iron, between 0.02 and 2 percent carbon, and may include other elements.

*United States* means the 50 States, the District of Columbia, and outlying areas.

*Unmanufactured construction material* means raw material brought to the construction site for incorporation into the building or work that has not been-

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

*WTO GPA country construction material* means a construction material that-

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different construction material distinct from the materials from which it was transformed.

(b) *Construction materials.*

(1) The restrictions of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) do not apply to Recovery Act designated country manufactured construction material. The restrictions of the Buy American statute do not apply to designated country unmanufactured construction material. Consistent with U.S. obligations under international agreements, this clause implements-

(i) Section 1605 of the Recovery Act by requiring, unless an exception applies, that all manufactured construction material in the project is manufactured in the United States and, if the construction material consists wholly or predominantly of iron or steel, the iron or steel was produced in the United States (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United States, except metallurgical processes involving refinement of steel additives); and.

(ii) The Buy American statute by providing a preference for unmanufactured construction material mined or produced in the United States over unmanufactured construction material mined or produced in a nondesignated country.

(2) The Contractor shall use only domestic construction material, Recovery Act designated country manufactured construction material, or designated country unmanufactured construction material in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

(3) The requirement in paragraph (b)(2) of this clause does not apply to the construction materials or components listed by the Government as follows:

*[Contracting Officer to list applicable excepted materials or indicate "none".]*

(4) The Contracting Officer may add other construction material to the list in paragraph (b)(3) of this clause if the Government determines that-

(i) The cost of domestic construction material would be unreasonable;

(A) The cost of domestic manufactured construction material is unreasonable when the cumulative cost of such material, when compared to the cost of comparable foreign manufactured construction material, other than Recovery Act designated country construction material, will increase the overall cost of the contract by more than 25 percent;

(B) The cost of domestic unmanufactured construction material is unreasonable when the cost of such material exceeds the cost of comparable foreign unmanufactured construction material, other than designated country construction material, by more than 20 percent;

(ii) The construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act to a particular manufactured construction material would be inconsistent with the public interest or the application of the Buy American statute to a particular unmanufactured construction material would be impracticable or inconsistent with the public interest.

*(c) Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American statute.*

(1) (i) Any Contractor request to use foreign construction material in accordance with paragraph (b)(4) of this clause shall include adequate information for Government evaluation of the request, including-

(A) A description of the foreign and domestic construction materials;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the construction project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign construction materials cited in accordance with paragraph (b)(4) of this clause.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this clause.

(iii) The cost of construction material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any Contractor request for a determination submitted after contract award shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before contract award. If the Contractor does not submit a satisfactory explanation, the Contracting Officer need not make a determination.

(2) If the Government determines after contract award that an exception to section 1605 of the Recovery Act or the Buy American statute applies and the Contracting Officer and the Contractor negotiate adequate consideration, the Contracting Officer will modify the contract to allow use of the foreign construction material. However, when the basis for the exception is the unreasonable cost of a domestic construction material, adequate consideration is not less than the differential established in paragraph (b)(4)(i) of this clause.

(3) Unless the Government determines that an exception to section 1605 of the Recovery Act or the Buy American statute applies, use of foreign construction material other than manufactured construction material from a Recovery Act designated country or unmanufactured construction material from a designated country is noncompliant with the applicable statute.

(d) *Data*. To permit evaluation of requests under paragraph (c) of this clause based on unreasonable cost, the Contractor shall include the following information and any applicable supporting data based on the survey of suppliers:

**FOREIGN (NONDESIGNATED COUNTRY) AND DOMESTIC CONSTRUCTION MATERIALS COST COMPARISON**

<b>Construction Material Description</b>	<b>Unit of Measure</b>	<b>Quantity</b>	<b>Cost (dollars)*</b>
Item 1:			
Foreign construction material			
Domestic construction material			
Item 2:			
Foreign construction material			
Domestic construction material			

*[ List name, address, telephone number, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]*

*[ Include other applicable supporting information.]*

*[\* Include all delivery costs to the construction site.]*

(End of clause)

\*\*\*\*(WHEN USING RECOVERY ACT FUNDS, USE BELOW IN SOLICITATIONS AND CONTRACTS FOR CONSTRUCTION PERFORMED IN THE UNITED STATES, VALUED AT \$7,008,000 OR MORE BUT LESS THAN \$10,802,884. **Note:** *The Contracting Officer must list, in paragraph (b)(3) of the clause, all foreign construction material excepted from the Buy American statute or section 1605 of the Recovery Act, unless the excepted foreign construction material is from a Recovery Act designated country other than Bahrain, Mexico, or Oman.* )\*\*\*\*

**23. Alternate I (May 2014) FAR Clause 52.225-23, Required Use of American Iron, Steel, and Manufactured Goods-Buy American Statute-Construction Materials under Trade Agreements (Jan 2021)**

*Alternate I (May 2014).* As prescribed in [25.1102\(e\)](#), add the following definition of "Bahrainian, Mexican, or Omani construction material" to paragraph (a) of the basic clause, and substitute the following paragraphs (b)(1) and (b)(2) for paragraphs (b)(1) and (b)(2) of the basic clause:

*Bahrainian, Mexican, or Omani construction material* means a construction material that-

(1) Is wholly the growth, product, or manufacture of Bahrain, Mexico, or Oman; or

(2) In the case of a construction material that consists in whole or in part of materials from another country, has been substantially transformed in Bahrain, Mexico, or Oman into a new and different construction material distinct from the materials from which it was transformed.

(b) *Construction materials.* (1) The restrictions of section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) do not apply to Recovery Act designated country manufactured construction material. The restrictions of the Buy American statute do not apply to designated country unmanufactured construction material. Consistent with U.S. obligations under international agreements, this clause implements-

(i) Section 1605 of the Recovery Act, by requiring, unless an exception applies, that all manufactured construction material in the project is manufactured in the United States and, if the construction material consists wholly or predominantly of iron or steel, the iron or steel was produced in the United States (produced in the United States means that all manufacturing processes of the iron or steel must take place in the United

States, except metallurgical processes involving refinement of steel additives); and

(ii) The Buy American statute by providing a preference for unmanufactured construction material mined or produced in the United States over unmanufactured construction material mined or produced in a nondesignated country.

(2) The Contractor shall use only domestic construction material, Recovery Act designated country manufactured construction material, or designated country unmanufactured construction material, other than Bahrainian, Mexican, or Omani construction material, in performing this contract, except as provided in paragraphs (b)(3) and (b)(4) of this clause.

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\*\*\*\*(USE BELOW IN SOLICITATIONS AND CONTRACTS GREATER THAN \$30,000 FOR THE PROVISION, SERVICE, OR SALE OF FOOD IN THE UNITED STATES.)\*\*\*\*

24. FAR Clause **52.226-6, Promoting Excess Food Donation to Nonprofit Organizations** (Jun 2020)

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

*Apparently wholesome food* means food that meets all quality and labeling standards imposed by Federal, State, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

*Excess food* means food that--

- (1) Is not required to meet the needs of the executive agencies; and
- (2) Would otherwise be discarded.

*Food-insecure* means inconsistent access to sufficient, safe, and nutritious food. Nonprofit organization means any organization that is--

- (1) Described in section 501(c) of the Internal Revenue Code of 1986; and
- (2) Exempt from tax under section 501(a) of that Code.

(b) In accordance with the Federal Food Donation Act of 2008 (Pub. L. 110-247), the Contractor is encouraged, to the maximum extent practicable

and safe, to donate excess, apparently wholesome food to nonprofit organizations that provide assistance to food-insecure people in the United States.

(c) *Costs*. (1) The Contractor, including any subcontractors, shall assume the responsibility for all the costs and the logistical support to collect, transport, maintain the safety of, or distribute the excess, apparently wholesome food to the nonprofit organization(s) that provides assistance to food-insecure people.

(2) The Contractor will not be reimbursed for any costs incurred or associated with the donation of excess foods. Any costs incurred for excess food donations are unallowable.

(d) *Liability*. The Government and the Contractor, including any subcontractors, shall be exempt from civil and criminal liability to the extent provided under the Bill Emerson Good Samaritan Food Donation Act (42 U.S.C. 1791). Nothing in this clause shall be construed to supersede State or local health regulations (subsection (f) of 42 U.S.C. 1791).

(e) *Flowdown*. The Contractor shall insert this clause in all contracts, task orders, delivery orders, purchase orders, and other similar instruments greater than \$25,000 with its subcontractors or suppliers, at any tier, who will perform, under this contract, the provision, service, or sale of food in the United States.

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\*\*\*\*(USE BELOW IN RFPs AND CONTRACTS FOR CONSTRUCTION, WHEN THE ESTIMATED VALUE OF THE ACQUISITION EXCEEDS \$30,000 BUT DOES NOT EXCEED \$150,000.

**ADDITIONAL INFORMATION TO COMPLETE THIS ITEM:**

- Subparagraph (a): FAR 28.102-1(b) contains information about payment protections to be included in this subparagraph.)\*\*\*\*

25. FAR Clause **52.228-13, Alternative Payment Protections** (Jul 2000)

(a) The Contractor shall submit one of the following payment protections:

(b) The amount of the payment protection shall be 100 percent of the contract price.



(c) The submission of the payment protection is required within \_\_ days of contract award.

(d) The payment protection shall provide protection for the full contract performance period plus a one-year period.

(e) Except for escrow agreements and payment bonds, which provide their own protection procedures, the Contracting Officer is authorized to access funds under the payment protection when it has been alleged in writing by a supplier of labor or material that a nonpayment has occurred, and to withhold such funds pending resolution by administrative or judicial proceedings or mutual agreement of the parties.

(f) When a tripartite escrow agreement is used, the Contractor shall utilize only suppliers of labor and material that signed the escrow agreement.

(End of clause)

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\*\*\*\*(USE BELOW IN SOLICITATIONS AND CONTRACTS (OTHER THAN CONSTRUCTION) THAT CONTAIN A REQUIREMENT FOR BOTH PAYMENT AND PERFORMANCE BONDS. THE CO MUST DETERMINE THE AMOUNT OF EACH BOND FOR INSERTION IN THE CLAUSE AND SET A PERIOD OF TIME (NORMALLY 10 DAYS) FOR RETURN OF THE EXECUTED BONDS.)\*\*\*\*

26. FAR Clause **52.228-16, Performance And Payment Bonds--Other Than Construction** (Nov 2006)

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

**Original Contract price** means the award price of the contract or, for requirements contracts, the price payable for the estimated quantity; or, for indefinite-quantity contracts, the price payable for the specified minimum quantity. Original contract price does not include the price of any options, except those options exercised at the time of contract award.

(b) The Contractor shall furnish a performance bond (Standard Form 1418) for the protection of the Government in an amount equal to \_\_ percent of the original contract price and a payment bond (Standard Form 1416) in an amount equal to \_\_ percent of the original contract price.

(c) The Contractor shall furnish all executed bonds, including any necessary reinsurance agreements, to the Contracting Officer, within \_ days, but in any event, before starting work.

(d) The Government may require additional performance and payment bond protection if the contract price is increased. The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bonds or to obtain additional bonds.

(e) The bonds shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570, individual sureties, or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is published in the Federal Register, or may be obtained from the U.S. Department of Treasury, Financial Management Service, Surety Bond Branch. The Surety Bond program no longer accepts paper submissions. All submissions must be made electronically via email at: [surety.bonds@fiscal.treasury.gov](mailto:surety.bonds@fiscal.treasury.gov) or via the internet at: <https://fiscal.treasury.gov/surety-bonds/>.

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\*\*\*\*(USE BELOW WITH THE ABOVE CLAUSE (ALTERNATE I) WHEN ONLY PERFORMANCE BONDS ARE REQUIRED.)\*\*\*\*

**Alternate I (Jul 2000) of FAR Clause 52.228-16, Performance and Payment Bonds--Other Than Construction (Nov 2006)**

As prescribed in 28.103-4, substitute the following paragraphs (b) and (d) for paragraphs (b) and (d) of the basic clause:

(b) The Contractor shall furnish a performance bond (Standard Form 1418) for the protection to the Government in an amount equal to percent of the original contract price.

(d) The Government may require additional performance bond protection if the contract price is increased. The Government may secure the additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

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\*\*\*\*(USE BELOW IN ONE YEAR INDEFINITE QUANTITY AND REQUIREMENTS SOLICITATIONS AND CONTRACTS FOR SERVICES WHEN THE CONTRACT IS FUNDED BY ANNUAL APPROPRIATIONS AND IS TO EXTEND BEYOND THE INITIAL FISCAL YEAR.

**ADDITIONAL INFORMATION TO COMPLETE THIS ITEM:**

1. Enter the last date in which contract funds are presently available in the first text area.
2. Enter the last date in which the Government shall be legally liable for payment of performance under the contract in the second text area.)\*\*\*\*

27. FAR Clause **52.232-19, Availability of Funds for the Next Fiscal Year** (Apr 1984).

Funds are not presently available for performance under this contract beyond \_\_\_\_\_. The Government's obligation for performance of this contract beyond that date is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise for performance under this contract beyond \_\_\_\_\_, until funds are made available to the Contracting Officer for performance and until the Contractor receives notice of availability, to be confirmed in writing by the Contracting Officer.

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\*\*\*\*(USE BELOW IN NEGOTIATED FIXED PRICE CONTRACTS (excluding A&E and Construction contracts) WHERE PERFORMANCE-BASED CONTRACT FINANCING WILL BE PROVIDED. See FAR Subpart 32.10 for more information. A DESCRIPTION OF THE BASIS FOR PAYMENT AND LIQUIDATION MUST BE PROVIDED AS REQUIRED BY FAR 32.1004.)\*\*\*\*

28. FAR Clause **52.232-32, Performance-Based Payments** (Apr 2012).

(a) *Amount of payments and limitations on payments.* Subject to such other limitations and conditions as are specified in this contract and this clause, the amount of payments and limitations on payments shall be specified in the contract's description of the basis for payment.

(b) *Contractor request for performance-based payment.* The Contractor may submit requests for payment of performance-based payments not more frequently than monthly, in a form and manner acceptable to the Contracting Officer. Unless otherwise authorized by the Contracting Officer, all performance-based payments in any period for which payment is being requested shall be included in a single request, appropriately itemized and

totalled. The Contractor's request shall contain the information and certification detailed in paragraphs (l) and (m) of this clause.

*(c) Approval and payment of requests .* (1) The Contractor shall not be entitled to payment of a request for performance-based payment prior to successful accomplishment of the event or performance criterion for which payment is requested. The Contracting Officer shall determine whether the event or performance criterion for which payment is requested has been successfully accomplished in accordance with the terms of the contract. The Contracting Officer may, at any time, require the Contractor to substantiate the successful performance of any event or performance criterion which has been or is represented as being payable.

(2) A payment under this performance-based payment clause is a contract financing payment under the Prompt Payment clause of this contract and not subject to the interest penalty provisions of the Prompt Payment Act. The designated payment office will pay approved requests on the \_\_\_ *[Contracting Officer insert day as prescribed by agency head; if not prescribed, insert "30th"]* day after receipt of the request for performance-based payment by the designated payment office. However, the designated payment office is not required to provide payment if the Contracting Officer requires substantiation as provided in paragraph (c)(1) of this clause, or inquiries into the status of an event or performance criterion, or into any of the conditions listed in paragraph (e) of this clause, or into the Contractor certification. The payment period will not begin until the Contracting Officer approves the request.

(3) The approval by the Contracting Officer of a request for performance-based payment does not constitute an acceptance by the Government and does not excuse the Contractor from performance of obligations under this contract.

*(d) Liquidation of performance-based payments.* (1) Performance-based finance amounts paid prior to payment for delivery of an item shall be liquidated by deducting a percentage or a designated dollar amount from the delivery payment. If the performance-based finance payments are on a delivery item basis, the liquidation amount for each such line item shall be the percent of that delivery item price that was previously paid under performance-based finance payments or the designated dollar amount. If the performance-based finance payments are on a whole contract basis, liquidation shall be by either predesignated liquidation amounts or a liquidation percentage.

(2) If at any time the amount of payments under this contract exceeds any limitation in this contract, the Contractor shall repay to the Government the excess. Unless otherwise determined by the Contracting Officer, such excess

shall be credited as a reduction in the unliquidated performance-based payment balance(s), after adjustment of invoice payments and balances for any retroactive price adjustments.

(e) *Reduction or suspension of performance-based payments.* The Contracting Officer may reduce or suspend performance-based payments, liquidate performance-based payments by deduction from any payment under the contract, or take a combination of these actions after finding upon substantial evidence any of the following conditions:

(1) The Contractor failed to comply with any material requirement of this contract (which includes paragraphs (h) and (i) of this clause).

(2) Performance of this contract is endangered by the Contractor's-

(i) Failure to make progress; or

(ii) Unsatisfactory financial condition.

(3) The Contractor is delinquent in payment of any subcontractor or supplier under this contract in the ordinary course of business.

(f) *Title.* (1) Title to the property described in this paragraph (f) shall vest in the Government. Vestiture shall be immediately upon the date of the first performance-based payment under this contract, for property acquired or produced before that date. Otherwise, vestiture shall occur when the property is or should have been allocable or properly chargeable to this contract.

(2) "Property," as used in this clause, includes all of the following described items acquired or produced by the Contractor that are or should be allocable or properly chargeable to this contract under sound and generally accepted accounting principles and practices:

(i) Parts, materials, inventories, and work in process;

(ii) Special tooling and special test equipment to which the Government is to acquire title;

(iii) Nondurable (i.e., noncapital) tools, jigs, dies, fixtures, molds, patterns, taps, gauges, test equipment and other similar manufacturing aids, title to which would not be obtained as special tooling under paragraph (f)(2)(ii) of this clause; and

(iv) Drawings and technical data, to the extent the Contractor or subcontractors are required to deliver them to the Government by other clauses of this contract.

(3) Although title to property is in the Government under this clause, other applicable clauses of this contract (e.g., the termination clauses) shall determine the handling and disposition of the property.

(4) The Contractor may sell any scrap resulting from production under this contract, without requesting the Contracting Officer's approval, provided that any significant reduction in the value of the property to which the Government has title under this clause is reported in writing to the Contracting Officer.

(5) In order to acquire for its own use or dispose of property to which title is vested in the Government under this clause, the Contractor shall obtain the Contracting Officer's advance approval of the action and the terms. If approved, the basis for payment (the events or performance criteria) to which the property is related shall be deemed to be not in compliance with the terms of the contract and not payable (if the property is part of or needed for performance), and the Contractor shall refund the related performance-based payments in accordance with paragraph (d) of this clause.

(6) When the Contractor completes all of the obligations under this contract, including liquidation of all performance-based payments, title shall vest in the Contractor for all property (or the proceeds thereof) not-

(i) Delivered to, and accepted by, the Government under this contract;  
or

(ii) Incorporated in supplies delivered to, and accepted by, the Government under this contract and to which title is vested in the Government under this clause.

(7) The terms of this contract concerning liability for Government-furnished property shall not apply to property to which the Government acquired title solely under this clause.

(g) *Risk of loss* . Before delivery to and acceptance by the Government, the Contractor shall bear the risk of loss for property, the title to which vests in the Government under this clause, except to the extent the Government expressly assumes the risk. If any property is lost (see 45.101), the basis of payment (the events or performance criteria) to which the property is related shall be

deemed to be not in compliance with the terms of the contract and not payable (if the property is part of or needed for performance), and the Contractor shall refund the related performance-based payments in accordance with paragraph (d) of this clause.

(h) *Records and controls.* The Contractor shall maintain records and controls adequate for administration of this clause. The Contractor shall have no entitlement to performance-based payments during any time the Contractor's records or controls are determined by the Contracting Officer to be inadequate for administration of this clause.

(i) *Reports and Government access.* The Contractor shall promptly furnish reports, certificates, financial statements, and other pertinent information requested by the Contracting Officer for the administration of this clause and to determine that an event or other criterion prompting a financing payment has been successfully accomplished. The Contractor shall give the Government reasonable opportunity to examine and verify the Contractor's records and to examine and verify the Contractor's performance of this contract for administration of this clause.

(j) *Special terms regarding default .* If this contract is terminated under the Default clause, (1) the Contractor shall, on demand, repay to the Government the amount of unliquidated performance-based payments, and (2) title shall vest in the Contractor, on full liquidation of all performance-based payments, for all property for which the Government elects not to require delivery under the Default clause of this contract. The Government shall be liable for no payment except as provided by the Default clause.

(k) *Reservation of rights.* (1) No payment or vesting of title under this clause shall-

(i) Excuse the Contractor from performance of obligations under this contract; or

(ii) Constitute a waiver of any of the rights or remedies of the parties under the contract.

(2) The Government's rights and remedies under this clause-

(i) Shall not be exclusive, but rather shall be in addition to any other rights and remedies provided by law or this contract; and

(ii) Shall not be affected by delayed, partial, or omitted exercise of any right, remedy, power, or privilege, nor shall such exercise or any single

exercise preclude or impair any further exercise under this clause or the exercise of any other right, power, or privilege of the Government.

(l) *Content of Contractor's request for performance-based payment.* The Contractor's request for performance-based payment shall contain the following:

- (1) The name and address of the Contractor;
- (2) The date of the request for performance-based payment;
- (3) The contract number and/or other identifier of the contract or order under which the request is made;
- (4) Such information and documentation as is required by the contract's description of the basis for payment; and
- (5) A certification by a Contractor official authorized to bind the Contractor, as specified in paragraph (m) of this clause.

(m) *Content of Contractor's certification.* As required in paragraph (l)(5) of this clause, the Contractor shall make the following certification in each request for performance-based payment:

I certify to the best of my knowledge and belief that-

- (1) This request for performance-based payment is true and correct; this request (and attachments) has been prepared from the books and records of the Contractor, in accordance with the contract and the instructions of the Contracting Officer;
- (2) (Except as reported in writing on \_\_\_\_\_), all payments to subcontractors and suppliers under this contract have been paid, or will be paid, currently, when due in the ordinary course of business;
- (3) There are no encumbrances (except as reported in writing on \_\_\_\_\_) against the property acquired or produced for, and allocated or properly chargeable to, the contract which would affect or impair the Government's title;
- (4) There has been no materially adverse change in the financial condition of the Contractor since the submission by the Contractor to the Government of the most recent written information dated \_\_\_\_\_; and
- (5) After the making of this requested performance-based payment, the amount of all payments for each deliverable item for which performance-



based payments have been requested will not exceed any limitation in the contract, and the amount of all payments under the contract will not exceed any limitation in the contract.

(End of clause)

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\*\*\*\*(USE BELOW IN FIXED PRICE SOLICITATIONS AND CONTRACTS FOR CONSTRUCTION WHEN PHYSICAL DATA (E.G., TEST BORINGS, HYDROGRAPHIC DATA, WEATHER CONDITIONS DATA) WILL BE FURNISHED OR MADE AVAILABLE TO OFFERORS. ADDITIONAL INFORMATION ABOUT THIS ITEM:

1. All information to be furnished or made available to offerors before award that pertains to the performance of the work should be identified in the clause.
2. When paragraphs are not applicable they may be deleted.)\*\*\*\*

29. FAR Clause **52.236-4, Physical Data** (Apr 1984).

Data and Data and information furnished or referred to below is for the Contractor's information. The Government shall not be responsible for any interpretation of or conclusion drawn from the data or information by the Contractor.

(a) The indications of physical conditions on the drawings and in the specifications are the result of site investigations by \_\_\_\_\_ [insert a description of investigational methods used, such as surveys, auger borings, core borings, test pits, probings, test tunnels].

(b) Weather conditions \_\_\_\_\_ [insert a summary of weather records and warnings].

(c) Transportation facilities \_\_\_\_\_ [insert a summary of transportation facilities providing access from the site, including information about their availability and limitations].

(d) \_\_\_\_\_ [insert other pertinent information].

(End of clause)

\*\*\*\*(USE BELOW IN SOLICITATIONS AND CONTRACTS WHENEVER THE CONTRACT INVOLVES THE PURCHASE OF GAS IN CONTRACTOR-FURNISHED RETURNABLE CYLINDERS AND THE CONTRACTOR RETAINS TITLE TO THE CYLINDERS)\*\*\*\*

30. FAR Clause **52.247-66, Returnable Cylinders** (May 1994)

(a) Cylinder, referred to in this clause, is a pressure vessel designed for pressures higher than 40 psia and having a circular cross section excluding a portable tank, multi-tank car tank, cargo tank or tank car.

(b) Returnable cylinders shall remain the Contractor's property but shall be loaned without charge to the Government for a period of \_\_ days [Contracting Officer shall insert number of days] (hereafter referred to as loan period) following the day of delivery to the f.o.b. point specified in the contract. Any cylinder not returned within the loan period shall be charged a daily rental beginning with the first day after the loan period expires, to and including the day the cylinders are delivered to the Contractor (if the original delivery was f.o.b. Origin) or are delivered or made available for delivery to the Contractor's designated carrier (if the original deliver was f.o.b. destination). The Government shall pay the Contractor a rental of \$ \_\_\_\_\_ [Contracting Officer shall insert dollar amount for rental, after evaluation of offers] per cylinder, per day, computed separately for cylinders by type, size, and capacity and for each point of delivery named in the contract. No rental shall accrue to the Contractor in excess of replacement value per cylinder specified in paragraph (c) of this clause.

(c) For each cylinder lost or damaged beyond repair while in the Government's possession, the Government shall pay to the Contractor the replacement value, less the allocable rental paid for that cylinder as follows: \_\_\_\_\_ [Contracting Officer shall insert the cylinder types, sizes, capacities, and associated replacement values.] These cylinders shall become Government property.

(d) If any lost cylinder is located within \_\_ [Contracting Officer shall insert number of days] calendar days after payment by the Government, it may be returned to the Contractor by the Government, and the Contractor shall pay to the Government an amount equal to the replacement value, less rental computed in accordance with paragraph (b) of this clause, beginning at the expiration of the loan period specified in paragraph (b) of this clause, and continuing to the date on which the cylinder was delivered to the Contractor.

(End of clause)

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\*\*\*\*(USE BELOW IN COST-REIMBURSEMENT SOLICITATIONS AND CONTRACTS WHEN THE CONTRACT OR A FIRST TIER COST-REIMBURSEMENT SUBCONTRACT THEREUNDER WILL AUTHORIZE REIMBURSEMENT OF TRANSPORTATION AS A DIRECT CHARGE TO THE CONTRACT OR SUBCONTRACT.)\*\*\*\*

31. FAR Clause **52.247-67, Submission of Transportation Documents for Audit** (Feb 2006).

(a) The Contractor shall submit to the address identified below, for prepayment audit, transportation documents on which the United States will assume freight charges that were paid--

(1) By Contractor under a cost-reimbursement contract; and

(2) By a first-tier subcontractor under a cost-reimbursement subcontract thereunder.

(b) Cost-reimbursement Contractors shall only submit for audit those bills of lading with freight shipment charges exceeding \$100. Bills under \$100 shall be retained on-site by the Contractor and made available for on-site audits. This exception only applies to freight shipment bills and is not intended to apply to bills and invoices for any other transportation services.

(c) Contractors shall submit the above referenced transportation documents to--

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*[To be filled in by the Contracting Officer]*

(End of clause)

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\*\*\*\*(USE BELOW IN ALL SOLICITATIONS AND CONTRACTS.)\*\*\*\*

b. DEPARTMENT OF HEALTH AND HUMAN SERVICES ACQUISITION REGULATION (HHSAR) (48 CHAPTER 3) CLAUSES:

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\*\*\*\*(USE BELOW IN ALL SOLICITATIONS AND CONTRACTS FUNDED IN WHOLE OR IN PART WITH PREVENTION AND PUBLIC HEALTH FUND (PPHF) FUNDS. THIS INCLUDES (but not is limited to) AWARDING OR MODIFYING ORDERS AGAINST EXISTING OR NEW CONTRACTS ISSUED UNDER FAR SUBPARTS 8.4 AND 16.5 THAT WILL BE FUNDED WITH PPHF FUNDS.

**ADDITIONAL INFORMATION ABOUT THIS ITEM:**

- Contracting Officers may not use PPHF funds on any existing or new contract or order if this clause is not incorporated in the contract.
- This clause is not required for any task and/or delivery order when it is contained in the "parent contract."\*\*\*\*

1. HHSAR Clause **352.204-70, Prevention and Public Health Fund-- Reporting Requirements** (December 2015).

(a) Pursuant to Public Law 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.

(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)

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\*\*\*\*(USE BELOW AND ANY APPROPRIATE ALTERNATES IN LIEU OF FAR 52.227-11 WHENEVER A DETERMINATION OF EXCEPTIONAL CIRCUMSTANCES (DEC) INVOLVING THE PROVISION OF MATERIALS HAS BEEN EXECUTED IN ACCORDANCE WITH AGENCY POLICY AND PROCEDURES CALLS FOR ITS USE AND ALL CIRCUMSTANCES ARE COVERED UNDER THIS CLAUSE.

**ADDITIONAL INFORMATION TO COMPLETE THIS ITEM :**

- ALTERNATE I: Insert the description of the license to Class 2 inventions.)\*\*\*\*

2. HHSAR Clause **352.227-11, Patent Rights--Exceptional Circumstances** (September 2014)

This clause applies to all Contractor and subcontractor (at all tiers) Subject Inventions.

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

*Agency* means the Agency of the U.S. Department of Health and Human Services that is entering into this contract.

*Class 1 Subject Invention* means a Subject Invention described and defined in the DEC that will be assigned to a third party assignee, or assigned as directed by the Agency.

*Class 2 Subject Invention* means a Subject Invention described and defined in the DEC.

*Class 3 Subject Invention* means a Subject Invention that does not fall into Class 1 or Class 2 as defined in this clause.

*DEC* means the Determination of Exceptional Circumstances signed by [insert approving official] \_\_\_\_\_ on \_\_\_\_\_ [insert date] \_\_\_\_\_ and titled "[insert description]."

*Invention* means any invention or discovery, which is or may be patentable or otherwise protectable under Title 35 of United States Code, or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, *et. seq.* )

*Made* means: When used in relation to any invention other than a plant variety, the conception or first actual reduction to practice of such invention; or when used in relation to a plant variety, that the Contractor has at least tentatively determined that the variety has been reproduced with recognized characteristics.

*Material* means any proprietary material, method, product, composition, compound, or device, whether patented or unpatented, which is provided to the Contractor under this contract.

*Nonprofit organization* means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

*Practical application* means to manufacture, in the case of a composition or product; to practice, in the case of a process or method, or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

*Small business firm* means a small business concern as defined at section 2 of Public Law 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

*Subject Invention* means any invention of the Contractor made in the performance of work under this contract.

*Third party assignee* means any entity or organization that may, as described in the DEC, be assigned Class 1 inventions.

(b) *Allocation of principal rights. (1) Retention of pre-existing rights.* Third party assignees shall retain all preexisting rights to Material in which the Third party assignee has a proprietary interest.

(2) *Allocation of Subject Invention rights.*

(i) *Disposition of Class 1 Subject Inventions.*

(A) Assignment to the Third party assignee or as directed by the Agency. The Contractor shall assign to the Third party assignee designated by the Agency the entire right, title, and interest throughout the world to each Subject Invention, or otherwise dispose of or transfer those rights as directed by the Agency, except to the extent that rights are retained by the Contractor under paragraph (b)(3) of this clause. Any such assignment or other disposition or transfer of rights will be subject to a nonexclusive, nontransferable, irrevocable, paid-up license to the U.S. Government to practice or have practiced the Subject Invention for or on behalf of the U.S. throughout the world. Any assignment shall additionally be subject to the "March-in rights" of 35 U.S.C. 203. If the Contractor is a U.S. nonprofit organization it may retain a royalty free, nonexclusive, nontransferable license to practice the invention for all nonprofit research including for educational purposes, and to permit other U.S. nonprofit organizations to do so.

(B) [Reserved]

(ii) *Disposition of Class 2 and 3 Subject Inventions.* Class 2 Subject Inventions shall be governed by FAR clause 52.227-11, Patent Rights-Ownership (December 2007) (incorporated herein by reference). However, the Contractor shall grant a license in the Class 2 Subject

Inventions to the provider of the Material or other party designated by the Agency as set forth in Alternate I.

(iii) Class 3 Subject Inventions shall be governed by FAR clause 52.227-11, Patent Rights-Ownership by the Contractor (December 2007) (previously incorporated herein by reference).

(3) *Greater Rights Determinations.*

The Contractor, or an employee-inventor after consultation by the Agency with the Contractor, may request greater rights than are provided in paragraph (b)(1) of this clause in accordance with the procedures of FAR paragraph 27.304-1(c). In addition to the considerations set forth in paragraph 27.304-1(c), the Agency may consider whether granting the requested greater rights will interfere with rights of the Government or any Third party assignee or otherwise impede the ability of the Government or the Third party assignee to, for example, develop and commercialize new compounds, dosage forms, therapies, preventative measures, technologies, or other approaches with potential for the diagnosis, prognosis, prevention, and treatment of human diseases.

A request for a determination of whether the Contractor or the employee-inventor is entitled to retain such greater rights must be submitted to the Agency Contracting Officer at the time of the first disclosure of the invention pursuant to paragraph (c)(1) of this clause, or not later than 8 months thereafter, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. Each determination of greater rights under this contract shall be subject to paragraph (c) of the FAR clause at 52.227-13 (incorporated herein by reference), and to any reservations and conditions deemed to be appropriate by the Agency such as the requirement to assign or exclusively license the rights to Subject Inventions to the Third party assignee.

A determination by the Agency denying a request by the Contractor for greater rights in a Subject Invention may be appealed within 30 days of the date the Contractor is notified of the determination to an Agency official at a level above the individual who made the determination. If greater rights are granted, the Contractor must file a patent application on the invention. Upon request, the Contractor shall provide the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a



language other than English), and patent number and issue date for any Subject Invention in any country for which the Contractor has retained title. Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(c) *Invention disclosure by Contractor.* The Contractor shall disclose in writing each Subject Invention to the Agency Contracting Officer and to the Director, Division of Extramural Inventions and Technology Resources (DEITR), if directed by the Contracting Officer, as provided in paragraph (j) of this clause within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The disclosure to the Agency Contracting Officer shall be in the form of a written report and shall identify the contract under which the invention was Made and all inventors. It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale (offer for sale), or public use of the invention and whether a manuscript describing the invention has been submitted for publication, and if so, whether it has been accepted for publication at the time of disclosure.

In addition, after disclosure to the Agency, the Contractor will promptly notify the Contracting Officer and DEITR of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor. If the Contractor assigns a Subject Invention to the Third party assignee, then the Contractor and its employee inventors shall assist the Third party assignee in securing patent protection. All costs of securing the patent, including the cost of the Contractor's assistance, are at the Third party's expense. Any assistance provided by the Contractor and its employee inventors to the Third party assignee or other costs incurred in securing patent protection shall be solely at the Third party's expense and not billable to the contract.

(d) *Contractor action to protect the Third party assignee's and the Government's interest.*

(1) The Contractor agrees to execute or to have executed and promptly deliver to the Agency all instruments necessary to: Establish or confirm the rights the Government has throughout the world in Subject Inventions pursuant to paragraph (b) of this clause; convey title to a Third party assignee in accordance with paragraph (b) of this clause; and enable the Third party assignee to obtain patent protection throughout the world in that Subject Invention.

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor, each Subject Invention "Made" under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on Subject Inventions and to establish the Government's rights or a Third party assignee's rights in the Subject Inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) If the Contractor is granted greater rights, the Contractor agrees to include, within the specification of any United States non-provisional patent application it files, and any patent issuing thereon, covering a Subject Invention the following statement: "This invention was made with Government support under (identify the Contract) awarded by (identify the specific Agency). The Government has certain rights in the invention."

(4) The Contractor agrees to provide a final invention statement and certification prior to the closeout of the contract listing all Subject Inventions or stating that there were none.

(e) *Subcontracts.*

(1) The Contractor will include this clause in all subcontracts, regardless of tier, for experimental, developmental, or research work. At all tiers, the clause must be modified to identify the parties as follows: References to the Government are not changed, and the subcontractor has all rights and obligations of the Contractor in the clause. The Contractor will not, as part of the consideration for awarding the contract, obtain rights in the subcontractor's Subject Inventions.

(2) In subcontracts, at any tier, the Agency, the subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the

Contract Disputes Act in connection with proceedings under paragraph (c)(1)(ii) of FAR clause 52.227-13.

*(f) Reporting on utilization of Subject Inventions in the event greater rights are granted to the Contractor.*

The Contractor agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a Subject Invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees when a request under subparagraph b.3. has been granted by the Agency. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the Agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the Agency in connection with any march-in proceeding undertaken by the Agency in accordance with paragraph (h) of this clause. As required by 35 U.S.C. 202(c)(5), the Agency agrees it will not disclose such information to persons outside the Government without permission of the Contractor.

*(g) Preference for United States industry in the event greater rights are granted to the Contractor. Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any Subject Invention in the United States unless such person agrees that any product embodying the Subject Invention or produced through the use of the Subject Invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Agency upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.*

*(h) March-in rights in the event greater rights are granted to the Contractor. The Contractor acknowledges that, with respect to any Subject Invention in which it has acquired ownership through the exercise of the rights specified in paragraph (b)(3) of this clause, the Agency has the right to require licensing pursuant to 35 U.S.C. 203 and 210(c), and in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of Agency in effect on the date of contract award.*

(i) Special provisions for contracts with nonprofit organizations in the event greater rights are granted to the Contractor. If the Contractor is a nonprofit organization, it shall:

(1) Not assign rights to a Subject Invention in the United States without the written approval of the Agency, except where an assignment is made to an organization that has as one of its primary functions the management of inventions, provided that the assignee shall be subject to the same provisions as the Contractor;

(2) Share royalties collected on a Subject Invention with the inventor, including Federal employee co-inventors (but through their Agency if the Agency deems it appropriate) when the Subject Invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) Use the balance of any royalties or income earned by the Contractor with respect to Subject Inventions, after payment of expenses (including payments to inventors) incidental to the administration of Subject Inventions for the support of scientific research or education;

(4) Make efforts that are reasonable under the circumstances to attract licensees of Subject Inventions that are small business concerns, and give a preference to a small business concern when licensing a Subject Invention if the Contractor determines that the small business concern has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business concerns; provided, that the Contractor is also satisfied that the small business concern has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Contractor; and

(5) Allow the Secretary of Commerce to review the Contractor's licensing program and decisions regarding small business applicants, and negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of paragraph (i)(4) of this clause.

(j) *Communications.* All invention disclosures and requests for greater rights shall be sent to the Agency Contracting Officer, as directed by the Contracting Officer. Additionally, a copy of all disclosures, confirmatory licenses to the Government,

face page of the patent applications, waivers and other routine communications under this funding agreement at all tiers must be sent to:

[Insert Agency Address]

Agency Invention Reporting Web site: <https://www.iEdison.gov> .

Alternate I (Sept 2014). As prescribed in 327.303, the license to Class 2 inventions recited in 352.227-11(b)(2)(a) is as follows:

[Insert description of license to Class 2 inventions]

(End of clause)

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\*\*\*\*(USE BELOW WITH ANY APPROPRIATE ALTERNATES IN ACCORDANCE WITH HHSAR 327.409 IN LIEU OF FAR 52.227-14 WHENEVER A DETERMINATION OF EXCEPTIONAL CIRCUMSTANCES (DEC) EXECUTED IN ACCORDANCE WITH AGENCY POLICY AND PROCEDURES CALLS FOR ITS USE.

**NOTE** : *Prior to use of this clause a DEC must be executed in accordance with agency policy and procedures. The Contracting Officer should reference the DEC in the solicitation and shall attach a copy of the executed DEC to the contract.*\*\*\*\*

3. HHSAR **352.227-14 Rights in Data-Exceptional Circumstances**  
(September 2014)

(a) *Definitions*. As used in this clause-[Definitions may be added or modified in paragraph (a) as applicable.]

*Computer database or database* means a collection of recorded information in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

*Computer software* –

(i) Means (A) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and

(B) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.

(ii) Does not include computer databases or computer software documentation.

*Computer software documentation* means owner's manuals, user's manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

*Data* means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

*Form, fit, and function data* means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

*Limited rights* means the rights of the Government in limited rights data as set forth in the Limited Rights Notice in Alternate II paragraph (g)(3) if included in this clause. "Limited rights data" means data, other than computer software, that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications.

*Restricted computer software* means computer software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is copyrighted computer software, including minor modifications of the computer software.

*Restricted rights*, as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of Alternate III paragraph (g)(4) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

*Technical data* means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer

databases and computer software documentation). This term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration. The term includes recorded information of a scientific or technical nature that is included in computer databases (See [41 U.S.C. 403 \(8\)](#)).

*Unlimited rights* means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) *Allocation of rights.*

(1) Except as provided in paragraph (c) of this clause, the Government shall have unlimited rights in-

(i) Data first produced in the performance of this contract;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and

(iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Contractor shall have the right to-

(i) Assert copyright in data first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this clause;

(ii) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause;

(iii) Substantiate the use of, add, or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and

(iv) Protect from unauthorized disclosure and use those data that are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause.

(c) *Copyright.*

(1) *Data first produced in the performance of this contract.*

(i) Unless provided otherwise in paragraph (d) of this clause, the Contractor may, without prior approval of the Contracting Officer, assert copyright in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings, or similar works. The prior, express written permission of the Contracting Officer is required to assert copyright in all other data first produced in the performance of this contract.

(ii) When authorized to assert copyright to the data, the Contractor shall affix the applicable copyright notices of [17 U.S.C. 401](#) or 402, and an acknowledgment of Government sponsorship (including contract number).

(iii) For data other than computer software, the Contractor grants to the Government and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of the Government. For computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public) by or on behalf of the Government.

(2) *Data not first produced in the performance of this contract.* The Contractor shall not, without the prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract unless the Contractor-

(i) Identifies the data; and

(ii) Grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause or, if such data are restricted computer software, the Government shall acquire a copyright license as set forth in paragraph (g)(4) of this clause (if included



in this contract) or as otherwise provided in a collateral agreement incorporated in or made part of this contract.

(3) *Removal of copyright notices.* The Government will not remove any authorized copyright notices placed on data pursuant to this paragraph (c), and will include such notices on all reproductions of the data.

(d) Release, publication, and use of data. The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except-

(1) As prohibited by Federal law or regulation ( *e.g.*, export control or national security laws or regulations);

(2) As expressly set forth in this contract; or

(3) If the Contractor receives or is given access to data necessary for the performance of this contract that contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless specifically authorized otherwise in writing by the Contracting Officer or in the following paragraphs.

(4) In addition to any other provisions, set forth in this contract, the Contractor shall ensure that information concerning possible inventions made under this contract is not prematurely published thereby adversely affecting the ability to obtain patent protection on such inventions. Accordingly, the Contractor will provide the Contracting Officer a copy of any publication or other public disclosure relating to the work performed under this contract at least 30 days in advance of the disclosure. Upon the Contracting Officer's request the Contractor agrees to delay the public disclosure of such data or publication of a specified paper for a reasonable time specified by the Contracting Officer, not to exceed 6 months, to allow for the filing of domestic and international patent applications in accordance with Clause 352.227-11, Patent Rights-Exceptional Circumstances (abbreviated month and year of Final Rule publication).

(5) *Data on Material(s).* The Contractor agrees that in accordance with paragraph (d)(2), proprietary data on Material(s) provided to the Contractor under or through this contract shall be used only for the purpose for which they were provided, including screening, evaluation or optimization and for no other purpose.

*(6) Confidentiality.*

(i) The Contractor shall take all reasonable precautions to maintain Confidential Information as confidential, but no less than the steps Contractor takes to secure its own confidential information.

(ii) Contractor shall maintain Confidential Information as confidential unless specifically authorized otherwise in writing by the Contracting Officer. Confidential Information includes/does not include [Government may define confidential information here.]

*(e) Unauthorized marking of data.*

(1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in paragraph (g)(3) or (4) of this clause (if those alternate paragraphs are included in this clause), and use of the notices is not authorized by this clause, or if the data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may cancel or ignore the markings. However, pursuant to [41 U.S.C. 253 d](#), the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer will make written inquiry to the Contractor affording the Contractor 60 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 60-day period (or a longer time approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in paragraph (e)(1)(i) of this clause, the Contracting Officer will consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Contractor will be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer will furnish the Contractor a written determination, which determination will become the final Agency decision regarding the appropriateness of the

markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government will continue to abide by the markings under this paragraph(e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government will thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in paragraph (e)(1) of this clause may be modified in accordance with Agency regulations implementing the Freedom of Information Act ( [5 U.S.C. 552](#) ) if necessary to respond to a request there under.

(3) Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by this paragraph (e) from bringing a claim, in accordance with the Disputes clause of this contract, that may arise as the result of the Government removing or ignoring authorized markings on data delivered under this contract.

*(f) Omitted or incorrect markings.*

(1) Data delivered to the Government without any restrictive markings shall be deemed to have been furnished with unlimited rights. The Government is not liable for the disclosure, use, or reproduction of such data.

(2) If the unmarked data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer in writing for good cause shown) after delivery of the data, permission to have authorized notices placed on the data at the Contractor's expense. The Contracting Officer may agree to do so if the Contractor-

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability for the disclosure, use, or reproduction of any data made prior to the addition of the notice or resulting from the omission of the notice.

(3) If data has been marked with an incorrect notice, the Contracting Officer may-

(i) Permit correction of the notice at the Contractor's expense if the Contractor identifies the data and demonstrates that the correct notice is authorized; or

(ii) Correct any incorrect notices.

(g) *Protection of limited rights data and restricted computer software.*

(1) The Contractor may withhold from delivery qualifying limited rights data or restricted computer software that are not data identified in paragraphs (b)(1)(i) through (iii) of this clause. As a condition to this withholding, the Contractor shall-

(i) Identify the data being withheld; and

(ii) Furnish form, fit, and function data instead.

(2) Limited rights data that are formatted as a computer database for delivery to the Government shall be treated as limited rights data and not restricted computer software.

(3) [Reserved]

(h) *Subcontracting.*

The Contractor shall obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government those rights, the Contractor shall promptly notify the Contracting Officer of the refusal and shall not proceed with the subcontract award without authorization in writing from the Contracting Officer.

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

(End of clause)

Alternate I (SEPT 2014). As prescribed in 327.409, substitute the following definition for "limited rights data" in paragraph (a) of the basic clause:

*Limited rights data* means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

Alternate II (SEPT 2014). As prescribed in 327.409, insert the following paragraph (g)(3) in the basic clause:

(g)(3) Notwithstanding paragraph (g)(1) of this clause, the contract may identify and specify the delivery of limited rights data, or the Contracting Officer may require by written request the delivery of limited rights data that has been withheld or would otherwise be entitled to be withheld. If delivery of that data is required, the Contractor shall affix the following "Limited Rights Notice" to the data and the Government will treat the data, subject to the provisions of paragraphs (e) and (f) of this clause, in accordance with the notice:

Limited Rights Notice (SEPT 2014)

(a) These data are submitted with limited rights under Government Contract No. \_\_\_\_ (and subcontract \_\_\_\_, if appropriate). These data may be reproduced and used by the Government with the express limitation that they will not, without written permission of the Contractor, be used for purposes of manufacture nor disclosed outside the Government; except that the Government may disclose these data outside the Government for the following purposes, if any; provided that the Government makes such disclosure subject to prohibition against further use and disclosure: [Agencies may list additional purposes or if none, so state.]

(b) This notice shall be marked on any reproduction of these data, in whole or in part.

(End of notice)

Alternate III (SEPT 2014). As prescribed in 327.409, insert the following paragraph (g)(4) in the basic clause: (g)(4)(i) Notwithstanding paragraph (g)(1) of this clause, the contract may identify and specify the delivery of restricted computer software, or the Contracting Officer may require by written request

the delivery of restricted computer software that has been withheld or would otherwise be entitled to be withheld. If delivery of that computer software is required, the Contractor shall affix the following "Restricted Rights Notice" to the computer software and the Government will treat the computer software, subject to paragraphs (e) and (f) of this clause, in accordance with the notice:

Restricted Rights Notice (SEPT 2014)

(a) This computer software is submitted with restricted rights under Government Contract No. \_\_\_\_ (and subcontract \_\_\_\_, if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this notice or as otherwise expressly stated in the contract.

(b) This computer software may be-

(1) Used or copied for use with the computer(s) for which it was acquired, including use at any Government installation to which the computer(s) may be transferred;

(2) Used or copied for use with a backup computer if any computer for which it was acquired is inoperative;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that the modified, adapted, or combined portions of the derivative software incorporating any of the delivered, restricted computer software shall be subject to the same restricted rights;

(5) Disclosed to and reproduced for use by support service Contractors or their subcontractors in accordance with paragraphs (b)(1) through (4) of this notice; and

(6) Used or copied for use with a replacement computer.

(c) Notwithstanding the foregoing, if this computer software is copyrighted computer software, it is licensed to the Government with the minimum rights set forth in paragraph (b) of this notice.

(d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the contract.

(e) This notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of notice)

(ii) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form notice may be used instead:

Restricted Rights Notice Short Form (SEPT 2014)

Use, reproduction, or disclosure is subject to restrictions set forth in Contract No. \_\_\_\_\_ (and subcontract, if appropriate) with \_\_\_\_\_ (name of Contractor and subcontractor).

(End of notice)

(iii) If restricted computer software is delivered with the copyright notice of [17 U.S.C. 401](#), it will be presumed to be licensed to the Government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause.

Alternate IV (SEPT 2014). As prescribed in *327.409*, substitute the following paragraph (c)(1) for paragraph (c)(1) of the basic clause:

(c) *Copyright* –

(1) *Data first produced in the performance of the contract.* Except as otherwise specifically provided in this contract, the Contractor may assert copyright in any data first produced in the performance of this contract. When asserting copyright, the Contractor shall affix the applicable copyright notice of [17 U.S.C. 401](#) or 402, and an acknowledgment of Government sponsorship (including contract number), to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For data other than computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. For computer software, the Contractor grants to the Government and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license for all such computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public), by or on behalf of the Government.

Alternate V (SEPT 2014). As prescribed in 327.409, add the following paragraph (j) to the basic clause:

(j) The Contractor agrees, except as may be otherwise specified in this contract for specific data deliverables listed as not subject to this paragraph, that the Contracting Officer may, up to 3 years after acceptance of all deliverables under this contract, inspect at the Contractor's facility any data withheld pursuant to paragraph (g)(1) of this clause, for purposes of verifying the Contractor's assertion of limited rights or restricted rights status of the data or for evaluating work performance. When the Contractor whose data are to be inspected demonstrates to the Contracting Officer that there would be a possible conflict of interest if a particular representative made the inspection, the Contracting Officer shall designate an alternate inspector.

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\*\*\*\*(USE BELOW SOLICITATIONS, CONTRACTS AND ORDERS TO DELIVER SERVICES UNDER HHS' PROGRAMS DIRECTLY TO THE PUBLIC.)\*\*\*\*

4. HHSAR Clause **352.237-74, Non-Discrimination in Service Delivery** (December 2015).

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)

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\*\*\*\*(USE BELOW WHEN NO FULL TEXT FAR CLAUSES ARE APPLICABLE TO THE CONTRACT.)\*\*\*\*

- b. **THERE ARE NO APPLICABLE CLAUSES IN THIS SECTION.**