

<b>SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS</b>				1. REQUISITION NUMBER <b>64597582</b>		PAGE 1 OF <b>116</b>	
2. CONTRACT NO.		3. AWARD/EFFECTIVE DATE	4. ORDER NUMBER		5. SOLICITATION NUMBER <b>SPE600-17-R-0504</b>		6. SOLICITATION ISSUE DATE <b>TBD</b>
7. FOR SOLICITATION INFORMATION CALL:			a. NAME <b>Jeremy Baxter</b>		b. TELEPHONE NUMBER (No collect calls) <b>703-767-8324</b>		8. OFFER DUE DATE/ LOCAL TIME <b>TBD</b>
9. ISSUED BY <b>Defense Logistics Agency (DLA) Energy 8725 John J. Kingman Road, Room 2945 Fort Belvoir, VA 22060 Buyer/Symbol: Jeremy Baxter/DLA Energy FESAC</b>			CODE <b>SPE600</b>	10. THIS ACQUISITION IS: <input type="checkbox"/> SMALL BUSINESS  <input checked="" type="checkbox"/> HUBZONE SMALL BUSINESS <input checked="" type="checkbox"/> SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS  UNRESTRICTED OR <input checked="" type="checkbox"/> SET ASIDE: 100% FOR: WOMEN-OWNED SMALL BUSINESS (WOSB) ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM EDWOSB NAICS: 493190 8 (A) SIZE STANDARD: \$27.5 M			
11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED  <b>SEE SCHEDULE</b>		12. DISCOUNT TERMS		13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)		13b. RATING	
15. DELIVER TO <b>See Schedule</b>			CODE	16. ADMINISTERED BY		CODE	
17a. CONTRACTOR/OFFEROR		CODE	FACILITY CODE	18a. PAYMENT WILL BE MADE BY  <b>See Clause 252.232-7006</b>			
17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER				18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED <b>SEE ADDENDUM</b>			
19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES			21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	<b>**SEE CLAUSE B34.01 (SCHEDULE)**</b>						
25. ACCOUNTING AND APPROPRIATION DATA					26. TOTAL AWARD AMOUNT (For Govt. Use Only)		
<input checked="" type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4. FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA				<input checked="" type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED			
<input type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA				<input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED			
<input checked="" type="checkbox"/> 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED				<input type="checkbox"/> 29. AWARD OF CONTRACT: REF. _____ OFFER DATED _____, YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:			
30a. SIGNATURE OF OFFEROR/CONTRACTOR				31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)			
30b. NAME AND TITLE OF SIGNER (Type or print)		30c. DATE SIGNED	31b. NAME OF CONTRACTING OFFICER (Type or print)		31c. DATE SIGNED		

**AUTHORIZED FOR LOCAL  
REPRODUCTION PREVIOUS EDITION IS  
NOT USABLE**

**STANDARD FORM 1449 (REV. 2/2012)  
Prescribed by GSA - FAR (48 CFR) 53.212**

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT

32a. QUANTITY IN COLUMN 21 HAS BEEN  
 RECEIVED     INSPECTED     ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED: \_\_\_\_\_

32b. SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE	32c. DATE	32d. PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT REPRESENTATIVE
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32e. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE	32f. TELEPHONE NUMBER OF AUTHORIZED GOVERNMENT REPRESENTATIVE
--	---

33. SHIP NUMBER <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	34. VOUCHER NUMBER	35. AMOUNT VERIFIED CORRECT FOR	32g. E-MAIL OF AUTHORIZED GOVERNMENT REPRESENTATIVE 36. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	37. CHECK NUMBER
--	--------------------	---------------------------------	---	------------------

38. S/R ACCOUNT NO.	39. S/R VOUCHER NUMBER	40. PAID BY
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41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT	42a. RECEIVED BY ( <i>Print</i> )	
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER	41c. DATE	42b. RECEIVED AT ( <i>Location</i> )
		42c. DATE REC'D ( <i>YY/MM/DD</i> )

### ADDITIONAL INSTRUCTIONS FOR ALL PROSPECTIVE OFFERORS

**NOTE:** See Addendum to FAR 52.212-1 – INSTRUCTIONS TO OFFERORS - COMMERCIAL ITEMS (OCT 2015), and FAR 52.212-2 – EVALUATION-COMMERCIAL ITEMS (OCT 2014) and Addendum for complete instructions on how to submit a proposal.

A pre-proposal conference is scheduled at Malmstrom AFB, MT and F.E.Warren AFB WY for this solicitation. The pre-proposal conference will be at F.E Warren on June 12<sup>th</sup> 2017 at 9:00 am and on June 14<sup>th</sup>, 2017 at Malmstrom AFB, MT starting at 9:00am local time. For Base access individuals must have a Federal Government pictured Identification Card i.e. CAC, Retired Military ID etc. If you do not have a Federal Government pictured Identification Card please contact Mr. Jeremy Baxter more than 15 days from pre-proposal conference. For more information or if you have any questions please contact Mr. Jeremy Baxter at [jeremy.baxter@dla.mil](mailto:jeremy.baxter@dla.mil) or 703-767-8324.

A. The North American Industry Classification System (NAICS) code is 493190 and the threshold is \$27.5 million in annual receipts. The point of contact for Small Business Affairs is Mr. Gregory Thevenin, 703-767-9465.

B. Your offer must be received in DLA Energy-FESAC by **TBD**. Facsimile proposals are not authorized. Do not return the entire solicitation package. Simply complete and return one original copy of the Offeror Submission Package (OSP) data, and an original and two copies of the Technical Proposal submissions as described in 52.212-1 Instructions to Offers—Commercial Items (OCT 2015) with Addendum. Your price must be inserted in Clause B 34.01 in the Offeror Submission Package. Proposed prices that are unrealistically low may be considered an indication of a lack of understanding of the solicitation requirements.

C. DLA ENERGY–FESAC is the designated office for receipt of offers. All offerors shall clearly mark envelopes/packages sent in response to this solicitation with the words, “Offer under Solicitation SPE600-17-R-0504.” Mailed offers should be mailed to the following address:

**US Post Office/US Post Office Express Mail offer only:**

ATTN: DLA Energy-FESAC, Bid Custodian Room 2945  
Defense Logistics Agency Energy  
8725 John J. Kingman Road, Room 2945  
Fort Belvoir, VA 22060-6222

**Hand Carried/Courier Delivery Service only:**

ATTN: DLA Energy-FESAC, Bid Custodian Room 2945  
Mr. Jeremy Baxter/ Telephone: 703-767-8324  
Defense Logistics Agency Energy  
8725 John J. Kingman Road, Room 2945 Fort Belvoir, VA 22060-6222

For verification of receipt contact: [jeremy.baxter@dla.mil](mailto:jeremy.baxter@dla.mil) (703) 767-8324

Unnecessarily elaborate brochures or other presentation beyond those sufficient to present a complete and effective response to this solicitation are not desired and may be construed as an indication of the offeror’s lack of cost consciousness. Elaborate artwork, expensive paper and bindings, and expensive visual and other presentations are neither necessary nor wanted.

**D. FAXED PROPOSALS ARE NOT AUTHORIZED.** Please submit your proposal submission by the closing date via either email or hard copy. If you choose the option of an email submission, e-mail your proposal to [bidcustodian@dla.mil](mailto:bidcustodian@dla.mil) as well as [jeremy.baxter@dla.mil](mailto:jeremy.baxter@dla.mil) and [heather.adams@dla.mil](mailto:heather.adams@dla.mil). All e-mail proposals MUST be followed-up with the hard copy (consisting of two volumes as outlined below) NO LATER THAN FIVE (5) business days after solicitation closing. Late proposals will be processed in accordance with FAR 15.208 – Submission, Modification, Revision, and Withdrawal of Proposals. Offeror’s proposals shall be prepared in two separate volumes and provided in the quantities shown below:

Volume	Title	No. of Copies	Page Limit
I	Technical Proposal	1 hard copy and 1 PDF electronic copy	70
II	Offeror Submission Package (OSP) includes Price Proposal	1 original and 1 PDF electronic copy of Attachment II – OFFEROR SUBMISSION PACKAGE	None
III	Past Performance	1 PDF electronic copy	None

Unless you specifically state otherwise, your offer is assumed to accept all terms and conditions of this solicitation. Any exceptions to any part of this solicitation must be specifically identified in a cover letter to your proposal.

E. The Government intends to evaluate proposals and award one contract after written or oral discussions with all responsible offerors that submit proposals within the competitive range. This procurement will use formal Source Selection Procedures using Lowest Price Technically Acceptable (LPTA) source selection process (FAR 15.101-2). See 52.212-2 Evaluation—Commercial Items (Oct 2014) for evaluation methodology of factors. The resulting type of contract will be Firm-Fixed-Price (FFP).

F. Any contract awarded to a contractor who, at the time of award, was suspended, debarred, or ineligible for receipt of a Government contract is voidable at the option of the Government.

G. Care should be taken to mail correspondence relating to this solicitation or resulting contract to the appropriate office as indicated in the applicable clauses.

Table of Contents

AUTHORIZED FOR LOCAL REPRODUCTION PREVIOUS EDITION IS NOT USABLE ..... 1

Prescribed by GSA - FAR (48 CFR) 53.212..... 1

SECTION B – SUPPLIES OR SERVICES AND PRICES..... 11

    B34.01 SERVICES TO BE FURNISHED AND PRICES (DLA ENERGY FEB 1991)..... 11

SECTION C – DESCRIPTIONS/SPECIFICATIONS/STATEMENT OF WORK ..... 11

    PERFORMANCE WORK STATEMENT – SEE SECTION J ..... 11

SECTION E - INSPECTION AND ACCEPTANCE ..... 11

    52.246-4 INSPECTION OF SERVICES - FIXED PRICE (AUG 1996) ..... 12

    252.246-7000 MATERIAL INSPECTION AND RECEIVING REPORT (MAR 2008)..... 12

    E-0001 E1.11 QUALITY CONTROL PLAN (DLA ENERGY MAR 2000) ..... 12

    E-0002 E22.01 QUALITY REPRESENTATIVE (DLA ENERGY JUL 1992)..... 13

    E-0003 E28 CONTRACTOR INSPECTION RESPONSIBILITIES (STORAGE) (DLA ENERGY DEC 2011)..... 13

    E-0004 E29 INITIAL ON-STATION INSPECTION (AARD) (DLA ENERGY MAR 1997) ..... 14

    E-0005 E29.01 CONTRACT TURNOVER INSPECTION (DLA ENERGY MAR 2002) ..... 14

    E-0006 E35 NONCONFORMING SUPPLIES AND SERVICES (DLA ENERGY DEC 2011)..... 14

SECTION F - DELIVERIES OR PERFORMANCE..... 15

    52.211-9072 GENERAL RECEIVING & STORING CONDITIONS - DLA ENERGY (NOV 2011) ..... 15

    52.242-15 STOP-WORK ORDER (AUG 1989) ..... 17

    F-0001 F1.05 GENERAL SHIPPING CONDITIONS (DLA ENERGY OCT 1997) ..... 17

    F-0002 F1.11 DLA INTERNET BID BOARD SYSTEM (DIBBS) (DLA ENERGY APR 2014)..... 19

SECTION G - CONTRACT ADMINISTRATION DATA ..... 19

    252.201-7000 CONTRACTING OFFICER'S REPRESENTATIVE (DEC 1991) ..... 19

    252.232-7003 ELECTRONIC SUBMISSION OF PAYMENT REQUESTS AND RECEIVING REPORTS (JUN 2012) ..... 20

    252.232-7006 WIDE AREA WORKFLOW PAYMENT INSTRUCTIONS (MAY 2013) ..... 20

G-0001 G3 INVOICE NUMBERING REQUIREMENTS (DLA ENERGY AUG 1998) ..... 21

G-0002 G9.06 ADDRESS TO WHICH REMITTANCE SHOULD BE MAILED (DLA ENERGY DEC 1999) ..... 21

G-0003 G21 DESIGNATION OF PROPERTY ADMINISTRATOR (DLA ENERGY MAY 2009)..... 22

G-0004 G22 DESIGNATION OF THE DEFENSE FUEL REGION (DLA ENERGY JUL 1997)..... 22

SECTION H - SPECIAL CONTRACT REQUIREMENTS ..... 22

H-0001 H11 GUARD SERVICE (DLA ENERGY MAR 1982) ..... 22

H-0002 H19 REPORTING AND CONTAINING OIL SPILLS (DOMESTIC STORAGE) (DLA ENERGY JAN 2012)..... 22

H-0003 H51.03 INSURANCE REQUIREMENTS FOR CONTRACTORS AND SUBCONTRACTORS (DLA ENERGY JAN 2012) 22

SECTION I - CONTRACT CLAUSES..... 23

52.202-1 DEFINITIONS (NOV 2013)..... 23

52.203-3 GRATUITIES (APR 1984) ..... 23

52.203-6 RESTRICTION ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEP 2006) ..... 23

52.203-7 ANTI-KICKBACK PROCEDURES (MAY 2014)..... 23

52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (MAY 2014) 24

52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (MAY 2014)..... 24

52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (OCT 2010) ..... 24

52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON POSTCONSUMER FIBER CONTENT PAPER (MAY 2011)..... 26

52.204-7 SYSTEM FOR AWARD MANAGEMENT (OCT 2016)..... 26

52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (JAN 2011) ..... 27

52.204-13 SYSTEM FOR AWARD MANAGEMENT MAINTENANCE (JUL 2013)..... 27

52.204-16 --COMMERCIAL AND GOVERNMENT ENTITY CODE REPORTING. (JUL 2016)..... 28

52.204-18 COMMERCIAL AND GOVERNMENT ENTITY CODE MAINTENANCE (JUL 2016)..... 29

52.209-6 PROTECTING THE GOVERNMENTS INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (AUG 2013) ..... 29

52.212-4 CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS (MAY 2017) ..... 29

ADDENDUM 1 TO 52.212-4..... 32

FAR 52.243-1 CHANGES FIXED PRICE W/ ALTERNATE I (APR 1984) ..... 32

52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS -- COMMERCIAL ITEMS (APR 2016).....	32
52.215-8 ORDER OF PRECEDENCE – UNIFORM CONTRACT FORMAT (OCT 1997) .....	35
52.217-8 OPTION TO EXTEND SERVICES (NOV 1999).....	35
52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000).....	35
52.219-1 SMALL BUSINESS PROGRAM REPRESENTATIONS (OCT 2014) .....	35
52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2014).....	37
52.219-14 LIMITATIONS ON SUBCONTRACTING (NOV 2011) .....	37
52.219-28 POST AWARD SMALL BUSINESS PROGRAM REPRESENTATION (JUL 2013).....	38
52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997) .....	38
52.222-41 SERVICE CONTRACT LABOR STANDARDS (MAY 2014) .....	39
52.222-42 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 2014) .....	42
52.222-43 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT LABOR STANDARDS – PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS) (MAY 2014).....	42
52.222-50 --COMBATING TRAFFICKING IN PERSONS (MAR 2015).....	43
52.223-1-BIOBASED PRODUCT CERTIFICATION (MAY 202).....	46
52.223-2 AFFIRMATIVE PROCUREMENT OF BIOBASED PRODUCTS UNDER SERVICE AND CONSTRUCTION CONTRACTS (SEP 2013) 46	46
52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (MAY 2011), ALT I (MAY 2011) .....	46
52.223-6 DRUG-FREE WORKPLACE (MAY 2001) .....	46
52.223-10 WASTE REDUCTION PROGRAM (MAY 2011).....	47
52.223-18 ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (AUG 2011) .....	47
52.223-19 COMPLIANCE WITH ENVIRONMENTAL MANAGEMENT SYSTEMS (MAY 2011) .....	48
52.224-1 PRIVACY ACT NOTIFICATION (APR 1984) .....	48
52.228-5 INSURANCE-WORK ON A GOVERNMENT INSTALLATION (JAN 1997) .....	48
52.229-3 FEDERAL, STATE, AND LOCAL TAXES (FEB 2013).....	48
52.232-17 INTEREST (MAY 2014).....	49
52.232-40 PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (DEC 2013) .....	49

52.232-9010 ACCELERATED PAYMENTS TO SMALL BUSINESS (APR 2014) .....	49
52.233-1 DISPUTES (JUL 2002), ALT I (DEC 1991) .....	49
52.233-3 PROTEST AFTER AWARD (AUG 1996) .....	50
52.233-4 APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004) .....	51
52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984) .....	51
52.237-3 CONTINUITY OF SERVICES (JAN 1991) .....	51
52.242-13 BANKRUPTCY (JUL 1995) .....	51
52.245-01 GOVERNMENT PROPERTY (APR 2012), ALT I (APR 2017).....	51
52.245-09 USE AND CHARGES (APR 2012).....	57
52.246-25 LIMITATION OF LIABILITY - SERVICES (FEB 1997).....	58
52.249-9000 ADMINSTRATIVE COSTS OF REPROCUREMENT AFTER DEFAULT ADMINISTRATIVE COSTS OF REPROCUREMENT AFTER DEFAULT (MAY 1988) DLAD .....	58
52.252-1 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE (FEB 1998).....	59
52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998).....	59
52.253-1 COMPUTER GENERATED FORMS (JAN 1991) .....	59
252.201-7000 CONTRACTING OFFICER'S REPRESENTATIVE (DEC 1991) .....	59
252.203-7000 REQUIREMENTS RELATING TO COMPENSATION OF FORMER DOD OFFICIALS (SEP 2011).....	59
252.203-7001 PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE CONTRACT-RELATED FELONIES (DEC 2008) 60	60
252.203-7002 REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (SEP 2013).....	60
252.203-7003 AGENCY OFFICE OF THE INSPECTOR GENERAL (DEC 2012) .....	60
252.203-7005 REPRESENTATION RELATING TO COMPENSATION OF FORMER DOD OFFICIALS (NOV 2011).....	60
252.203-7996 PROHIBITION ON CONTRACTING WITH ENTITIES THAT REQUIRE CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS—REPRESENTATION. ....	61
252.203-7997 PROHIBITION ON CONTRACTING WITH ENTITIES THAT REQUIRE CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS. 61	61
252.204-7000 DISCLOSURE OF INFORMATION (AUG 2013) .....	61
252.204-7003 CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT (APR 1992).....	61

252.204-7004 ALTERNATE A, SYSTEM FOR AWARD MANAGEMENT (FEB 2014) .....	61
252.204-7008 COMPLIANCE WITH SAFEGUARDING COVERED DEFENSE INFORMATION .....	62
CONTROLS (DEVIATION 2016-O0001) (OCT 2015).....	62
252.204-7012 SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT .....	62
REPORTING (DEVIATION 2016-O0001) (OCT 2015) .....	62
252.209-7004 SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE GOVERNMENT OF A COUNTRY THAT IS A STATE SPONSOR OF TERRORISM (DEC 2014) .....	64
252.211-7007 REPORTING OF GOVERNMENT-FURNISHED PROPERTY (AUG 2012) .....	64
252.211-7008 USE OF GOVERNMENT-ASSIGNED SERIAL NUMBERS (SEP 2010) .....	66
252.215-7008 ONLY ONE OFFER. (OCT 2013) .....	66
252.219-7003 SMALL BUSINESS SUBCONTRACTING PLAN (DOD CONTRACTS)—BASIC (MAR 2016) .....	67
252.222-7007 SAFEGUARDING SENSITIVE CONVENTIONAL ARMS, AMMUNITION, AND EXPLOSIVES (SEP 1999)..	68
252.232-7010 LEVIES ON CONTRACT PAYMENTS (DEC 2006) .....	68
252.237-7010 PROHIBITION ON INTERROGATION OF DETAINEES BY CONTRACTOR PERSONNEL (JUN 2013).....	69
252.243-7001 PRICING OF CONTRACT MODIFICATIONS (DEC 1991).....	69
252.244-7000 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (DOD CONTRACTS) (JUN 2013)	69
252.245-7001 TAGGING, LABELING, AND MARKING OF GOVERNMENT-FURNISHED PROPERTY (APR 2012) .....	69
252.245-7002 REPORTING LOSS OF GOVERNMENT PROPERTY (APR 2012) .....	69
252.245-7003 CONTRACTOR PROPERTY MANAGEMENT SYSTEM ADMINISTRATION (APR 2012) .....	70
52.204-9000 CONTRACTOR PERSONNEL SECURITY REQUIREMENTS (AUG 2014) .....	71
I-0001 I1.01-4 DEFINITIONS (CONT'D) (STORAGE) (DLA ENERGY JUNE 2009) .....	72
I-0002 I1.01-9 DEFINITIONS (CONT'D) (AARD/TESTING) (DLA ENERGY JUN 2009) .....	74
I-0003 I11.01-2 ADMINISTRATIVE COST OF TERMINATION FOR CAUSE – COMMERCIAL ITEMS (DLA ENERGY FEB 1996)	74
I-0004 I102.02 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT -- PAYROLL TAX ADJUSTMENT (DLA ENERGY JAN 2012).....	74
I-0005 I116 RESPONSIBILITY FOR GOVERNMENT-OWNED PETROLEUM PRODUCTS (DLA ENERGY JAN 2012) ...	75

I-0006	I116.01	LIABILITY FOR FUEL SPILLS (DLA ENERGY JAN 2012)	75
I-0007	I119.04	INVENTORY CONTROL RECORDS AND SYSTEMS OF RECORD (DLA ENERGY JAN 2012)	75
I-0008	I121	CUSTODY OF PETROLEUM PRODUCT (DLA ENERGY APR 1968)	78
I-0009	I122	USE OF FACILITIES (DLA ENERGY APR 2009)	78
I-0010	I123	TITLE TO FACILITIES (DLA ENERGY JUL 1991)	78
I-0011	I130	RISK OF LOSS OR DAMAGE TO GOVERNMENT-OWNED AND/OR CHARTERED AIRCRAFT (DLA ENERGY APR 1968)	78
I-0012	I147	DEMURRAGE (DLA ENERGY NOV 1989)	79
I-0013	I180.02	ENVIRONMENTAL PROTECTION (STORAGE) (DLA ENERGY JAN 2012)	79
I-0014	I291	CONTRACTOR PUBLIC KEY INFRASTRUCTURE (PKI) IMPLEMENTATION (SEP 2009)	79
SECTION J – LIST OF ATTACHMENTS			79
SECTION K - REPRESENTATIONS, CERTIFICATIONS AND STATEMENTS			80
52.203-2		CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (APR 1985)	80
52.209-5		CERTIFICATION REGARDING RESPONSIBILITY MATTERS (APR 2010)	80
52.209-7		INFORMATION REGARDING RESPONSIBILITY MATTERS (JUL 2013)	81
52.219-1		SMALL BUSINESS PROGRAM REPRESENTATIONS (OCT 2014)	99
252.209-7998		REPRESENTATION REGARDING CONVICTION OF A FELONY CRIMINAL VIOLATION UNDER ANY FEDERAL OR STATE LAW (DEVIATION 2012-O0007) (MAR 2012)	100
252.209-7999		REPRESENTATION BY CORPORATIONS REGARDING AN UNPAID DELINQUENT TAX LIABILITY OR A FELONY CONVICTION UNDER ANY FEDERAL LAW (DEVIATION 2012-O0004) (JAN 2012)	101
252.247-7022		REPRESENTATION OF EXTENT OF TRANSPORTATION BY SEA (AUG 1992)	101
K-0001	K15	RELEASE OF PRICES (DLA ENERGY MAR 2009)	101
K-0002	K33.01	AUTHORIZED NEGOTIATORS (DLA ENERGY APR 2007)	101
K-0003	K150	WIDE AREA WORKFLOW (WAWF) SUPPLEMENTAL INVOICE SUBMISSION (DLA ENERGY MAY 2014)	101
SECTION L - INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS			102
52.212-1		INSTRUCTIONS TO OFFERORS - COMMERCIAL ITEMS (JAN 2017)	102
		ADDENDUM TO 52.212-1 – INSTRUCTIONS TO OFFERS – COMMERCIAL ITEMS (JAN 2017)	105
52.216-1		TYPE OF CONTRACT (APR 1984)	108

52.222-24 PREAWARD ON-SITE EQUAL OPPORTUNITY COMPLIANCE EVALUATION (FEB 1999).....	108
52.233-2 SERVICE OF PROTEST (SEP 2006) .....	108
52.237-1 SITE VISIT (APR 1984).....	108
52.252-5 AUTHORIZED DEVIATIONS IN PROVISIONS (APR 1984) .....	108
52.233-9000 AGENCY PROTESTS (NOV 2011).....	108
52.233-9001 DISPUTES - AGREEMENT TO USE ALTERNATIVE DISPUTE RESOLUTION (NOV 2011).....	109
252.209-7002 DISCLOSURE OF OWNERSHIP OR CONTROL BY A FOREIGN GOVERNMENT (JUN 2010).....	109
L-0001 L1.02 PROPOSAL ACCEPTANCE PERIOD (DLA ENERGY NOV 1991) .....	110
L-0002 L2.01-1 PROPOSAL PREPARATION INSTRUCTIONS AND PAST PERFORMANCE AND SOCIOECONOMIC PLAN SUBMISSIONS (DLA ENERGY FEB 2015) .....	110
L-0003 L2.06 EVIDENCE OF RESPONSIBILITY (AARD) (DLA ENERGY NOV 1989) .....	110
L-0004 L2.11-4 E-MAIL PROPOSALS (DLA ENERGY OCT 2010).....	111
L-0005 L198 PREPROPOSAL CONFERENCE (SERVICES) (DLA ENERGY FEB 2009) .....	111
L-0006 L82 WAGE DETERMINATION (DLA ENERGY FEB 2009).....	111
SECTION M - EVALUATION FACTORS FOR AWARD .....	111
52.212-2 EVALUATION – COMMERCIAL ITEMS (OCT 2014).....	111
M-0001 M72 EVALUATION OF OFFERS (EXCEPTIONS/DEVIATIONS) (DLA ENERGY APR 1997 ...	116

**SECTION B – SUPPLIES OR SERVICES AND PRICES**

**B34.01 SERVICES TO BE FURNISHED AND PRICES (DLA ENERGY FEB 1991)**

The services to be furnished during the period specified herein and the unit prices are as follows:

\*FUELS MANAGEMENT SERVICES – BASE PERIOD October 1, 2017 – September 30, 2021; Option Period October 1, 2021 through September 30, 2026.

FIRM-FIXED-PRICE (Pro-rated for part months)

Note: Separate Contract Awards will be issued as a result of this solicitation; one Contract for F.E. Warren AFB, WY and one Contract for Malmstrom AFB, MT.

Non-personal Services. Provide fuels management services to receive, store, transfer, and issue petroleum and cryogenics products as applicable while maintaining accountability and quality control of products; perform and track required maintenance to ensure facilities, associated systems, vehicles, and equipment remain operational to meet the base mission; and comply with environmental, safety, and security directives, **F.E.Warren AFB, WY**, in accordance with Attachment I, Performance Work Statement (PWS). FOB DESTINATION.

<u>ITEM NO.</u>	<u>SUPPLIES/SERVICES</u>	<u>QUANTITY</u>	<u>UNIT</u>	<u>UNIT PRICE</u>	<u>TOTAL (Unit Price X 48 mos.)</u>
0001	*	48	Months	\$ _____	\$ _____
		(October 1, 2017 – September 30, 2021)			
		<b>Base Period</b>			

<u>ITEM NO.</u>	<u>SUPPLIES/SERVICES</u>	<u>QUANTITY</u>	<u>UNIT</u>	<u>UNIT PRICE</u>	<u>TOTAL (Unit Price X 60 mos.)</u>
0002	*	60	Months	\$ _____	\$ _____
		(October 1, 2021 – September 30, 2026)			
		<b>Option Period</b>			

Non-personal Services. Provide fuels management services to receive, store, transfer, and issue petroleum and cryogenics products as applicable while maintaining accountability and quality control of products; perform and track required maintenance to ensure facilities, associated systems, vehicles, and equipment remain operational to meet the base mission; and comply with environmental, safety, and security directives, **Malmstrom AFB, MT**, in accordance with Attachment I, Performance Work Statement (PWS). FOB DESTINATION.

<u>ITEM NO.</u>	<u>SUPPLIES/SERVICES</u>	<u>QUANTITY</u>	<u>UNIT</u>	<u>UNIT PRICE</u>	<u>TOTAL (Unit Price X 48 mos.)</u>
0004	*	48	Months	\$ _____	\$ _____
		(October 1, 2017 – September 30, 2021)			
		<b>Base Period</b>			

<u>ITEM NO.</u>	<u>SUPPLIES/SERVICES</u>	<u>QUANTITY</u>	<u>UNIT</u>	<u>UNIT PRICE</u>	<u>TOTAL (Unit Price X 60 mos.)</u>
0005	*	60	Months	\$ _____	\$ _____
		(October 1, 2021 – September 30, 2026)			
		<b>Option Period</b>			

**SECTION C – DESCRIPTIONS/SPECIFICATIONS/STATEMENT OF WORK**

**PERFORMANCE WORK STATEMENT – SEE SECTION J**

**SECTION E - INSPECTION AND ACCEPTANCE**

**52.246-4 INSPECTION OF SERVICES - FIXED PRICE (AUG 1996)**

- (a) Definition: "Services," as used in this clause, includes services performed, workmanship, and material furnished or utilized in the performance of services.
- (b) The Contractor shall provide and maintain an inspection system acceptable to the Government covering the services under this contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to the Government during contract performance and for as long afterwards as the contract requires.
- (c) The Government has the right to inspect and test all services called for by the contract, to the extent practicable at all times and places during the term of the contract. The Government shall perform inspections and tests in a manner that will not unduly delay the work.
- (d) If the Government performs inspections or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish, and shall require subcontractors to furnish, at no increase in contract price, all reasonable facilities and assistance for the safe and convenient performance of these duties.
- (e) If any of the services do not conform with contract requirements, the Government may require the Contractor to perform the services again in conformity with contract requirements, at no increase in contract amount. When the defects in services cannot be corrected by reperformance, the Government may --
- (1) Require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and
  - (2) Reduce the contract price to reflect the reduced value of the services performed.
- (f) If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with contract requirements, the Government may --
- (1) By contract or otherwise, perform the services and charge to the Contractor any cost incurred by the Government that is directly related to the performance of such service; or
  - (2) Terminate the contract for default.

**252.246-7000 MATERIAL INSPECTION AND RECEIVING REPORT (MAR 2008)**

- a) At the time of each delivery of supplies or services under this contract, the Contractor shall prepare and furnish to the Government a material inspection and receiving report in the manner and to the extent required by Appendix F, Material Inspection and Receiving Report, of the Defense FAR Supplement.
- (b) Contractor submission of the material inspection and receiving information required by Appendix F of the Defense FAR Supplement by using the Wide Area Work Flow (WAWF) electronic form (see paragraph (b) of the clause at 252.232-7003) fulfills the requirement for a material inspection and receiving report (DD Form 250). Two copies of the receiving report (paper copies of either the DD Form 250 or the WAWF report) shall be distributed with the shipment, in accordance with Appendix F, Part 4, F-401, Table 1, of the Defense FAR Supplement.

**E-0001 E1.11 QUALITY CONTROL PLAN (DLA ENERGY MAR 2000)**

- (a) Upon award, the Contractor shall prepare, in triplicate and in English, a Quality Control Plan (QCP). Prior to the first receipt of Government-owned product into the facility, two copies of the QCP shall be forwarded to the Contracting Officer and one copy to the assigned Quality Assurance Representative for approval.
- (b) The QCP shall include the following quality control procedures employed by the Contractor.
- (1) Receiving (both product and additives);
  - (2) Blending;
  - (3) Sampling;
  - (4) Testing;
  - (5) Storage and handling;
  - (6) Loading and shipping;
  - (7) Calibration program for testing and measuring equipment in accordance with ISO 10012-1, "Quality Assurance Requirements for Measuring Equipment, Part I." Equivalent local regulation, as appropriate, may be used as well. Whichever program used must include a section addressing meter proving (used to determine quantity) and must comply with the American Petroleum Institute Manual of Petroleum Measurement Standards, Chapters 4, 5, and 6, or equivalent foreign standard. For any item that requires calibration but is not covered by ASTM, API, or IP publications, the applicable manufacturer's recommended calibration method(s) outlined in the applicable industry publication shall be used if acceptable to the Government;
  - (8) Quantity measurement;
  - (9) Records and reports; and
  - (10) Corrective action procedures (to include, but not be limited to, procedures for notification of Quality Representative, actions to be taken on discovery of off-spec product during receipts/shipments, upgrading procedures for Contractor-caused contamination, leaks, etc.).
- The QCP shall also include an organizational chart of key personnel and their responsibilities and a schematic diagram of the facility with key inspection/activity points marked for each product handled.

- (c) The QCP shall require that each Contractor employee be familiar with its content and shall state that it must be reviewed semiannually and revised as needed. Revision should occur when any change is made to the inspection system, when any corrective action needs to be incorporated due to quality problems, and as otherwise necessary. The Contractor shall sign and date each revision of the

QCP.

**E-0002 E22.01 QUALITY REPRESENTATIVE (DLA ENERGY JUL 1992)**

The Quality Office assigned inspection responsibility under this contract is DLA Americas West.

**E-0003 E28 CONTRACTOR INSPECTION RESPONSIBILITIES (STORAGE) (DLA ENERGY DEC 2011)**

(a) Inspection and tests by the Government of services, facilities, and equipment specified within this contract does not relieve the Contractor from responsibility to meet all requirements of the contract.

(b) The Contractor shall furnish personnel, facilities, and equipment on-site to accomplish the following routine tests and procedures. These on-site resources may be provided by Contractor personnel or by a commercial source action on behalf of the Contractor. The Quality Representative will not be responsible for performing any of these services for the Contractor.

(1) Sampling of storage tanks, shipments and receipts in accordance with ASTM D 4057, Standard Practice for Manual Sampling of Petroleum and Petroleum Products (API Manual of Petroleum Measurement Standards (MPMS), Chapter 8.1);

(2) Retaining of product composite samples from shipments and receipts as follows:

<u>METHOD OF SHIPMENT</u>	<u>MINIMUM QUANTITY</u>	<u>RETENTION PERIOD</u>
Pipeline	20 liters	60 days
Tanker/Barge		
Parcel Composite	20 liters	90 days
Each compartment	0.5 liters	90 days
Navy Fleet Oilers/Vessels	10 liters	60 days
Tank Truck/Car	1 liter	15 days

**NOTE: After the minimum retention period, samples shall be tested for Appearance, Color (Visual), API Gravity/Density and Flash Point and, if found to be on-specification, shall be returned to like Government stock on-site. Sample containers may be reused if properly cleaned.**

(3) Determining the presence of water in storage tanks, shipments and receipts. Ensure that accurate water cuts are obtained by means of a water indicating paste conforming to MIL-W-83779B. Two suggested sources are Stewart Hall Chemical Testmaster Water Indicating Paste or Sartomer Sar Gel Water Indicating Paste (see Note 2 below);

(4) Determining Density at 15 degrees Celsius or API gravity of products by ASTM D 1298 or ASTM D 4052 (see Note 2 below);

(5) Determining the temperature of products by the API MPMS, Chapter 7 (see Note 2 below);

(6) Determining the Appearance of applicable products using ASTM D 4176, Procedure 1 (see Note 2 below);

(7) Determining the visual color of products.

(8) Determining the Flash Point of applicable products using test methods cited in the appropriate product specification (see Note 2 below);

(9) Conversion of gross to net gallonage (liters);

(10) Determining the percentage (volume) of fuel system icing inhibitor (FSII) by means of a portable refractometer in accordance with ASTM D 5006. One suggested source is H.B. Industries, Inc., Glenview, IL 60025 (B/2 Anti-Icing Additive test kit) (see Note 2 below); and

(11) Determining the range of fuel electrical conductivity using ASTM D 2624. One suggested source for a conductivity meter is Emcee Electronics, Inc., Sarasota, FL 33581 (Model 1152) (see Note 2 below).

**Note 1: All costs for providing the above tests and procedures shall be included in the monthly service charge. The only exception to the Contractor's obligation to provide these services as part of the monthly service charge is when the tests described above are part of the higher order analysis (defined as the following categories: Composite Samples, Storage Tanks After Receipt, Interface Mixtures, Dormant Stocks and Individual Tests (including particulate contamination) found in the attachment to the solicitations entitled MINIMUM REQUIREMENTS FOR STORAGE SAMPLING AND TESTING. Provisions for providing higher order analyses are covered in the SAMPLING AND TESTING OF PETROLEUM PRODUCTS (STORAGE) contract provision.**

**Note 2: Upon request, the Contractor shall permit the Quality Representative unrestricted use of the equipment and ancillary supplies needed to perform this test/procedure on behalf of the Government.**

(c) During the contract, the Contractor shall furnish representative samples of the product in each storage tank, shipment or receipt at the request of, and in the manner and to the place designated by, the Quality Representative. Sample size will be 2 gallons for gasoline-type fuels and one gallon or 10 gallons for jet diesel-type fuels. The number of samples to be furnished during any 12-month period shall not exceed eight times the number of tanks specified in the contract. Such samples shall be packed, marked, and shipped by the Contractor, shipping expense prepaid, in containers and shipping boxes furnished by the Contractor. Sample containers shall be epoxy coated on the interior. This requirement is in addition to sampling required elsewhere in this contract provision and the contract. All reasonable direct shipping costs associated with samples required by this paragraph shall be reimbursed upon request from the Contractor and such costs shall not be included in the monthly service charge. However, all other costs related to this requirement shall be included as part of the monthly service charge.

**E-0004 E29 INITIAL ON-STATION INSPECTION (AARD) (DLA ENERGY MAR 1997)**

(a) **INSPECTION.** The initial on-station inspection is for the sole benefit of the Government and the Government may partially or totally waive its right of inspection at its discretion. The date, time, and place of inspection may be changed by the mutual agreement of the parties.

(b) **TIMEFRAME.** Unless notified otherwise, all equipment shall be available for Government inspection at the installation where services are to be performed four calendar days prior to the start of the delivery period. No work may be performed on the equipment during the inspection period except as permitted by the Government. The Government will complete inspection of the Contractor's equipment no later than the calendar day preceding the date aircraft fuel delivery services are to commence.

(c) **ENTRY.** The Contractor is responsible for making necessary arrangements with the Commanding Officer of such installation or an authorized representative regarding entry into the installation.

(d) **TANK INTERIORS.** Equipment presented for inspection shall be vapor free.

(e) **FILTRATION MEDIA.** If requested by the Government, the Contractor shall be responsible for disassembling filtration units to facilitate the inspection. The Contractor shall present, at the time of the inspection, written certification attesting to the last date on which each filter element was changed and shall provide a historical record denoting pressure drip data for each filter element (if such certification and pressure drip data exists).

(f) **CONTRACTOR REPRESENTATIVE.** Representation by the Contractor at the inspection shall be limited to one individual except when additional personnel have been specifically authorized by the Government.

(g) **DEFAULT.** If the Contractor fails to make the equipment available on the date specified or otherwise mutually agreed upon, or if the inspection discloses that the equipment is not in conformance with contract requirements, the Government may terminate this contract for default.

(h) **REINSPECTION.** If the Government discovers equipment deficiencies during the initial inspection, the Government may, at its discretion, conduct a reinspection at the Contractor's expense.

**E-0005 E29.01 CONTRACT TURNOVER INSPECTION (DLA ENERGY MAR 2002)**

The outgoing Contractor, during the last 10 working days of the contract, shall permit personnel of the successor Contractor access to all contacted facilities to observe operations. The successor Contractor shall, during the last 96 hours of the expiring contract, be provided assistance by the outgoing Contractor, DLA Energy representatives, and the Contracting Officer's Representative in accomplishing a joint facilities turnover inspection. The inspection shall provide for a facilities walk-through and property inventory, product sampling and testing, and a complete product inventory. The successor Contractor agrees to protect and not disclose any inadvertently disclosed proprietary information of the outgoing Contractor discovered during the turnover period.

**E-0006 E35 NONCONFORMING SUPPLIES AND SERVICES (DLA ENERGY DEC 2011)**

(a) **DEFINITION:** As used in this contract provision:

**Deviation** is defined as a written authorization granted after contract award and prior to manufacture of an item, to depart from a particular performance or design requirement of a contract, specification, or referenced document, for a specific number of units or specific period of time, normally the duration of the contract.

**Extraordinary situation** means the matter cannot await resolution until the next DLA Energy business day (0800 to 1630 hours EST, Monday through Friday, Federal Holidays excluded).

**Waiver** is defined as a written authorization granted after contract award to accept a configuration item or other designated item which, during production or after having been submitted for inspection, is found to depart from specified requirements, but nevertheless is considered suitable for use "as is" or after repair by an approved method. Approval is on a case-by-case basis and is normally for a set period of time.

(b) The Government may, at its discretion, accept nonconforming supplies or services. In such cases, the Contractor must obtain a deviation or waiver from the Contracting Officer prior to acceptance.

(c) The following procedures shall be used to request a deviation or waiver.

(1) Requests for deviations and waivers shall be submitted by the Contractor to the Contracting Officer with a copy to the appropriate Inspection Office referenced in the LIST OF INSPECTION OFFICES FOR DLA ENERGY CONTRACTS or QUALITY REPRESENTATIVE contract provision of this contract. Each request shall provide the following information: Contractor name; name and contact information of the contractor's authorized negotiator; contract number; contract line item number and product nomenclature, clause or contract provision number, paragraph and subparagraph, as appropriate; the nature of the request; the reason for the request; the corrective action being taken by the Contractor to correct and prevent recurrence of the condition(s) causing the nonconformance; and an agreement to pay an equitable price reduction, estimated and proposed by DLA Energy, over and above the administrative fee, contingent on the impact of the specific circumstances on DLA Energy relative to approval of the deviation or waiver.

(2) In extraordinary situations, the Contractor may initially submit a verbal request for a waiver, but not a deviation, to the Contracting Officer. Written requests shall be submitted to the Contracting Officer by the next DLA Energy business day (0800 to 1630 hours EST, Monday through Friday, Federal Holidays excluded). If the Contracting Officer cannot be reached, the Duty Officer shall be contacted to provide the necessary information to the proper individuals as soon as possible. The Duty Officer's telephone number is **(800) 286-7633** or **(703) 767-8420**.

(3) If a deviation or waiver is granted, the contract will be modified to accept the nonconforming supplies or services and to require the Contractor to provide an equitable price reduction or other adequate consideration commensurate with the deviation or waiver being granted. If the situation warrants, a deviation or waiver may be granted without prior agreement on price reduction or other consideration, subject to agreement by the Contractor, or its representative, to subsequent negotiation. Such an agreement, in addition to a brief description of the terms of the deviation or waiver, shall be documented on the shipping document or other appropriate correspondence. After negotiations, failure to agree on adequate consideration shall be a dispute concerning a question of fact within the meaning of the Disputes paragraph of the CONTRACT TERMS AND CONDITIONS – COMMERCIAL ITEMS contract provision of this contract.

(4) If a deviation or waiver is granted and the nonconforming supplies are accepted, then in no event will consideration be less

than \$500, which covers administrative costs, plus any additional cost of Government reinspection or retest, if necessary.

(5) If a deviation or waiver is granted modifying this contract, but the supplies accepted are subsequently determined to be in conformity with contract specifications, the Contractor shall still be obligated to pay the consideration originally agreed upon in support of the deviation or waiver. If, however, this consideration exceeds \$1000, a second contract modification shall be issued reducing the Contractor's obligation to \$1000 (the administrative cost of issuing the two required modifications), plus, if appropriate, any cost of Government reinspection or retest performed as a result of the deviation or waiver being granted.

(d) When notification of nonconforming supplies is received after the supplies have been accepted, and the Government determines not to exercise its right to reject or to require correction under the INSPECTION OF SUPPLIES – FIXED-PRICE, INSPECTION OF SERVICES – FIXED PRICE, or CONTRACT TERMS AND CONDITIONS – COMMERCIAL ITEMS contract provision, then in no event will consideration be less than \$500 to cover administrative costs. This \$500 fee is in addition to—

(1) Consideration commensurate with the extent of nonconforming supplies; and

(2) Cost of Government re-inspection or retest, if necessary.

The administrative fee will apply to each claim letter issued for off-specification product delivered to an activity.

(e) Contractors shall be held responsible for payment of any fines or penalties imposed on a receiving activity by an environmental enforcement agency, resulting from the delivery of nonconforming supplies under a DLA Energy contract.

(f) Repeated tender of nonconforming supplies or services, including those with only minor defects, will be discouraged by appropriate actions, including, but not limited to, rejecting the supplies or services whenever feasible and documenting the Contractor's performance records.

## **SECTION F - DELIVERIES OR PERFORMANCE**

### **52.211-9072 GENERAL RECEIVING & STORING CONDITIONS - DLA ENERGY (NOV 2011)**

Notice will be furnished to the Contractor of upcoming product receipts. The notice will include the method of receipt, the source, grade, or type of product, and any special instructions.

The Contractor shall transfer and store each grade of product in a manner that preserves the quality of the product and will prevent contamination. The responsibility for preventing contamination rests with the Contractor.

When requested, the Contractor will transfer product between tanks to consolidate like types or grades.

Whenever a product is to be removed from a tank to accomplish cleaning or repair of the tank, or to change product, or to affect the release of the tank to the Contractor, the Contractor shall strip such tank to preclude loss of recoverable fuel. The Contractor shall provide the quality assurance representative (QAR) with information pertaining to the amount of fuel deemed unrecoverable, the reason why the fuel cannot be recovered, and an analysis of the unrecovered fuel quality. All unrecoverable tank bottoms/line fill quantities will be reported to the Property Administrator for disposition instructions.

Contaminated/off-specification product will be reported to the QAR in order to obtain disposition instructions. Tanks out of service for repair shall be removed from revenue until such time as they are returned to Government service. Tanks out of service for cleaning shall be governed by the Inspection and Cleaning Of Bulk Petroleum Storage Tanks clause.

Custody of product received by pipeline, and risk of loss thereof, shall pass from the carrier to the Contractor when the product passes the flange connecting the carrier's pipeline and the Contractor's pipeline.

Custody of product received by transport truck, and risk of loss thereof, shall pass from the carrier to the Contractor when the product passes from the transport truck discharge hoses into the Contractor's receiving facilities.

Custody of product received by tank car, and risk of loss thereof, shall pass from the carrier to the Contractor when the tank car comes to rest on the Contractor's siding.

Custody of product received from tanker or barge, and risk of loss thereof, shall pass from the carrier to the Contractor when the fuel passes the vessel's permanent hose connection.

The Contractor shall be held accountable for demurrage charges arising from delay(s) in receipt by tank cars or transport trucks, except when the delay(s) are caused by reason beyond the control and without the fault or negligence of the Contractor and its subcontractors.

The following subparagraphs apply only to barges and tankers.

Scheduled arrival date and basic allowed laytime.

The Contractor shall be notified in advance of the scheduled arrival date. Each notice will specify the quantity to be delivered, the cargo number, the name of the vessel, and the scheduled arrival date. For tankers, the notice will also include the size of the vessel and the expected time of arrival. For tankers, the notice of delivery will be furnished at least 72 hours in advance of the scheduled arrival date; for barges, at least 48 hours in advance of the scheduled arrival date.

The Government will provide the maximum notice practicable when the anticipated vessel transit time from the loading point is less than the 72/48 hours. Changes in the scheduled arrival date that will provide less than the 48 hours' notice for barges and the 72 hours' notice for tankers will require the verbal approval of the Contractor. This verbal approval is to be confirmed in writing as soon as practicable.

The Contractor shall provide a reachable berth, free of charge, where the vessel can be safely moored and afloat with necessary access thereto as soon as possible, but no later than, for barges, within 3 hours after issue of notice of readiness to unload, and, for tankers, within 6 hours after issue of notice of readiness, provided –

If the vessel is tendered for unloading on a date earlier than the last agreed scheduled arrival date, the Government's vessel shall be unloaded as soon as possible in its proper turn with other vessels, and laytime shall not commence until the vessel moors alongside or, for barges, 3:00 A.M. local time; for tankers, 6:00 A.M. local time, on the last agreed scheduled arrival date, whichever occurs first.

If the vessel is tendered for unloading later than 12:00 noon of the day following the last scheduled arrival date, the vessel shall be unloaded in its proper turn with other vessels. Laytime shall commence when the vessel moors alongside, provided a good faith effort is made by the Contractor to moor the vessel in its turn with other vessels as loading berths become available.

Laytime shall commence either (A) at the expiration of the notice period prescribed in subparagraph (ii) above, berth or no berth, or (B) immediately when the vessel moors alongside, with or without notice of readiness, whichever occurs first.

Laytime, once started, shall continue 24 hours per day, 7 days per week, without interruption, from its commencement until unloading of the barge or tanker is completed and hoses have been disconnected.

Unless otherwise provided in the Schedule, the Contractor shall be allowed and will complete unloading within laytime determined as follows:

For barges: One hour for each 2,000 barrels of product to be unloaded.

For tankers: Thirty-six hours of discharge of a full vessel cargo. When partial vessel cargoes are to be unloaded, the 36 hours will be prorated based on quantities discharged in each port.

Hoses and loading arms for unloading a barge or tanker will be furnished, connected, and disconnected by the Contractor.

Increases to basic allowed laytime.

If, after laytime commences, the conditions or facilities of the barge or tanker to be unloaded do not permit unloading, basic allowed laytime shall be increased by the duration of the delay.

If the vessel is delayed in reaching its berth and the delay is caused by the fault of the vessel, basic allowed laytime shall be increased by the duration of the delay.

If the vessel owner's or operator's regulations prohibit unloading at any time after laytime has commenced, the lost time shall be added to the basic allowed laytime.

If, for any reason, the Contractor is delayed in unloading the barge or tanker because of actions of a Government representative, acting under the contract, that arise through no fault or negligence on the part of the Contractor or its subcontractors, basic allowed laytime shall be increased by the duration of the delay.

There will be no increase to basic allowed laytime (nor other reductions to any resulting demurrage time) for saved laytime arising out of other loadings/discharges.

Delays, after commencement of laytime, attributed to causes beyond the control and without the fault or negligence of the Contractor or the U.S. Government will result in increasing the basic allowed laytime by one half of the delay time.

Payment of demurrage. For all hours of laytime which elapse in excess of the basic allowed laytime for unloading provided for by subparagraph (k)(1)(v), or as otherwise provided in the Schedule, the Contractor shall pay demurrage to the Government as follows:

USS, USNS, or time chartered vessels. At the demurrage rate for the vessel loaded computed to the nearest whole hour as published by the Military Sealift Command and in effect on the date the loading of the vessel is completed.

Voyage chartered vessels. At the demurrage rate cited in the charter, except that the demurrage payable by the Contractor shall in no event exceed the demurrage expense incurred by the Government under the Charter.

## **52.242-15 STOP-WORK ORDER (AUG 1989)**

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this contract for a period of 90 days after the order is delivered to the Contractor, and for any further period to which the parties may agree. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of 90 days after a stop-work is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either --

(1) Cancel the stop-work order; or

(2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.

(b) If a stop-work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if --

(1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(2) The Contractor asserts its right to the adjustment within 30 days after the end of the period of work stoppage; provided, that, if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon the claim submitted at any time before final payment under this contract.

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

(d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.

## **F-0001 F1.05 GENERAL SHIPPING CONDITIONS (DLA ENERGY OCT 1997)**

(a) The Contractor will prepare the inspection and shipment documents covering deliveries made from the terminal in accordance with instructions contained in the Documentation and Product Property Control Plan. Normally, the document will consist of DD Form 250 for tank car, tank truck, pipeline, and packaged shipments, and DD Form 250-1 and ullage/inn age reports in the case of barge and tanker shipments. The Contractor will distribute the DD Forms 250 and the Quality Representative (QR) will distribute the DD Forms 250-1. When the QR is not present for release or shipment of product inspected at these facilities, and the Contractor's quality control program has been approved by the responsible Government Quality Office in accordance with paragraph 246.471 of the DOD FAR Supplement, the Contractor will insert the following certification on the inspector's copy of the shipping documents:

"I certify that the above supplies were (a) in the quantity indicated, (b) taken from Government-owned and approved stocks, and (c) loaded into inspected and approved containers. This shipment was released in accordance with paragraph 246.471-2 of the DoD FAR Supplement under authorization of (NAME and TITLE OF THE AUTHORIZED REPRESENTATIVE OF THE CONTRACT ADMINISTRATION OFFICE) in a letter dated (DATE OF AUTHORIZING LETTER). (SIGNATURE AND TITLE OF CONTRACTOR'S DESIGNATED REPRESENTATIVE)."

(b) Shipment of products hereunder will be made only pursuant to a "release" furnished by the Product Property Administrator or his designated representative. The "release" will indicate the consignees who are authorized to issue "calls" or "orders" for shipment of product. Such "release" will be periodically furnished to the Contractor by the cognizant Product Property Administrator.

(c) Conveyances required for shipments shall be furnished or designated by the Government. The Contractor shall inspect all shipping conveyances prior to loading to insure that product loaded will not be lost or contaminated by the condition of the equipment. Tank truck inspection must be performed by qualified Contractor personnel. Delegation of this responsibility shall not be passed to the tank truck operator/driver. The tank truck operator/driver may be permitted to physically load the tank truck; however, the loading operation must be under the surveillance and direction of Contractor personnel. Equipment found to be unsatisfactory shall be reported as follows: (1) TANKERS AND BARGES. Report immediately by telephone to the QR; if not present, the master of the tanker or barge or to the carrier's agent or general office;

(2) TANK CARS. Report to the QR and by wire (Government Rate, Collect) to Commander, Eastern Area, Military Traffic Management Command, ATTN: MTE-INR-O, Brooklyn, NY 11250. Any shortage or overage of tank cars shall be similarly reported; (3) TRANSPORT TRUCKS. Contractor shall expeditiously report to the Traffic Manager of the appropriate Defense Fuel Region, Government QR, and to the carrier's terminal where equipment is domiciled.

(d) Except when loading barges or tankers, or making pipeline deliveries, strainers of 100 mesh or finer shall be utilized in loading aviation fuels and jet lubricating oil and 60 mesh or finer in the case of reciprocating engine oil. Strainers shall be located as near the loading point as practicable. Contractor shall furnish and periodically inspect and clean such strainers and repair same, if necessary, keeping a written record thereof.

(e) Contractor shall affix serially numbered seals to the dome covers of tank cars and all openings in the case of tank trucks in such a manner that entry could only be gained by breaking a seal. Such seals will be furnished by the Contractor. Seal numbers will be indicated on shipping documents.

(f) Placards, as required by 49 CFR 172.506 and 49 CFR 172.508, shall be furnished and affixed to all tank cars and tank trucks by Contractors unless placards are already affixed.

(g) **FOR TANK CARS ONLY.**

(1) If Government-owned or leased tank cars are furnished, the Contractor will maintain records showing each day a car is received or forwarded by car number and will furnish the information to the Defense Fuel Regional Office upon request.

(2) Bottom outlet gaskets and manway cover gaskets, when required due to deterioration or loss, shall be furnished and applied to tank cars by the Contractor.

(3) The Contractor shall (i) inspect empty Government-owned tank cars located on the Contractor's premises and (ii) ship tank cars located on the Contractor's premises to repair facilities as directed by the Government.

(h) Unless otherwise directed, the Contractor shall prepare and distribute Government bills of lading utilized in shipments. Such bills of lading, routing instructions, and transportation assistance will be furnished by the Defense Fuel Region placing orders.

(i) The Contractor shall comply with routing instructions furnished by the Government. Such instruction will include names, routes, route order numbers, and other pertinent information. The Contractor shall be responsible for scheduling of commercial transport trucks, trucks and trailer, and tank wagons to its plant in accordance with such routing instructions and consonant with the applicable order. The Contractor shall provide sufficient advance notice to carriers and schedule the carrier's equipment for loading. The Contractor shall reimburse the Government for any demurrage incurred as a result of improper scheduling.

(j) Custody of product shipped by pipeline, and risk of loss thereof, shall pass from the Contractor to the carrier when the product passes the flange connecting the Contractor's pipeline and the carrier's pipeline.

(k) Custody of product shipped by transport truck, and risk of loss thereof, shall pass from the Contractor to the carrier when the loaded transport truck is released for shipment by the Contractor.

(l) Custody of product shipped by tank car, and risk of loss thereof, shall pass from the Contractor to the carrier when the loaded tank car is picked up by the carrier.

(m) Custody of product delivered to tanker or barge, and risk of loss thereof, shall pass from the Contractor to the carrier when the fuel passes the vessel's permanent hose connection.

(n) The Contractor shall be held accountable for demurrage charges arising from delay(s) in shipment by tank cars and transport trucks except when those delays are caused by reasons beyond the control and without the fault or negligence of the Contractor and its subcontractors.

(o) The following subparagraphs only apply to barges and tankers.

(1) **SCHEDULED ARRIVAL DATE AND BASIC ALLOWED LAYTIME.**

(i) Notice shall be furnished to the Contractor in advance of the date on which loading is to be made, which date is hereinafter referred to as the "Scheduled Arrival Date." Each notice will specify the quantity to be loaded, the cargo number, and name of the vessel and the scheduled loading date. For tankers, notice will also include the size of the vessel and the expected time of arrival. Notice of delivery will be furnished at least 72 hours in advance of the scheduled arrival date for tankers, and at least 48 hours in advance of the scheduled arrival date for barges. When anticipated vessel transit time to the loading point is less than 72/48 hours, the Government will provide the maximum notice practicable. Any change in the scheduled arrival date of less than 48 hours notice for barges and 72 hours notice for tankers will require verbal approval of the Contractor, confirmed in writing.

(ii) The Contractor shall provide as soon as possible, but within 3 hours after issue of notice of readiness to load from a barge and within 6 hours after the Contractor receives notice of readiness to load from a tanker, a reachable berth, free of cost to the Government, where the vessel can be safely moored and afloat with necessary access thereto PROVIDED, however --

(A) If the vessel is tendered for loading on a date earlier than the last agreed scheduled arrival date, the Government's vessel shall be loaded as soon as possible in its proper turn with other vessels, and laytime shall not commence until the vessel moors alongside or, for barges, 3:00 A.M. local time; for tankers, 6:00 A.M. local time, on the last agreed scheduled arrival date, whichever occurs first.

(B) If the vessel is tendered for loading later than 12:00 noon of the day following the last scheduled arrival date, the vessel shall be loaded in its proper turn with other vessels. Laytime shall commence when the vessel moors alongside, provided a good faith effort is made by the Contractor to moor the vessel in its turn with other vessels as loading berths become available. If the vessel is not moored in its proper turn with other vessels, laytime will commence at 6:00 A.M. on the date the Government vessel's turn occurred.

(iii) Laytime shall commence either (A) at the expiration of the notice period prescribed in subparagraph (ii) above, berth or no berth, or (B) immediately when the vessel moors alongside, with or without notice of readiness, whichever occurs first.

(iv) Laytime, once started, shall continue 24 hours per day, 7 days per week, without interruption, from its commencement until loading of the barge or tanker is completed and hoses have been removed.

(v) Unless otherwise provided in the Schedule, the Contractor shall be allowed and will complete unloading within laytime determined as follows:

(A) **FOR BARGES:** One hour for each 2,000 barrels of product to be loaded.

(B) **FOR TANKERS:** Thirty-six hours for load of full vessel cargo. When partial vessel cargoes are to be loaded, the 36 hours will be prorated based on quantities loaded by each supplier. The 36 hours includes allowances for routine events that occur in the loading process, such as cushioning and topping off of vessel tanks.

(vi) Hoses and loading arms for loading shall be furnished, connected, and disconnected by the Contractor.

(2) **INCREASES TO BASIC ALLOWED LAYTIME.**

(i) If, after laytime commences, the conditions or facilities of the barge or tanker to be loaded do not permit loading, basic allowed laytime shall be increased by the duration of the delay.

(ii) If the vessel is delayed in reaching its berth and the delay is caused by the fault of the vessel, basic allowed laytime shall be increased by the duration of the delay.

(iii) After laytime commences, when vessels are required to dock at anchorage due to vessel delays such as vessel inspection and inserting, laytime credit will be allowed for transit time from anchors away at anchorage until first line ashore berthing, not to exceed 2 hours.

(iv) If regulations of the owner or operator of the vessel prohibit loading at any time after laytime has commenced, time so lost shall be added to basic allowed laytime.

(v) If, for any reason, the Contractor is delayed in loading the barge or tanker because of actions of a Government representative, acting under the contract, that arise through no fault or negligence on the part of the Contractor or its subcontractors, basic allowed laytime shall be increased by the duration of the delay.

(vi) There will be no increase to basic allowed laytime (nor other reductions to any resulting demurrage time) for saved laytime arising out of other loadings/discharges.

(vii) Delays, after commencement of laytime, attributed to causes beyond the control and without the fault or negligence of the Contractor or the U.S. Government will result in increasing the basic allowed laytime by one half of the delay time.

(3) **PAYMENT OF DEMURRAGE.** For all hours of laytime which elapse in excess of the basic allowed laytime for loading provided for by paragraph (1) above, or as otherwise provided in the Schedule, the Contractor shall pay demurrage to the Government as follows:

(i) **USS, USNS, OR TIME CHARTERED VESSELS.** At the demurrage rate for the vessel loaded computed to the nearest whole hour as published by the Military Sealift Command and in effect on the date the loading of the vessel is completed.

(ii) **VOYAGE CHARTERED VESSELS.** At the demurrage rate cited in the charter, except that the demurrage payable by the Contractor shall in no event exceed the demurrage expense incurred by the Government under the Charter.

## **F-0002 F1.11 DLA INTERNET BID BOARD SYSTEM (DIBBS) (DLA ENERGY APR 2014)**

THIS PROVISION ONLY APPLIES TO DLA FUNDED LINE ITEMS.

(a) Contractor Registration. Contractors must register in DIBBS to obtain a login account at <https://www.dibbs.bsm.dla.mil>. The login account will allow a contractor to register a primary and alternate email address for notifications. Contractors are strongly encouraged to establish a group email address for the primary email address for the contractor's authorized point of contacts. The registered email addresses will be the only email used by the government to make notifications.

(b) All contractors must have an active System for Award Management (SAM) account, <http://www.sam.gov> in order to register for DIBBS.

(c) The Contractor shall use DIBBS to receive orders. DLA Energy will not be using DIBBS receipt of quotes capability. All quotations, proposals, bids shall be submitted in accordance with the terms and conditions of the solicitation.

### **(d) Preparation and Transmission of Orders**

(1) The Government may issue an order for a specific delivery or a series of deliveries (e.g., several deliveries during a week). The Government may also elect to issue an order covering a longer period (including monthly orders) and make periodic calls against these orders designating specific delivery dates, times, and quantities.

(2) Only a DLA Energy warranted Contracting Officer can issue an order, either orally or in writing, against a contract. An oral order issued by the warranted Contracting Officer shall provide the required advance notice to the Contractor and the following information: **Interim order number**; contract number; item number; ceiling price; quantity; delivery location; and the required delivery and/ or service date.

(i) For all product orders, the Contractor will receive an electronically signed written order via DIBBS, within 24 hours or one business day after the warranted Contracting Officer issues an oral order.

(ii) For all service orders, the Contractor will receive an electronically signed written order via DIBBS, within five business days after issuing the oral order.

(iii) Interim order number is subject to change once the electronically signed written order is received by the contractor. The order number on the written order will take precedence over the interim order number, if different.

(iv) Regardless of the unit price cited on the written order, the office designated to make payments on the written order will pay the applicable unit price in effect under the terms and conditions of the contract.

(v) Once the order has been issued, an email will be sent to the Contractor to provide notice that the order is available on the contract-specific web page. The order will also be submitted to the payment office.

(3) Calls against previously issued orders must be confirmed in writing within 24 hours or one business day via email message. The email confirmation will reference the previously issued order number and item number and designate specific delivery location, dates, and quantity to be delivered against that order.

(4) The Contractor's non-receipt of a written or electronic confirmation of an oral order or oral call against a written or electronic order does not relieve the Contractor from its obligation to perform in accordance with the oral order or oral call against a written or electronic order. The Contractor should contact the DLA Energy Contracting Officer if problems are experienced with receipt of the electronic or written confirmation.

## **SECTION G - CONTRACT ADMINISTRATION DATA**

### **252.201-7000 CONTRACTING OFFICER'S REPRESENTATIVE (DEC 1991)**

(a) Definition. "Contracting officer's representative" means an individual designated in accordance with subsection 201.602-2 of the Defense Federal Acquisition Regulation Supplement and authorized in writing by the contracting officer to perform specific technical or administrative functions.

(b) If the Contracting Officer designates a contracting officer's representative (COR), the Contractor will receive a copy of the written designation.

It will specify the extent of the COR's authority to act on behalf of the contracting officer. The COR is not authorized to make any commitments or changes that will affect price, quality, quantity, delivery, or any other term or condition of the contract.

### **252.232-7003 ELECTRONIC SUBMISSION OF PAYMENT REQUESTS AND RECEIVING REPORTS (JUN 2012)**

- (1) "Contract financing payment" and "invoice payment" have the meanings given in section 32.001 of the Federal Acquisition Regulation.
- (2) "Electronic form" means any automated system that transmits information electronically from the initiating system to all affected systems. Facsimile, e-mail, and scanned documents are not acceptable electronic forms for submission of payment requests. However, scanned documents are acceptable when they are part of a submission of a payment request made using Wide Area WorkFlow (WAWF) or another electronic form authorized by the Contracting Officer.
- (3) "Payment request" means any request for contract financing payment or invoice payment submitted by the Contractor under this contract.
- (4) "Receiving report" means the data required by the clause at [252.246-7000](#), Material Inspection and Receiving Report.
- (b) Except as provided in paragraph (c) of this clause, the Contractor shall submit payment requests and receiving reports using WAWF, in one of the following electronic formats that WAWF accepts: Electronic Data Interchange, Secure File Transfer Protocol, or World Wide Web input. Information regarding WAWF is available on the Internet at <https://wawf.eb.mil/>.
- (c) The Contractor may submit a payment request and receiving report using other than WAWF only when—
- (1) The Contracting Officer administering the contract for payment has determined, in writing, that electronic submission would be unduly burdensome to the Contractor. In such cases, the Contractor shall include a copy of the Contracting Officer's determination with each request for payment;
- (2) DoD makes payment for commercial transportation services provided under a Government rate tender or a contract for transportation services using a DoD-approved electronic third party payment system or other exempted vendor payment/invoicing system (e.g., PowerTrack, Transportation Financial Management System, and Cargo and Billing System);
- (3) DoD makes payment for rendered health care services using the TRICARE Encounter Data System (TEDS) as the electronic format; or
- (4) When the Governmentwide commercial purchase card is used as the method of payment, only submission of the receiving report in electronic form is required.
- (d) The Contractor shall submit any non-electronic payment requests using the method or methods specified in Section G of the contract.
- (e) In addition to the requirements of this clause, the Contractor shall meet the requirements of the appropriate payment clauses in this contract when submitting payment requests.

### **252.232-7006 WIDE AREA WORKFLOW PAYMENT INSTRUCTIONS (MAY 2013)**

- (a) Definitions. As used in this clause— "Department of Defense Activity Address Code (DoDAAC)" is a six position code that uniquely identifies a unit, activity, or organization. "Document type" means the type of payment request or receiving report available for creation in Wide Area WorkFlow (WAWF). "Local processing office (LPO)" is the office responsible for payment certification when payment certification is done external to the entitlement system.
- (b) Electronic invoicing. The WAWF system is the method to electronically process vendor payment requests and receiving reports, as authorized by DFARS 252.232-7003, Electronic Submission of Payment Requests and Receiving Reports.
- (c) WAWF access. To access WAWF, the Contractor shall—
- (1) Have a designated electronic business point of contact in the Central Contractor Registration at <https://www.acquisition.gov>; and
- (2) Be registered to use WAWF at <https://wawf.eb.mil/> following the step-by-step procedures for self-registration available at this web site.
- (d) WAWF training. The Contractor should follow the training instructions of the WAWF Web-Based Training Course and use the Practice Training Site before submitting payment requests through WAWF. Both can be accessed by selecting the "Web Based Training" link on the WAWF home page at <https://wawf.eb.mil/>
- (e) WAWF methods of document submission. Document submissions may be via web entry, Electronic Data Interchange, or File Transfer Protocol or Payweb
- (1) To access PayWeb, the vendor may go to the following site: <https://ononline.onr.navy.mil/payweb/>
- (2) For instructions on PayWeb payment request submission, please contact the office identified below: \_\_\_\_\_ **NOT APPLICABLE**
- (f) WAWF payment instructions. The Contractor must use the following information when submitting payment requests and receiving reports in WAWF for this contract/order:
- (1) **Document type. The Contractor shall use the following document type(s). Invoice 2-in-1 (Services Only)**  
Note: If a "Combo" document type is identified but not supportable by the Contractor's business systems, an "Invoice" (stand-alone) and "Receiving Report" (stand-alone) document type may be used instead.)
- (2) **Inspection/acceptance location. The Contractor shall select the following inspection/acceptance location(s) in WAWF, as specified by the contracting officer. NOT APPLICABLE**
- (3) **Document routing. The Contractor shall use the information in the Routing Data Table below only to fill in applicable fields in WAWF when creating payment requests and receiving reports in the system. Routing Data Table\***

Routing Data Table\*

Field Name in WAWF	Data to be entered in WAWF
Pay Official DoDAAC	SL4701
Issue By DoDAAC	SPE600
Admin DoDAAC	SPE600
Inspect By DoDAAC	DoDAAC: SE5F0H; EXTENSION: USGOCO
Ship To Code	NOT APPLICABLE
Ship From Code	NOT APPLICABLE
Mark For Code	NOT APPLICABLE
Service Approver (DoDAAC)	NOT APPLICABLE
Service Acceptor (DoDAAC)	DoDAAC: SPE600; EXTENSION: USGOCO
Accept at Other DoDAAC	NOT APPLICABLE
LPO DoDAAC	NOT APPLICABLE
DCAA Auditor DoDAAC	NOT APPLICABLE
Other DoDAAC(s)	NOT APPLICABLE

(\*Contracting Officer: Insert applicable DoDAAC information or "See schedule" if multiple ship to/acceptance locations apply, or "Not applicable.")

(4) Payment request and supporting documentation. The Contractor shall ensure a payment request includes appropriate contract line item and subline item descriptions of the work performed or supplies delivered, unit price/cost per unit, fee (if applicable), and all relevant back-up documentation, as defined in DFARS Appendix F, (e.g. timesheets) in support of each payment request.

(5) WAWF email notifications. The Contractor shall enter the e-mail address identified below in the "Send Additional Email Notifications" field of WAWF once a document is submitted in the system.

[jeremy.baxter@dla.mil](mailto:jeremy.baxter@dla.mil)

(g) WAWF point of contact.

**(1) The Contractor may obtain clarification regarding invoicing in WAWF from the following contracting activity's WAWF point of contact.**

[bsme.helpdesk@dla.mil](mailto:bsme.helpdesk@dla.mil), 800-446-4950

(2) For technical WAWF help, contact the WAWF helpdesk at 866-618-5988.

(End of clause)

**G-0001 G3 INVOICE NUMBERING REQUIREMENTS (DLA ENERGY AUG 1998)**

Each invoice submitted for payment under this contract shall be identified by an individual invoice number. The number shall not be duplicated on subsequent invoices. Duplicate invoice numbers or invoices that do not include numbers may be rejected.

**G-0002 G9.06 ADDRESS TO WHICH REMITTANCE SHOULD BE MAILED (DLA ENERGY DEC 1999)**

Remittances shall be mailed only at the Government's option or where an exception to payment by Electronic Funds Transfer (EFT) applies. (See the PAYMENT BY ELECTRONIC FUNDS TRANSFER - CENTRAL CONTRACTOR REGISTRATION or the PAYMENT BY ELECTRONIC FUNDS TRANSFER - OTHER THAN CENTRAL CONTRACTOR REGISTRATION clause.)

Offeror shall indicate below the complete mailing address (including the nine-digit zip code) to which remittances should be mailed if such address is other than that shown in Block 15a (Standard Form (SF) 33) for noncommercial items or Block 17a (SF 1449) for commercial items. In addition, if offeror did not incorporate its nine-digit zip code in the address shown in Block 15a of the SF 33 or in Block 17a of the SF 1449, the offeror shall enter it below:

(a) Payee Name (Contractor)

\_\_\_\_\_ (DO NOT EXCEED 25 CHARACTERS)

(b) Check Remittance Address:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(DO NOT EXCEED 30 CHARACTERS PER LINE) (c) Narrative Information (special instructions).



(b) Prior to the commencement of work hereunder, at the request of the Contracting Officer, the Contractor shall submit the required certificates of insurance to the Contracting Officer.

## **SECTION I - CONTRACT CLAUSES**

### **52.202-1 DEFINITIONS (NOV 2013)**

When a solicitation provision or contract clause uses a word or term that is defined in the Federal Acquisition Regulation (FAR), the word or term has the same meaning as the definition in FAR 2.101 in effect at the time the solicitation was issued, unless—

- (a) The solicitation, or amended solicitation, provides a different definition;
- (b) The contracting parties agree to a different definition;
- (c) The part, subpart, or section of the FAR where the provision or clause is prescribed provides a different meaning; or
- (d) The word or term is defined in FAR Part 31, for use in the cost principles and procedures.

### **52.203-3 GRATUITIES (APR 1984)**

(a) The right of the Contractor to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the Contractor, its agent, or another representative —

- (1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the Government; and
- (2) Intended, by the gratuity, to obtain a contract or favorable treatment under a contract.

(b) The facts supporting this determination may be reviewed by any court having lawful jurisdiction.

(c) If this contract is terminated under paragraph (a) of this clause, the Government is entitled —

- (1) To pursue the same remedies as in a breach of the contract; and
- (2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the Contractor in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this contract uses money appropriated to the Department of Defense.)

(d) The rights and remedies of the Government provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

### **52.203-6 RESTRICTION ON SUBCONTRACTOR SALES TO THE GOVERNMENT (SEP 2006)**

(a) Except as provided in (b) of this clause, the Contractor shall not enter into any agreement with an actual or prospective subcontractor, nor otherwise act in any manner, which has or may have the effect of restricting sales by such subcontractors directly to the Government of any item or process (including computer software) made or furnished by the subcontractor under this contract or under any follow-on production contract.

(b) The prohibition in (a) of this clause does not preclude the Contractor from asserting rights that are otherwise authorized by law or regulation.

(c) The Contractor agrees to incorporate the substance of this clause, including this paragraph (c), in all subcontracts under this contract which exceed the simplified acquisition threshold.

### **52.203-7 ANTI-KICKBACK PROCEDURES (MAY 2014)**

(a) Definitions.

“Kickback,” as used in this clause, means any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind which is provided to any prime Contractor, prime Contractor employee, subcontractor, or subcontractor employee for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contractor in connection with a subcontract relating to a prime contract.

“Person,” as used in this clause, means a corporation, partnership, business association of any kind, trust, joint-stock company, or individual.

“Prime contract,” as used in this clause, means a contract or contractual action entered into by the United States for the purpose of obtaining supplies, materials, equipment, or services of any kind.

“Prime Contractor” as used in this clause, means a person who has entered into a prime contract with the United States.

“Prime Contractor employee,” as used in this clause, means any officer, partner, employee, or agent of a prime Contractor.

“Subcontract,” as used in this clause, means a contract or contractual action entered into by a prime Contractor or subcontractor for the purpose of obtaining supplies, materials, equipment, or services of any kind under a prime contract.

“Subcontractor,” as used in this clause,

(1) means any person, other than the prime Contractor, who offers to furnish or furnishes any supplies, materials, equipment, or services of any kind under a prime contract or a subcontract entered into in connection with such prime contract, and

(2) includes any person who offers to furnish or furnishes general supplies to the prime Contractor or a higher tier subcontractor.

“Subcontractor employee,” as used in this clause, means any officer, partner, employee, or agent of a subcontractor.

(b) The 41 U.S.C. chapter 87, Kickbacks, prohibits any person from --

(1) Providing or attempting to provide or offering to provide any kickback;

(2) Soliciting, accepting, or attempting to accept any kickback; or

(3) Including, directly or indirectly, the amount of any kickback in the contract price charged by a prime Contractor to the United States or in the contract price charged by a subcontractor to a prime Contractor or higher tier subcontractor.

(c)

(1) The Contractor shall have in place and follow reasonable procedures designed to prevent and detect possible violations described in paragraph (b) of this clause in its own operations and direct business relationships.

(2) When the Contractor has reasonable grounds to believe that a violation described in paragraph (b) of this clause may have occurred, the Contractor shall promptly report in writing the possible violation. Such reports shall be made to the inspector general of the contracting agency, the head of the contracting agency if the agency does not have an inspector general, or the Attorney General.

(3) The Contractor shall cooperate fully with any Federal agency investigating a possible violation described in paragraph (b) of this clause.

(4) The Contracting Officer may

- (i) offset the amount of the kickback against any monies owed by the United States under the prime contract and/or
  - (ii) direct that the Prime Contractor withhold from sums owed a subcontractor under the prime contract the amount of the kickback. The Contracting Officer may order that monies withheld under subdivision (c)(4)(ii) of this clause be paid over to the Government unless the Government has already offset those monies under subdivision (c)(4)(i) of this clause. In either case, the Prime Contractor shall notify the Contracting Officer when the monies are withheld.
- (5) The Contractor agrees to incorporate the substance of this clause, including subparagraph (c)(5) but excepting subparagraph (c)(1), in all subcontracts under this contract which exceed \$150,000.

#### **52.203-8 CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACTIVITY (MAY 2014)**

- (a) If the Government receives information that a contractor or a person has violated 41 U.S.C. 2102-2104, Restriction on Obtaining and Disclosing Certain Information, the Government may --
- (1) Cancel the solicitation, if the contract has not yet been awarded or issued; or
  - (2) Rescind the contract with respect to which --
    - (i) The Contractor or someone acting for the Contractor has been convicted for an offense where the conduct violates 41 U.S.C. 2102 for the purpose of either --
      - (A) Exchanging the information covered by such subsections for anything of value; or
      - (B) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or
    - (ii) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the Contractor or someone acting for the Contractor has engaged in conduct punishable under 41 U.S.C. 2105(a).
- (b) If the Government rescinds the contract under paragraph (a) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.
- (c) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

#### **52.203-10 PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY (MAY 2014)**

- (a) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph (b) of this clause if the head of the contracting activity or designee determines that there was a violation of 41 U.S.C. 2102 or 2103, as implemented in section 3.104 of the Federal Acquisition Regulation.
- (b) The price or fee reduction referred to in paragraph (a) of this clause shall be --
- (1) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;
  - (2) For cost-plus-incentive-fee contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract;
  - (3) For cost-plus-award-fee contracts --
    - (i) The base fee established in the contract at the time of contract award;
    - (ii) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the Contractor for each award fee evaluation period or at each award fee determination point.
  - (4) For fixed-price-incentive contracts, the Government may --
    - (i) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or
    - (ii) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the Contracting Officer may defer such adjustment until establishment of the total final price of the contract. The total final price established in accordance with the incentive price revision provisions of the contract shall be reduced by an amount equal to the initial target profit specified in the contract at the time of contract award and such reduced price shall be the total final contract price.
  - (5) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the Contracting Officer from records or documents in existence prior to the date of the contract award.
- (c) The Government may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph (b) of this clause for violations of the statute by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.
- (d) In addition to the remedies in paragraphs (a) and (c) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

#### **52.203-12 LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS (OCT 2010)**

- (a) *Definitions.* As used in this clause—
- "Agency" means executive agency as defined in Federal Acquisition Regulation (FAR) 2.101.
- "Covered Federal action" means any of the following Federal actions:
- (1) Awarding any Federal contract.
  - (2) Making any Federal grant.
  - (3) Making any Federal loan.
  - (4) Entering into any cooperative agreement.
  - (5) Extending, continuing, renewing, amending, or modifying any Federal contract, grant, loan, or cooperative agreement.
- "Indian tribe" and "tribal organization" have the meaning provided in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C.450B) and include Alaskan Natives.

“Influencing or attempting to influence” means making, with the intent to influence, any communication to or appearance before an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

“Local government” means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government.

“Officer or employee of an agency” includes the following individuals who are employed by an agency:

- (1) An individual who is appointed to a position in the Government under Title 5, United States Code, including a position under a temporary appointment.
- (2) A member of the uniformed services, as defined in subsection 101(3), Title 37, United States Code.
- (3) A special Government employee, as defined in section 202, Title 18, United States Code.
- (4) An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code, appendix 2.

“Person” means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit, or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.

“Reasonable compensation” means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

“Reasonable payment” means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

“Recipient” includes the Contractor and all subcontractors. This term excludes an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency, but only with respect to expenditures by such tribe or organization that are made for purposes specified in paragraph (b) of this clause and are permitted by other Federal law.

“Regularly employed” means, with respect to an officer or employee of a person requesting or receiving a Federal contract, an officer or employee who is employed by such person for at least 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than 130 working days within 1 year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for 130 working days.

“State” means a State of the United States, the District of Columbia, or an outlying area of the United States, an agency or instrumentality of a State, and multi-State, regional, or interstate entity having governmental duties and powers.

(b) *Prohibition.* 31 U.S.C. 1352 prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal actions. In accordance with 31 U.S.C. 1352 the Contractor shall not use appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the award of this contract the extension, continuation, renewal, amendment, or modification of this contract.

(1) The term *appropriated funds* does not include profit or fee from a covered Federal action.

(2) To the extent the Contractor can demonstrate that the Contractor has sufficient monies, other than Federal appropriated funds, the Government will assume that these other monies were spent for any influencing activities that would be unallowable if paid for with Federal appropriated funds.

(c) *Exceptions.* The prohibition in paragraph (b) of this clause does not apply under the following conditions:

(1) Agency and legislative liaison by Contractor employees.

(i) Payment of reasonable compensation made to an officer or employee of the Contractor if the payment is for agency and legislative liaison activities not directly related to this contract. For purposes of this paragraph, providing any information specifically requested by an agency or Congress is permitted at any time.

(ii) Participating with an agency in discussions that are not related to a specific solicitation for any covered Federal action, but that concern—  
(A) The qualities and characteristics (including individual demonstrations) of the person’s products or services, conditions or terms of sale, and service capabilities; or

(B) The application or adaptation of the person’s products or services for an agency’s use.

(iii) Providing prior to formal solicitation of any covered Federal action any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;

(iv) Participating in technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and

(v) Making capability presentations prior to formal solicitation of any covered Federal action by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Pub. L. 95-507, and subsequent amendments.

(2) Professional and technical services.

(i) A payment of reasonable compensation made to an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action, if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action.

(ii) Any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action or an extension, continuation, renewal, amendment, or modification of a covered Federal action if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal action or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal action. Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.

(iii) As used in this paragraph (c)(2), “professional and technical services” are limited to advice and analysis directly applying any professional or technical discipline (for examples, see FAR 3.803(a)(2)(iii)).

(iv) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation and any other requirements in the actual award documents.

(3) Only those communications and services expressly authorized by paragraphs (c)(1) and (2) of this clause are permitted.

## (d) Disclosure.

- (1) If the Contractor did not submit OMB Standard Form LLL, Disclosure of Lobbying Activities, with its offer, but registrants under the Lobbying Disclosure Act of 1995 have subsequently made a lobbying contact on behalf of the Contractor with respect to this contract, the Contractor shall complete and submit OMB Standard Form LLL to provide the name of the lobbying registrants, including the individuals performing the services.
- (2) If the Contractor did submit OMB Standard Form LLL disclosure pursuant to paragraph (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, and a change occurs that affects Block 10 of the OMB Standard Form LLL (name and address of lobbying registrant or individuals performing services), the Contractor shall, at the end of the calendar quarter in which the change occurs, submit to the Contracting Officer within 30 days an updated disclosure using OMB Standard Form LLL.

## (e) Penalties.

(1) Any person who makes an expenditure prohibited under paragraph (b) of this clause or who fails to file or amend the disclosure to be filed or amended by paragraph (d) of this clause shall be subject to civil penalties as provided for by 31 U.S.C.1352. An imposition of a civil penalty does not prevent the Government from seeking any other remedy that may be applicable.

(2) Contractors may rely without liability on the representation made by their subcontractors in the certification and disclosure form.

(f) *Cost allowability*. Nothing in this clause makes allowable or reasonable any costs which would otherwise be unallowable or unreasonable. Conversely, costs made specifically unallowable by the requirements in this clause will not be made allowable under any other provision.

## (g) Subcontracts.

(1) The Contractor shall obtain a declaration, including the certification and disclosure in paragraphs (c) and (d) of the provision at FAR 52.203-11, Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions, from each person requesting or receiving a subcontract exceeding \$150,000 under this contract. The Contractor or subcontractor that awards the subcontract shall retain the declaration.

(2) A copy of each subcontractor disclosure form (but not certifications) shall be forwarded from tier to tier until received by the prime Contractor. The prime Contractor shall, at the end of the calendar quarter in which the disclosure form is submitted by the subcontractor, submit to the Contracting Officer within 30 days a copy of all disclosures. Each subcontractor certification shall be retained in the subcontract file of the awarding Contractor.

(3) The Contractor shall include the substance of this clause, including this paragraph (g), in any subcontract exceeding \$150,000.

**52.204-4 PRINTED OR COPIED DOUBLE-SIDED ON POSTCONSUMER FIBER CONTENT PAPER (MAY 2011)**

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

Postconsumer fiber means—

(1) Paper, paperboard, and fibrous materials from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; or

(2) All paper, paperboard, and fibrous materials that enter and are collected from municipal solid waste; but not

(3) Fiber derived from printers' over-runs, converters' scrap, and over-issue publications.

(b) The Contractor is required to submit paper documents, such as offers, letters, or reports that are printed or copied double-sided on paper containing at least 30 percent postconsumer fiber, whenever practicable, when not using electronic commerce methods to submit information or data to the Government.

**52.204-7 SYSTEM FOR AWARD MANAGEMENT (OCT 2016)**

## (a) Definitions. As used in this provision—

“Electronic Funds Transfer (EFT) indicator” means a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the commercial, nonprofit, or Government entity to establish additional System for Award Management records for identifying alternative EFT accounts (see [subpart 32.11](#)) for the same entity.

“Registered in the System for Award Management (SAM) database” means that—

(1) The Offeror has entered all mandatory information, including the unique entity identifier and the EFT indicator, if applicable, the Commercial and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see [subpart 4.14](#)) into the SAM database;

(2) The offeror has completed the Core, Assertions, and Representations and Certifications, and Points of Contact sections of the registration in the SAM database;

(3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The offeror will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and

(4) The Government has marked the record “Active”.

“Unique entity identifier” means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See [www.sam.gov](http://www.sam.gov) for the designated entity for establishing unique entity identifiers.

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the SAM database prior to award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation.

(2) The Offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “Unique Entity Identifier” followed by the unique entity identifier that identifies the Offeror’s name and address exactly as stated in the offer. The Offeror also shall enter its EFT indicator, if applicable. The unique entity identifier will be used by the Contracting Officer to verify that the Offeror is registered in the SAM database.

(c) If the Offeror does not have a unique entity identifier, it should contact the entity designated at [www.sam.gov](http://www.sam.gov) for establishment of the unique entity identifier directly to obtain one. The Offeror should be prepared to provide the following information:

- (1) Company legal business name.
  - (2) Tradestyle, doing business, or other name by which your entity is commonly recognized.
  - (3) Company Physical Street Address, City, State, and Zip Code.
  - (4) Company Mailing Address, City, State and Zip Code (if separate from physical).
  - (5) Company telephone number.
  - (6) Date the company was started.
  - (7) Number of employees at your location.
  - (8) Chief executive officer/key manager.
  - (9) Line of business (industry).
  - (10) Company Headquarters name and address (reporting relationship within your entity).
- (d) If the Offeror does not become registered in the SAM database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror.
- (e) Processing time, which normally takes 48 hours, should be taken into consideration when registering. Offerors who are not registered should consider applying for registration immediately upon receipt of this solicitation.
- (f) Offerors may obtain information on registration at <https://www.acquisition.gov>.

#### **52.204-9 PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL (JAN 2011)**

- (a) The Contractor shall comply with agency personal identity verification procedures identified in the contract that implement Homeland Security Presidential Directive-12 (HSPD-12), Office of Management and Budget (OMB) guidance M-05-24, and Federal Information Processing Standards Publication (FIPS PUB) Number 201.
- (b) The Contractor shall account for all forms of Government-provided identification issued to the Contractor employees in connection with performance under this contract. The Contractor shall return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by the Government;
- (1) When no longer needed for contract performance.
  - (2) Upon completion of the Contractor employee's employment.
  - (3) Upon contract completion or termination.
- (c) The Contracting Officer may delay final payment under a contract if the Contractor fails to comply with these requirements.
- (d) The Contractor shall insert the substance of clause, including this paragraph (d), in all subcontracts when the subcontractor's employees are required to have routine physical access to a Federally-controlled facility and/or routine access to a Federally-controlled information system. It shall be the responsibility of the prime Contractor to return such identification to the issuing agency in accordance with the terms set forth in paragraph (b) of this section, unless otherwise approved in writing by the Contracting Officer.

#### **52.204-13 SYSTEM FOR AWARD MANAGEMENT MAINTENANCE (JUL 2013)**

"Data Universal Numbering System (DUNS) number" means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities, which is used as the identification number for Federal Contractors.

"Data Universal Numbering System+4 (DUNS+4) number" means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional SAM records for identifying alternative Electronic Funds Transfer (EFT) accounts (see the FAR at subpart 32.11) for the same concern.

"Registered in the System for Award Management (SAM) database" means that—

- (1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, the Contractor and government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see subpart 4.14), into the SAM database;
- (2) The Contractor has completed the Core, Assertions, Representations and Certifications, and Points of Contact sections of the registration in the SAM database;
- (3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The Contractor will be required to provide consent for TIN validation to the Government as a part of the SAM registration process; and
- (4) The Government has marked the record "Active".

"System for Award Management (SAM)" means the primary Government repository for prospective Federal awardee and Federal awardee information and the centralized Government system for certain contracting, grants, and other assistance-related processes. It includes—

- (1) Data collected from prospective Federal awardees required for the conduct of business with the Government;
- (2) Prospective contractor-submitted annual representations and certifications in accordance with FAR subpart 4.12; and
- (3) Identification of those parties excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non-financial assistance and benefits.

(b) The Contractor is responsible for the accuracy and completeness of the data within the SAM database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the SAM database after the initial registration, the Contractor is

required to review and update on an annual basis, from the date of initial registration or subsequent updates, its information in the SAM database to ensure it is current, accurate and complete. Updating information in the SAM does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(c)(1)(i) If a Contractor has legally changed its business name, doing business as name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to—

(A) Change the name in the SAM database;

(B) Comply with the requirements of subpart 42.12 of the FAR; and

(C) Agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor shall provide with the notification sufficient documentation to support he legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (c)(1)(i) of this clause, or fails to perform the agreement at paragraph (c)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the SAM information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

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

(3) The Contractor shall ensure that the DUNS number is maintained with Dun & Bradstreet throughout the life of the contract. The Contractor shall communicate any change to the DUNS number to the Contracting Officer within 30 days after the change, so an appropriate modification can be issued to update the data on the contract. A change in the DUNS number does not necessarily require a novation be accomplished. Dun & Bradstreet may be contacted—

(i) Via the internet at <http://fedgov.dnb.com/webform> or if the Contractor does not have internet access, it may call Dun and Bradstreet at 1-866-705-5711 if located within the United States; or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet office.

(d) Contractors may obtain additional information on registration and annual confirmation requirements at <https://www.acquisition.gov>.

## **52.204-16 --COMMERCIAL AND GOVERNMENT ENTITY CODE REPORTING. (JUL 2016)**

(a) Definition. As used in this provision—

"Commercial and Government Entity (CAGE) code means--

(1) An identifier assigned to entities located in the United States or its outlying areas by the Defense Logistics Agency (DLA) Commercial and Government Entity (CAGE) Branch to identify a commercial or government entity; or

(2) An identifier assigned by a member of the North Atlantic Treaty Organization (NATO) or by the NATO Support and Procurement Agency (NSPA) to entities located outside the United States and its outlying areas that the DLA Commercial and Government Entity (CAGE) Branch records and maintains in the CAGE master file. This type of code is known as a NATO CAGE (NCAGE) code.

(b) The Offeror shall enter its CAGE code in its offer with its name and address or otherwise include it prominently in its proposal. The CAGE code entered must be for that name and address. Enter "CAGE" before the number. The CAGE code is required prior to award.

(c) CAGE codes may be obtained via –

(1) Registration in the system for Award management (SAM) at [www.sam.gov](http://www.sam.gov). If the Offeror is located in the United States or its outlying areas and does not already have a CAGE code assigned, the DLA Commercial and Government Entity (CAGE) Branch will assign a CAGE code as a part of the SAM registration process. SAM registrants located outside the United States and its outlying areas shall obtain a NCAGE code prior to registration in SAM (see paragraph (c)(3) of this provision).

(2) The DLA Commercial and Government Entity (CAGE) Branch. If registration in SAM is not required for the subject procurement, and the offeror does not otherwise register in SAM, an offeror located in the United States or its outlying areas may request that a CAGE code be assigned by submitting a request at <https://cage.dla.mil>.

(3) The appropriate country codification bureau. Entities located outside the United States and its outlying areas may obtain an NCAGE code by contacting the Codification Bureau in the foreign entity's country if that country is a member of NATO or a sponsored nation. NCAGE codes may be obtained from the NSPA at <https://eportal.nspa.nato.int/AC135Public/scage/CageList.aspx> if the foreign entity's country is not a member of NATO or a sponsored nation. Points of contact for codification bureaus, as well as additional information on obtaining NCAGE codes, are available at <http://www.nato.int/structur/AC/135/main/links/contacts.htm>.

(d) Additional guidance for establishing and maintaining CAGE codes is available at <https://www.cage.dla.mil>.

(e) When a CAGE Code is required for the immediate owner and/or the highest-level owner by 52.204-17 or 52.212-3(p), the Offeror shall obtain the respective CAGE Code from that entity to supply the CAGE Code to the Government.

(f) Do not delay submission of the offer pending receipt of a CAGE code.

**52.204-18 COMMERCIAL AND GOVERNMENT ENTITY CODE MAINTENANCE (JUL 2016)**

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

“Commercial and government Entity (CAGE) code” means—

- (1) An identifier assigned to entities located in the United States or its outlying areas by the Defense Logistics Agency (DLA) Commercial and Government Entity (CAGE) Branch to identify a commercial or Government entity, or
  - (2) An identifier assigned by a member of the North Atlantic Treaty Organization (NATO) or by the NATO Support and Procurement Agency (NSPA) to entities located outside the United States and its outlying areas that the DLA Commercial and Government Entity (CAGE) Branch records and maintains in the CAGE master file. This type of code is known as the NATO CAGE (NCAGE) code.
- (b) Contractors shall ensure that the CAGE code is maintained throughout the life of the contract. For contractors registered in the System for Award Management (SAM), the DLA Commercial and Government Entity (CAGE) Branch shall only modify data received from SAM in the CAGE master file if the contractor initiates those changes via update of its SAM registration. Contractors undergoing a novation or change-of-name agreement shall notify the contracting officer in accordance with subpart 42.12. The contractor shall communicate any change to the CAGE code to the contracting officer within 30 days after the change, so that a modification can be issued to update the CAGE code on the contract.
- (c) Contractors located in the United States or its outlying areas that are not registered in SAM shall submit written change requests to the DLA Commercial and Government Entity (CAGE) Branch. Requests for changes shall be provided at <https://cage.dla.mil>. Change requests to the CAGE master file are accepted from the entity identified by the code.
- (d) Contractors located outside the United States and its outlying areas that are not registered in SAM shall contact the appropriate National Codification Bureau (points of contact available at <http://www.nato.int/structur/AC135/main/links/contacts.htm>) or NSPA at <https://portal.nspa.nato.int/AC135Public/scage/CageList.aspx>.
- (e) Additional guidance for maintaining CAGE codes is available at <https://cage.dla.mil>.

**52.209-6 PROTECTING THE GOVERNMENTS INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT (AUG 2013)**

(a) *Definition.* “Commercially available off-the-shelf (COTS) item,” as used in this clause--

- (1) Means any item of supply (including construction material) that is—
    - (i) A commercial item (as defined in paragraph (1) of the definition in 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.
- (b) The Government suspends or debar Contractors to protect the Government’s interests. Other than a subcontract for a commercially available off-the-shelf item, the Contractor shall not enter into any subcontract in excess of \$30,000 with a Contractor that is debarred, suspended, or proposed for debarment by any executive agency unless there is a compelling reason to do so.
- (c) The Contractor shall require each proposed subcontractor whose subcontract will exceed \$30,000, other than a subcontractor providing a commercially available off-the-shelf item, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.
- (d) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party (other than a subcontractor providing a commercially available off-the-shelf item) that is debarred, suspended, or proposed for debarment (see FAR 9.404 for information on the System for Award Management (SAM) Exclusions). The notice must include the following:
- (1) The name of the subcontractor.
  - (2) The Contractor’s knowledge of the reasons for the subcontractor being listed with an exclusion in SAM.
  - (3) The compelling reason(s) for doing business with the subcontractor notwithstanding its being listed with an exclusion in SAM.
  - (4) The systems and procedures the Contractor has established to ensure that it is fully protecting the Government’s interests when dealing with such subcontractor in view of the specific basis for the party’s debarment, suspension, or proposed debarment.
- (e) Subcontracts. Unless this is a contract for the acquisition of commercial items, the Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for the identification of the parties), in each subcontract that—
- (1) Exceed \$30,000 in value; and
  - (2) Is not a subcontract for commercially available off-the-shelf items.

**52.212-4 CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS (MAY 2017)**

- (a) *Inspection/Acceptance.* The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights --
- (1) Within a reasonable time after the defect was discovered or should have been discovered; and
  - (2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.
- (b) *Assignment.* The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act (31 U.S.C.3727). However, when a third party makes payment (e.g., use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.
- (c) *Changes.* See Addendum.

- (d) Disputes. This contract is subject to 41 U.S.C. chapter 71, Contract Disputes. Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR 52.233-1, Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.
- (e) Definitions. The clause at FAR 52.202-1, Definitions, is incorporated herein by reference.
- (f) Excusable delays. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
- (g) Invoice.
- (1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include --
- (i) Name and address of the Contractor;
  - (ii) Invoice date and number;
  - (iii) Contract number, line item number and, if applicable, the order number;
  - (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
  - (v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;
  - (vi) Terms of any discount for prompt payment offered;
  - (vii) Name and address of official to whom payment is to be sent;
  - (viii) Name, title, and phone number of person to notify in event of defective invoice; and
  - (ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.
- (x) Electronic funds transfer (EFT) banking information.
- (A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.
- (B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (e.g., 52.232-33, Payment by Electronic Funds Transfer— System for Award Management, or 52.232-34, Payment by Electronic Funds Transfer—Other Than System for Award Management), or applicable agency procedures.
- (C) EFT banking information is not required if the Government waived the requirement to pay by EFT.
- (2) Invoices will be handled in accordance with the Prompt Payment Act (31 U.S.C. 3903) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR part 1315.
- (h) Patent indemnity. The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.
- (i) Payment.
- (1) Items accepted. Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.
- (2) Prompt Payment. The Government will make payment in accordance with the Prompt Payment Act (31 U.S.C. 3903) and prompt payment regulations at 5 CFR Part 1315.
- (3) Electronic Funds Transfer (EFT). If the Government makes payment by EFT, see 52.212-5(b) for the appropriate EFT clause.
- (4) Discount. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.
- (5) Overpayments. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—
- (i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—
    - (A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);
    - (B) Affected contract number and delivery order number, if applicable;
    - (C) Affected line item or subline item, if applicable; and
    - (D) Contractor point of contact.
  - (ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.
- (6) Interest.
- (i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each six-month period at fixed by the Secretary until the amount is paid.
- (ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.
- (iii) Final decisions. The Contracting Officer will issue a final decision as required by 33.211 if—
- (A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;
  - (B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or
  - (C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).
- (iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.
- (v) Amounts shall be due at the earliest of the following dates:
- (A) The date fixed under this contract.
  - (B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.
- (vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—
- (A) The date on which the designated office receives payment from the Contractor;
  - (B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against

the contract debt; or

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

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

(j) Risk of loss. Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

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

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

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

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

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

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

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

(r) Compliance with laws unique to Government contracts. The Contractor agrees to comply with 31 U.S.C. 1352 relating to limitations on the use of appropriated funds to influence certain Federal contracts; 18 U.S.C. 431 relating to officials not to benefit; 40 U.S.C. chapter 37, Contract Work Hours and Safety Standards; 41 U.S.C. chapter 87, Kickbacks; 41 U.S.C. 4712 and 10 U.S.C. 2409 relating to whistleblower protections; 49 U.S.C. 40118, Fly American; and 41 U.S.C. chapter 21 relating to procurement integrity.

(s) Order of precedence. Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

(1) The schedule of supplies/services.

(2) The Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Contracts, and Unauthorized Obligations paragraphs of this clause.

(3) The clause at 52.212-5.

(4) Addenda to this solicitation or contract, including any license agreements for computer software.

(5) Solicitation provisions if this is a solicitation.

(6) Other paragraphs of this clause.

(7) The Standard Form 1449.

(8) Other documents, exhibits, and attachments.

(9) The specification.

(t) System for Award Management (SAM).

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

(2)

(i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in Subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to:

(A) Change the name in the SAM database;

(B) Comply with the requirements of Subpart 42.12 of the FAR;

(C) Agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

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

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

(4) Offerors and Contractors may obtain information on registration and annual confirmation requirements via SAM accessed through <https://www.acquisition.gov>.

(u) Unauthorized Obligations.

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

(i) Any such clause is unenforceable against the Government.

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

(iii) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

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

(v) Incorporation by reference. The Contractor's representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

#### **ADDENDUM 1 TO 52.212-4**

Paragraph (c) of FAR 52.212-4 IS DELETED AND REPLACED WITH FAR 52.243-1 CHANGES FIXED PRICE W/ ALTERNATE I.

#### **FAR 52.243-1 CHANGES FIXED PRICE W/ ALTERNATE I (APR 1984)**

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Description of services to be performed.

(2) Time of performance (i.e., hours of the day, days of the week, etc.).

(3) Place of performance of the services.

(b) If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this contract, whether or not changed by the order, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(c) The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a proposal submitted before final payment of the contract.

(d) If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Contracting Officer shall have the right to prescribe the manner of the disposition of the property.

(e) Failure to agree to any adjustment shall be a dispute under the Disputes clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

Alternate I (Apr 1984). If the requirement is for services, other than architect-engineer or other professional services, and no supplies are to be furnished, substitute the following paragraph (a) for paragraph (a) of the basic clause:

(a) The Contracting Officer may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one or more of the following:

(1) Description of services to be performed.

(2) Time of performance (i.e., hours of the day, days of the week, etc.).

(3) Place of performance of the services.

#### **52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS -- COMMERCIAL ITEMS (APR 2016)**

a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses, which are incorporated in this contract by reference, to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

(1) 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations (Nov 2015).

(2) 52.233-3, Protest After Award (Aug 1996) (31 U.S.C. 3553).

(3) 52.233-4, Applicable Law for Breach of Contract Claim (Oct 2004) (Pub. L. 108-77, 108-78 [19 U.S.C. 3805 note]).

(b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the contracting officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:

[Contracting Officer check as appropriate.]

(1) 52.203-6, Restrictions on Subcontractor Sales to the Government (Sept 2006), with Alternate I (Oct 1995) (41 U.S.C. 4704 and 10 U.S.C. 2402).

(2) 52.203-13, Contractor Code of Business Ethics and Conduct (Oct 2015) (41 U.S.C. 3509).

(3) 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub L. 111-5)

(4) 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards (Oct 2016) (Pub. L. 109-282) (31 U.S.C. 6101 note).

(5) [Reserved]

(6) 52.204-14, Service Contract Reporting Requirements (OCT 2016) (Pub. L. 111-117, section 743 of Div. C).

(7) 52.204-15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts (Jan 2016) (Pub. L. 111-117, section 743 of Div. C).

(8) 52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Oct 2015) (31 U.S.C. 6101 note).

(9) 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters (Jul 2013) (41 U.S.C. 2313).

- (10) [Reserved]
- (11) (i) 52.219-3, Notice of HUBZone Set-Aside or Sole-Source Award (Nov 2011) (15 U.S.C. 657a).
- (ii) Alternate I (Nov 2011) of 52.219-3.
- (12) (i) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Oct 2014) (if the offeror elects to waive the preference, it shall so indicate in its offer)(15 U.S.C. 657a).
- (ii) Alternate I (Jan 2011) of 52.219-4.
- (13) [Reserved]
- (14) (i) 52.219-6, Notice of Total Small Business Aside (Nov 2011) (15 U.S.C. 644).
- (ii) Alternate I (Nov 2011).
- (iii) Alternate II (Nov 2011).
- (15) (i) 52.219-7, Notice of Partial Small Business Set-Aside (June 2003) (15 U.S.C. 644).
- (ii) Alternate I (Oct 1995) of 52.219-7.
- (iii) Alternate II (Mar 2004) of 52.219-7.
- (16) 52.219-8, Utilization of Small Business Concerns (Nov 2016) (15 U.S.C. 637(d)(2) and (3)).
- (17) (i) 52.219-9, Small Business Subcontracting Plan (Nov 2016) (15 U.S.C. 637 (d)(4)).
- (ii) Alternate I (Nov 2016) of 52.219-9.
- (iii) Alternate II (Nov 2016) of 52.219-9.
- (iv) Alternate III (Nov 2016) of 52.219-9.
- (v) Alternate IV (Nov 2016) of 52.219-9.
- (18) 52.219-13, Notice of Set-Aside of Orders (Nov 2011) (15 U.S.C. 644(r)).
- (19) 52.219-14, Limitations on Subcontracting (Nov 2011) (15 U.S.C. 637(a)(14)).
- (20) 52.219-16, Liquidated Damages—Subcontracting Plan (Jan 1999) (15 U.S.C. 637(d)(4)(F)(i)).
- (21) 52.219-27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (Nov 2011) (15 U.S.C. 657f).
- (22) 52.219-28, Post Award Small Business Program Rerepresentation (Jul 2013) (15 U.S.C. 632(a)(2)).
- (23) 52.219-29, Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (Dec 2015) (15 U.S.C. 637(m)).
- (24) 52.219-30, Notice of Set-Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (Dec 2015) (15 U.S.C. 637(m)).
- (25) 52.222-3, Convict Labor (June 2003) (E.O. 11755).
- (26) 52.222-19, Child Labor—Cooperation with Authorities and Remedies (Oct 2016) (E.O. 13126).
- (27) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).
- (28) 52.222-26, Equal Opportunity (Sep 2016) (E.O. 11246).
- (29) 52.222-35, Equal Opportunity for Veterans (Oct 2015) (38 U.S.C. 4212).
- (30) 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C. 793).
- (31) 52.222-37, Employment Reports on Veterans (Feb 2016) (38 U.S.C. 4212).
- (32) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496).
- (33) (i) 52.222-50, Combating Trafficking in Persons (Mar 2015) (22 U.S.C. chapter 78 and E.O. 13627).
- (ii) Alternate I (Mar 2015) of 52.222-50, (22 U.S.C. chapter 78 and E.O. 13627).
- (34) 52.222-54, Employment Eligibility Verification (Oct 2015). (E. O. 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in 22.1803.)  
Per Court Injunction dated 24 Oct 2016 and OMB memo dated 25 Oct 2016 do not implement the following until further direction.
- (35) 52.222-59, Compliance with Labor Laws (Executive Order 13673) (Oct 2016). (Applies at \$50 million for solicitations and resultant contracts issued from October 25, 2016 through April 24, 2017; applies at \$500,000 for solicitations and resultant contracts issued after April 24, 2017).
- (36) 52.222-60, Paycheck Transparency (Executive Order 13673) (Oct 2016).
- (37) (i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Items (May 2008) (42 U.S.C. 6962(c)(3)(A)(ii)). (Not applicable to the acquisition of commercially available off-the-shelf items.)
- (ii) Alternate I (May 2008) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)). (Not applicable to the acquisition of commercially available off-the-shelf items.)
- (38) 52.223-11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (Jun 2016) (E.O.13693).
- (39) 52.223-12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (Jun 2016) (E.O. 13693).
- (40) (i) 52.223-13, Acquisition of EPEAT® -Registered Imaging Equipment (Jun 2014) (E.O.s 13423 and 13514
- (ii) Alternate I (Oct 2015) of 52.223-13.
- (41) (i) 52.223-14, Acquisition of EPEAT® -Registered Television (Jun 2014) (E.O.s 13423 and 13514).
- (ii) Alternate I (Jun 2014) of 52.223-14.
- (42) 52.223-15, Energy Efficiency in Energy-Consuming Products (Dec 2007) (42 U.S.C. 8259b).
- (43) (i) 52.223-16, Acquisition of EPEAT® -Registered Personal Computer Products (Oct 2015) (E.O.s 13423 and 13514).
- (ii) Alternate I (Jun 2014) of 52.223-16.
- (44) 52.223-18, Encouraging Contractor Policies to Ban Text Messaging while Driving (Aug 2011) (E.O. 13513).
- (45) 52.223-20, Aerosols (Jun 2016) (E.O. 13693).
- (46) 52.223-21, Foams (Jun 2016) (E.O. 13696).
- (47) 52.225-1, Buy American--Supplies (May 2014) (41 U.S.C. chapter 83).
- (48) (i) 52.225-3, Buy American--Free Trade Agreements--Israeli Trade Act (May 2014) (41 U.S.C. chapter 83, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, 19 U.S.C. 4001 note, Pub. L. 103-182, 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, 112-42, and 112-43).
- (ii) Alternate I (May 2014) of 52.225-3.
- (iii) Alternate II (May 2014) of 52.225-3.
- (iv) Alternate III (May 2014) of 52.225-3.
- (49) 52.225-5, Trade Agreements (Oct 2016) (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).
- (50) 52.225-13, Restrictions on Certain Foreign Purchases (Jun 2008) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).
- (51) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the

National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).

- \_\_\_ (52) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) (42 U.S.C. 5150).
- \_\_\_ (53) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) (42 U.S.C. 5150).
- \_\_\_ (54) 52.232-29, Terms for Financing of Purchases of Commercial Items (Feb 2002) (41 U.S.C. 4505), 10 U.S.C. 2307(f)).
- \_\_\_ (55) 52.232-30, Installment Payments for Commercial Items (Oct 1995) (41 U.S.C. 4505, 10 U.S.C. 2307(f)).
- \_\_\_ (56) 52.232-33, Payment by Electronic Funds Transfer— System for Award Management (Jul 2013) (31 U.S.C. 3332).
- \_\_\_ (57) 52.232-34, Payment by Electronic Funds Transfer—Other Than System for Award Management (Jul 2013) (31 U.S.C. 3332).
- \_\_\_ (58) 52.232-36, Payment by Third Party (May 2014) (31 U.S.C. 3332).
- \_\_\_ (59) 52.239-1, Privacy or Security Safeguards (Aug 1996) (5 U.S.C. 552a).
- \_\_\_ (60) (i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx 1241(b) and 10 U.S.C. 2631).
- \_\_\_ (ii) Alternate I (Apr 2003) of 52.247-64.

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

[Contracting Officer check as appropriate.]

- (1) 52.222-17, Nondisplacement of Qualified Workers (May 2014) (E.O. 13495)
- (2) 52.222-41, Service Contract Labor Standards (May 2014) (41 U.S.C. chapter 67).
- (3) 52.222-42, Statement of Equivalent Rates for Federal Hires (May 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).
- (4) 52.222-43, Fair Labor Standards Act and Service Contract Labor Standards -- Price Adjustment (Multiple Year and Option Contracts) (May 2014) (29 U.S.C.206 and 41 U.S.C. chapter 67).
- (5) 52.222-44, Fair Labor Standards Act and Service Contract Labor Standards -- Price Adjustment (May 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).
- \_\_\_ (6) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment--Requirements (May 2014) (41 U.S.C. chapter 67).
- \_\_\_ (7) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services--Requirements (May 2014) (41 U.S.C. chapter 67).
- (8) 52.222-55, Minimum Wages Under Executive Order 13658 (Dec 2015) (E.O. 13658).
- \_\_\_ (9) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations. (May 2014) (42 U.S.C. 1792).
- \_\_\_ (10) 52.237-11, Accepting and Dispensing of \$1 Coin (Sep 2008) (31 U.S.C. 5112(p)(1)).

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

(1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.

(2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.

(3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.

(e)

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

- (i) 52.203-13, Contractor Code of Business Ethics and Conduct (Oct 2015) (41 U.S.C. 3509).
- (ii) 52.219-8, Utilization of Small Business Concerns (Nov 2016) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$700,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
- (iii) 52.222-17, Nondisplacement of Qualified Workers (May 2014) (E.O. 13495). Flow down required in accordance with paragraph (1) of FAR clause 52.222-17.
- (iv) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).
- (v) 52.222-26, Equal Opportunity (Sep 2016) (E.O. 11246).
- (vi) 52.222-35, Equal Opportunity for Veterans (Oct 2015) (38 U.S.C. 4212).
- (vii) 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C. 793).
- (viii) 52.222-37, Employment Reports on Veterans (Feb 2016) (38 U.S.C. 4212).
- (ix) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.
- (x) 52.222-41, Service Contract Labor Standards (May 2014), (41 U.S.C. chapter 67).
- (xi) \_\_\_ (A) 52.222-50, Combating Trafficking in Persons (Mar 2015) (22 U.S.C. chapter 78 and E.O. 13627).
- \_\_\_ (B) Alternate I (Mar 2015) of 52.222-50 (22 U.S.C. chapter 78 E.O. 13627).
- (xii) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment--Requirements (May 2014) (41 U.S.C. chapter 67.)
- (xiii) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services--Requirements (May 2014) (41 U.S.C. chapter 67)
- (xiv) 52.222-54, Employment Eligibility Verification (Oct 2015) (E. O. 12989).
- (xv) 52.222-55, Minimum Wages Under Executive Order 13658 (Dec 2015).
- (xvii) 52.222-60, Paycheck Transparency (Executive Order 13673) (Oct 2016).
- (xviii) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Oct 2016) (Section 862, as amended, of the National

Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).

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

(xx) 52.247-64, Preference for Privately-Owned U.S. Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx 1241(b) and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.

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

#### **52.215-8 ORDER OF PRECEDENCE – UNIFORM CONTRACT FORMAT (OCT 1997)**

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order:

- (a) The Schedule (excluding the specifications).
- (b) Representations and other instructions.
- (c) Contract clauses.
- (d) Other documents, exhibits, and attachments.
- (e) The specifications.

#### **52.217-8 OPTION TO EXTEND SERVICES (NOV 1999)**

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within 60 days. (End of 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 30 days; provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 60 days 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 9 years, 6 months.

#### **52.219-1 SMALL BUSINESS PROGRAM REPRESENTATIONS (OCT 2014)**

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

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

“Service-disabled veteran-owned small business concern” --

(1) Means a small business concern--

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

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

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

“Small disadvantaged business concern, consistent with 13 CFR 124.1002,” means a small business concern under the size standard applicable to the acquisition, that--

(1) Is at least 51 percent unconditionally and directly owned (as defined at 13 CFR 124.105) by--

(i) One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States, and

(ii) Each individual claiming economic disadvantage has a net worth not exceeding \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(2) The management and daily business operations of which are controlled (as defined at 13 CFR 124.106) by individuals who meet the criteria in paragraphs (1)(i) and (ii) of this definition.

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

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

(2) The management and daily business operations of which are controlled by one or more veterans.

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

(1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

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

(b)

(1) The North American Industry Classification System (NAICS) code for this acquisition is 493190.

(2) The small business size standard is \$27.5 Million.

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is N/A employees.

(c) *Representations.*

(1) The offeror represents as part of its offer that it  is,  is not a small business concern.

(2) [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it  is,  is not, a small disadvantaged business concern as defined in 13 CFR 124.1002.

(3) [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents as part of its offer that it  is,  is not a women-owned small business concern.

(4) Women-owned small business (WOSB) concern eligible under the WOSB Program. [Complete only if the offeror represented itself as a women-owned small business concern in paragraph (c)(3) of this provision.] The offeror represents as part of its offer that—

(i) It  is,  is not a WOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It  is,  is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (c)(4)(i) of this provision is accurate for each WOSB concern eligible under the WOSB Program participating in the joint venture. [The offeror shall enter the name or names of the WOSB concern eligible under the WOSB Program and other small businesses that are participating in the joint venture: \_\_\_\_\_.]

Each WOSB concern eligible under the WOSB Program participating in the joint venture shall submit a separate signed copy of the WOSB representation.

(5) Economically disadvantaged women-owned small business (EDWOSB) concern. [Complete only if the offeror represented itself as a women-owned small business concern eligible under the WOSB Program in (c)(4) of this provision.] The offeror represents as part of its offer that--

(i) It  is,  is not an EDWOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It  is,  is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (c)(5)(i) of this provision is accurate for each EDWOSB concern participating in the joint venture. [The offeror shall enter the name or names of the EDWOSB concern and other small businesses that are participating in the joint venture: \_\_\_\_\_.]

Each EDWOSB concern participating in the joint venture shall submit a separate signed copy of the EDWOSB representation.

(6) [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents as part of its offer that it  is,  is not a veteran-owned small business concern.

(7) [Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(6) of this provision.] The offeror represents as part of its offer that it  is,  is not a service-disabled veteran-owned small business concern.

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

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

(ii) It  is,  is not a HUBZone joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (c)(8)(i) of this provision is accurate for each HUBZone small business concern participating in the HUBZone joint venture. [The offeror shall enter the names of each of the HUBZone small business concerns participating in the HUBZone joint venture: \_\_\_\_\_.]

Each HUBZone small business concern participating in the HUBZone joint venture shall submit a separate signed copy of the HUBZone representation.

(d) *Notice.*

(1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.

(2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a business concern that is small, HUBZone small, small disadvantaged, service-disabled veteran-owned small, economically disadvantaged women-owned small, or women-owned small eligible under the WOSB Program in order to obtain a contract to be awarded under the preference programs established pursuant to section 8, 9, 15, 31, and 36 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall --

(i) Be punished by imposition of fine, imprisonment, or both;

(ii) Be subject to administrative remedies, including suspension and debarment; and

(iii) Be ineligible for participation in programs conducted under the authority of the Act.

(End of Provision)

*Alternate I (May 2014).* As prescribed in [19.309\(a\)\(2\)](#), add the following paragraph (b)(9) to the basic provision:

(9) [Complete if offeror represented itself as disadvantaged in paragraph (b)(2) of this provision.] The offeror shall check the category in which its ownership falls:

Black American.

Hispanic American.

Native American (American Indians, Eskimos, Aleuts, or Native Hawaiians).

Asian-Pacific American (persons with origins from Burma, Thailand, Malaysia, Indonesia, Singapore, Brunei, Japan, China, Taiwan, Laos, Cambodia (Kampuchea), Vietnam, Korea, The Philippines, Republic of Palau, Republic of the Marshall Islands, Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, Guam, Samoa, Macao, Hong Kong, Fiji, Tonga, Kiribati, Tuvalu, or Nauru).

Subcontinent Asian (Asian-Indian) American (persons with origins from India, Pakistan, Bangladesh, Sri Lanka, Bhutan, the Maldives Islands, or Nepal).

Individual/concern, other than one of the preceding.

**52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2014)**

"HUBZone small business concern" means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.

"Service-disabled veteran-owned small business concern" —

(1) Means a small business concern—

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

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

"Small business concern" means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.

"Small disadvantaged business concern, consistent with 13 CFR 124.1002," means a small business concern under the size standard applicable to the acquisition, that--

(1) Is at least 51 percent unconditionally and directly owned (as defined at 13 CFR 124.105) by--

- (i) One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States; and
- (ii) Each individual claiming economic disadvantage has a net worth not exceeding \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(2) The management and daily business operations of which are controlled (as defined at 13.CFR 124.106) by individuals, who meet the criteria in paragraphs (1)(i) and (ii) of this definition.

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

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

(2) The management and daily business operations of which are controlled by one or more veterans.

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

(1) That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

(b) It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.

(c) The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.

(d)

(1) Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a small disadvantaged business concern, or a women-owned small business concern.

(2) The Contractor shall confirm that a subcontractor representing itself as a HUBZone small business concern is certified by SBA as a HUBZone small business concern by accessing the System for Award Management database or by contacting the SBA. Options for contacting the SBA include—

(i) HUBZone small business database search application Web page at [http://dsbs.sba.gov/dsbs/search/dsp\\_searchhubzone.cfm](http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm) ; or <http://www.sba.gov/hubzone> ;

(ii) In writing to the Director/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington DC 20416; or

(iii) The SBA HUBZone Help Desk at [hubzone@sba.gov](mailto:hubzone@sba.gov)

**52.219-14 LIMITATIONS ON SUBCONTRACTING (NOV 2011)**

(a) This clause does not apply to the unrestricted portion of a partial set-aside.

(b) *Applicability.* This clause applies only to--

(1) Contracts that have been set aside or reserved for small business concerns or 8(a) concerns;

- (2) Part or parts of a multiple-award contract that have been set aside for small business concerns or 8(a) concerns; and
- (3) Orders set aside for small business or 8(a) concerns under multiple-award contracts as described in [8.405-5](#) and [16.505\(b\)\(2\)\(i\)\(F\)](#).
- (c) By submission of an offer and execution of a contract, the Offeror/Contractor agrees that in performance of the contract in the case of a contract for --
- (1) *Services (except construction)*. At least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern.
  - (2) *Supplies (other than procurement from a nonmanufacturer of such supplies)*. The concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials.
  - (3) *General construction*. The concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees.
  - (4) *Construction by special trade contractors*. The concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees.

## 52.219-28 POST AWARD SMALL BUSINESS PROGRAM REPRESENTATION (JUL 2013)

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

*Long-term contract* means a contract of more than five years in duration, including options. However, the term does not include contracts that exceed five years in duration because the period of performance has been extended for a cumulative period not to exceed six months under the clause at 52.217-8, Option to Extend Services, or other appropriate authority.

*Small business concern* means a concern, including its affiliates that is independently owned and operated, not dominant in the field of operation in which it is bidding on Government contracts, and qualified as a small business under the criteria in 13 CFR part 121 and the size standard in paragraph (c) of this clause. Such a concern is "not dominant in its field of operation" when it does not exercise a controlling or major influence on a national basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

(b) If the Contractor represented that it was a small business concern prior to award of this contract, the Contractor shall represent its size status according to paragraph (e) of this clause or, if applicable, paragraph (g) of this clause, upon the occurrence of any of the following:

- (1) Within 30 days after execution of a novation agreement or within 30 days after modification of the contract to include this clause, if the novation agreement was executed prior to inclusion of this clause in the contract.
- (2) Within 30 days after a merger or acquisition that does not require a novation or within 30 days after modification of the contract to include this clause, if the merger or acquisition occurred prior to inclusion of this clause in the contract.
- (3) For long-term contracts—
  - (i) Within 60 to 120 days prior to the end of the fifth year of the contract; and
  - (ii) Within 60 to 120 days prior to the date specified in the contract for exercising any option thereafter.

(c) The Contractor shall represent its size status in accordance with the size standard in effect at the time of this representation that corresponds to the North American Industry Classification System (NAICS) code assigned to this contract. The small business size standard corresponding to this NAICS code can be found at <http://www.sba.gov/content/table-small-business-size-standards>.

(d) The small business size standard for a Contractor providing a product which it does not manufacture itself, for a contract other than a construction or service contract, is 500 employees.

(e) Except as provided in paragraph (g) of this clause, the Contractor shall make the representation required by paragraph (b) of this clause by validating or updating all its representations in the Representations and Certifications section of the System for Award Management (SAM) and its other data in SAM, as necessary, to ensure that they reflect the Contractor's current status. The Contractor shall notify the contracting office in writing within the timeframes specified in paragraph (b) of this clause that the data have been validated or updated, and provide the date of the validation or update.

(f) If the Contractor represented that it was other than a small business concern prior to award of this contract, the Contractor may, but is not required to, take the actions required by paragraphs (e) or (g) of this clause.

(g) If the Contractor does not have representations and certifications in SAM, or does not have a representation in SAM for the NAICS code applicable to this contract, the Contractor is required to complete the following re-representation and submit it to the contracting office, along with the contract number and the date on which the re-representation was completed:

The Contractor represents that it [ ] is, [ ] is not a small business concern under NAICS Code 493190 assigned to contract number \_\_\_\_\_.[Contractor to sign and date and insert authorized signer's name and title].

## 52.222-1 NOTICE TO THE GOVERNMENT OF LABOR DISPUTES (FEB 1997)

If the Contractor has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this contract,

the Contractor shall immediately give notice, including all relevant information, to the Contracting Officer.

## **52.222-41 SERVICE CONTRACT LABOR STANDARDS (MAY 2014)**

Definitions. As used in this clause—

“Contractor” when this clause is used in any subcontract, shall be deemed to refer to the subcontractor, except in the term “Government Prime Contractor.”

“Service employee” means any person engaged in the performance of this contract other than any person employed in a bona fide executive, administrative, or professional capacity, as these terms are defined in Part 541 of Title 29, Code of Federal Regulations, as revised. It includes all such persons regardless of any contractual relationship that may be alleged to exist between a Contractor or subcontractor and such persons.

(b) Applicability. This contract is subject to the following provisions and to all other applicable provisions of 41 U.S.C. chapter 67, Service Contract Labor Standards, and regulations of the Secretary of Labor (29 CFR Part 4). This clause does not apply to contracts or subcontracts administratively exempted by the Secretary of Labor or exempted by 41 U.S.C. 6702, as interpreted in Subpart C of 29 CFR Part 4.

(c) Compensation.

(1) Each service employee employed in the performance of this contract by the Contractor or any subcontractor shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor, or authorized representative, as specified in any wage determination attached to this contract.

(2)

(i) If a wage determination is attached to this contract, the Contractor shall classify any class of service employee which is not listed therein and which is to be employed under the contract (i.e., the work to be performed is not performed by any classification listed in the wage determination) so as to provide a reasonable relationship (i.e., appropriate level of skill comparison) between such unlisted classifications and the classifications listed in the wage determination. Such conformed class of employees shall be paid the monetary wages and furnished the fringe benefits as are determined pursuant to the procedures in this paragraph (c).

(ii) This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The Contractor shall submit Standard Form (SF) 1444, Request for Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed SF 1444 (which must include information regarding the agreement or disagreement of the employees’ authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

(iii) The final determination of the conformance action by the Wage and Hour Division shall be transmitted to the Contracting Officer who shall promptly notify the Contractor of the action taken. Each affected employee shall be furnished by the Contractor with a written copy of such determination or it shall be posted as a part of the wage determination.

(iv)

(A) The process of establishing wage and fringe benefit rates that bear a reasonable relationship to those listed in a wage determination cannot be reduced to any single formula. The approach used may vary from wage determination to wage determination depending on the circumstances. Standard wage and salary administration practices which rank various job classifications by pay grade pursuant to point schemes or other job factors may, for example, be relied upon. Guidance may also be obtained from the way different jobs are rated under Federal pay systems (Federal Wage Board Pay System and the General Schedule) or from other wage determinations issued in the same locality. Basic to the establishment of any conformable wage rate(s) is the concept that a pay relationship should be maintained between job classifications based on the skill required and the duties performed.

(B) In the case of a contract modification, an exercise of an option, or extension of an existing contract, or in any other case where a Contractor succeeds a contract under which the classification in question was previously conformed pursuant to paragraph (c) of this clause, a new conformed wage rate and fringe benefits may be assigned to the conformed classification by indexing (i.e., adjusting) the previous conformed rate and fringe benefits by an amount equal to the average (mean) percentage increase (or decrease, where appropriate) between the wages and fringe benefits specified for all classifications to be used on the contract which are listed in the current wage determination, and those specified for the corresponding classifications in the previously applicable wage determination. Where conforming actions are accomplished in accordance with this paragraph prior to the performance of contract work by the unlisted class of employees, the Contractor shall advise the Contracting Officer of the action taken but the other procedures in subdivision (c)(2)(ii) of this clause need not be followed.

(C) No employee engaged in performing work on this contract shall in any event be paid less than the currently applicable minimum wage specified under section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended.

(v) The wage rate and fringe benefits finally determined under this subparagraph (c)(2) of this clause shall be paid to all employees performing in the classification from the first day on which contract work is performed by them in the classification. Failure to pay the unlisted employees the compensation agreed upon by the interested parties and/or finally determined by the Wage and Hour Division retroactive to the date such class of employees commenced contract work shall be a violation of the Service Contract Labor Standards statute and this contract.

(vi) Upon discovery of failure to comply with subparagraph (c)(2) of this clause, the Wage and Hour Division shall make a final determination of conformed classification, wage rate, and/or fringe benefits which shall be retroactive to the date such class or classes of employees commenced

contract work.

(3) Adjustment of compensation. If the term of this contract is more than 1 year, the minimum monetary wages and fringe benefits required to be paid or furnished thereunder to service employees under this contract shall be subject to adjustment after 1 year and not less often than once every 2 years, under wage determinations issued by the Wage and Hour Division.

(d) Obligation to furnish fringe benefits. The Contractor or subcontractor may discharge the obligation to furnish fringe benefits specified in the attachment or determined under subparagraph (c)(2) of this clause by furnishing equivalent combinations of bona fide fringe benefits, or by making equivalent or differential cash payments, only in accordance with Subpart D of 29 CFR Part 4.

(e) Minimum wage. In the absence of a minimum wage attachment for this contract, neither the Contractor nor any subcontractor under this contract shall pay any person performing work under this contract (regardless of whether the person is a service employee) less than the minimum wage specified by section 6(a)(1) of the Fair Labor Standards Act of 1938. Nothing in this clause shall relieve the Contractor or any subcontractor of any other obligation under law or contract for payment of a higher wage to any employee.

(f) Successor contracts. If this contract succeeds a contract subject to the Service Contract Labor Standards statute under which substantially the same services were furnished in the same locality and service employees were paid wages and fringe benefits provided for in a collective bargaining agreement, in the absence of the minimum wage attachment for this contract setting forth such collectively bargained wage rates and fringe benefits, neither the Contractor nor any subcontractor under this contract shall pay any service employee performing any of the contract work (regardless of whether or not such employee was employed under the predecessor contract), less than the wages and fringe benefits provided for in such collective bargaining agreement, to which such employee would have been entitled if employed under the predecessor contract, including accrued wages and fringe benefits and any prospective increases in wages and fringe benefits provided for under such agreement. No Contractor or subcontractor under this contract may be relieved of the foregoing obligation unless the limitations of 29 CFR 4.1b(b) apply or unless the Secretary of Labor or the Secretary's authorized representative finds, after a hearing as provided in 29 CFR 4.10 that the wages and/or fringe benefits provided for in such agreement are substantially at variance with those which prevail for services of a character similar in the locality, or determines, as provided in 29 CFR 4.11, that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations. Where it is found in accordance with the review procedures provided in 29 CFR 4.10 and/or 4.11 and Parts 6 and 8 that some or all of the wages and/or fringe benefits contained in a predecessor Contractor's collective bargaining agreement are substantially at variance with those which prevail for services of a character similar in the locality, and/or that the collective bargaining agreement applicable to service employees employed under the predecessor contract was not entered into as a result of arm's length negotiations, the Department will issue a new or revised wage determination setting forth the applicable wage rates and fringe benefits. Such determination shall be made part of the contract or subcontract, in accordance with the decision of the Administrator, the Administrative Law Judge, or the Administrative Review Board, as the case may be, irrespective of whether such issuance occurs prior to or after the award of a contract or subcontract (53 Comp. Gen. 401 (1973)). In the case of a wage determination issued solely as a result of a finding of substantial variance, such determination shall be effective as of the date of the final administrative decision.

(g) Notification to employees. The Contractor and any subcontractor under this contract shall notify each service employee commencing work on this contract of the minimum monetary wage and any fringe benefits required to be paid pursuant to this contract, or shall post the wage determination attached to this contract. The poster provided by the Department of Labor (Publication WH 1313) shall be posted in a prominent and accessible place at the worksite. Failure to comply with this requirement is a violation of 41 U.S.C. 6703 and of this contract.

(h) Safe and sanitary working conditions. The Contractor or subcontractor shall not permit any part of the services called for by this contract to be performed in buildings or surroundings or under working conditions provided by or under the control or supervision of the Contractor or subcontractor which are unsanitary, hazardous, or dangerous to the health or safety of the service employees. The Contractor or subcontractor shall comply with the safety and health standards applied under 29 CFR Part 1925.

(i) Records.

(1) The Contractor and each subcontractor performing work subject to the Service Contract Labor Standards statute shall make and maintain for 3 years from the completion of the work, and make them available for inspection and transcription by authorized representatives of the Wage and Hour Division, Employment Standards Administration, a record of the following:

(i) For each employee subject to the Service Contract Labor Standards statute--

(A) Name and address and social security number;

(B) Correct work classification or classifications, rate or rates of monetary wages paid and fringe benefits provided, rate or rates of payments in lieu of fringe benefits, and total daily and weekly compensation;

(C) Daily and weekly hours worked by each employee; and

(D) Any deductions, rebates, or refunds from the total daily or weekly compensation of each employee.

(ii) For those classes of service employees not included in any wage determination attached to this contract, wage rates or fringe benefits determined by the interested parties or by the Administrator or authorized representative under the terms of paragraph (c) of this clause. A copy of the report required by subdivision (c)(2)(ii) of this clause will fulfill this requirement.

(iii) Any list of the predecessor Contractor's employees which had been furnished to the Contractor as prescribed by paragraph (n) of this clause.

(2) The Contractor shall also make available a copy of this contract for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available these records for inspection and transcription shall be a violation of the regulations and this contract, and in the case of failure to produce these records, the Contracting Officer, upon direction of the Department of Labor and notification to the Contractor, shall take action to cause suspension of any further payment or advance of funds until the violation ceases.

- (4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.
- (j) Pay periods. The Contractor shall unconditionally pay to each employee subject to the Service Contract Labor Standards statute all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR Part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this statute may not be of any duration longer than semi-monthly.
- (k) Withholding of payments and termination of contract. The Contracting Officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Service Contract Labor Standards statute all or part of the wages or fringe benefits due under the Service Contract Labor Standards statute, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.
- (l) Subcontracts. The Contractor agrees to insert this clause in all subcontracts subject to the Service Contract Labor Standards statute.
- (m) Collective bargaining agreements applicable to service employees. If wages to be paid or fringe benefits to be furnished any service employees employed by the Government Prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government Prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance such agreements shall be reported promptly after negotiation thereof.
- (n) Seniority list. Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (29 CFR 4.173), the incumbent Prime Contractor shall furnish the Contracting Officer a certified list of the names of all service employees on the Contractor's or subcontractor's payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer shall turn over such list to the successor Contractor at the commencement of the succeeding contract.
- (o) Rulings and interpretations. Rulings and interpretations of the Service Contract Labor Standards statute are contained in Regulations, 29 CFR Part 4.
- (p) Contractor's certification.
- (1) By entering into this contract, the Contractor (and officials thereof) certifies that neither it nor any person or firm who has a substantial interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed under 41 U.S.C. 6706.
- (2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract under 41 U.S.C. 6706.
- (3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.
- (q) Variations, tolerances, and exemptions involving employment. Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to 41 U.S.C. 6707 prior to its amendment by Pub.L.92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:
- (1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency, or injury may be employed at wages lower than the minimum wage otherwise required by 41 U.S.C. 6703(1) without diminishing any fringe benefits or cash payments in lieu thereof required under section 41 U.S.C. 6703(2), in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, persons with disabilities, and disabled clients of work centers under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR Parts 520, 521, 524, and 525).
- (2) The Administrator will issue certificates under the statute for the employment of apprentices, student-learners, persons with disabilities, or disabled clients of work centers not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two statutes, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR Parts 520, 521, 524, and 525).
- (3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR Parts 525 and 528.
- (r) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Office of Apprenticeship Training, Employer, and Labor Services (OATELS), U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually

performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman’s rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.

(s) Tips. An employee engaged in an occupation in which the employee customarily and regularly receives more than \$30 a month in tips may have the amount of these tips credited by the employer against the minimum wage required by 41 U.S.C. 6703(1), in accordance with section 3(m) of the Fair Labor Standards Act and Regulations, 29 CFR Part 531. However, the amount of credit shall not exceed \$1.34 per hour beginning January 1, 1981. To use this provision --

- (1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;
- (2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);
- (3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Labor Standards minimum wage through the combination of direct wages and tip credit; and
- (4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of 41 U.S.C. 6707(c).

(t) Disputes concerning labor standards. The U.S. Department of Labor has set forth in 29 CFR Parts 4, 6, and 8 procedures for resolving disputes concerning labor standards requirements. Such disputes shall be resolved in accordance with those procedures and not the Disputes clause of this contract. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

**52.222-42 STATEMENT OF EQUIVALENT RATES FOR FEDERAL HIRES (MAY 2014)**

In compliance with the Service Contract Labor Standards statute and the regulations of the Secretary of Labor (29 CFR part 4), this clause identifies the classes of service employees expected to be employed under the contract and states the wages and fringe benefits payable to each if they were employed by the contracting agency subject to the provisions of 5 U.S.C. 5341 or 5332.

*This Statement is for Information Only:  
It is not a Wage Determination*

Employee Class	Monetary Wage -- Fringe Benefits

**52.222-43 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT LABOR STANDARDS – PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS) (MAY 2014)**

(a) This clause applies to both contracts subject to area prevailing wage determinations and contracts subject to collective bargaining agreements.

(b) The Contractor warrants that the prices in this contract do not include any allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(c) The wage determination, issued under the Service Contract Labor Standards statute, (41 U.S.C. chapter 67), by the Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract. If no such determination has been made applicable to this contract, then the Federal minimum wage as established by section 6(a)(1) of the Fair Labor Standards Act of 1938, as amended, (29 U.S.C. 206) current on the anniversary date of a multiple year contract or the beginning of each renewal option period, shall apply to this contract.

(d) The contract price, contract unit price labor rates, or fixed hourly labor rates will be adjusted to reflect the Contractor’s actual increase or decrease in applicable wages and fringe benefits to the extent that the increase is made to comply with or the decrease is voluntarily made by the Contractor as a result of:

(1) The Department of Labor wage determination applicable on the anniversary date of the multiple year contract, or at the beginning of the renewal option period. For example, the prior year wage determination required a minimum wage rate of \$4.00 per hour. The Contractor chose to pay \$4.10. The new wage determination increases the minimum rate to \$4.50 per hour. Even if the Contractor voluntarily increases the rate to \$4.75 per hour, the allowable price adjustment is \$.40 per hour;

(2) An increased or decreased wage determination otherwise applied to the contract by operation of law; or

(3) An amendment to the Fair Labor Standards Act of 1938 that is enacted after award of this contract, affects the minimum wage, and becomes applicable to this contract under law.

(e) Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (d) of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers’ compensation insurance, but shall not otherwise

include any amount for general and administrative costs, overhead, or profit.

(f) The Contractor shall notify the Contracting Officer of any increase claimed under this clause within 30 days after receiving a new wage determination unless this notification period is extended in writing by the Contracting Officer. The Contractor shall promptly notify the Contracting Officer of any decrease under this clause, but nothing in the clause shall preclude the Government from asserting a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and the change in fixed hourly rates (if this is a time-and-materials or labor-hour contract), and any relevant supporting data, including payroll records, that the Contracting Officer may reasonably require. Upon agreement of the parties, the contract price, contract unit price labor rates, or fixed hourly rates shall be modified in writing. The Contractor shall continue performance pending agreement on or determination of any such adjustment and its effective date.

(g) The Contracting Officer or an authorized representative shall have access to and the right to examine any directly pertinent books, documents, papers and records of the Contractor until the expiration of 3 years after final payment under the contract.

## **52.222-50 --COMBATING TRAFFICKING IN PERSONS (MAR 2015)**

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

“Agent” means any individual, including a director, an officer, an employee, or an independent contractor, authorized to act on behalf of the organization.

“Coercion” means—

(1) Threats of serious harm to or physical restraint against any person;

(2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(3) The abuse or threatened abuse of the legal process.

“Commercial sex act” means any sex act on account of which anything of value is given to or received by any person.

“Commercially available off-the-shelf (COTS) item” means--

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

(i) A commercial item (as defined in paragraph (1) of the definition at 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.

“Debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

“Employee” means an employee of the Contractor directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

“Forced labor” means knowingly providing or obtaining the labor or services of a person—

(1) By threats of serious harm to, or physical restraint against, that person or another person;

(2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or

(3) By means of the abuse or threatened abuse of law or the legal process.

“Involuntary servitude” includes a condition of servitude induced by means of—

(1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or

(2) The abuse or threatened abuse of the legal process.

“Severe forms of trafficking in persons” means—

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

“Sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

“Subcontract” means any contract entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract.

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

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

(b) *Policy.* The United States Government has adopted a policy prohibiting trafficking in persons including the trafficking-related activities of this clause. Contractors, contractor employees, and their agents shall not—

(1) Engage in severe forms of trafficking in persons during the period of performance of the contract;

(2) Procure commercial sex acts during the period of performance of the contract;

(3) Use forced labor in the performance of the contract;

- (4) Destroy, conceal, confiscate, or otherwise deny access by an employee to the employee's identity or immigration documents, such as passports or drivers' licenses, regardless of issuing authority;
- (5)(i) Use misleading or fraudulent practices during the recruitment of employees or offering of employment, such as failing to disclose, in a format and language accessible to the worker, basic information or making material misrepresentations during the recruitment of employees regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, the living conditions, housing and associated costs (if employer or agent provided or arranged), any significant cost to be charged to the employee, and, if applicable, the hazardous nature of the work;
- (ii) Use recruiters that do not comply with local labor laws of the country in which the recruiting takes place;
- (6) Charge employees recruitment fees;
- (7)(i) Fail to provide return transportation or pay for the cost of return transportation upon the end of employment--
- (A) For an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. Government contract or subcontract (for portions of contracts performed outside the United States); or
- (B) For an employee who is not a United States national and who was brought into the United States for the purpose of working on a U.S. Government contract or subcontract, if the payment of such costs is required under existing temporary worker programs or pursuant to a written agreement with the employee (for portions of contracts performed inside the United States); except that--
- (ii) The requirements of paragraphs (b)(7)(i) of this clause shall not apply to an employee who is--
- (A) Legally permitted to remain in the country of employment and who chooses to do so; or
- (B) Exempted by an authorized official of the contracting agency from the requirement to provide return transportation or pay for the cost of return transportation;
- (iii) The requirements of paragraph (b)(7)(i) of this clause are modified for a victim of trafficking in persons who is seeking victim services or legal redress in the country of employment, or for a witness in an enforcement action related to trafficking in persons. The contractor shall provide the return transportation or pay the cost of return transportation in a way that does not obstruct the victim services, legal redress, or witness activity. For example, the contractor shall not only offer return transportation to a witness at a time when the witness is still needed to testify. This paragraph does not apply when the exemptions at paragraph (b)(7)(ii) of this clause apply.
- (8) Provide or arrange housing that fails to meet the host country housing and safety standards; or
- (9) If required by law or contract, fail to provide an employment contract, recruitment agreement, or other required work document in writing. Such written work document shall be in a language the employee understands. If the employee must relocate to perform the work, the work document shall be provided to the employee at least five days prior to the employee relocating. The employee's work document shall include, but is not limited to, details about work description, wages, prohibition on charging recruitment fees, work location(s), living accommodations and associated costs, time off, roundtrip transportation arrangements, grievance process, and the content of applicable laws and regulations that prohibit trafficking in persons.
- (c) *Contractor requirements.* The Contractor shall—
- (1) Notify its employees and agents of—
- (i) The United States Government's policy prohibiting trafficking in persons, described in paragraph (b) of this clause; and
- (ii) The actions that will be taken against employees or agents for violations of this policy. Such actions for employees may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and
- (2) Take appropriate action, up to and including termination, against employees, agents, or subcontractors that violate the policy in paragraph (b) of this clause.
- (d) *Notification.*
- (1) The Contractor shall inform the Contracting Officer and the agency Inspector General immediately of—
- (i) Any credible information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, subcontractor employee, or their agent has engaged in conduct that violates the policy in paragraph (b) of this clause (see also 18 U.S.C. 1351, Fraud in Foreign Labor Contracting, and 52.203-13(b)(3)(i)(A), if that clause is included in the solicitation or contract, which requires disclosure to the agency Office of the Inspector General when the Contractor has credible evidence of fraud); and
- (ii) Any actions taken against a Contractor employee, subcontractor, subcontractor employee, or their agent pursuant to this clause.
- (2) If the allegation may be associated with more than one contract, the Contractor shall inform the contracting officer for the contract with the highest dollar value.
- (e) *Remedies.* In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (c), (d), (g), (h), or (i) of this clause may result in—
- (1) Requiring the Contractor to remove a Contractor employee or employees from the performance of the contract;
- (2) Requiring the Contractor to terminate a subcontract;
- (3) Suspension of contract payments until the Contractor has taken appropriate remedial action;
- (4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined Contractor non-compliance;
- (5) Declining to exercise available options under the contract;
- (6) Termination of the contract for default or cause, in accordance with the termination clause of this contract; or
- (7) Suspension or debarment.
- (f) *Mitigating and aggravating factors.* When determining remedies, the Contracting Officer may consider the following:

- (1) *Mitigating factors.* The Contractor had a Trafficking in Persons compliance plan or an awareness program at the time of the violation, was in compliance with the plan, and has taken appropriate remedial actions for the violation, that may include reparation to victims for such violations.
- (2) *Aggravating factors.* The Contractor failed to abate an alleged violation or enforce the requirements of a compliance plan, when directed by the Contracting Officer to do so.
- (g) *Full cooperation.*
- (1) The Contractor shall, at a minimum—
- (i) Disclose to the agency Inspector General information sufficient to identify the nature and extent of an offense and the individuals responsible for the conduct;
- (ii) Provide timely and complete responses to Government auditors' and investigators' requests for documents;
- (iii) Cooperate fully in providing reasonable access to its facilities and staff (both inside and outside the U.S.) to allow contracting agencies and other responsible Federal agencies to conduct audits, investigations, or other actions to ascertain compliance with the Trafficking Victims Protection Act of 2000 (22 U.S.C. chapter 78), E.O. 13627, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor; and
- (iv) Protect all employees suspected of being victims of or witnesses to prohibited activities, prior to returning to the country from which the employee was recruited, and shall not prevent or hinder the ability of these employees from cooperating fully with Government authorities.
- (2) The requirement for full cooperation does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not—
- (i) Require the Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine;
- (ii) Require any officer, director, owner, employee, or agent of the Contractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; or
- (iii) Restrict the Contractor from—
- (A) Conducting an internal investigation; or
- (B) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.
- (h) *Compliance plan.*
- (1) This paragraph (h) applies to any portion of the contract that—
- (i) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and
- (ii) Has an estimated value that exceeds \$500,000.
- (2) The Contractor shall maintain a compliance plan during the performance of the contract that is appropriate—
- (i) To the size and complexity of the contract; and
- (ii) To the nature and scope of the activities to be performed for the Government, including the number of non-United States citizens expected to be employed and the risk that the contract or subcontract will involve services or supplies susceptible to trafficking in persons.
- (3) *Minimum requirements.* The compliance plan must include, at a minimum, the following:
- (i) An awareness program to inform contractor employees about the Government's policy prohibiting trafficking-related activities described in paragraph (b) of this clause, the activities prohibited, and the actions that will be taken against the employee for violations. Additional information about Trafficking in Persons and examples of awareness programs can be found at the Web site for the Department of State's Office to Monitor and Combat Trafficking in Persons at <http://www.state.gov/j/tip/>.
- (ii) A process for employees to report, without fear of retaliation, activity inconsistent with the policy prohibiting trafficking in persons, including a means to make available to all employees the hotline phone number of the Global Human Trafficking Hotline at 1-844-888-FREE and its email address at [help@befree.org](mailto:help@befree.org).
- (iii) A recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees to the employee, and ensures that wages meet applicable host-country legal requirements or explains any variance.
- (iv) A housing plan, if the Contractor or subcontractor intends to provide or arrange housing, that ensures that the housing meets host-country housing and safety standards.
- (v) Procedures to prevent agents and subcontractors at any tier and at any dollar value from engaging in trafficking in persons (including activities in paragraph (b) of this clause) and to monitor, detect, and terminate any agents, subcontracts, or subcontractor employees that have engaged in such activities.
- (4) *Posting.*
- (i) The Contractor shall post the relevant contents of the compliance plan, no later than the initiation of contract performance, at the workplace (unless the work is to be performed in the field or not in a fixed location) and on the Contractor's Web site (if one is maintained). If posting at the workplace or on the Web site is impracticable, the Contractor shall provide the relevant contents of the compliance plan to each worker in writing.
- (ii) The Contractor shall provide the compliance plan to the Contracting Officer upon request.
- (5) *Certification.* Annually after receiving an award, the Contractor shall submit a certification to the Contracting Officer that—
- (i) It has implemented a compliance plan to prevent any prohibited activities identified at paragraph (b) of this clause and to monitor, detect, and terminate any agent, subcontract or subcontractor employee engaging in prohibited activities; and
- (ii) After having conducted due diligence, either—
- (A) To the best of the Contractor's knowledge and belief, neither it nor any of its agents, subcontractors, or their agents is engaged in any such activities; or

(B) If abuses relating to any of the prohibited activities identified in paragraph (b) of this clause have been found, the Contractor or subcontractor has taken the appropriate remedial and referral actions.

(i) *Subcontracts.*

(1) The Contractor shall include the substance of this clause, including this paragraph (i), in all subcontracts and in all contracts with agents. The requirements in paragraph (h) of this clause apply only to any portion of the subcontract that—

(A) Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and

(B) Has an estimated value that exceeds \$500,000.

(2) If any subcontractor is required by this clause to submit a certification, the Contractor shall require submission prior to the award of the subcontract and annually thereafter. The certification shall cover the items in paragraph (h)(5) of this clause.

### **52.223-1-BIOBASED PRODUCT CERTIFICATION (MAY 202)**

As required by the Farm Security and Rural Investment Act of 2002 and the Energy Policy Act of 2005 (7 U.S.C. 8102(c)(3)), the offeror certifies, by signing this offer, that biobased products (within categories of products listed by the United States Department of Agriculture in 7 CFR part 3201, subpart B) to be used or delivered in the performance of the contract, other than biobased products that are not purchased by the offeror as a direct result of this contract, will comply with the applicable specifications or other contractual requirements.

### **52.223-2 AFFIRMATIVE PROCUREMENT OF BIOBASED PRODUCTS UNDER SERVICE AND CONSTRUCTION CONTRACTS (SEP 2013)**

(a) In the performance of this contract, the contractor shall make maximum use of biobased products that are United States Department of Agriculture (USDA)-designated items unless—

(1) The product cannot be acquired—

(i) Competitively within a time frame providing for compliance with the contract performance schedule;

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

(2) The product is to be used in an application covered by a USDA categorical exemption (see 7 CFR 3201.3(e)). For example, all USDA-designated items are exempt from the preferred procurement requirement for the following:

(i) Spacecraft system and launch support equipment.

(ii) Military equipment, i.e., a product or system designed or procured for combat or combat-related missions.

(b) Information about this requirement and these products is available at <http://www.biopreferred.gov>.

(c) In the performance of this contract, the Contractor shall—

(1) Report to <http://www.sam.gov>, with a copy to the Contracting Officer, on the product types and dollar value of any USDA-designated biobased products purchased by the Contractor during the previous Government fiscal year, between October 1 and September 30; and

(2) Submit this report not later than—

(i) October 31 of each year during contract performance; and

(ii) At the end of contract performance.

### **52.223-5 POLLUTION PREVENTION AND RIGHT-TO-KNOW INFORMATION (MAY 2011), ALT I (MAY 2011)**

“Toxic chemical” means a chemical or chemical category in listed in 40 CFR 372.65.

(b) Federal facilities are required to comply with the provisions of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11001-11050), and the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101-13109).

(c) The Contractor shall provide all information needed by the Federal facility to comply with the following:

(1) The emergency planning reporting requirements of Section 302 of EPCRA.

(2) The emergency notice requirements of Section 304 of EPCRA

(3) The list of Material Safety Data Sheets required by Section 311 of EPCRA

(4) The emergency and hazardous chemical inventory forms of Section 312 of EPCRA

(5) The toxic chemical release inventory of Section 313 of EPCRA, which includes the reduction and recycling information required by Section 6607 of PPA

(6) The toxic chemical and hazardous substance release and use reduction goals of section 2(e) of Executive Order 13423 and of Executive Order 13514.

### **52.223-6 DRUG-FREE WORKPLACE (MAY 2001)**

“Controlled substance” means a controlled substance in schedules I through V of section 202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in regulation at 21 CFR 1308.11 -- 1308.15.

“Conviction” means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes.

“Criminal drug statute” means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, possession, or use of any controlled substance.

“Drug-free workplace” means the site(s) for the performance of work done by the Contractor in connection with a specific contract where employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

“Employee” means an employee of a Contractor directly engaged in the performance of work under a Government contract. “Directly engaged” is defined to include all direct cost employees and any other Contractor employee who has other than a minimal impact or involvement in contract performance.

“Individual” means an offeror/contractor that has no more than one employee including the offeror/contractor.

(b) The Contractor, if other than an individual, shall -- within 30 days after award (unless a longer period is agreed to in writing for contracts of 30 days or more performance duration), or as soon as possible for contracts of less than 30 days performance duration --

(1) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor’s workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establish an ongoing drug-free awareness program to inform such employees about --

(i) The dangers of drug abuse in the workplace;

(ii) The Contractor’s policy of maintaining a drug-free workplace;

(iii) Any available drug counseling, rehabilitation, and employee assistance programs; and

(iv) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(3) Provide all employees engaged in performance of the contract with a copy of the statement required by subparagraph (b)(1) of this clause;

(4) Notify such employees in writing in the statement required by subparagraph (b)(1) of this clause that, as a condition of continued employment on this contract, the employee will --

(i) Abide by the terms of the statement; and

(ii) Notify the employer in writing of the employee’s conviction under a criminal drug statute for a violation occurring in the workplace no later than 5 days after such conviction;

(5) Notify the Contracting Officer in writing within 10 days after receiving notice under subdivision (b)(4)(ii) of this clause, from an employee or otherwise receiving actual notice of such conviction. The notice shall include the position title of the employee;

(6) Within 30 days after receiving notice under subdivision (b)(4)(ii) of this clause of a conviction, take one of the following actions with respect to any employee who is convicted of a drug abuse violation occurring in the workplace:

(i) Taking appropriate personnel action against such employee, up to and including termination; or

(ii) Require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency; and

(7) Make a good faith effort to maintain a drug-free workplace through implementation of subparagraphs (b)(1) through (b)(6) of this clause.

(c) The Contractor, if an individual, agrees by award of the contract or acceptance of a purchase order, not to engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while performing this contract.

(d) In addition to other remedies available to the Government, the Contractor’s failure to comply with the requirements of paragraph (b) or (c) of this clause may, pursuant to FAR 23.506, render the Contractor subject to suspension of contract payments, termination of the contract or default, and suspension or debarment.

#### **52.223-10 WASTE REDUCTION PROGRAM (MAY 2011)**

“Recycling” means the series of activities, including collection, separation, and processing, by which products or other materials are recovered from the solid waste stream for use in the form of raw materials in the manufacture of products other than fuel for producing heat or power by combustion.

“Waste prevention” means any change in the design, manufacturing, purchase, or use of materials or products (including packaging) to reduce their amount or toxicity before they are discarded. Waste prevention also refers to the reuse of products or materials.

“Waste reduction” means preventing or decreasing the amount of waste being generated through waste prevention, recycling, or purchasing recycled and environmentally preferable products.

(b) Consistent with the requirements of section 3(e) of Executive Order 13423, the Contractor shall establish a program to promote cost-effective waste reduction in all operations and facilities covered by this contract.

#### **52.223-18 ENCOURAGING CONTRACTOR POLICIES TO BAN TEXT MESSAGING WHILE DRIVING (AUG 2011)**

“Driving” — (1) Means operating a motor vehicle on an active roadway with the motor running, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise.

(2) Does not include operating a motor vehicle with or without the motor running when one has pulled over to the side of, or off, an active roadway and has halted in a location where one can safely remain stationary.

“Text messaging” means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include glancing at or listening to a navigational device that is secured in a commercially

designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to park.

(b) This clause implements Executive Order 13513, Federal Leadership on Reducing Text Messaging while Driving, dated October 1, 2009.

(c) The Contractor is encouraged to—

(1) Adopt and enforce policies that ban text messaging while driving—

(i) Company-owned or -rented vehicles or Government-owned vehicles; or

(ii) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.

(2) Conduct initiatives in a manner commensurate with the size of the business, such as—

(i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

(ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(d) Subcontracts. The Contractor shall insert the substance of this clause, including this paragraph (d), in all subcontracts that exceed the micro-purchase threshold.

### **52.223-19 COMPLIANCE WITH ENVIRONMENTAL MANAGEMENT SYSTEMS (MAY 2011)**

The Contractor's work under this contract shall conform with all operational controls identified in the applicable agency or facility Environmental Management Systems and provide monitoring and measurement information necessary for the Government to address environmental performance relative to the goals of the Environmental Management Systems.

### **52.224-1 PRIVACY ACT NOTIFICATION (APR 1984)**

The Contractor will be required to design, develop, or operate a system of records on individuals, to accomplish an agency function subject to the Privacy Act of 1974, Public Law 93-579, December 31, 1974 (5 U.S.C.552a) and applicable agency regulations. Violation of the Act may involve the imposition of criminal penalties.

### **52.228-5 INSURANCE-WORK ON A GOVERNMENT INSTALLATION (JAN 1997)**

(a) The Contractor shall, at its own expense, provide and maintain during the entire performance of this contract, at least the kinds and minimum amounts of insurance required in the Schedule or elsewhere in the contract.

(b) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. The policies evidencing required insurance shall contain an endorsement to the effect that any cancellation or any material change adversely affecting the Government's interest shall not be effective --

(1) For such period as the laws of the State in which this contract is to be performed prescribe; or

(2) Until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer, whichever period is longer.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in subcontracts under this contract that require work on a Government installation and shall require subcontractors to provide and maintain the insurance required in the Schedule or elsewhere in the contract. The Contractor shall maintain a copy of all subcontractors' proofs of required insurance, and shall make copies available to the Contracting Officer upon request.

### **52.229-3 FEDERAL, STATE, AND LOCAL TAXES (FEB 2013)**

"After-imposed Federal tax," means any new or increased Federal excise tax or duty, or tax that was exempted or excluded on the contract date but whose exemption was later revoked or reduced during the contract period, on the transactions or property covered by this contract that the Contractor is required to pay or bear as the result of legislative, judicial, or administrative action taking effect after the contract date. It does not include social security tax or other employment taxes.

"After-relieved Federal tax," means any amount of Federal excise tax or duty, except social security or other employment taxes, that would otherwise have been payable on the transactions or property covered by this contract, but which the Contractor is not required to pay or bear, or for which the Contractor obtains a refund or drawback, as the result of legislative, judicial, or administrative action taking effect after the contract date.

"All applicable Federal, State, and local taxes and duties," means all taxes and duties, in effect on the contract date, that the taxing authority is imposing and collecting on the transactions or property covered by this contract.

"Contract date," means the date set for bid opening or, if this is a negotiated contract or a modification, the effective date of this contract or modification.

"Local taxes," includes taxes imposed by a possession or territory of the United States, Puerto Rico, or the Northern Mariana Islands, if the contract is performed wholly or partly in any of those areas.

(b) (1) The contract price includes all applicable Federal, State, and local taxes and duties except as provided in subparagraph (b)(2)(i) of this clause.

(2) Taxes imposed under 26 U.S.C. 5000C may not be—

(i) Included in the contract price; nor

(ii) Reimbursed.

(c) The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no

amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.

- (d) The contract price shall be decreased by the amount of any after-relieved Federal tax.
- (e) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor's fault, negligence, or failure to follow instructions of the Contracting Officer.
- (f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds \$250.
- (g) The Contractor shall promptly notify the Contracting Officer of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.
- (h) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

#### **52.232-17 INTEREST (MAY 2014)**

- (a) Except as otherwise provided in this contract under a Price Reduction for Defective Certified Cost or Pricing Data clause or a Cost Accounting Standards clause, all amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in 41 U.S.C. 7109, which is applicable to the period in which the amount becomes due, as provided in paragraph (e) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.
- (b) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.
- (c) Final Decisions. The Contracting Officer will issue a final decision as required by 33.211 if—
  - (1) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt in a timely manner;
  - (2) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or
  - (3) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see 32.607-2).
- (d) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.
- (e) Amounts shall be due at the earliest of the following dates:
  - (1) The date fixed under this contract.
  - (2) The date of the first written demand for payment, including any demand for payment resulting from a default termination.
- (f) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—
  - (1) The date on which the designated office receives payment from the Contractor;
  - (2) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or
  - (3) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.
- (g) The interest charge made under this clause may be reduced under the procedures prescribed in 32.608-2 of the Federal Acquisition Regulation in effect on the date of this contract.

#### **52.232-40 PROVIDING ACCELERATED PAYMENTS TO SMALL BUSINESS SUBCONTRACTORS (DEC 2013)**

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

#### **52.232-9010 ACCELERATED PAYMENTS TO SMALL BUSINESS (APR 2014)**

In order to implement Department of Defense policy providing for accelerated payments to small businesses, the Government may issue awards that reflect payment terms of Net 30 days, regardless of the payment terms offered by the vendor. This is required so the Government can make accelerated payment to small businesses in accordance with Defense Federal Acquisition Regulation Supplement (DFARS) 232.906(a)(ii) as soon as practicable on contracts or orders for which fast pay procedures do not apply, following receipt of a proper invoice and completion of receipt and acceptance documentation as required for payment by Federal Acquisition Regulation (FAR) 32.905. The Government's intent to make accelerated payment does not alter the rules for imposition of interest pursuant to the Prompt Payment Act as set out in the contract or order and FAR Subpart 32.9.

#### **52.233-1 DISPUTES (JUL 2002), ALT I (DEC 1991)**

- (a) This contract is subject to 41 U.S.C chapter 71, Contract Disputes.

- (b) Except as provided in 41 U.S.C chapter 71, all disputes arising under or relating to this contract shall be resolved under this clause.
- (c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$100,000 is not a claim under 41 U.S.C chapter 71 until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under 41 U.S.C chapter 71. The submission may be converted to a claim under 41 U.S.C chapter 71, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.
- (d)(1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.
- (2)(i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.
- (ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.
- (iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am authorized to certify the claim on behalf of the Contractor."
- (3) The certification may be executed by any person authorized to bind the Contractor with respect to the claim.
- (e) For Contractor claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.
- (f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in 41 U.S.C chapter 71.
- (g) If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor's specific reasons for rejecting the offer.
- (h) The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.
- (i) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

### **52.233-3 PROTEST AFTER AWARD (AUG 1996)**

- (a) Upon receipt of a notice of protest (as defined in FAR 33.101) or a determination that a protest is likely (see FAR 33.102(d)), the Contracting Officer may, by written order to the Contractor, direct the Contractor to stop performance of the work called for by this contract. The order shall be specifically identified as a stop-work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Upon receipt of the final decision in the protest, the Contracting Officer shall either—
- (1) Cancel the stop-work order; or
- (2) Terminate the work covered by the order as provided in the Default, or the Termination for Convenience of the Government, clause of this contract.
- (b) If a stop-work order issued under this clause is canceled either before or after a final decision in the protest, the Contractor shall resume work. The Contracting Officer shall make an equitable adjustment in the delivery schedule or contract price, or both, and the contract shall be modified, in writing, accordingly, if—
- (1) The stop-work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and
- (2) The Contractor asserts its right to an adjustment within 30 days after the end of the period of work stoppage; provided, that if the Contracting Officer decides the facts justify the action, the Contracting Officer may receive and act upon a proposal at any time before final payment under this contract.
- (c) If a stop-work order is not canceled and the work covered by the order is terminated for the convenience of the Government, the Contracting Officer shall allow reasonable costs resulting from the stop-work order in arriving at the termination settlement.
- (d) If a stop-work order is not canceled and the work covered by the order is terminated for default, the Contracting Officer shall allow, by equitable adjustment or otherwise, reasonable costs resulting from the stop-work order.
- (e) The Government's rights to terminate this contract at any time are not affected by action taken under this clause.
- (f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. In addition to any other remedy available, and pursuant to the requirements of Subpart 32.6, the Government may collect this debt by offsetting the amount against any payment due the Contractor under any contract

between the Contractor and the Government.

#### **52.233-4 APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM (OCT 2004)**

United States law will apply to resolve any claim of breach of this contract.

#### **52.237-2 PROTECTION OF GOVERNMENT BUILDINGS, EQUIPMENT, AND VEGETATION (APR 1984)**

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

#### **52.237-3 CONTINUITY OF SERVICES (JAN 1991)**

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

- (1) Furnish phase-in training; and
- (2) Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

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

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

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

#### **52.242-13 BANKRUPTCY (JUL 1995)**

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish, by certified mail or electronic commerce method authorized by the contract, written notification of the bankruptcy to the Contracting Officer responsible for administering the contract. This notification shall be furnished within five days of the initiation of the proceedings relating to bankruptcy filing. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of Government contract numbers and contracting offices for all Government contracts against which final payment has not been made. This obligation remains in effect until final payment under this contract.

#### **52.245-01 GOVERNMENT PROPERTY (APR 2012), ALT I (APR 2017)**

(a) Definitions. As used in this clause—

“Cannibalize” means to remove parts from Government property for use or for installation on other Government property.

“Contractor-acquired property” means property acquired, fabricated, or otherwise provided by the Contractor for performing a contract, and to which the Government has title.

“Contractor inventory” means—

- (1) Any property acquired by and in the possession of a Contractor or subcontractor under a contract for which title is vested in the Government and which exceeds the amounts needed to complete full performance under the entire contract;
- (2) Any property that the Government is obligated or has the option to take over under any type of contract, e.g., as a result either of any changes in the specifications or plans thereunder or of the termination of the contract (or subcontract thereunder), before completion of the work, for the convenience or at the option of the Government; and
- (3) Government-furnished property that exceeds the amounts needed to complete full performance under the entire contract.

“Contractor's managerial personnel” means the Contractor's directors, officers, managers, superintendents, or equivalent representatives who have supervision or direction of—

- (1) All or substantially all of the Contractor's business;
- (2) All or substantially all of the Contractor's operation at any one plant or separate location; or
- (3) A separate and complete major industrial operation.

“Demilitarization” means rendering a product unusable for, and not restorable to, the purpose for which it was designed or is customarily used.

“Discrepancies incident to shipment” means any differences (e.g., count or condition) between the items documented to have been shipped and

items actually received.

“Equipment” means a tangible item that is functionally complete for its intended purpose, durable, nonexpendable, and needed for the performance of a contract. Equipment is not intended for sale, and does not ordinarily lose its identity or become a component part of another article when put into use. Equipment does not include material, real property, special test equipment or special tooling.

“Government-furnished property” means property in the possession of, or directly acquired by, the Government and subsequently furnished to the Contractor for performance of a contract. Government-furnished property includes, but is not limited to, spares and property furnished for repair, maintenance, overhaul, or modification. Government-furnished property also includes contractor-acquired property if the contractor-acquired property is a deliverable under a cost contract when accepted by the Government for continued use under the contract.

“Government property” means all property owned or leased by the Government. Government property includes both Government-furnished and Contractor-acquired property. Government property includes material, equipment, special tooling, special test equipment, and real property. Government property does not include intellectual property and software.

“Loss of Government Property” means unintended, unforeseen or accidental loss, damage or destruction to Government property that reduces the Government’s expected economic benefits of the property. Loss of Government property does not include purposeful destructive testing, obsolescence, normal wear and tear or manufacturing defects. Loss of Government property includes, but is not limited to—

(1) Items that cannot be found after a reasonable search:

(2) Theft:

(3) Damage resulting in unexpected harm to property requiring repair to restore the item to usable condition; or

(4) Destruction resulting from incidents that render the item useless for its intended purpose or beyond economical repair.

“Material” means property that may be consumed or expended during the performance of a contract, component parts of a higher assembly, or items that lose their individual identity through incorporation into an end item. Material does not include equipment, special tooling, special test equipment or real property.

“Nonseverable” means property that cannot be removed after construction or installation without substantial loss of value or damage to the installed property or to the premises where installed.

“Precious metals” means silver, gold, platinum, palladium, iridium, osmium, rhodium, and ruthenium.

“Production scrap” means unusable material resulting from production, engineering, operations and maintenance, repair, and research and development contract activities. Production scrap may have value when re-melted or reprocessed, e.g., textile and metal clippings, borings, and faulty castings and forgings.

“Property” means all tangible property, both real and personal.

“Property Administrator” means an authorized representative of the Contracting Officer appointed in accordance with agency procedures, responsible for administering the contract requirements and obligations relating to Government property in the possession of a Contractor.

“Property records” means the records created and maintained by the contractor in support of its stewardship responsibilities for the management of Government property.

“Provide” means to furnish, as in Government-furnished property, or to acquire, as in contractor-acquired property.

“Real property” See Federal Management Regulation 102-71.20 (41 CFR 102-71.20).

“Sensitive property” means property potentially dangerous to the public safety or security if stolen, lost, or misplaced, or that shall be subject to exceptional physical security, protection, control, and accountability. Examples include weapons, ammunition, explosives, controlled substances, radioactive materials, hazardous materials or wastes, or precious metals.

“Unit acquisition cost” means—

(1) For Government-furnished property, the dollar value assigned by the Government and identified in the contract; and

(2) For contractor-acquired property, the cost derived from the Contractor’s records that reflect consistently applied generally accepted accounting principles.

(b) Property management.

(1) The Contractor shall have a system of internal controls to manage (control, use, preserve, protect, repair and maintain) Government property in its possession. The system shall be adequate to satisfy the requirements of this clause. In doing so, the Contractor shall initiate and maintain the processes, systems, procedures, records, and methodologies necessary for effective and efficient control of Government property. The Contractor shall disclose any significant changes to its property management system to the Property Administrator prior to implementation of the changes. The Contractor may employ customary commercial practices, voluntary consensus standards, or industry-leading practices and standards that provide effective and efficient Government property management that are necessary and appropriate for the performance of this contract (except where inconsistent with law or regulation).

(2) The Contractor's responsibility extends from the initial acquisition and receipt of property, through stewardship, custody, and use until formally relieved of responsibility by authorized means, including delivery, consumption, expending, sale (as surplus property), or other disposition, or via a completed investigation, evaluation, and final determination for lost property. This requirement applies to all Government property under the Contractor's accountability, stewardship, possession or control, including its vendors or subcontractors (see paragraph (f)(1)(v) of this clause).

(3) The Contractor shall include the requirements of this clause in all subcontracts under which Government property is acquired or furnished for subcontract performance.

(4) The Contractor shall establish and maintain procedures necessary to assess its property management system effectiveness and shall perform periodic internal reviews, surveillances, self assessments, or audits. Significant findings or results of such reviews and audits pertaining to

Government property shall be made available to the Property Administrator.

(c) Use of Government property.

(1) The Contractor shall use Government property, either furnished or acquired under this contract, only for performing this contract, unless otherwise provided for in this contract or approved by the Contracting Officer.

(2) Modifications or alterations of Government property are prohibited, unless they are—

- (i) Reasonable and necessary due to the scope of work under this contract or its terms and conditions;
- (ii) Required for normal maintenance; or
- (iii) Otherwise authorized by the Contracting Officer.

(3) The Contractor shall not cannibalize Government property unless otherwise provided for in this contract or approved by the Contracting Officer.

(d) Government-furnished property.

(1) The Government shall deliver to the Contractor the Government-furnished property described in this contract. The Government shall furnish related data and information needed for the intended use of the property. The warranties of suitability of use and timely delivery of Government-furnished property do not apply to property acquired or fabricated by the Contractor as contractor-acquired property and subsequently transferred to another contract with this Contractor.

(2) The delivery and/or performance dates specified in this contract are based upon the expectation that the Government-furnished property will be suitable for contract performance and will be delivered to the Contractor by the dates stated in the contract.

(i) If the property is not delivered to the Contractor by the dates stated in the contract, the Contracting Officer shall, upon the Contractor's timely written request, consider an equitable adjustment to the contract.

(ii) In the event property is received by the Contractor, or for Government-furnished property after receipt and installation, in a condition not suitable for its intended use, the Contracting Officer shall, upon the Contractor's timely written request, advise the Contractor on a course of action to remedy the problem. Such action may include repairing, replacing, modifying, returning, or otherwise disposing of the property at the Government's expense. Upon completion of the required action(s), the Contracting Officer shall consider an equitable adjustment to the contract (see also paragraph (f)(1)(ii)(A) of this clause).

(iii) The Government may, at its option, furnish property in an "as-is" condition. The Contractor will be given the opportunity to inspect such property prior to the property being provided. In such cases, the Government makes no warranty with respect to the serviceability and/or suitability of the property for contract performance. Any repairs, replacement, and/or refurbishment shall be at the Contractor's expense.

(3)(i) The Contracting Officer may by written notice, at any time—

- (A) Increase or decrease the amount of Government-furnished property under this contract;
- (B) Substitute other Government-furnished property for the property previously furnished, to be furnished, or to be acquired by the Contractor for the Government under this contract; or
- (C) Withdraw authority to use property.

(ii) Upon completion of any action(s) under paragraph (d)(3)(i) of this clause, and the Contractor's timely written request, the Contracting Officer shall consider an equitable adjustment to the contract.

(e) Title to Government property.

(1) All Government-furnished property and all property acquired by the Contractor, title to which vests in the Government under this paragraph (collectively referred to as "Government property"), is subject to the provisions of this clause. The Government shall retain title to all Government-furnished property. Title to Government property shall not be affected by its incorporation into or attachment to any property not owned by the Government, nor shall Government property become a fixture or lose its identity as personal property by being attached to any real property.

(2) Title vests in the Government for all property acquired or fabricated by the Contractor in accordance with the financing provisions or other specific requirements for passage of title in the contract. Under fixed price type contracts, in the absence of financing provisions or other specific requirements for passage of title in the contract, the Contractor retains title to all property acquired by the Contractor for use on the contract, except for property identified as a deliverable end item. If a deliverable item is to be retained by the Contractor for use after inspection and acceptance by the Government, it shall be made accountable to the contract through a contract modification listing the item as Government-furnished property.

(3) Title under Cost-Reimbursement or Time-and-Material Contracts or Cost-Reimbursable line items under Fixed-Price contracts.

(i) Title to all property purchased by the Contractor for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract shall pass to and vest in the Government upon the vendor's delivery of such property.

(ii) Title to all other property, the cost of which is reimbursable to the Contractor, shall pass to and vest in the Government upon—

- (A) Issuance of the property for use in contract performance;
- (B) Commencement of processing of the property for use in contract performance; or
- (C) Reimbursement of the cost of the property by the Government, whichever occurs first.

(f) Contractor plans and systems.

- (1) Contractors shall establish and implement property management plans, systems, and procedures at the contract, program, site or entity level to enable the following outcomes:
- (i) Acquisition of Property. The Contractor shall document that all property was acquired consistent with its engineering, production planning, and property control operations.
- (ii) Receipt of Government Property. The Contractor shall receive Government property and document the receipt, record the information necessary to meet the record requirements of paragraph (f)(1)(iii)(A)(1) through (5) of this clause, identify as Government owned in a manner appropriate to the type of property (e.g., stamp, tag, mark, or other identification), and manage any discrepancies incident to shipment.
- (A) Government-furnished property. The Contractor shall furnish a written statement to the Property Administrator containing all relevant facts, such as cause or condition and a recommended course(s) of action, if overages, shortages, or damages and/or other discrepancies are discovered upon receipt of Government-furnished property.
- (B) Contractor-acquired property. The Contractor shall take all actions necessary to adjust for overages, shortages, damage and/or other discrepancies discovered upon receipt, in shipment of Contractor-acquired property from a vendor or supplier, so as to ensure the proper allocability and allowability of associated costs.
- (iii) Records of Government property. The Contractor shall create and maintain records of all Government property accountable to the contract, including Government-furnished and Contractor-acquired property.
- (A) Property records shall enable a complete, current, auditable record of all transactions and shall, unless otherwise approved by the Property Administrator, contain the following:
- (1) The name, part number and description, National Stock Number (if needed for additional item identification tracking and/or disposition) and other data elements as necessary and required in accordance with the terms and conditions of the contract.
  - (2) Quantity received (or fabricated), issued, and balance-on-hand.
  - (3) Unit acquisition cost.
  - (4) Unique-item identifier or equivalent (if available and necessary for individual item tracking).
  - (5) Unit of measure.
  - (6) Accountable contract number or equivalent code designation.
  - (7) Location.
  - (8) Disposition.
  - (9) Posting reference and date of transaction.
  - (10) Date placed in service (if required in accordance with the terms and conditions of the contract).
- (B) Use of a Receipt and Issue System for Government Material. When approved by the Property Administrator, the Contractor may maintain, in lieu of formal property records, a file of appropriately cross-referenced documents evidencing receipt, issue, and use of material that is issued for immediate consumption.
- (iv) Physical inventory. The Contractor shall periodically perform, record, and disclose physical inventory results. A final physical inventory shall be performed upon contract completion or termination. The Property Administrator may waive this final inventory requirement, depending on the circumstances (e.g., overall reliability of the Contractor's system or the property is to be transferred to a follow-on contract).
- (v) Subcontractor control.
- (A) The Contractor shall award subcontracts that clearly identify items to be provided and the extent of any restrictions or limitations on their use. The Contractor shall ensure appropriate flow down of contract terms and conditions (e.g., extent of liability for loss of Government property).
- (B) The Contractor shall assure its subcontracts are properly administered and reviews are periodically performed to determine the adequacy of the subcontractor's property management system.
- (vi) Reports. The Contractor shall have a process to create and provide reports of discrepancies, loss of Government property, physical inventory results, audits and self-assessments, corrective actions, and other property related reports as directed by the Contracting Officer.
- (vii) Relief of stewardship responsibility and liability. The Contractor shall have a process to enable the prompt recognition, investigation, disclosure and reporting of loss of Government property, including losses that occur at subcontractor or alternate site locations.
- (A) This process shall include the corrective actions necessary to prevent recurrence.
- (B) Unless otherwise directed by the Property Administrator, the Contractor shall investigate and report to the Government all incidents of property loss as soon as the facts become known. Such reports shall, at a minimum, contain the following information:
- (1) Date of incident (if known).
  - (2) The data elements required under paragraph (f)(1)(iii)(A) of this clause.
  - (3) Quantity.
  - (4) Accountable contract number.
  - (5) A statement indicating current or future need.
  - (6) Unit acquisition cost, or if applicable, estimated sales proceeds, estimated repair or replacement costs.
  - (7) All known interests in commingled material of which includes Government material.
  - (8) Cause and corrective action taken or to be taken to prevent recurrence.
  - (9) A statement that the Government will receive compensation covering the loss of Government property, in the event the Contractor was or will be reimbursed or compensated.
  - (10) Copies of all supporting documentation.
  - (11) Last known location.

(12) A statement that the property did or did not contain sensitive, export controlled, hazardous, or toxic material, and that the appropriate agencies and authorities were notified.

(C) Unless the contract provides otherwise, the Contractor shall be relieved of stewardship responsibility and liability for property when—

(1) Such property is consumed or expended, reasonably and properly, or otherwise accounted for, in the performance of the contract, including reasonable inventory adjustments of material as determined by the Property Administrator;

(2) Property Administrator grants relief of responsibility and liability for loss of Government property;

(3) Property is delivered or shipped from the Contractor's plant, under Government instructions, except when shipment is to a subcontractor or other location of the Contractor; or

(4) Property is disposed of in accordance with paragraphs (j) and (k) of this clause.

(viii) Utilizing Government property.

(A) The Contractor shall utilize, consume, move, and store Government Property only as authorized under this contract. The Contractor shall promptly disclose and report Government property in its possession that is excess to contract performance.

(B) Unless otherwise authorized in this contract or by the Property Administrator the Contractor shall not commingle Government material with material not owned by the Government.

(ix) Maintenance. The Contractor shall properly maintain Government property. The Contractor's maintenance program shall enable the identification, disclosure, and performance of normal and routine preventative maintenance and repair. The Contractor shall disclose and report to the Property Administrator the need for replacement and/or capital rehabilitation.

(x) Property closeout. The Contractor shall promptly perform and report to the Property Administrator contract property closeout, to include reporting, investigating and securing closure of all loss of Government property cases; physically inventorying all property upon termination or completion of this contract; and disposing of items at the time they are determined to be excess to contractual needs.

(2) The Contractor shall establish and maintain Government accounting source data, as may be required by this contract, particularly in the areas of recognition of acquisitions, loss of Government property, and disposition of material and equipment.

(g) Systems analysis.

(1) The Government shall have access to the contractor's premises and all Government property, at reasonable times, for the purposes of reviewing, inspecting and evaluating the Contractor's property management plan(s), systems, procedures, records, and supporting documentation that pertains to Government property. This access includes all site locations and, with the Contractor's consent, all subcontractor premises.

(2) Records of Government property shall be readily available to authorized Government personnel and shall be appropriately safeguarded.

(3) Should it be determined by the Government that the Contractor's (or subcontractor's) property management practices are inadequate or not acceptable for the effective management and control of Government property under this contract, or present an undue risk to the Government, the Contractor shall prepare a corrective action plan when requested by the Property Administrator and take all necessary corrective actions as specified by the schedule within the corrective action plan.

(4) The Contractor shall ensure Government access to subcontractor premises, and all Government property located at subcontractor premises, for the purposes of reviewing, inspecting and evaluating the subcontractor's property management plan, systems, procedures, records, and supporting documentation that pertains to Government property.

(h) Contractor Liability for Government Property.

(1) Unless otherwise provided for in the contract, the Contractor shall not be liable for loss of Government property furnished or acquired under this contract, except when any one of the following applies—

(i) The risk is covered by insurance or the Contractor is otherwise reimbursed (to the extent of such insurance or reimbursement). The allowability of insurance costs shall be determined in accordance with 31.205-19.

(ii) Loss of Government property that is the result of willful misconduct or lack of good faith on the part of the Contractor's managerial personnel.

(iii) The Contracting Officer has, in writing, revoked the Government's assumption of risk for loss of Government property due to a determination under paragraph (g) of this clause that the Contractor's property management practices are inadequate, and/or present an undue risk to the Government, and the Contractor failed to take timely corrective action. If the Contractor can establish by clear and convincing evidence that the loss of Government property occurred while the Contractor had adequate property management practices or the loss did not result from the Contractor's failure to maintain adequate property management practices, the Contractor shall not be held liable.

(2) The Contractor shall take all reasonable actions necessary to protect the property from further loss. The Contractor shall separate the damaged and undamaged property, place all the affected property in the best possible order, and take such other action as the Property Administrator directs.

(3) The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any loss of Government property.

(4) The Contractor shall reimburse the Government for loss of Government property, to the extent that the Contractor is financially liable for such loss, as directed by the Contracting Officer.

(5) Upon the request of the Contracting Officer, the Contractor shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation, including the prosecution of suit and the execution of instruments of assignment in favor of the Government in obtaining recovery.

(i) Equitable adjustment. Equitable adjustments under this clause shall be made in accordance with the procedures of the Changes clause.

However, the Government shall not be liable for breach of contract for the following:

- (1) Any delay in delivery of Government-furnished property.
  - (2) Delivery of Government-furnished property in a condition not suitable for its intended use.
  - (3) An increase, decrease, or substitution of Government-furnished property.
  - (4) Failure to repair or replace Government property for which the Government is responsible. Standard Form 1428.
- (j) Contractor inventory disposal. Except as otherwise provided for in this contract, the Contractor shall not dispose of Contractor inventory until authorized to do so by the Plant Clearance Officer or authorizing official.
- (1) Predisposal requirements.
    - (i) If the Contractor determines that the property has the potential to fulfill requirements under other contracts, the Contractor, in consultation with the Property Administrator, shall request that the Contracting Officer transfer the property to the contract in question, or provide authorization for use, as appropriate. In lieu of transferring the property, the Contracting Officer may authorize the Contractor to credit the costs of Contractor-acquired property (material only) to the losing contract, and debit the gaining contract with the corresponding cost, when such material is needed for use on another contract. Property no longer needed shall be considered contractor inventory.
    - (ii) For any remaining Contractor-acquired property, the Contractor may purchase the property at the unit acquisition cost if desired or make reasonable efforts to return unused property to the appropriate supplier at fair market value (less, if applicable, a reasonable restocking fee that is consistent with the supplier's customary practices.)
  - (2) Inventory disposal schedules.
    - (i) Absent separate contract terms and conditions for property disposition, and provided the property was not reutilized, transferred, or otherwise disposed of, the Contractor, as directed by the Plant Clearance Officer or authorizing official, shall use Standard Form 1428, Inventory Disposal Schedule or electronic equivalent, to identify and report—
      - (A) Government-furnished property that is no longer required for performance of this contract;
      - (B) Contractor-acquired property, to which the Government has obtained title under paragraph (e) of this clause, which is no longer required for performance of that contract; and
      - (C) Termination inventory.
    - (ii) The Contractor may annotate inventory disposal schedules to identify property the Contractor wishes to purchase from the Government, in the event that the property is offered for sale.
    - (iii) Separate inventory disposal schedules are required for aircraft in any condition, flight safety critical aircraft parts, and other items as directed by the Plant Clearance Officer
    - (iv) The Contractor shall provide the information required by FAR 52.245-1(f)(1)(iii) along with the following:
      - (A) Any additional; information that may facilitate understanding of the property's intended use.
      - (B) For work-in-progress, the estimated percentage of completion.
      - (C) For precious metals in raw or bulk form, the type of metal and estimated weight.
      - (D) For hazardous material or property contaminated with hazardous material, the type of hazardous material.
      - (E) For metals in mill product form, the form, shape, treatment, hardness, temper, specification (commercial or Government) and dimensions (thickness, width and length).
    - (v) Property with the same description, condition code, and reporting location may be grouped in a single line item.
    - (vi) Scrap should be reported by "lot" along with metal content, estimated weight and estimated value.
  - (3) Submission requirements.
    - (i) The Contractor shall submit inventory disposal schedules to the Plant Clearance Officer no later than—
      - (A) 30 days following the Contractor's determination that a property item is no longer required for performance of this contract;
      - (B) 60 days, or such longer period as may be approved by the Plant Clearance Officer, following completion of contract deliveries or performance; or
      - (C) 120 days, or such longer period as may be approved by the Termination Contracting Officer, following contract termination in whole or in part.
    - (ii) Unless the Plant Clearance Officer determines otherwise, the Contractor need not identify or report production scrap on inventory disposal schedules, and may process and dispose of production scrap in accordance with its own internal scrap procedures. The processing and disposal of other types of Government-owned scrap will be conducted in accordance with the terms and conditions of the contract or Plant Clearance Officer direction, as appropriate.
  - (4) Corrections. The Plant Clearance Officer may—
    - (i) Reject a schedule for cause (e.g., contains errors, determined to be inaccurate); and
    - (ii) Require the Contractor to correct an inventory disposal schedule.
  - (5) Postsubmission adjustments. The Contractor shall notify the Plant Clearance Officer at least 10 working days in advance of its intent to remove an item from an approved inventory disposal schedule. Upon approval of the Plant Clearance Officer, or upon expiration of the notice period, the Contractor may make the necessary adjustments to the inventory schedule.
  - (6) Storage.
    - (i) The Contractor shall store the property identified on an inventory disposal schedule pending receipt of disposal instructions. The Government's failure to furnish disposal instructions within 120 days following acceptance of an inventory disposal schedule may entitle the Contractor to an equitable adjustment for costs incurred to store such property on or after the 121st day.

(ii) The Contractor shall obtain the Plant Clearance Officer's approval to remove property from the premises where the property is currently located prior to receipt of final disposition instructions. If approval is granted, any costs incurred by the Contractor to transport or store the property shall not increase the price or fee of any Government contract. The storage area shall be appropriate for assuring the property's physical safety and suitability for use. Approval does not relieve the Contractor of any liability for such property under this contract.

(7) Disposition instructions.

(i) The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of Contractor inventory as directed by the Plant Clearance Officer. Unless otherwise directed by the Contracting Officer or by the Plant Clearance Officer, the Contractor shall remove and destroy any markings identifying the property as U.S. Government-owned property prior to its disposal.

(ii) The Contracting Officer may require the Contractor to demilitarize the property prior to shipment or disposal. In such cases, the Contractor may be entitled to an equitable adjustment under paragraph (i) of this clause.

(8) Disposal proceeds. As directed by the Contracting Officer, the Contractor shall credit the net proceeds from the disposal of Contractor inventory to the contract, or to the Treasury of the United States as miscellaneous receipts.

(9) Subcontractor inventory disposal schedules. The Contractor shall require its Subcontractors to submit inventory disposal schedules to the Contractor in accordance with the requirements of paragraph (j)(3) of this clause.

(k) Abandonment of Government property.

(1) The Government shall not abandon sensitive property or termination inventory without the Contractor's written consent.

(2) The Government, upon notice to the Contractor, may abandon any nonsensitive property in place, at which time all obligations of the Government regarding such property shall cease.

(3) Absent contract terms and conditions to the contrary, the Government may abandon parts removed and replaced from property as a result of normal maintenance actions, or removed from property as a result of the repair, maintenance, overhaul, or modification process.

(4) The Government has no obligation to restore or rehabilitate the Contractor's premises under any circumstances; however, if Government-furnished property is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (i) of this clause may properly include restoration or rehabilitation costs.

(l) Communication. All communications under this clause shall be in writing.

(m) Contracts outside the United States. If this contract is to be performed outside of the United States and its outlying areas, the words "Government" and "Government-furnished" (wherever they appear in this clause) shall be construed as "United States Government" and "United States Government-furnished," respectively.

## **52.245-09 USE AND CHARGES (APR 2012)**

(a) Definitions. Definitions applicable to this contract are provided in the clause at 52.245-1, Government Property. Additional definitions as used in this clause include:

"Rental period" means the calendar period during which Government property is made available for nongovernmental purposes.

"Rental time" means the number of hours, to the nearest whole hour, rented property is actually used for nongovernmental purposes. It includes time to set up the property for such purposes, perform required maintenance, and restore the property to its condition prior to rental (less normal wear and tear).

(b) Use of Government property. The Contractor may use the Government property without charge in the performance of—

(1) Contracts with the Government that specifically authorize such use without charge;

(2) Subcontracts of any tier under Government prime contracts if the Contracting Officer having cognizance of the prime contract—

(i) Approves a subcontract specifically authorizing such use; or

(ii) Otherwise authorizes such use in writing; and

(3) Other work, if the Contracting Officer specifically authorizes in writing use without charge for such work.

(c) Rental. If granted written permission by the Contracting Officer, or if it is specifically provided for in the Schedule, the Contractor may use the Government property (except material) for a rental fee for work other than that provided in paragraph (b) of this clause. Authorizing such use of the Government property does not waive any rights of the Government to terminate the Contractor's right to use the Government property. The rental fee shall be determined in accordance with the following paragraphs.

(d) General.

(1) Rental requests shall be submitted to the Administrative Contracting Officer (ACO), identify the property for which rental is requested, propose a rental period, and compute an estimated rental charge by using the Contractor's best estimate of rental time in the formulae described in paragraph (e) of this clause.

(2) The Contractor shall not use Government property for nongovernmental purposes, including Independent Research and Development, until a rental charge for real property, or estimated rental charge for other property, is agreed upon. Rented property shall be used only on a non-interference basis.

(e) Rental charge. —

(1) Real property and associated fixtures.

(i) The Contractor shall obtain, at its expense, a property appraisal from an independent licensed, accredited, or certified appraiser that computes

a monthly, daily or hourly rental rate for comparable commercial property. The appraisal may be used to compute rentals under this clause throughout its effective period or, if an effective period is not stated in the appraisal, for one year following the date the appraisal was performed. The Contractor shall submit the appraisal to the ACO at least 30 days prior to the date the property is needed for nongovernmental use. Except as provided in paragraph (e)(1)(iii) of this clause, the ACO shall use the appraisal rental rate to determine a reasonable rental charge.

(ii) Rental charges shall be determined by multiplying the rental time by the appraisal rental rate expressed as a rate per hour. Monthly or daily appraisal rental rates shall be divided by 720 or 24, respectively, to determine an hourly rental rate.

(iii) When the ACO believes the appraisal rental rate is unreasonable, the ACO shall promptly notify the Contractor. The parties may agree on an alternative means for computing a reasonable rental charge.

(iv) The Contractor shall obtain, at its expense, additional property appraisals in the same manner as provided in paragraph (e)(1)(i) if the effective period has expired and the Contractor desires the continued use of property for nongovernmental use. The Contractor may obtain additional appraisals within the effective period of the current appraisal if the market prices decrease substantially.

(2) Other Government property. The Contractor may elect to compute the rental charge using the appraisal method described in paragraph (e)(1) of this clause subject to the constraints therein or the following formula in which rental time shall be expressed in increments of not less than one hour with portions of hours rounded to the next higher hour: The hourly rental charge is calculated by multiplying 2 percent of the acquisition cost by the hours of rental time, and dividing by 720.

(3) Alternative methodology. The Contractor may request consideration of an alternative basis for computing the rental charge if it considers the monthly rental rate or a time-based rental unreasonable or impractical.

(f) Rental payments.

(1) Rent is due 60 days following completion of the rental period or as otherwise specified in the contract. The Contractor shall compute the rental due, and furnish records or other supporting data in sufficient detail to permit the ACO to verify the rental time and computation. Payment shall be made by check payable to the Treasurer of the United States and sent to the contract administration office identified in the contract, unless otherwise specified by the Contracting Officer.

(2) Interest will be charged if payment is not made by the date specified in paragraph (f)(1) of this clause. Interest will accrue at the "Renegotiation Board Interest Rate" (published in the Federal Register semiannually on or about January 1st and July 1st) for the period in which the rent is due.

(3) The Government's acceptance of any rental payment under this clause, in whole or in part, shall not be construed as a waiver or relinquishment of any rights it may have against the Contractor stemming from the Contractor's unauthorized use of Government property or any other failure to perform this contract according to its terms

(g) Use revocation. At any time during the rental period the Government may revoke nongovernmental use authorization and require the Contractor, at the Contractor's expense, to return the property to the Government, restore the property to its pre-rental condition (less normal wear and tear), or both.

(h) Unauthorized use. The unauthorized use of Government property can subject a person to fines, imprisonment, or both under 18 U.S.C. 641.

#### **52.246-25 LIMITATION OF LIABILITY - SERVICES (FEB 1997)**

(a) Except as provided in paragraphs (b) and (c) below, and except to the extent that the Contractor is expressly responsible under this contract for deficiencies in the services required to be performed under it (including any materials furnished in conjunction with those services), the Contractor shall not be liable for loss of or damage to property of the Government that --

(1) Occurs after Government acceptance of services performed under this contract; and

(2) Results from any defects or deficiencies in the services performed or materials furnished.

(b) The limitation of liability under paragraph (a) above shall not apply when a defect or deficiency in, or the Government's acceptance of, services performed or materials furnished results from willful misconduct or lack of good faith on the part of any of the Contractor's managerial personnel. The term "Contractor's managerial personnel," as used in this clause, means the Contractor's directors, officers, and any of the Contractor's managers, superintendents, or equivalent representatives who have supervision or direction of --

(1) All or substantially all of the Contractor's business;

(2) All or substantially all of the Contractor's operations at any one plant, laboratory, or separate location at which the contract is being performed; or

(3) A separate and complete major industrial operation connected with the performance of this contract.

(c) If the Contractor carries insurance, or has established a reserve for self-insurance, covering liability for loss or damage suffered by the Government through the Contractor's performance of services or furnishing of materials under this contract, the Contractor shall be liable to the Government, to the extent of such insurance or reserve, for loss of or damage to property of the Government occurring after Government acceptance of, and resulting from any defects and deficiencies in, services performed or materials furnished under this contract.

#### **52.249-9000 ADMINISTRATIVE COSTS OF REPROCUREMENT AFTER DEFAULT ADMINISTRATIVE COSTS OF REPROCUREMENT AFTER DEFAULT (MAY 1988) DLAD**

If this contract is terminated in whole or in part for default pursuant to the clause included herein entitled "Default," and the supplies or services covered by the contract so terminated are repurchased by the Government, the Government will incur administrative costs in such repurchases. The Contractor and the Government expressly agree that, in addition to any excess costs of repurchase, as provided in paragraph (b) of the "Default" clause of the contract, or any other damages resulting from such default, the Contractor shall pay, and the Government shall accept, the sum of [insert administrative cost figure] as payment in full for the administrative costs of such repurchase. This assessment of damages for administrative costs shall apply for any termination for default following which the Government repurchases the terminated supplies or services,

regardless of whether any other damages are incurred and/or assessed.

#### **52.252-1 SOLICITATION PROVISIONS INCORPORATED BY REFERENCE (FEB 1998)**

This solicitation incorporates one or more solicitation provisions by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. The offeror is cautioned that the listed provisions may include blocks that must be completed by the offeror and submitted with its quotation or offer. In lieu of submitting the full text of those provisions, the offeror may identify the provision by paragraph identifier and provide the appropriate information with its quotation or offer. Also, the full text of a solicitation provision may be accessed electronically at this/these address(es):

<http://www.acq.osd.mil/dpap/dars/far.html>

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

<http://www.acq.osd.mil/dpap/dars/far.html>

#### **52.252-2 CLAUSES INCORPORATED BY REFERENCE (FEB 1998)**

This contract incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at this/these address(es):

<http://farsite.hill.af.mil/>

#### **52.253-1 COMPUTER GENERATED FORMS (JAN 1991)**

(a) Any data required to be submitted on a Standard or Optional Form prescribed by the Federal Acquisition Regulation (FAR) may be submitted on a computer generated version of the form, provided there is no change to the name, content, or sequence of the data elements on the form, and provided the form carries the Standard or Optional Form number and edition date.

(b) Unless prohibited by agency regulations, any data required to be submitted on an agency unique form prescribed by an agency supplement to the FAR may be submitted on a computer generated version of the form provided there is no change to the name, content, or sequence of the data elements on the form and provided the form carries the agency form number and edition date.

(c) If the Contractor submits a computer generated version of a form that is different than the required form, then the rights and obligations of the parties will be determined based on the content of the required form.

#### **252.201-7000 CONTRACTING OFFICER'S REPRESENTATIVE (DEC 1991)**

"Contracting officer's representative" means an individual designated in accordance with subsection 201.602-2 of the Defense Federal Acquisition Regulation Supplement and authorized in writing by the contracting officer to perform specific technical or administrative functions.

(b) If the Contracting Officer designates a contracting officer's representative (COR), the Contractor will receive a copy of the written designation. It will specify the extent of the COR's authority to act on behalf of the contracting officer. The COR is not authorized to make any commitments or changes that will affect price, quality, quantity, delivery, or any other term or condition of the contract.

#### **252.203-7000 REQUIREMENTS RELATING TO COMPENSATION OF FORMER DOD OFFICIALS (SEP 2011)**

"Covered DoD official," as used in this clause, means an individual that—

(1) Leaves or left DoD service on or after January 28, 2008; and

(2)(i) Participated personally and substantially in an acquisition as defined in 41 U.S.C. 131 with a value in excess of \$10 million, and serves or served—

(A) In an Executive Schedule position under subchapter II of chapter 53 of Title 5, United States Code;

(B) In a position in the Senior Executive Service under subchapter VIII of chapter 53 of Title 5, United States Code; or

(C) In a general or flag officer position compensated at a rate of pay for grade O-7 or above under section 201 of Title 37, United States Code; or

(ii) Serves or served in DoD in one of the following positions: program manager, deputy program manager, procuring contracting officer, administrative contracting officer, source selection authority, member of the source selection evaluation board, or chief of a financial or technical evaluation team for a contract in an amount in excess of \$10 million.

(b) The Contractor shall not knowingly provide compensation to a covered DoD official within 2 years after the official leaves DoD service, without first determining that the official has sought and received, or has not received after 30 days of seeking, a written opinion from the appropriate DoD ethics counselor regarding the applicability of post-employment restrictions to the activities that the official is expected to undertake on behalf of the Contractor.

(c) Failure by the Contractor to comply with paragraph (b) of this clause may subject the Contractor to rescission of this contract, suspension, or debarment in accordance with 41 U.S.C. 2105(c).

### **252.203-7001 PROHIBITION ON PERSONS CONVICTED OF FRAUD OR OTHER DEFENSE CONTRACT-RELATED FELONIES (DEC 2008)**

(a) Definitions. As used in this clause—

(1) “Arising out of a contract with the DoD” means any act in connection with—

(i) Attempting to obtain;

(ii) Obtaining; or

(iii) Performing a contract or first-tier subcontract of any agency, department, or component of the Department of Defense (DoD).

(2) “Conviction of fraud or any other felony” means any conviction for fraud or a felony in violation of state or Federal criminal statutes, whether entered on a verdict or plea, including a plea of nolo contendere, for which sentence has been imposed.

(3) “Date of conviction” means the date judgment was entered against the individual.

(b) Any individual who is convicted after September 29, 1988, of fraud or any other felony arising out of a contract with the DoD is prohibited from serving—

(1) In a management or supervisory capacity on this contract;

(2) On the board of directors of the Contractor;

(3) As a consultant, agent, or representative for the Contractor; or

(4) In any other capacity with the authority to influence, advise, or control the decisions of the Contractor with regard to this contract.

(c) Unless waived, the prohibition in paragraph (b) of this clause applies for not less than 5 years from the date of conviction.

(d) 10 U.S.C. 2408 provides that the Contractor shall be subject to a criminal penalty of not more than \$500,000 if convicted of knowingly—

(1) Employing a person under a prohibition specified in paragraph (b) of this clause; or

(2) Allowing such a person to serve on the board of directors of the contractor or first-tier subcontractor.

(e) In addition to the criminal penalties contained in 10 U.S.C. 2408, the Government may consider other available remedies, such as—

(1) Suspension or debarment;

(2) Cancellation of the contract at no cost to the Government; or

(3) Termination of the contract for default.

(f) The Contractor may submit written requests for waiver of the prohibition in paragraph (b) of this clause to the Contracting Officer. Requests shall clearly identify—

(1) The person involved;

(2) The nature of the conviction and resultant sentence or punishment imposed;

(3) The reasons for the requested waiver; and

(4) An explanation of why a waiver is in the interest of national security.

(g) The Contractor agrees to include the substance of this clause, appropriately modified to reflect the identity and relationship of the parties, in all first-tier subcontracts exceeding the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation, except those for commercial items or components.

(h) Pursuant to 10 U.S.C. 2408(c), defense contractors and subcontractors may obtain information as to whether a particular person has been convicted of fraud or any other felony arising out of a contract with the DoD by contacting The Office of Justice Programs, The Denial of Federal Benefits Office, U.S. Department of Justice, telephone 301-937-1542; [www.ojp.usdoj.gov/BJA/grant/DPFC.html](http://www.ojp.usdoj.gov/BJA/grant/DPFC.html).

### **252.203-7002 REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (SEP 2013)**

(a) The Contractor shall inform its employees in writing, in the predominant native language of the workforce, of contractor employee whistleblower rights and protections under 10 U.S.C. 2409, as described in subpart 203.9 of the Defense Federal Acquisition Regulation Supplement.

(b) The Contractor shall include the substance of this clause, including this paragraph (b), in all subcontracts.

### **252.203-7003 AGENCY OFFICE OF THE INSPECTOR GENERAL (DEC 2012)**

The agency office of the Inspector General referenced in paragraphs (c) and (d) of FAR clause 52.203-13, Contractor Code of Business Ethics and Conduct, is the DoD Office of Inspector General at the following address:

Department of Defense Office of Inspector General

Investigative Policy and Oversight

Contractor Disclosure Program

4800 Mark Center Drive, Suite 11H25

Alexandria, VA 22350-1500

Toll Free Telephone: 866-429-8011

### **252.203-7005 REPRESENTATION RELATING TO COMPENSATION OF FORMER DOD OFFICIALS (NOV 2011)**

“Covered DoD official” is defined in the clause at 252.203-7000, Requirements Relating to Compensation of Former DoD Officials.

(b) By submission of this offer, the offeror represents, to the best of its knowledge and belief, that all covered DoD officials employed by or otherwise receiving compensation from the offeror, and who are expected to undertake activities on behalf of the offeror for any resulting

contract, are presently in compliance with all post-employment restrictions covered by 18 U.S.C. 207, 41 U.S.C. 2101-2107, and 5 CFR parts 2637 and 2641, including Federal Acquisition Regulation 3.104-2.

#### **252.203-7996 PROHIBITION ON CONTRACTING WITH ENTITIES THAT REQUIRE CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS—REPRESENTATION.**

(a) In accordance with section 101(a) of the Continuing Appropriations Act, 2016 (Pub. L. 114-53) and any subsequent FY 2016 appropriations act that extends to FY 2016 funds the same restrictions as are contained in section 743 of division E, title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235), none of the funds appropriated (or otherwise made available) by this or any other Act may be used for a contract with an entity that requires employees or subcontractors of such entity seeking to report fraud, waste, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contactors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(b) The prohibition in paragraph (a) of this provision does not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(c) Representation. By submission of its offer, the Offeror represents that it does not require employees or subcontractors of such entity seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contactors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

#### **252.203-7997 PROHIBITION ON CONTRACTING WITH ENTITIES THAT REQUIRE CERTAIN INTERNAL CONFIDENTIALITY AGREEMENTS.**

(a) The Contractor shall not require employees or subcontractors seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or contactors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(b) The Contractor shall notify employees that the prohibitions and restrictions of any internal confidentiality agreements covered by this clause are no longer in effect.

(c) The prohibition in paragraph (a) of this clause does not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(d)(1) Use of funds appropriated (or otherwise made available) by the Continuing Appropriations Act, 2016 (Pub. L. 114-53) or any other FY 2016 appropriations act that extends to FY 2016 funds the same prohibitions as contained in sections 743 of division E, title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) may be prohibited, if the Government determines that the Contractor is not in compliance with the provisions of this clause.

(2) The Government may seek any available remedies in the event the Contractor fails to perform in accordance with the terms and conditions of the contract as a result of Government action under this clause.

#### **252.204-7000 DISCLOSURE OF INFORMATION (AUG 2013)**

(a) The Contractor shall not release to anyone outside the Contractor's organization any unclassified information, regardless of medium (e.g., film, tape, document), pertaining to any part of this contract or any program related to this contract, unless—

(1) The Contracting Officer has given prior written approval;

(2) The information is otherwise in the public domain before the date of release; or

(3) The information results from or arises during the performance of a project that has been scoped and negotiated by the contracting activity with the contractor and research performer and determined in writing by the contracting officer to be fundamental research in accordance with National Security Decision Directive 189, National Policy on the Transfer of Scientific, Technical and Engineering Information, in effect on the date of contract award and the USD (AT&L) memoranda on Fundamental Research, dated May 24, 2010, and on Contracted Fundamental Research, dated June 26, 2008, (available at DFARS PGI 204.4).

(b) Requests for approval under paragraph (a)(1) shall identify the specific information to be released, the medium to be used, and the purpose for the release. The Contractor shall submit its request to the Contracting Officer at least 10 business days before the proposed date for release.

(c) The Contractor agrees to include a similar requirement, including this paragraph (c), in each subcontract under this contract. Subcontractors shall submit requests for authorization to release through the prime contractor to the Contracting Officer.

#### **252.204-7003 CONTROL OF GOVERNMENT PERSONNEL WORK PRODUCT (APR 1992)**

The Contractor's procedures for protecting against unauthorized disclosure of information shall not require Department of Defense employees or members of the Armed Forces to relinquish control of their work products, whether classified or not, to the Contractor.

#### **252.204-7004 ALTERNATE A, SYSTEM FOR AWARD MANAGEMENT (FEB 2014)**

"System for Award Management (SAM) database" means the primary Government repository for contractor information required for the conduct

of business with the Government.

“Commercial and Government Entity (CAGE) code” means—

- (1) A code assigned by the Defense Logistics Information Service (DLIS) to identify a commercial or Government entity; or
- (2) A code assigned by a member of the North Atlantic Treaty Organization that DLIS records and maintains in the CAGE master file. This type of code is known as an “NCAGE code.”

“Data Universal Numbering System (DUNS) number” means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities.

“Data Universal Numbering System +4 (DUNS+4) number” means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional SAM records for identifying alternative Electronic Funds Transfer (EFT) accounts (see FAR 32.11) for the same parent concern.

“Registered in the System for Award Management (SAM) database” means that—

- (1) The contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, and Contractor and Government Entity (CAGE) code into the SAM database; and
- (2) The contractor has completed the Core Data, Assertions, Representations and Certifications, and Points of Contact sections of the registration in the SAM database;
- (3) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS). The Contractor will be required to provide consent for TIN validation to the Government as part of the SAM registration process; and
- (4) The Government has marked the record “Active.”

## **252.204-7008 COMPLIANCE WITH SAFEGUARDING COVERED DEFENSE INFORMATION CONTROLS (DEVIATION 2016-O0001) (OCT 2015)**

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

“Controlled technical information,” “covered contractor information system,” and “covered defense information” are defined in clause 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting (DEVIATION 2016-O0001) (OCT 2015).

(b) The security requirements required by contract clause 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting (DEVIATION 2016-O0001) (OCT 2015) shall be implemented for all covered defense information on all covered contractor information systems that support the performance of this contract.

(c) If the Offeror anticipates that additional time will be necessary to implement derived security requirement 3.5.3 “Use of multifactor authentication for local and network access to privileged accounts and for network access to non-privileged accounts” within National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, “Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations (see <http://dx.doi.org/10.6028/NIST.SP.800-171>), the Offeror shall notify the Contracting Officer that they will implement the requirement within 9 months of contract award.

(d) If the Offeror proposes to deviate from any of the security requirements in NIST SP 800-171 that is in effect at the time the solicitation is issued or as authorized by the Contracting Officer, the Offeror shall submit to the Contracting Officer, for consideration by the DoD Chief Information Officer (CIO), a written explanation of—

- (1) Why a particular security requirement is not applicable; or
- (2) How an alternative, but equally effective, security measure is used to compensate for the inability to satisfy a particular requirement and achieve equivalent protection.

(e) An authorized representative of the DoD CIO will approve or disapprove offeror requests to deviate from NIST SP 800-171 requirements in writing prior to contract award. Any approved deviation from NIST SP 800-171 shall be incorporated into the resulting contract.

## **252.204-7012 SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING (DEVIATION 2016-O0001) (OCT 2015)**

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

“Adequate security” means protective measures that are commensurate with the consequences and probability of loss, misuse, or unauthorized access to, or modification of information.

“Compromise” means disclosure of information to unauthorized persons, or a violation of the security policy of a system, in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object, or the copying of information to unauthorized media may have occurred.

“Contractor attributional/proprietary information” means information that identifies the contractor(s), whether directly or indirectly, by the grouping of information that can be traced back to the contractor(s) (e.g., program description, facility locations), personally identifiable information, as well as trade secrets, commercial or financial information, or other commercially sensitive information that is not customarily shared outside of the company.

“Contractor information system” means an information system belonging to, or operated by or for, the Contractor.

“Controlled technical information” means technical information with military or space application that is subject to controls on the access, use,

reproduction, modification, performance, display, release, disclosure, or dissemination. Controlled technical information would meet the criteria, if disseminated, for distribution statements B through F using the criteria set forth in DoD Instruction 5230.24, Distribution Statements on Technical Documents. The term does not include information that is lawfully publicly available without restrictions.

“Covered contractor information system” means an information system that is owned, or operated by or for, a contractor and that processes, stores, or transmits covered defense information.

“Covered defense information” means unclassified information that—

(i) Is—

(A) Provided to the contractor by or on behalf of DoD in connection with the performance of the contract; or

(B) Collected, developed, received, transmitted, used, or stored by or on behalf of the contractor in support of the performance of the contract; and

(ii) Falls in any of the following categories:

(A) *Controlled technical information.*

(B) *Critical information (operations security).* Specific facts identified through the Operations Security process about friendly intentions, capabilities, and activities vitally needed by adversaries for them to plan and act effectively so as to guarantee failure or unacceptable consequences for friendly mission accomplishment (part of Operations Security process).

(C) *Export control.* Unclassified information concerning certain items, commodities, technology, software, or other information whose export could reasonably be expected to adversely affect the United States national security and nonproliferation objectives. To include dual use items; items identified in export administration regulations, international traffic in arms regulations and munitions list; license applications; and sensitive nuclear technology information.

(D) Any other information, marked or otherwise identified in the contract, that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Government-wide policies (e.g., privacy, proprietary business information).

“Cyber incident” means actions taken through the use of computer networks that result in an actual or potentially adverse effect on an information system and/or the information residing therein.

“Forensic analysis” means the practice of gathering, retaining, and analyzing computer-related data for investigative purposes in a manner that maintains the integrity of the data.

“Malicious software” means computer software or firmware intended to perform an unauthorized process that will have adverse impact on the confidentiality, integrity, or availability of an information system. This definition includes a virus, worm, Trojan horse, or other code-based entity that infects a host, as well as spyware and some forms of adware.

“Media” means physical devices or writing surfaces including, but is not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which information is recorded, stored, or printed within an information system.

“Operationally critical support” means supplies or services designated by the Government as critical for airlift, sealift, intermodal transportation services, or logistical support that is essential to the mobilization, deployment, or sustainment of the Armed Forces in a contingency operation.

“Rapid(ly) report(ing)” means within 72 hours of discovery of any cyber incident.

“Technical information” means technical data or computer software, as those terms are defined in the clause at DFARS 252.227-7013, Rights in Technical Data-Non Commercial Items, regardless of whether or not the clause is incorporated in this solicitation or contract. Examples of technical information include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, technical orders, catalog-item identifications, data sets, studies and analyses and related information, and computer software executable code and source code.

(b) *Adequate security.* The Contractor shall provide adequate security for all covered defense information on all covered contractor information systems that support the performance of work under this contract. To provide adequate security, the Contractor shall—

(1) Implement information systems security protections on all covered contractor information systems including, at a minimum—

(i) For covered contractor information systems that are part of an Information Technology (IT) service or system operated on behalf of the Government—

(A) Cloud computing services shall be subject to the security requirements specified in the clause 252.239-7010, Cloud Computing Services, of this contract; and

(B) Any other such IT service or system (i.e., other than cloud computing) shall be subject to the security requirements specified elsewhere in this contract; or

(ii) For covered contractor information systems that are not part of an IT service or system operated on behalf of the Government and therefore are not subject to the security requirement specified at paragraph (b)(1)(i) of this clause—

(A) The security requirements in National Institute of Standards and

Technology (NIST) Special Publication (SP) 800-171, “Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations,” (see <http://dx.doi.org/10.6028/NIST.SP.800-171>) that is in effect at the time the solicitation is issued or as authorized by the Contracting Officer with the exception of the derived security requirement 3.5.3 “Use of multifactor authentication for local and network access to privileged accounts and for network access to non-privileged accounts”, which will be required not later than 9 months after award of the contract, if the Contractor notified the contracting officer in accordance with paragraph (c) of the provision 252.204-7008, Compliance with Safeguarding Covered Defense Information Controls (DEVIATION 2016-00001)(OCT 2015); or

(B) Alternative but equally effective security measures used to compensate for the inability to satisfy a particular requirement and achieve equivalent protection approved in writing by an authorized representative of the DoD Chief Information Officer (CIO) prior to contract award; and

(2) Apply other information systems security measures when the Contractor reasonably determines that information systems security measures, in addition to those identified in paragraph (b)(1) of this clause, may be required to provide adequate security in a dynamic environment based on an assessed risk or vulnerability.

(c) *Cyber incident reporting requirement.*

(1) When the Contractor discovers a cyber-incident that affects a covered contractor information system or the covered defense information residing therein, or that affects the contractor’s ability to perform the requirements of the contract that are designated as operationally critical support, the Contractor shall—

- (i) Conduct a review for evidence of compromise of covered defense information, including, but not limited to, identifying compromised computers, servers, specific data, and user accounts. This review shall also include analyzing covered contractor information system(s) that were part of the cyber incident, as well as other information systems on the Contractor's network(s), that may have been accessed as a result of the incident in order to identify compromised covered defense information, or that affect the Contractor's ability to provide operationally critical support; and
- (ii) Rapidly report cyber incidents to DoD at <http://dibnet.dod.mil>.
- (2) *Cyber incident report*. The cyber incident report shall be treated as information created by or for DoD and shall include, at a minimum, the required elements at <http://dibnet.dod.mil>.
- (3) *Medium assurance certificate requirement*. In order to report cyber incidents in accordance with this clause, the Contractor or subcontractor shall have or acquire a DoD-approved medium assurance certificate to report cyber incidents. For information on obtaining a DoD-approved medium assurance certificate, see <http://iase.disa.mil/pki/eca/Pages/index.aspx>.
- (d) *Malicious software*. The Contractor or subcontractors that discover and isolate malicious software in connection with a reported cyber incident shall submit the malicious software in accordance with instructions provided by the Contracting Officer.
- (e) *Media preservation and protection*. When a Contractor discovers a cyber-incident has occurred, the Contractor shall preserve and protect images of all known affected information systems identified in paragraph (c)(1)(i) of this clause and all relevant monitoring/packet capture data for at least 90 days from the submission of the cyber incident report to allow DoD to request the media or decline interest.
- (f) *Access to additional information or equipment necessary for forensic analysis*. Upon request by DoD, the Contractor shall provide DoD with access to additional information or equipment that is necessary to conduct a forensic analysis.
- (g) *Cyber incident damage assessment activities*. If DoD elects to conduct a damage assessment, the Contracting Officer will request that the Contractor provide all of the damage assessment information gathered in accordance with paragraph (e) of this clause.
- (h) *DoD safeguarding and use of contractor attributional/proprietary information*. The Government shall protect against the unauthorized use or release of information obtained from the contractor (or derived from information obtained from the contractor) under this clause that includes contractor attributional/proprietary information, including such information submitted in accordance with paragraph (c). To the maximum extent practicable, the Contractor shall identify and mark attributional/proprietary information. In making an authorized release of such information, the Government will implement appropriate procedures to minimize the contractor attributional/proprietary information that is included in such authorized release, seeking to include only that information that is necessary for the authorized purpose(s) for which the information is being released.
- (i) *Use and release of contractor attributional/proprietary information not created by or for DoD*. Information that is obtained from the contractor (or derived from information obtained from the contractor) under this clause that is not created by or for DoD is authorized to be released outside of DoD—
- (1) To entities with missions that may be affected by such information;
  - (2) To entities that may be called upon to assist in the diagnosis, detection, or mitigation of cyber incidents;
  - (3) To Government entities that conduct counterintelligence or law enforcement investigations;
  - (4) For national security purposes, including cyber situational awareness and defense purposes (including with Defense Industrial Base (DIB) participants in the program at 32 CFR part 236); or
  - (5) To a support services contractor ("recipient") that is directly supporting Government activities under a contract that includes the clause at 252.204-7009, Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information.
- (j) *Use and release of contractor attributional/proprietary information created by or for DoD*. Information that is obtained from the contractor (or derived from information obtained from the contractor) under this clause that is created by or for DoD (including the information submitted pursuant to paragraph (c) of this clause) is authorized to be used and released outside of DoD for purposes and activities authorized by paragraph (i) of this clause, and for any other lawful Government purpose or activity, subject to all applicable statutory, regulatory, and policy based restrictions on the Government's use and release of such information.
- (k) The Contractor shall conduct activities under this clause in accordance with applicable laws and regulations on the interception, monitoring, access, use, and disclosure of electronic communications and data.
- (l) *Other safeguarding or reporting requirements*. The safeguarding and cyber incident reporting required by this clause in no way abrogates the Contractor's responsibility for other safeguarding or cyber incident reporting pertaining to its unclassified information systems as required by other applicable clauses of this contract, or as a result of other applicable U.S. Government statutory or regulatory requirements.
- (m) *Subcontracts*. The Contractor shall—
- (1) Include the substance of this clause, including this paragraph (m), in all subcontracts, including subcontracts for commercial items; and
  - (2) Require subcontractors to rapidly report cyber incidents directly to DoD at <http://dibnet.dod.mil> and the prime Contractor. This includes providing the incident report number, automatically assigned by DoD, to the prime Contractor (or next highest tier subcontractor) as soon as practicable.

## **252.209-7004 SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE GOVERNMENT OF A COUNTRY THAT IS A STATE SPONSOR OF TERRORISM (DEC 2014)**

- (a) Unless the Government determines that there is a compelling reason to do so, the Contractor shall not enter into any subcontract in excess of \$30,000 with a firm, or a subsidiary of a firm, that is identified in the Exclusions section of the System for Award Management (SAM Exclusions) as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a country that is a state sponsor of terrorism.
- (b) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is identified, in SAM Exclusions, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a country that is a state sponsor of terrorism. The notice must include the name of the proposed subcontractor and the compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion in SAM Exclusions.

## **252.211-7007 REPORTING OF GOVERNMENT-FURNISHED PROPERTY (AUG 2012)**

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

“Commercial and Government entity (CAGE) code” means—

- (i) A code assigned by the Defense Logistics Agency Logistics Information Service to identify a commercial or Government entity; or
- (ii) A code assigned by a member of the North Atlantic Treaty Organization that the Defense Logistics Agency Logistics Information Service records and maintains in the CAGE master file. The type of code is known as an “NCAGE code.”

“Contractor-acquired property” has the meaning given in FAR clause 52.245-1. Upon acceptance by the Government, contractor-acquired property becomes Government-furnished property.

“Government-furnished property” has the meaning given in FAR clause 52.245-1.

“Item unique identification (IUID)” means a system of assigning, reporting, and marking DoD property with unique item identifiers that have machine-readable data elements to distinguish an item from all other like and unlike items.

“IUID Registry” means the DoD data repository that receives input from both industry and Government sources and provides storage of, and access to, data that identifies and describes tangible Government personal property. The IUID Registry is—

- (i) The authoritative source of Government unit acquisition cost for items with unique item identification (see DFARS [252.211-7003](#)) that were acquired after January 1, 2004;
- (ii) The master data source for Government-furnished property; and
- (iii) An authoritative source for establishing the acquisition cost of end-item equipment.

“National stock number (NSN)” means a 13-digit stock number used to identify items of supply. It consists of a four-digit Federal Supply Code and a nine-digit National Item Identification Number.

“Nomenclature” means—

- (i) The combination of a Government-assigned type designation and an approved item name;
- (ii) Names assigned to kinds and groups of products; or
- (iii) Formal designations assigned to products by customer or supplier (such as model number or model type, design differentiation, or specific design series or configuration).

“Part or identifying number (PIN)” means the identifier assigned by the original design activity, or by the controlling nationally recognized standard, that uniquely identifies (relative to that design activity) a specific item.

“Reparable” means an item, typically in unserviceable condition, furnished to the Contractor for maintenance, repair, modification, or overhaul.

“Serially managed item” means an item designated by DoD to be uniquely tracked, controlled, or managed in maintenance, repair, and/or supply systems by means of its serial number.

“Supply condition code” means a classification of materiel in terms of readiness for issue and use or to identify action underway to change the status of materiel (see [http://www2.dla.mil/j-6/dlmsso/elibrary/manuals/dlm/dlm\\_pubs.asp](http://www2.dla.mil/j-6/dlmsso/elibrary/manuals/dlm/dlm_pubs.asp)).

“Unique item identifier (UII)” means a set of data elements permanently marked on an item that is globally unique and unambiguous and never changes, in order to provide traceability of the item throughout its total life cycle. The term includes a concatenated UII or a DoD recognized unique identification equivalent.

“Unit acquisition cost” has the meaning given in FAR clause 52.245-1.

(b) *Reporting Government-furnished property to the IUID Registry.* Except as provided in paragraph (c) of this clause, the Contractor shall report, in accordance with paragraph (f), Government-furnished property to the IUID Registry as follows:

(1) Up to and including December 31, 2013, report serially managed Government-furnished property with a unit-acquisition cost of \$5,000 or greater.

(2) Beginning January 1, 2014, report—

- (i) All serially managed Government-furnished property, regardless of unit-acquisition cost; and
- (ii) Contractor receipt of non-serially managed items. Unless tracked as an individual item, the Contractor shall report non-serially managed items to the Registry in the same unit of packaging, e.g., original manufacturer’s package, box, or container, as it was received.

(c) *Exceptions.* Paragraph (b) of this clause does not apply to—

- (1) Contractor-acquired property;
- (2) Property under any statutory leasing authority;
- (3) Property to which the Government has acquired a lien or title solely because of partial, advance, progress, or performance-based payments;
- (4) Intellectual property or software;
- (5) Real property; or
- (6) Property released for work in process.

(d) *Data for reporting to the IUID Registry.* To permit reporting of Government-furnished property to the IUID Registry, the Contractor’s property management system shall enable the following data elements in addition to those required by paragraph (f)(1)(iii) (A)(1) through (3), (5), (7), (8), and (10) of the Government Property clause of this contract (FAR 52.245-1):

- (1) Received/Sent (shipped) date.
- (2) Status code.
- (3) Accountable Government contract number.
- (4) Commercial and Government Entity (CAGE) code on the accountable Government contract.
- (5) Mark record.

- (i) Bagged or tagged code (for items too small to individually tag or mark).
  - (ii) Contents (the type of information recorded on the item, e.g., item internal control number).
  - (iii) Effective date (date the mark is applied).
  - (iv) Added or removed code/flag.
  - (v) Marker code (designates which code is used in the marker identifier, e.g., D=CAGE, UN=DUNS, LD=DODAAC).
  - (vi) Marker identifier, e.g., Contractor's CAGE code or DUNS number.
  - (vii) Medium code; how the data is recorded, e.g., barcode, contact memory button.
  - (viii) Value, e.g., actual text or data string that is recorded in its human-readable form.
  - (ix) Set (used to group marks when multiple sets exist).
- (6) Appropriate supply condition code, required only for reporting of reparable, per Appendix 2 of DoD 4000.25-2-M, Military Standard Transaction Reporting and Accounting Procedures manual ([http://www2.dla.mil/j-6/dlms/eLibrary/manuals/dlm/dlm\\_pubs.asp](http://www2.dla.mil/j-6/dlms/eLibrary/manuals/dlm/dlm_pubs.asp)).
- (e) When Government-furnished property is in the possession of subcontractors, Contractors shall ensure that reporting is accomplished using the data elements required in paragraph (d) of this clause.
- (f) *Procedures for reporting of Government-furnished property.* Except as provided in paragraph (c) of this clause, the Contractor shall establish and report to the IUID Registry the information required by FAR clause 52.245-1, paragraphs (e) and (f)(1)(iii), in accordance with the data submission procedures at [http://www.acq.osd.mil/dpap/pdi/uid/data\\_submission\\_information.html](http://www.acq.osd.mil/dpap/pdi/uid/data_submission_information.html).
- (g) *Procedures for updating the IUID Registry.*
- (1) Except as provided in paragraph (g)(2), the Contractor shall update the IUID Registry at <https://iuid.logisticsinformationservice.dla.mil/> for changes in status, mark, custody, condition code (for reparable only), or disposition of items that are—
- (i) Received by the Contractor;
  - (ii) Delivered or shipped from the Contractor's plant, under Government instructions, except when shipment is to a subcontractor or other location of the Contractor;
  - (iii) Consumed or expended, reasonably and properly, or otherwise accounted for, in the performance of the contract as determined by the Government property administrator, including reasonable inventory adjustments;
  - (iv) Disposed of; or
  - (v) Transferred to a follow-on or other contract.
- (2) The Contractor need not report to the IUID Registry those transactions reported or to be reported to the following DCMA etools:
- (i) Plant Clearance Automated Reutilization and Screening System (PCARSS); or
  - (ii) Lost, Theft, Damaged or Destroyed (LTDD) system.
- (3) The contractor shall update the IUID Registry as transactions occur or as otherwise stated in the Contractor's property management procedure.

### **252.211-7008 USE OF GOVERNMENT-ASSIGNED SERIAL NUMBERS (SEP 2010)**

"Government-assigned serial number" means a combination of letters or numerals in a fixed human-readable information format (text) conveying information about a major end item, which is provided to a contractor by the requiring activity with accompanying technical data instructions for marking the Government-assigned serial number on major end items to be delivered to the Government.

"Major end item" means a final combination of component parts and/or materials which is ready for its intended use and of such importance to operational readiness that review and control of inventory management functions (procurement, distribution, maintenance, disposal, and asset reporting) is required at all levels of life cycle management. Major end items include aircraft; ships; boats; motorized wheeled, tracked, and towed vehicles for use on highway or rough terrain; weapon and missile end items; ammunition; and sets, assemblies, or end items having a major end item as a component.

"Unique item identifier (UII)" means a set of data elements permanently marked on an item that is globally unique and unambiguous and never changes in order to provide traceability of the item throughout its total life cycle. The term includes a concatenated UII or a DoD-recognized unique identification equivalent.

- (b) The Contractor shall mark the Government-assigned serial numbers on those major end items as specified by line item in the Schedule, in accordance with the technical instructions for the placement and method of application identified in the terms and conditions of the contract.
- (c) The Contractor shall register the Government-assigned serial number along with the major end item's UII at the time of delivery in accordance with the provisions of the clause at DFARS 252.211-7003(d).
- (d) The Contractor shall establish the UII for major end items for use throughout the life of the major end item. The Contractor may elect, but is not required, to use the Government-assigned serial number to construct the UII.

### **252.215-7008 ONLY ONE OFFER (OCT 2013)**

(a) After initial submission of offers, the Offeror agrees to submit any subsequently requested additional cost or pricing data if the Contracting Officer notifies the offeror that-

(1) Only one offer was received; and

(2) Additional cost or pricing data is required in order to determine whether the price is fair and reasonable or to comply with the statutory requirement for certified cost or pricing data (10 U.S.C. 2306a and FAR 15.403-3).

(b) *Requirement for submission of additional cost or pricing data.* Except as provided in paragraph (c) of this provision, the Offeror shall submit additional cost or pricing data as follows:

(1) If the Contracting Officer notifies the Offeror that additional cost or pricing data are required in accordance with paragraph (a) of this clause, the data shall be certified unless an exception applies (FAR 15.403-1(b)).

(2) *Exceptions from certified cost or pricing data.* In lieu of submitting certified cost or pricing data, the Offeror may submit a written request for exception by submitting the information described in the following paragraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

(i) *Identification of the law or regulation establishing the price offered.* If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document, unless it was previously submitted to the contracting office.

(ii) *Commercial item exception.* For a commercial item exception, the Offeror shall submit, at a minimum, information on prices at which the same item or/ similar items have previously been sold in the commercial market that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include—

(A) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, or a statement that the catalog is on file in the buying office to which the proposal is being submitted. Provide a copy or describe current discount policies and price lists (published or unpublished), *e.g.*, wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities;

(B) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market; or

(C) For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(3) The Offeror grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Offeror's determination of the prices to be offered in the catalog or marketplace.

(4) *Requirements for certified cost or pricing data.* If the Offeror is not granted an exception from the requirement to submit certified cost or pricing data, the following applies:

(i) The Offeror shall prepare and submit certified cost or pricing data and supporting attachments in accordance with the instructions contained in Table 15-2 of FAR 15.408, which is incorporated by reference with the same force and effect as though it were inserted here in full text. The instructions in Table 15-2 are incorporated as a mandatory format to be used, unless the Contracting Officer and the Offeror agree to a different format.

(ii) As soon as practicable after agreement on price, but before contract award (except for unpriced actions such as letter contracts), the offeror shall submit a Certificate of Current Cost or Pricing Data, as prescribed by FAR 15.406-2.

(c) If the Offeror is the Canadian Commercial Corporation, certified cost or pricing data are not required. If the Contracting Officer notifies the Canadian Commercial Corporation that additional data other than certified cost or pricing data are required in accordance with [225.870-4\(c\)](#), the Canadian Commercial Corporation shall obtain and provide the following:

(1) Profit rate or fee (as applicable).

(2) Analysis provided by Public Works and Government Services Canada to the Canadian Commercial Corporation to determine a fair and reasonable price (comparable to the analysis required at FAR 15.404-1).

(3) Data other than certified cost or pricing data necessary to permit a determination by the U.S. Contracting Officer that the proposed price is fair and reasonable [*U.S. Contracting Officer to provide description of the data required in accordance with FAR 15.403-3(a)(1) with the notification*].

(4) As specified in FAR 15.403-3(a)(4), an offeror who does not comply with a requirement to submit data that the U.S. Contracting Officer has deemed necessary to determine price reasonableness or cost realism is ineligible for award unless the head of the contracting activity determines that it is in the best interest of the Government to make the award to that offeror.

(d) If negotiations are conducted, the negotiated price should not exceed the offered price.

## **252.219-7003 SMALL BUSINESS SUBCONTRACTING PLAN (DOD CONTRACTS)—BASIC (MAR 2016)**

This clause supplements the Federal Acquisition Regulation 52.219-9, Small Business Subcontracting Plan, clause of this contract.

(a) *Definitions.* "Summary Subcontract Report (SSR) Coordinator," as used in this clause, means the individual at the department or agency level who is registered in the Electronic Subcontracting Reporting System (eSRS) and is responsible for acknowledging receipt or rejecting SSRs in eSRS for the department or agency.

(b) Subcontracts awarded to workshops approved by the Committee for Purchase from People Who are Blind or Severely Disabled (41 U.S.C. 8502-8504), may be counted toward the Contractor’s small business subcontracting goal.

(c) A mentor firm, under the Pilot Mentor-Protege Program established under section 831 of Public Law 101-510, as amended, may count toward its small disadvantaged business goal, subcontracts awarded to—

- (1) Protege firms which are qualified organizations employing the severely disabled; and
- (2) Former protege firms that meet the criteria in section 831(g)(4) of Public Law 101-510.

(d) The master plan is approved by the Contractor's cognizant contract administration activity.

(e) In those subcontracting plans which specifically identify small businesses, the Contractor shall notify the Administrative Contracting Officer of any substitutions of firms that are not small business firms, for the small business firms specifically identified in the subcontracting plan.

Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.

(f)(1) For DoD, the Contractor shall submit reports in eSRS as follows:

(i) The Individual Subcontract Report (ISR) shall be submitted to the contracting officer at the procuring contracting office, even when contract administration has been delegated to the Defense Contract Management Agency.

(ii) An SSR for other than a commercial subcontracting plan, or construction and related maintenance repair contracts, shall be submitted in eSRS to the department or agency within DoD that administers the majority of the Contractor’s individual subcontracting plans. An example would be Defense Finance and Accounting Service or Missile Defense Agency.

(2) For DoD, the authority to acknowledge receipt or reject reports in eSRS is as follows:

(i) The authority to acknowledge receipt or reject the ISR resides with the contracting officer who receives it, as described in paragraph (f)(1)(i) of this clause.

(ii) Except as provided in (f)(2)(iii), the authority to acknowledge receipt or reject SSRs in eSRS resides with the SSR Coordinator at the department or agency that administers the majority of the Contractor’s individual subcontracting plans.

(iii) The authority to acknowledge receipt or reject SSRs for construction and related maintenance and repair contracts resides with the SSR Coordinator for each department or agency.

**252.222-7007 SAFEGUARDING SENSITIVE CONVENTIONAL ARMS, AMMUNITION, AND EXPLOSIVES (SEP 1999)**

(a) *Definition.* “Arms, ammunition, and explosives (AA&E),” as used in this clause, means those items within the scope (chapter 1, paragraph B) of DoD 5100.76-M, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives.

(b) The requirements of DoD 5100.76-M apply to the following items of AA&E being developed, produced, manufactured, or purchased for the Government, or provided to the Contractor as Government-furnished property under this contract:

NOMENCLATURE	NATIONAL STOCK NUMBER	SENSITIVITY/CATEGORY

(c) The Contractor shall comply with the requirements of DoD 5100.76-M, as specified in the statement of work. The edition of DoD 5100.76-M in effect on the date of issuance of the solicitation for this contract shall apply.

(d) The Contractor shall allow representatives of the Defense Security Service (DSS), and representatives of other appropriate offices of the Government, access at all reasonable times into its facilities and those of its subcontractors, for the purpose of performing surveys, inspections, and investigations necessary to review compliance with the physical security standards applicable to this contract.

(e) The Contractor shall notify the cognizant DSS field office of any subcontract involving AA&E within 10 days after award of the subcontract.

(f) The Contractor shall ensure that the requirements of this clause are included in all subcontracts, at every tier<sup>2</sup>

(1) For the development, production, manufacture, or purchase of AA&E; or

(2) When AA&E will be provided to the subcontractor as Government-furnished property.

(g) Nothing in this clause shall relieve the Contractor of its responsibility for complying with applicable Federal, state, and local laws, ordinances, codes, and regulations (including requirements for obtaining licenses and permits) in connection with the performance of this contract.

**252.232-7010 LEVIES ON CONTRACT PAYMENTS (DEC 2006)**

(a) 26 U.S.C. 6331(h) authorizes the Internal Revenue Service (IRS) to continuously levy up to 100 percent of contract payments, up to the amount of tax debt.

(b) When a levy is imposed on a payment under this contract and the Contractor believes that the levy may result in an inability to perform the contract, the Contractor shall promptly notify the Procuring Contracting Officer in writing, with a copy to the Administrative Contracting Officer, and shall provide—

- (1) The total dollar amount of the levy;

- (2) A statement that the Contractor believes that the levy may result in an inability to perform the contract, including rationale and adequate supporting documentation; and
- (3) Advice as to whether the inability to perform may adversely affect national security, including rationale and adequate supporting documentation.
- (c) DoD shall promptly review the Contractor's assessment, and the Procuring Contracting Officer shall provide a written notification to the Contractor including—
- (1) A statement as to whether DoD agrees that the levy may result in an inability to perform the contract; and
- (2)(i) If the levy may result in an inability to perform the contract and the lack of performance will adversely affect national security, the total amount of the monies collected that should be returned to the Contractor; or
- (ii) If the levy may result in an inability to perform the contract but will not impact national security, a recommendation that the Contractor promptly notify the IRS to attempt to resolve the tax situation.
- (d) Any DoD determination under this clause is not subject to appeal under the Contract Disputes Act.

#### **252.237-7010 PROHIBITION ON INTERROGATION OF DETAINEES BY CONTRACTOR PERSONNEL (JUN 2013)**

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

“Detainee” means any person captured, detained, held, or otherwise under the effective control of DoD personnel (military or civilian) in connection with hostilities. This includes, but is not limited to, enemy prisoners of war, civilian internees, and retained personnel. This does not include DoD personnel or DoD contractor personnel being held for law enforcement purposes.

“Interrogation of detainees” means a systematic process of formally and officially questioning a detainee for the purpose of obtaining reliable information to satisfy foreign intelligence collection requirements.

(b) Contractor personnel shall not interrogate detainees.

(c) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts, including subcontracts for commercial items, that may require subcontractor personnel to interact with detainees in the course of their duties.

#### **252.243-7001 PRICING OF CONTRACT MODIFICATIONS (DEC 1991)**

When costs are a factor in any price adjustment under this contract, the contract cost principles and procedures in FAR Part 31 and DFARS Part 231, in effect on the date of this contract, apply.

#### **252.244-7000 SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (DOD CONTRACTS) (JUN 2013)**

(a) The Contractor is not required to flow down the terms of any Defense Federal Acquisition Regulation Supplement (DFARS) clause in subcontracts for commercial items at any tier under this contract, unless so specified in the particular clause.

(b) While not required, the Contractor may flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligation.

(c) The Contractor shall include the terms of this clause, including this paragraph (c), in subcontracts awarded under this contract, including subcontracts for the acquisition of commercial items.

#### **252.245-7001 TAGGING, LABELING, AND MARKING OF GOVERNMENT-FURNISHED PROPERTY (APR 2012)**

“Government-furnished property” is defined in the clause at FAR 52.245-1, Government Property.

“Serially-managed item” means an item designated by DoD to be uniquely tracked, controlled, or managed in maintenance, repair, and/or supply systems by means of its serial number.

(b) The Contractor shall tag, label, or mark Government-furnished property items identified in the contract as subject to serialized item management (serially-managed items).

(c) The Contractor is not required to tag, label, or mark Government-furnished property previously tagged, labeled, or marked.

#### **252.245-7002 REPORTING LOSS OF GOVERNMENT PROPERTY (APR 2012)**

“Government property” is defined in the clause at FAR 52.245-1, Government Property.

“Loss of Government property” means unintended, unforeseen, or accidental loss, damage, or destruction of Government property that reduces the Government's expected economic benefits of the property. Loss of Government property does not include purposeful destructive testing, obsolescence, normal wear and tear, or manufacturing defects. Loss of Government property includes, but is not limited to—

- (1) Items that cannot be found after a reasonable search;

- (2) Theft;
- (3) Damage resulting in unexpected harm to property requiring repair to restore the item to usable condition; or
- (4) Destruction resulting from incidents that render the item useless for its intended purpose or beyond economical repair.

“Unit acquisition cost” means—

- (1) For Government-furnished property, the dollar value assigned by the Government and identified in the contract; and
- (2) For Contractor-acquired property, the cost derived from the Contractor’s records that reflect consistently applied, generally acceptable

accounting principles.

(b) Reporting loss of Government property.

(1) The Contractor shall use the Defense Contract Management Agency (DCMA) eTools software application for reporting loss of Government property. Reporting value shall be at unit acquisition cost. The eTools “LTDD of Government Property” toolset can be accessed from the DCMA home page External Web Access Management application at <http://www.dcmil/aboutetools.cfm>.

(2) Unless otherwise provided for in this contract, the requirements of paragraph (b)(1) of this clause do not apply to normal and reasonable inventory adjustments, i.e., losses of low-risk consumable material such as common hardware, as agreed to by the Contractor and the Government Property Administrator. Such losses are typically a product of normal process variation. The Contractor shall ensure that its property management system provides adequate management control measures, e.g., statistical process controls, as a means of managing such variation.

(3) The Contractor shall report losses of Government property outside normal process variation, e.g., losses due to—

- (i) Theft;
- (ii) Inadequate storage;
- (iii) Lack of physical security; or
- (iv) “Acts of God.”

(4) This reporting requirement does not change any liability provisions or other reporting requirements that may exist under this contract.

## **252.245-7003 CONTRACTOR PROPERTY MANAGEMENT SYSTEM ADMINISTRATION (APR 2012)**

(a) Definitions. As used in this clause—

“Acceptable property management system” means a property system that complies with the system criteria in paragraph (c) of this clause.

“Property management system” means the Contractor’s system or systems for managing and controlling Government property.

“Significant deficiency” means a shortcoming in the system that materially affects the ability of officials of the Department of Defense to rely upon information produced by the system that is needed for management purposes.

(b) General. The Contractor shall establish and maintain an acceptable property management system. Failure to maintain an acceptable property management system, as defined in this clause, may result in disapproval of the system by the Contracting Officer and/or withholding of payments.

(c) System criteria. The Contractor’s property management system shall be in accordance with paragraph (f) of the contract clause at Federal Acquisition Regulation 52.245-1.

(d) Significant deficiencies. (1) The Contracting Officer will provide an initial determination to the Contractor, in writing, of any significant deficiencies. The initial determination will describe the deficiency in sufficient detail to allow the Contractor to understand the deficiency.

(2) The Contractor shall respond within 30 days to a written initial determination from the Contracting Officer that identifies significant deficiencies in the Contractor’s property management system. If the Contractor disagrees with the initial determination, the Contractor shall state, in writing, its rationale for disagreeing.

(3) The Contracting Officer will evaluate the Contractor’s response and notify the Contractor, in writing, of the Contracting Officer’s final determination concerning—

- (i) Remaining significant deficiencies;
- (ii) The adequacy of any proposed or completed corrective action; and
- (iii) System disapproval, if the Contracting Officer determines that one or more significant deficiencies remain.

(e) If the Contractor receives the Contracting Officer’s final determination of significant deficiencies, the Contractor shall, within 45 days of receipt of the final determination, either correct the significant deficiencies or submit an acceptable corrective action plan showing milestones and actions to eliminate the significant deficiencies.

(f) Withholding payments. If the Contracting Officer makes a final determination to disapprove the Contractor’s property management system, and the contract includes the clause at 252.242-7005, Contractor Business Systems, the Contracting Officer will withhold payments in accordance with that clause.

**52.204-9000 CONTRACTOR PERSONNEL SECURITY REQUIREMENTS (AUG 2014)**

(a) Work to be performed under this contract or task order may, in full or in part, be performed at the Defense Logistics Agency (DLA) Headquarters (HQ), DLA field activity office(s), or other Federally-controlled facilities. Prior to beginning work on a contract, DLA requires all Contractor personnel working on the Federally-controlled facility to have a favorably adjudicated National Agency Check with Written Inquiries (NACI) or NACI equivalent.

(b) Additionally, in accordance with Department of Defense (DoD) Regulation 5200.2-R, Personnel Security Programs, and DLA Issuance 4314, Personnel Security Program, all DoD Contractor personnel who have access to Federally-controlled information systems must be assigned to positions which are designated at one of three information technology (IT) levels, each requiring a certain level of investigation and clearance, as follows:

- (1) IT-I for an IT position requiring a single scope background investigation (SSBI) or SSBI equivalent;
- (2) IT-II for an IT position requiring a National Agency check with Law and Credit (NACLC) or NACLC equivalent; and
- (3) IT-III for an IT position requiring a NACI or equivalent.

Note: IT levels will be designated according to the criteria in DoD 5200.2-R.

(c) Previously completed security investigations may be accepted by the Government in lieu of new investigations if determined by the DLA Intelligence Personnel Security Office to be essentially equivalent in scope to the contract requirements. The length of time elapsed since the previous investigation will also be considered in determining whether a new investigation is warranted. To assist the Government in making this determination, the Contractor must provide the following information to the respective DLA Intelligence Personnel Security Office immediately upon receipt of the contract. This information must be provided for each Contractor employee who will perform work on a Federally-controlled facility and/or will require access to Federally-controlled information systems:

- (1) Full name, with middle name, as applicable, with social security number;
- (2) Citizenship status with date and place of birth;
- (3) Proof of the individual's favorably adjudicated background investigation or NACI, consisting of identification of the type of investigation performed, date of the favorable adjudication, name of the agency that made the favorable adjudication, and name of the agency that performed the investigation;
- (4) Company name, address, phone and fax numbers with email address;
- (5) Location of on-site workstation or phone number if off-site (if known by the time of award); and
- (6) Delivery order or contract number and expiration date; and name of the Contracting Officer.

(d) The Contracting Officer will ensure that the Contractor is notified as soon as a determination is made by the assigned or cognizant DLA Intelligence Personnel Security Office regarding acceptance of the previous investigation and clearance level.

(1) If a new investigation is deemed necessary, the Contractor and Contracting Officer will be notified by the respective DLA Personnel Security Office after appropriate checks in DoD databases have been made.

(2) If the Contractor employee requires access to classified information and currently does not have the appropriate clearance level and/or an active security clearance, the DLA Intelligence Personnel Security Office will relay this information to the Contractor and Contracting Officer for further action. Investigations for Contractor employees requiring access to classified information must be initiated by the Contractor Facility Security Officer (FSO).

(3) The Contracting Officer will ensure that the respective DLA Intelligence Personnel Security Office initiates investigations for Contractor employees not requiring access to classified information (i.e., IT or unescorted entry) .

(4) It is the Contractor's responsibility to ensure that adequate information is provided and that each Contractor employee completes the appropriate paperwork, as required either by the Contracting Officer or the DLA Intelligence Personnel Security Office, in order to begin the investigation process for the required clearance level.

(e) The Contractor is responsible for ensuring that each Contractor employee assigned to the position has the appropriate security clearance level.

(f) The Contractor shall submit each request for IT access and investigation through the Contracting Officer to the assigned or cognizant DLA Intelligence Personnel Security Office. Requests shall include the following information and/or documentation:

- (1) Standard Form (SF) 85, Questionnaire for Non-Sensitive Positions, or the SF 86, Questionnaire for National Security Positions (see note below);
- (2) Proof of citizenship (i.e., an original or a certified copy of a birth certificate, passport, or naturalization certificate); and
- (3) Form FD-258, Fingerprint Card (however, fingerprinting can be performed by the cognizant DLA Intelligence Personnel Security Office).

(Note to (f)(1) above: An investigation request is facilitated through use of the SF 85 or the SF 86. These forms with instructions as well as the Optional Form (OF) 306, Declaration for Federal Employment, which is required with submission of the SF85 or SF 86, are available at the Office of Personnel Management's (OPM) system called Electronic –Questionnaires for Investigations Processing (e-QIP). Hard copies of the SF85 and SF86 are available at OPM's web-site, [www.opm.gov](http://www.opm.gov), but hard copies of the forms are not accepted.)

(g) Required documentation, listed above in paragraphs (f) (1) through (3), must be provided by the Contractor as directed by the Contracting Officer to the cognizant DLA Intelligence Personnel Security Office at the time of fingerprinting or prior to the DLA Intelligence Personnel Security Office releasing the investigation to OPM .

(h) Upon completion of the NACI, NACLC, SSBI, or other sufficient, appropriate investigation, the results of the investigation will be forwarded by OPM to the appropriate adjudication facility for eligibility determination or the DLA Intelligence Personnel Security Office for review and determination regarding the applicant's suitability to occupy an unescorted entry position in performance of the DLA contract. Contractor personnel shall not commence work on this effort until the investigation has been favorably adjudicated or the Contractor employee has been

waived into the position pending completion of adjudication. The DLA Intelligence Personnel Security Office will ensure that results of investigations will be sent by OPM to the Department of Defense, Consolidated Adjudications Facility (DoD CAF) or DLA Intelligence Personnel Security Office.

(i) A waiver for an IT-I or IT-II position to allow assignment of an individual Contractor employee to commence work prior to completion of the investigation may be granted in emergency situations when it is determined that a delay would be harmful to national security. A request for waiver will be considered only after the Government is in receipt of the individual Contractor employee's completed forms. The request for a waiver must be approved by the Commander/Director or Deputy Commander/Director of the site. The cognizant DLA Intelligence Personnel Security Office reserves the right to determine whether a waiver request will be forwarded for processing, however, there will be no waiver for an IT-III position. The individual Contractor employee for which the waiver is being requested may not be assigned to a position, that is, physically work at the Federally-controlled facility and/or be granted access to Federally-controlled information systems, until the waiver has been approved.

(j) The requirements of this clause apply to the prime Contractor and any subcontractors the prime Contractor may employ during the course of this contract, as well as any temporary employees that may be hired by the Contractor. The Government retains the right to request removal of Contractor personnel, regardless of prior clearance or adjudication status whose actions, while assigned to this contract, who are determined by the Contracting Officer to conflict with the interests of the Government. If such removal occurs, the Contractor shall assign qualified personnel, with the required investigation, to any vacancy.

(k) All Contractor personnel who are granted access to Government and/or Federally-controlled information systems shall observe all local automated information system (AIS) security policies and procedures. Violations of local AIS security policy, such as password sharing, performing personal work, file access violations, or browsing files outside the scope of the contract, will result in removal of the Contractor employee from Government property and referral to the Contractor for appropriate disciplinary action. Actions taken by the Contractor in response to a violation will be evaluated and will be reflected in the Contractor's performance assessment for use in making future source selection decisions. In addition, based on the nature and extent of any violations of AIS security policy, the Government will consider whether it needs to pursue any other actions under the contract such as a possible termination.

(l) The Contractor may also be required to obtain a Common Access Card (CAC) for each Contractor employee in accordance with procedures established by DLA. When a CAC is required, the Contracting Officer will ensure that the Contractor follows the requirements of Homeland Security Presidential Directive 12 and any other CAC-related requirements in the contract. The Contractor shall provide, on a monthly basis, a listing of all personnel working under the contract that have CACs.

(m) Contractor personnel must additionally receive operations security (OPSEC) and information security (INFOSEC) awareness training. The DLA annual OPSEC refresher training and DLA annual INFOSEC training will satisfy these requirements and are available through the DLA Intelligence Office.

(n) When a Contractor employee who has been granted a clearance is removed from the contract, the Contractor shall provide an appropriately trained substitute who has met or will meet the investigative requirements of this clause. The substitute may not begin work on the contract without written documentation, signed by the Contracting Officer, stating that the new Contractor employee has met one of the criteria set forth in paragraphs (c), (d), or (i) of this clause, (i.e., acceptance of a previously completed security investigation, satisfactory completion of a new investigation, or a waiver allowing work to begin pending completion of an investigation). Contractor individual employees removed from this contract as a result of a violation of local AIS security policy are removed for the duration of the contract.

(o) The following shall be completed for every employee of the Government Contractor working on this contract upon contract expiration. Additionally, the Contractor shall notify the contracting officer immediately in writing whenever a Contractor employee working on this contract resigns, is reassigned, is terminated or no longer requires admittance to the Federally-controlled facility or access to Federally-controlled information systems. When the Contractor employee departs, the Contractor will relay departure information to the cognizant DLA Intelligence Personnel Security Office so appropriate databases can be updated. The Contractor will ensure each departed employee has completed the DLA J6 Out-Processing Checklist, when applicable, for the necessary security briefing, has returned any Government-furnished equipment, returned the DoD CAC and DLA (or equivalent) badge, returned any DoD or DLA vehicle decal, and requested deletion of local area network account with a prepared Department of Defense (DD) Form 2875. The Contractor will be responsible for any costs involved for failure to complete the out-processing, including recovery of Government property and investigation involved.

(p) These Contractor security requirements do not excuse the Contractor from meeting the delivery schedule/performance requirements set forth in the contract, or waive the delivery schedule/performance requirements in any way. The Contractor shall meet the required delivery schedule/performance requirements unless the contracting officer grants a waiver or extension.

(q) The Contractor shall not bill for personnel, who are not working on the contract while that Contractor employee's clearance investigation is pending.

#### **I-0001 11.01-4 DEFINITIONS (CONT'D) (STORAGE) (DLA ENERGY JUNE 2009)**

As used throughout this contract, the following terms shall have the meanings set forth below:

(a) **Quality Assurance Representative (QAR)** is a Government Representative authorized to represent the Contracting Officer to assure the contractor complies with the contractual requirements in furnishing petroleum products and services and to assure the contractor complies with the contractual requirements in furnishing services.

(b) **Petroleum storage facilities** shall include --

(1) The tanks enumerated in the Schedule and all installations, fixtures, and equipment required for safe and expeditious movement of petroleum

products into and out of such tanks;

(2) Fencing, flood lighting, dikes or fire walls, suitable firefighting plan and watchman services to the extent necessary to comply with local regulations and standard commercial practices; and

(3) Whatever unloading and loading facilities that may be required to receive and ship product by the method(s) specified in the Schedule.

(c) The terms **isolated system** and **segregated system** mean a system that has a positive separation from other systems in a tank farm through the means of blind flanges, locked double-block and bleed-type valves, etc.

(d) **Dedicated system** means a self-contained, single product system with no pipeline connections to any other system in the facility. exclusively.

(e) **Common system** means a system that usually utilizes a manifold or pipeline that handles more than one product

(f) **Shell capacity** means the gross volumetric capacity of the storage tank as determined from tank calibration.

(g) **Fill capacity** means the capacity of the storage tank when filled to the maximum fill level, i.e., the highest point to which a petroleum storage tank may be filled with product, allowing for product expansion and other safety considerations.

(h) **Product or products** means the Government-owned petroleum product(s) within one of the following categories which the Schedule indicates the Contractor is to receive, store, handle, and ship under this contract:

(1) Crude oil shall include any unrefined petroleum in its natural state;

(2) Light fuels includes any grade of the following distillate fuel types: aircraft engine fuels, motor gasoline, naphtha and like solvents, kerosene, diesel fuels and numbers 1 and 2 heating fuels;

(3) Heavy fuels includes number 4 heating fuel and all residual type fuels;

(4) Lubricating oil includes all grades of such product utilized in aircraft, automotive, diesel, and marine engines; (5) Packaged products means all products packaged in containers of 55-gallon capacity or less.

(i) **Unit of quantity** means--

(1) The U.S. gallon of 231 cubic inches;

(2) The barrel of 42 U.S. gallons;

(3) The long ton of 2240 pounds; and

(4) The pound of 16 ounces, depending upon the unit shown in the Schedule.

(j) **DLA ENERGY description of services to be performed** as stated in the CHANGES - FIXED PRICE clause is defined to include, but is not limited to, the following:

(1) The grade or type of product by specification;

(2) The regular working hours set forth in the schedule;

(3) The method of receiving or shipping.

(4) The specifications of Contractor-furnished equipment,

(5) The provisions of the General Delivery Conditions as amended;

(6) The number of the Contractor-furnished units (equipment);

(7) The response time;

(8) The estimated truck movement; and

(k) Equipment or delivery and servicing equipment as used herein means those fuel and/or oil servicing units such as tank trucks, tank trailers, mobile hose carts, pantographs (fixed or mobile), small trailers and drums together with the necessary prime movers.

(l) Fuel and Oil used herein means aircraft reciprocating engine fuel, aircraft turbine and jet engine fuel, aircraft reciprocating engine oil, and jet engine oil.

(m) Response time is defined as that interval of time between the time a call is placed on the Contractor to service an aircraft and the time the Contractor's equipment is in position to service said aircraft.

(n) For purposes of this contract, the term truck movement as set forth above is defined to be any of the following:

(1) The movement of a refueler, defueler, or oiler to, and servicing of, an aircraft. In the event that more than one aircraft is serviced as a result of one service call, each individual aircraft servicing shall be considered a "truck movement."

(2) The movement of a combination refueler/oiler which services an aircraft with both products. Such movement shall be considered a 1 1/2 "truck movement."

(3) The movement of a combination refueler/oiler which services an aircraft with oil only. Such movement shall be considered one "truck movement."

(4) Servicings of group support equipment, small tanks, and/or other units as designated by the Commanding Officer, with either jet fuel or AVGAS, shall count as truck movements if dispatched separately. Each such servicing, if performed in multiples or in conjunction with aircraft fuel delivery, shall be counted as a 1/5 "truck movement" with the exception of the first which will count as one "truck movement." the Contractor.

(5) The movement of a refueler, defueler, or oiler as the result of a service call which is not completed, due to no fault of

(6) The movement of a refueler, defueler, or oiler to a tank farm for purposes of refilling or discharging product as applicable. With regard to refueler refilling, only those refills totaling 1,000 gallons or more per vehicle shall be considered a truck movement. The Commanding Officer may, at his discretion, exercise control and supervision over the refilling/discharging operation.

**I-0002 11.01-9 DEFINITIONS (CONT'D) (AARD/TESTING) (DLA ENERGY JUN 2009)**

As used throughout this contract, the following terms shall have the meanings set forth below:

- (a) **Quality Assurance Representative** (QAR) is a Government Representative authorized to represent the Contracting Officer to assure the contractor complies with the contractual requirements in furnishing petroleum products and services and to assure the contractor complies with the contractual requirements in furnishing services.
- (b) Petroleum **storage facilities**" shall include--
- (1) The tanks enumerated in the Schedule and all installations, fixtures, and equipment required for safe and expeditious movement of petroleum products into and out of such tanks;
  - (2) Fencing, flood lighting, dikes or fire walls, suitable firefighting plan, and watchman services to the extent necessary to comply with local regulations and standard commercial practices; and
  - (3) Whatever unloading and loading facilities that may be required to receive and ship product by the method(s) specified in the Schedule.
- (c) **Unit of quantity** means--
- (1) The U.S. gallon of 231 cubic inches;
  - (2) The barrel of 42 U.S. gallons;
  - (3) The long ton of 2240 pounds; and
  - (4) The pound of 16 ounces, depending upon the unit shown in the Schedule.
- (d) **Description of services to be performed** as stated in the CHANGES - FIXED-PRICE clause is defined to include, but is not limited to, the following:
- (1) The grade or type of product by specification;
  - (2) The regular working hours set forth in the Schedule;
  - (3) The method of receiving or shipping.
  - (4) The specifications of Contractor-furnished equipment,
  - (5) The provisions of the General Delivery Conditions as amended;
  - (6) The number of the Contractor-furnished units (equipment);
  - (7) The response time;
  - (8) The estimated truck movement;
- (e) **Equipment or delivery and servicing equipment** as used herein means those fuel and/or oil servicing units such as tank trucks, tank trailers, mobile hose carts, pantographs (fixed or mobile), small trailers and drums together with the necessary prime movers.
- (f) **Fuel and Oil** used herein means aircraft reciprocating engine fuel, aircraft turbine and jet engine fuel, aircraft reciprocating engine oil and jet engine oil.
- (g) **Response time** is defined as that interval of time between the time a call is placed to the Contractor to service an aircraft and the time the Contractor's equipment is in position to service said aircraft.
- (h) For purposes of this contract, the term **truck movement** as set forth above is defined to be any of the following:
- (1) The movement of a refueler or defueler to, and servicing of, an aircraft. In the event that more than one aircraft is serviced as a result of one service call, each individual aircraft servicing shall be considered a "truck movement."
  - (2) The movement of a refueler or defueler, as the result of a service call which is not completed, due to no fault of the Contractor.
  - (3) Each individual aircraft servicing by use of the high speed refueling facility (hot pits).

**I-0003 111.01-2 ADMINISTRATIVE COST OF TERMINATION FOR CAUSE – COMMERCIAL ITEMS (DLA ENERGY FEB 1996)**

- (a) In the event this contract is terminated for cause, in whole or in part, the Government will incur administrative costs.
- (b) The Contractor agrees to pay all administrative costs associated with a contract termination action. The minimum amount the Contractor shall pay for each termination action is \$500. This payment for administrative costs is in addition to any excess re-procurement costs and any other remedies or damages resulting from the termination.
- (c) The term **termination action**, as used herein, means the termination for cause, including any associated re-procurement effort, involving--
- (1) Any single order or any group of orders terminated together;
  - (2) Any item or group of items terminated together; or
  - (3) The entire contract.

**I-0004 1102.02 FAIR LABOR STANDARDS ACT AND SERVICE CONTRACT ACT -- PAYROLL TAX ADJUSTMENT (DLA ENERGY JAN 2012)**

- (a) The Contractor warrants that the prices set forth in this contract do not include any contingency allowance for increased costs for which adjustment is provided by this clause.
- (b) When payroll taxes that are applicable to this contract by law (i.e., Workmen's Compensation, Federal Unemployment Insurance (FUI), State Unemployment Insurance (SUI), and Federal Insurance Compensation (FICA) rates) are revised or imposed after award, increasing or decreasing the Contractor's costs under this contract, the contract price or contract unit price will be adjusted to reflect the changes. This adjustment shall be limited to increases or decreases in payroll taxes and shall not include any amount for general and administrative cost, overhead, or profit.
- (c) The Contractor shall notify the Contracting Officer of any increases or decreases claimed under this clause within 30 days after the effective date of the change in payroll taxes, unless this period is extended by the Contracting Officer in writing. In the case of any decrease in payroll taxes, if a Contractor fails to promptly notify the Contracting Officer, the Government retains the right to submit a claim within the period permitted by law. The notice shall contain a statement of the amount claimed and any other relevant data in support thereof that may reasonably be required by the Contracting Officer. Upon agreement of the parties, the contract price shall be modified in writing. Pending agreement on or determination of any such adjustment and its effective date, the Contractor shall continue performance.

(d) The Contracting Officer or his authorized representative shall, until the expiration of 3 years after final payment under the contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor.

#### **I-0005 1116 RESPONSIBILITY FOR GOVERNMENT-OWNED PETROLEUM PRODUCTS (DLA ENERGY JAN 2012)**

(a) Government-owned petroleum products received, stored, and transported under this contract are governed by the provisions of this clause.

(b) Title to any Government-owned petroleum products in the possession of or under the custody of the Contractor by reason of this contract, which is hereinafter referred to in this clause as "such property," shall at all times remain in the Government, and such property shall be used only for the purposes set forth in this contract. The Government shall at all times have access to the premises wherein any such property is located. When product is received on an f.o.b. destination basis, the Product Supplier or his representative may witness all quantity and quality functions during the receipt of the product into Government-owned Contractor-operated/Contractor-owned Contractor-operated tanks.

(c) The Contractor shall protect and preserve such property in a manner consistent with sound industrial practice.

(d) At the end of the contract period the Government may abandon any Government-owned petroleum products in place, at which time all obligations of the Government regarding such abandoned petroleum products shall cease. The contract price shall be reduced to reflect the fair market value of any abandoned petroleum products. If an agreement as to compensation for abandoned petroleum products cannot be reached in a timely manner, the Contracting Officer will make a formal determination. The decision will be subject to resolution in accordance with paragraph (d), Disputes, of the CONTRACT TERMS AND CONDITIONS - COMMERCIAL ITEMS clause.

(e) The Contractor shall not be liable for loss of or damage to such property while in the possession of or under the custody of the Contractor by reason of this contract, or for expenses incidental to such loss or damage, except that the Contractor shall be liable for any such loss or damage (including expenses incidental thereto) --

(1) Which results from negligence, or bad faith, or willful misconduct of the Contractor, its employees, or agents; or

(2) Which results from a risk that is in fact covered by insurance or for which the Contractor is otherwise reimbursed, but the Contractor in such case shall be responsible only to the extent of such insurance or reimbursement.

(f) Except for those risks assumed by the Contractor pursuant to subparagraph (e)(1) of this clause, the Contractor represents and warrants that the prices stated in the Schedule do not include the cost of insurance covering risk or loss of or damage to such property while in the possession of or under the custody of the Contractor by reason of this contract, nor any provision for a reserve to cover such risk. In the event the Contractor is reimbursed or compensated for any loss or damage to such property, it shall reimburse the Government. The Contractor shall do nothing to prejudice the Government's rights to recover against third parties for any such loss or damage and, upon the request of the Contracting Officer, shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

#### **I-0006 1116.01 LIABILITY FOR FUEL SPILLS (DLA ENERGY JAN 2012)**

The Contractor shall take all measures required by law and good business practice to prevent fuel spills (including, but not limited to, any spilling, leaking, pumping, pouring, emitting, emptying, or dumping into or onto any land or water). In the event that the Contractor's failure to take such measures results in a fuel spill, the Contractor shall be liable for the costs of spill containment, cleanup, and disposal. In addition, the Contractor shall reimburse the Government for any resulting fines or penalties. For purposes of this clause, the term fuel includes all petroleum and additive products.

#### **I-0007 1119.04 INVENTORY CONTROL RECORDS AND SYSTEMS OF RECORD (DLA ENERGY JAN 2012)**

(a) **INTRODUCTION.** The Contractor shall prepare all documentation and systemically process related transactions in accordance with the information and instructions provided herein, DoD 4140.25M, DoD Management of Bulk Petroleum Products, Natural Gas, and Coal, which is available at <http://www.DLAENERGY.dla.mil/DCM/DCMPage.asp?pagid=699>, DLA Energy Interim Implementation and Procedural Guidance, and applicable BSM-E guidance. Documents and procedures are subject to change on a recurring basis and notifications of changes or newly published documents are announced during the Logon process to the Fuels Enterprise Server (FES). Unless the Government has specifically stated it will provide the hardware (usually at Government-owned facilities), the Contractor shall provide requisite hardware (specifications will be provided by the Government) capable of processing all applicable inventory and accounting transactions on a daily basis (weekdays excluding weekend and holidays) through DLA Energy-provided applications or software. The current processing methodologies include both base level support application (BLSA) input and upload to the FES via a high speed web/internet-based application or direct input to FES using the FES-02/Fuels Manager Defense (FMD) processing tools. At a minimum, BSM-E applications require the Contractor to provide and have on-site high speed internet access with a static Internet Protocol (IP) address, electronic mail (e-mail) with individual user accounts, the current version of Adobe Acrobat, and Microsoft Office XP with DLA Energy-mandated service packs (). DLA Energy web-based applications use the DoD Public Key Infrastructure (PKI) compliant web browser which will be provided to the Contractor by DLA Energy. These identified DLA Energy systems require user identifications and passwords in accordance with DoD Automated Data Processing (ADP) Level III systems access. The Contractor shall be responsible for (in conjunction with DLA Energy/DLA) identifying employees that will be processing inventory/accounting transactions for obtaining requisite systems access for those employees. It should be noted that DoD ADP Level III systems access requires a National Agency Check (NAC) investigation. Those contractors which have not had a NAC will be provided forms and fingerprint cards for the investigation, which DLA will initiate. The Contractor shall **immediately** notify DLA Energy when Contractor personnel with access privileges no longer work at the contract facility or no longer require access. DLA Energy Systems Access Request Submission Process can be found at <http://www.DLAENERGY.dla.mil/DCM/DCMPage.asp?PageID=479> under DLA Energy-I-24, Requesting Access to DLA Energy Automated Information Systems (AIS) Applications.

(b) **AUTOMATED FUEL INVENTORY REPORTING REQUIREMENTS.**

(1) The Contractor shall prepare all necessary documentation (see paragraph (b)(5)) and systemically process each transaction affecting inventory of Government-owned products in its possession by virtue of this contract. Within one business day of each transaction/business event (excluding weekends and Government holidays), the Contractor shall input transaction data into the automated inventory and accounting system(s) or applications designated/provided by the Government. Initial training for inputting transactional data will be provided by the Government via on-site support or via electronic means, such as user manuals or on-line support/tutorials, after which the Contractor assumes all responsibility for timeliness and accuracy of transaction data input by its employees. The Contractor shall prepare and

report each transaction in accordance with guidance provided during the training and, thereafter, by qualified Government representatives. The Government will advise the Contractor of any changes in processing and reporting procedures. The Government reserves the right to contact the Contractor on a daily basis (weekdays excluding weekends and holidays) to obtain information concerning transactions processed. Locations that do not have direct connectivity to BSM-E shall forward all transactions to the applicable DLA Energy Regional Office for processing.

(2) The Contractor shall record in the automated inventory system the inventory (quantity corrected to 60 degrees Fahrenheit) of each Government-owned product stored at the facility. Daily inventories shall be recorded to reflect on-hand inventories as of 2400 hours local time, (discretionary system clock/calendar rollover to the next transaction date) and monthly inventories shall be recorded to reflect on-hand inventories as of 2400 hours local time on the last calendar day of each month (discretionary system clock/calendar rollover to the first transaction date of the next month). End-of-year (EOY) inventories shall be reported as of the last calendar day of the year. EOY transactions and inventories must be processed to FES by close of business September 30th. The Contractor shall have the account reconciled in accordance with DoD 4140.25M and/or DLA Energy-P-1, Posting of Daily and End-of-Month Transactions, available at <http://www.DLAENERGY.dla.mil/DCM/DCMPage.asp?PageID=479>

(3) End of Fiscal Year Closeout Process. The United States Government closes its financial ledgers at midnight on September 30th. In the event the EOY closeout falls on a Saturday or Sunday, the Contractor will be required to document and process all inventory related transactions per EOY closeout instructions that are provided via a pop-up during logon to the FES or that are made available for download from <http://www.DLAENERGY.dla.mil/DCM/DCMPage.asp?PageID=479>.

(4) The Contractor shall prepare inventory adjustment documents (DD Form 1348-8, DFSP Inventory Accounting Document and End of Month Report) in accordance with the guidance provided in DLA Energy-P-1, Posting of Daily and End-of-Month Transactions, and DLA Energy-1-4, FCC Processing of Fuel Transactions, Inventory Adjustments (Physical Inventory) and End-of-Month Determinable Gain/Loss Transactions. A detailed explanation shall be provided by the Contractor on each inventory adjustment document explaining each gain and/or loss in excess of DLA Energy provided tolerances. Each document shall be signed and dated by the Contractor’s representative and the authorized Government representative and copies provided to DLA Energy-N. The authorized Government representative shall indicate whether he/she concurs or nonconcurs with the statement and shall provide an explanation for any nonconcurrence. The term **authorized Government representative**, as used in this provision, refers to the quality representative assigned to the Defense Fuel Support Point (DFSP).

Inventory Operating Gain or Loss Tolerances

Post Group	Allowable Operating Tolerance Gain/Loss Percentage
Distillates (Diesel Fuels, Jet A1, JP5, JP8, JP8, JPTS, F76, Kerosene, other residuals, etc.)	.0025 or .25%
JP4	.003 or .3%
Aviation and Motor Gasoline (AVGAS (130), MOGAS (MUR, MUP, etc.)	.005 or .5%
Fuel System Icing Inhibitor (FSII)	.0025 or .25%
Lube Oils**	.0025 or .25%

\*\*NOTE: All Lube Oil transactions are to be reported at “gross” or ambient temperatures.

(5) **END OF MONTH/END OF YEAR RECONCILIATION.** EOM and EOY reconciliation procedures are detailed in DLA Energy Interim Guidance DLA Energy-P-1, Posting of Daily and End-of-Month Transactions. DLA Energy-P-1 and end of year close out instructions are located at <http://www.DLAENERGY.dla.mil/DCM/DCMPage.asp?PageID=479>.

(6) The following are documentation requirements for transactions (**NOTE: DD Forms are located at <http://www.dtic.mil/whs/directives/infomgt/forms/formsprogram.htm>**):

**TRANSACTION DOCUMENT**

Appointment/Delegation Letters      Formal Correspondence

**RECEIPTS**

Receipts from DLA Energy Procurement Contracts      DD Form 250/250-1

Receipts of Shipments from a DFSP      DD Form 250/250-1  
DD Form 1348-7

Receipts from an end-user (with or without credit)      DD Form 1898 or 1149

**SHIPMENTS**

Shipments from a DFSP to authorized customers      See Sales

Shipments between DFSPs      DD Form 250/250-1  
DD Form 1348-7

**INVENTORY**

Physical Inventory      DD Form 1348-8\* and/or  
DD Forms 2920, 2921, 2921C

\*DD Form 1348-8 is required for end-of-month inventory reporting or transfer of account actions only.

All Inventory Adjustments      DD Form 1348-8

Normal handling of variances (excessive)      DLA Energy Form 24 / DD Form 1348-8

Determinable losses such as spills, line breaks, nonrecoverable tank bottoms, major disasters, combat losses, etc.

Condition/Identity Change      DD Form 1348-8

Downgrade, regrade, or additive

**ISSUES/SALES OR RETURNS/CREDITS**

Issues of product from a DFSP to an end user customer      DD Form 1898 or 1149



Delegation letters Retain current letter on file at DFSP	
Receipts from a DLA Energy Procurement Contract	Six years, three months after the accounting month
Sales/Issues and Returns (with credit)	Six years, three months after the accounting month
Government or Commercial Bills of Lading	Six years, three months after the accounting month
Report(s) of Survey (ROS) and all supporting Documentation	Six years, three months after completion of ROS
Returns without credit	Six years, three months after the accounting month
Shipments between DFSPs (Shipment documentation, e.g., DD Forms 1348-7, 250-1, etc.)	Current fiscal year (FY) plus two additional FYs
Physical inventory data/documentation	Current FY plus two additional FYs
All inventory adjustment documentation	Current FY plus two additional FYs
Product condition or identify changes, and supporting laboratory analysis	Current FY plus two additional FYs
Contract modifications or change orders	Retained locally, three years after the expiration of the current contract

#### **I-0008 1121 CUSTODY OF PETROLEUM PRODUCT (DLA ENERGY APR 1968)**

(a) Custody of petroleum products and risk of loss thereof shall pass to the Contractor as follows:

- (1) **PIPELINE RECEIPTS.** When the product passes the flange connecting the carrier's pipeline and the Government-furnished Contractor-operated pipeline.
- (2) **MARINE RECEIPTS.** When the product passes the permanent hose connections of the barge or tanker unloading the product.
- (3) **TANK CAR RECEIPTS.** When the tank car comes to rest on the Government-furnished Contractor-operated siding.
- (4) **TRANSPORT TRUCK RECEIPTS.** When the product passes from the transport truck discharge hoses into the Government-furnished Contractor-operated receiving facilities whether it be a storage tank, line, or any other type of receiving equipment.

(b) Custody of petroleum products and risk of loss thereof shall pass from the Contractor as follows:

- (1) **PIPELINE SHIPMENTS.** When the product passes the flange connecting the Government-furnished Contractor-operated pipeline and the carrier's pipeline.
- (2) **MARINE SHIPMENTS.** When the product passes the permanent hose connections of the barge or tanker.
- (3) **TANK CAR SHIPMENTS.** When the loaded tank car is picked up by the carrier.
- (4) **TRANSPORT TRUCK SHIPMENTS.** When the loaded transport truck is released for shipment by the Contractor.

#### **I-0009 1122 USE OF FACILITIES (DLA ENERGY APR 2009)**

(a) The Contractor shall not use the facilities (defined in FAR Part 45 GOVERNMENT PROPERTY) for any purpose other than that required for the performance of this contract.

(b) The Contractor shall not be required to pay rental for the use of the facilities for the performance of this contract. The Contractor shall not include any amount on account of rental of the facilities as an element of price or cost under this contract. The Contractor further agrees and represents that in no event will it include any amount or allowance for amortization, depreciation, or obsolescence of the facilities as an element of cost or price under any contract with the Government or any subcontract thereunder.

(c) The Government shall not be liable to the Contractor for damage or loss of profit by reason of non-delivery or of any delay in the delivery of any of the facilities. In any such case, the Contracting Officer shall equitably adjust the performance dates or contract price, or both, and any other contract provisions affected by the non-delivery or delay in accordance with the procedures provided for in the CHANGES clause of this contract.

#### **I-0010 1123 TITLE TO FACILITIES (DLA ENERGY JUL 1991)**

(a) Title to the facilities, including any additions or replacements thereto, furnished by the Government shall at all times remain with the Government.

(b) Title to all repairs, replacement parts, or accessories furnished and affixed to the facilities by the Contractor in performing maintenance hereunder shall vest in the Government.

#### **I-0011 1130 RISK OF LOSS OR DAMAGE TO GOVERNMENT-OWNED AND/OR CHARTERED AIRCRAFT (DLA ENERGY APR 1968)**

(a) The Contractor shall not be liable for loss of or damage to Government-owned and/or chartered aircraft arising out of or in any way connected with the Contractor's performance under this contract, or for expenses incidental to such loss or damage, except that the Contractor

shall be liable for any such loss or damage including expenses incidental thereto--

(1) That results from willful misconduct or lack of good faith on the part of any of the Contractor's directors or officers, or on the part of any of its managers, superintendents, or other equivalent representatives, who have supervision or directions of (i) all or substantially all of the Contractor's business, or (ii) all or substantially all of the Contractor's operations pertaining to performance hereunder; or

(2) That results from a risk which is in fact covered by insurance or for which the Contractor is otherwise reimbursed, and the Contractor in such case shall be responsible only to the extent of such insurance or reimbursement.

(b) In the event the Contractor is indemnified, reimbursed, or otherwise compensated for any loss or destruction of or damage to such Government-owned and/or chartered aircraft, it shall reimburse the Government in the amount thereof. The Contractor shall do nothing to prejudice the Government's right to recover against third parties for any such loss, destruction, or damage and, upon the request of the Contracting Officer, shall, at the Government's expense, furnish to the Government all reasonable assistance and cooperation (including the prosecution of suit and the execution of instruments of assignment in favor of the Government) in obtaining recovery.

#### **I-0012 I147 DEMURRAGE (DLA ENERGY NOV 1989)**

Subject to paragraph (c) of the DEFAULT clause, the Contractor shall pay to the vessel operator or carrier, or reimburse the Government for, any demurrage incurred by reason of the Contractor's failure to comply with the provisions of this contract.

#### **I-0013 I180.02 ENVIRONMENTAL PROTECTION (STORAGE) (DLA ENERGY JAN 2012)**

The Contractor agrees to conform to all laws and regulations relating to the protection of the environment in effect on the date the contract is awarded, which are applicable to its operation in the performance of this contract. The Contractor further agrees to conform to any laws or regulations enacted after contract award that are applicable to its operation in the performance of this contract. In the event that conformance with any such new laws or regulations causes an increase or decrease in the operating cost, the Contractor and the Government will negotiate an equitable adjustment in the contract price. Failure to agree on an equitable adjustment in the contract price shall be a dispute concerning a question of fact within the meaning of the DISPUTES clause of this contract; however, nothing in this clause shall excuse the Contractor from implementing any such laws or regulations. The Contractor shall proceed with performance of this contract, unless so advised in writing by the Contracting Officer.

#### **I-0014 I291 CONTRACTOR PUBLIC KEY INFRASTRUCTURE (PKI) IMPLEMENTATION (SEP 2009)**

(a) Public Key Infrastructure (PKI) certification is required when work performed under this contract/task order requires access to DLA/DLA Energy or United States Government information systems.

(b) The preferred option for (PKI) certification is through a Common Access Card (CAC) as mandated by Homeland Security Presidential Directive 12. CACs are normally issued and obtained at a Real-Time Automated Personnel Identification System (RAPIDS) site. A directory of RAPIDS sites is available at <http://www.dmdc.osd.mil/rsi/owa/home>. Guidance for obtaining a CAC is identified in FAR 52.204-9.

(c) In cases where contract performance is not on a U.S. Government installation and is not within reasonable access of a RAPIDS site, the contractor shall obtain Department of Defense (DOD) PKI certificates through the External Certificate Authority (ECA) Program from one of three approved vendors. These ECA vendors are found on the DOD PKI Customer Support Web Page located at this hyperlink: <http://iase.disa.mil/pki/eca/index.html>.

(d) DLA Energy Business System Modernization – Energy (BSM-E) applications require IT III level access in accordance with DOD Instruction 8500.2, Paragraph E2.1.36.

(1) A National Agency Check with written Inquiry (NACI) or equivalent investigation shall be obtained for personnel using BSM-E applications. Personnel accessing BSM-E applications by means of ECAs will follow those portions of FAR 52.204-9 necessary to obtain the required background investigation.

(2) BSM-E application instruction is provided in DLA Energy Interim Guidance 24, Requesting Access to DLA Energy Automated Information System (AIS) Applications. This guidance is located at [https://www.desc.dla.mil/DCM/Files/desc-I-24\\_1.pdf](https://www.desc.dla.mil/DCM/Files/desc-I-24_1.pdf).

(e) The contract price includes all costs associated with obtaining CACs or ECAs.

(f) The Contractor will provide the Contracting Officer or designated Contracting Officer's Representative (COR) the roster of employees requiring PKI certificates. The Contracting Officer/ COR will work in association with agency Trusted Agents to verify Contractor employees in accordance with CAC and ECA procedures.

### **SECTION J – LIST OF ATTACHMENTS**

**PERFORMANCE WORK STATEMENT (PWS)  
OFFEROR SUBMISSION PACKAGE (OSP)  
COLLECTIVE BARGAINING AGREEMENT  
PAST PERFORMANCE QUESTIONNAIRE  
JOINT VENTURE AGREEMENT**

**ATTACHMENT I  
ATTACHMENT II  
ATTACHMENT III  
ATTACHMENT IV  
ATTACHMENT V**

## SECTION K - REPRESENTATIONS, CERTIFICATIONS AND STATEMENTS

### 52.203-2 CERTIFICATE OF INDEPENDENT PRICE DETERMINATION (APR 1985)

(a) The offeror certifies that—

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to—

(i) Those prices;

(ii) The intention to submit an offer; or (iii) The methods or factors used to calculate the prices offered.

(2) The prices in this offer have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition.

(b) Each signature on the offer is considered to be a certification by the signatory that the signatory—

(1) Is the person in the offeror's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this provision; or

(2)(i) Has been authorized, in writing, to act as agent for the following principals in certifying that those principals have not participated, and will not participate in any action contrary to paragraphs (a)(1) through (a)(3) of this provision \_\_\_\_\_ **[insert full name of person(s) in the offeror's organization responsible for determining the prices offered in this bid or proposal, and the title of his or her position in the offeror's organization]**; (ii) As an authorized agent, does certify that the principal s named in subdivision (b)(2)(i) of this provision have not participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision; and (iii) As an agent, has not personally participated, and will not participate, in any action contrary to paragraphs (a)(1) through (a)(3) of this provision. (c) If the offeror deletes or modifies paragraph (a)(2) of this provision, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

(c) If the offeror deletes or modifies paragraph (a)(2) of this provision, the offeror must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

### 52.209-5 CERTIFICATION REGARDING RESPONSIBILITY MATTERS (APR 2010)

(a)

(1) The Offeror certifies, to the best of its knowledge and belief, that –

(i) The Offeror and/or any of its Principals –

(A) Are  are not  presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(B) Have  have not , within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) contract or subcontract; violation of Federal or State antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property (if offeror checks "have", the offeror shall also see 52.209-7, if included in this solicitation); and

(C) Are  are not  presently indicted for, or otherwise criminally or civilly charged by a governmental entity with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this provision; and

(D) Have , have not , within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.

(1) Federal taxes are considered delinquent if both of the following criteria apply:

(i) *The tax liability is finally determined.* The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(ii) *The taxpayer is delinquent in making payment.* A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(2) Examples.

(i) The taxpayer has received a statutory notice of deficiency, under I.R.C. §6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(ii) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. §6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(iii) The taxpayer has entered into an installment agreement pursuant to I.R.C. §6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(iv) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. 362 (the Bankruptcy Code).

(ii) The Offeror has  has not , within a three-year period preceding this offer, had one or more contracts terminated for default by any Federal agency.

(2) "Principal," for the purposes of this certification, means an officer; director; owner; partner; or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions).

This Certification Concerns a Matter Within the Jurisdiction of an Agency of the United States and the Making of a False, Fictitious, or Fraudulent Certification May Render the Maker Subject to Prosecution Under Section 1001, Title 18, United States Code.

(b) The Offeror shall provide immediate written notice to the Contracting Officer if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

(c) A certification that any of the items in paragraph (a) of this provision exists will not necessarily result in withholding of an award under this solicitation. However, the certification will be considered in connection with a determination of the Offeror's responsibility. Failure of the Offeror to furnish a certification or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

(d) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

(e) The certification in paragraph (a) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation for default.

## 52.209-7 INFORMATION REGARDING RESPONSIBILITY MATTERS (JUL 2013)

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

"Administrative proceeding" means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative Proceedings, Civilian Board of Contract Appeals Proceedings, and Armed Services Board of Contract Appeals Proceedings). This includes administrative proceeding at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include agency actions such as contract audits, site visits, corrective plans, or inspection of deliverables.

"Federal contracts and grants with total value greater than \$10,000,000" means—

- (1) The total value of all current, active contracts and grants, including all priced options; and
- (2) The total value of all current, active orders including all priced options under indefinite-delivery, indefinite-quantity, 8(a), or requirements contracts (including task and delivery and multiple-award Schedules).

"Principal" means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (e.g., general manager; plant manager; head of a division or business segment; and similar positions).

(b) The offeror  has  does not have current active Federal contracts and grants with total value greater than \$10,000,000.

(c) If the offeror checked "has" in paragraph (b) of this provision, the offeror represents, by submission of this offer, that the information it has entered in the Federal Awardee Performance and Integrity Information System (FAPIIS) is current, accurate, and complete as of the date of submission of this offer with regard to the following information:

(1) Whether the offeror, and/or any of its principals, has or has not, within the last five years, in connection with the award to or performance by the offeror of a Federal contract or grant, been the subject of a proceeding, at the Federal or State level that resulted in any of the following dispositions:

(i) In a criminal proceeding, a conviction.

(ii) In a civil proceeding, a finding of fault and liability that results in the payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more.

(iii) In an administrative proceeding, a finding of fault and liability that results in—

(A) The payment of a monetary fine or penalty of \$5,000 or more; or

(B) The payment of a reimbursement, restitution, or damages in excess of \$100,000.

(iv) In a criminal, civil, or administrative proceeding, a disposition of the matter by consent or compromise with an acknowledgment of fault by the

Contractor if the proceeding could have led to any of the outcomes specified in paragraphs (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this provision.

(2) If the offeror has been involved in the last five years in any of the occurrences listed in (c)(1) of this provision, whether the offeror has provided the requested information with regard to each occurrence.

(d) The offeror shall post the information in paragraphs (c)(1)(i) through (c)(1)(iv) of this provision in FAPIIS as required through maintaining an active registration in the System for Award Management database via <https://www.acquisition.gov> (see 52.204-7).

### **Offeror Representations and Certifications -- Commercial Items (Jan 2017)**

The offeror shall complete only paragraphs (b) of this provision if the Offeror has completed the annual representations and certification electronically via the System for Award Management (SAM) Web site located at <http://www.sam.gov/portal>. If the Offeror has not completed the annual representations and certifications electronically, the Offeror shall complete only paragraphs (c) through (u) of this provision.

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

“Administrative merits determination” means certain notices or findings of labor law violations issued by an enforcement agency following an investigation. An administrative merits determination may be final or be subject to appeal or further review. To determine whether a particular notice or finding is covered by this definition, it is necessary to consult section II.B. in the DOL Guidance.

“Arbitral award or decision” means an arbitrator or arbitral panel determination that a labor law violation occurred, or that enjoined or restrained a violation of labor law. It includes an award or decision that is not final or is subject to being confirmed, modified, or vacated by a court, and includes an award or decision resulting from private or confidential proceedings. To determine whether a particular award or decision is covered by this definition, it is necessary to consult section II.B. in the DOL Guidance.

“Civil judgment” means--

(1) In paragraph (h) of this provision: A judgment or finding of a civil offense by any court of competent jurisdiction.

(2) In paragraph (s) of this provision: Any judgment or order entered by any Federal or State court in which the court determined that a labor law violation occurred, or enjoined or restrained a violation of labor law. It includes a judgment or order that is not final or is subject to appeal. To determine whether a particular judgment or order is covered by this definition, it is necessary to consult section II.B. in the DOL Guidance.

“DOL Guidance” means the Department of Labor (DOL) Guidance entitled: “Guidance for Executive Order 13673, ‘Fair Pay and Safe Workplaces’ “. The DOL Guidance, dated August 25, 2016, can be obtained from [www.dol.gov/fairpayandsafeworkplaces](http://www.dol.gov/fairpayandsafeworkplaces).

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

“Enforcement agency” means any agency granted authority to enforce the Federal labor laws. It includes the enforcement components of DOL (Wage and Hour Division, Office of Federal Contract Compliance Programs, and Occupational Safety and Health Administration), the Equal Employment Opportunity Commission, the Occupational Safety and Health Review Commission, and the National Labor Relations Board. It also means a State agency designated to administer an OSHA-approved State Plan, but only to the extent that the State agency is acting in its capacity as administrator of such plan. It does not include other Federal agencies which, in their capacity as contracting agencies, conduct investigations of potential labor law violations. The enforcement agencies associated with each labor law under E.O. 13673 are--

(1) Department of Labor Wage and Hour Division (WHD) for--

(i) The Fair Labor Standards Act;

(ii) The Migrant and Seasonal Agricultural Worker Protection Act;

(iii) 40 U.S.C. chapter 31, subchapter IV, formerly known as the Davis-Bacon Act;

(v) 41 U.S.C. chapter 67, formerly known as the Service Contract Act;

(vi) The Family and Medical Leave Act; and

(vii) E.O. 13658 of February 12, 2014 (Establishing a Minimum Wage for Contractors);

(2) Department of Labor Occupational Safety and Health Administration (OSHA) for--

(i) The Occupational Safety and Health Act of 1970; and

(ii) OSHA-approved State Plans;

(4) Department of Labor Office of Federal Contract Compliance Programs (OFCCP) for--

(i) Section 503 of the Rehabilitation Act of 1973;

(ii) The Vietnam Era Veterans' Readjustment Assistance Act of 1972 and the Vietnam Era Veterans' Readjustment Assistance Act of 1974; and

(iii) E.O. 11246 of September 24, 1965 (Equal Employment Opportunity);

(5) National Labor Relations Board (NLRB) for the National Labor Relations Act; and

(6) Equal Employment Opportunity Commission (EEOC) for--

(i) Title VII of the Civil Rights Act of 1964;

(ii) The Americans with Disabilities Act of 1990;

(iii) The Age Discrimination in Employment Act of 1967; and

(iv) Section 6(d) of the Fair Labor Standards Act (Equal Pay Act).

“Forced or indentured child labor” means all work or service—

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

“Highest-level owner” means the entity that owns or controls an immediate owner of the offeror, or that owns or controls one or more entities that control an immediate owner of the offeror. No entity owns or exercises control of the highest level owner.

“Immediate owner” means an entity, other than the offeror, that has direct control of the offeror. Indicators of control include, but are not limited to, one or more of the following: Ownership or interlocking management, identity of interests among family members, shared facilities and equipment, and the common use of employees.

“Inverted domestic corporation,” means a foreign incorporated entity that meets the definition of an inverted domestic corporation under 6 U.S.C. 395(b), applied in accordance with the rules and definitions of 6 U.S.C. 395(c).

“Labor compliance agreement” means an agreement entered into between a contractor or subcontractor and an enforcement agency to address appropriate remedial measures, compliance assistance, steps to resolve issues to increase compliance with the labor laws, or other related matters.

“Labor laws” means the following labor laws and E.O.s:

- (1) The Fair Labor Standards Act.
- (2) The Occupational Safety and Health Act (OSHA) of 1970.
- (3) The Migrant and Seasonal Agricultural Worker Protection Act.
- (4) The National Labor Relations Act.
- (5) 40 U.S.C. chapter 31, subchapter IV, formerly known as the Davis-Bacon Act.
- (6) 41 U.S.C. chapter 67, formerly known as the Service Contract Act.
- (7) E.O. 11246 of September 24, 1965 (Equal Employment Opportunity).
- (8) Section 503 of the Rehabilitation Act of 1973.
- (9) The Vietnam Era Veterans' Readjustment Assistance Act of 1972 and the Vietnam Era Veterans' Readjustment Assistance Act of 1974.
- (10) The Family and Medical Leave Act.
- (11) Title VII of the Civil Rights Act of 1964.
- (12) The Americans with Disabilities Act of 1990.
- (13) The Age Discrimination in Employment Act of 1967.
- (14) E.O. 13658 of February 12, 2014 (Establishing a Minimum Wage for Contractors).
- (15) Equivalent State laws as defined in the DOL Guidance. (The only equivalent State laws implemented in the FAR are OSHA-approved State Plans, which can be found at [www.osha.gov/dcsp/osp/approved\\_state\\_plans.html](http://www.osha.gov/dcsp/osp/approved_state_plans.html)).

“Labor law decision” means an administrative merits determination, arbitral award or decision, or civil judgment, which resulted from a violation of one or more of the laws listed in the definition of “labor laws”.

“Manufactured end product” means any end product in product and service codes (PSCs) 1000-9999, except—

- (1) PSC 5510, Lumber and Related Basic Wood Materials;
- (2) Product or Service Group (PSG) 87, Agricultural Supplies;
- (3) PSG 88, Live Animals;
- (4) PSG 89, Subsistence;
- (5) PSC 9410, Crude Grades of Plant Materials;
- (6) PSC 9430, Miscellaneous Crude Animal Products, Inedible;

(7) PSC 9440, Miscellaneous Crude Agricultural and Forestry Products;

(8) PSC 9610, Ores;

(9) PSC 9620, Minerals, Natural and Synthetic; and

(10) PSC 9630, Additive Metal Materials.

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

“Predecessor” means an entity that is replaced by a successor and includes any predecessors of the predecessor.

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

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

Sensitive technology—

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

“Service-disabled veteran-owned small business concern”—

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

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

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

“Small disadvantaged business concern, consistent with 13 CFR 124.1002,” means a small business concern under the size standard applicable to the acquisition, that--

(1) Is at least 51 percent unconditionally and directly owned (as defined at 13 CFR 124.105) by--

(i) One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States; and

(ii) Each individual claiming economic disadvantage has a net worth not exceeding \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(2) The management and daily business operations of which are controlled (as defined at 13.CFR 124.106) by individuals, who meet the criteria in paragraphs (1)(i) and (ii) of this definition.

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

(1) Directly by a parent corporation; or

(2) Through another subsidiary of a parent corporation.

“Successor” means an entity that has replaced a predecessor by acquiring the assets and carrying out the affairs of the predecessor under a new name (often through acquisition or merger). The term “successor” does not include new offices/divisions of the same company or a company that only changes its name. The extent of the responsibility of the successor for the liabilities of the predecessor may vary, depending on State law and specific circumstances.

“Veteran-owned small business concern” means a small business concern—

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

(2) The management and daily business operations of which are controlled by one or more veterans.

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

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

(1) That is at least 51 percent owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

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

**Note to paragraph (a):** By a court order issued on October 24, 2016, the following definitions in this paragraph (a) are enjoined indefinitely as of the date of the order: “Administrative merits determination”, “Arbitral award or decision”, paragraph (2) of “Civil judgment”, “DOL Guidance”, “Enforcement agency”, “Labor compliance agreement”, “Labor laws”, and “Labor law decision”. The enjoined definitions will become effective immediately if the court terminates the injunction. At that time, DoD, GSA, and NASA will publish a document in the Federal Register advising the public of the termination of the injunction.

(b)

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

(2) The offeror has completed the annual representations and certifications electronically via the SAM website accessed through <https://www.acquisition.gov>. After reviewing the SAM database information, the offeror verifies by submission of this offer that the representation and certifications currently posted electronically at FAR 52.212-3, Offeror Representations and Certifications—Commercial Items, have been entered or updated in the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR 4.1201), except for paragraphs \_\_\_\_\_. [Offeror to identify the applicable paragraphs at (c) through (u) of this provision that the offeror has completed for the purposes of this solicitation only, if any. These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer. Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted electronically on SAM.]

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

(1) *Small business concern.* The offeror represents as part of its offer that it  is,  is not a small business concern.

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

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

(4) *Small disadvantaged business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it  is,  is not, a small disadvantaged business concern as defined in 13 CFR 124.1002.

(5) *Women-owned small business concern.* [Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.] The offeror represents that it  is,  is not a women-owned small business concern.

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

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

(i) It  is,  is not a WOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It  is,  is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (c)(6)(i) of this provision is accurate for each WOSB concern eligible under the WOSB Program participating in the joint venture. [The offeror shall enter the name or names of the WOSB concern eligible under the WOSB Program and other small businesses that are participating in the joint venture: \_\_\_\_\_.] Each WOSB concern eligible under the WOSB Program participating in the joint venture shall submit a separate signed copy of the WOSB representation.

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

(i) It  is,  is not an EDWOSB concern, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and

(ii) It  is,  is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (c)(7)(i) of this provision is accurate for each EDWOSB concern participating in the joint venture. [The offeror shall enter the name or names of the EDWOSB concern and other small businesses that are participating in the joint venture: \_\_\_\_\_.] Each EDWOSB concern participating in the joint venture shall submit a separate signed copy of the EDWOSB representation.

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

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

\_\_\_\_\_

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

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

(ii) It  is,  is not a HUBZone joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (c)(10)(i) of this provision is accurate for each HUBZone small business concern participating in the HUBZone joint venture. [The offeror shall enter the names of each of the HUBZone small business concerns participating in the HUBZone joint venture: \_\_\_\_\_.] Each HUBZone small business concern participating in the HUBZone joint venture shall submit a separate signed copy of the HUBZone representation.

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

(1) Previous contracts and compliance. The offeror represents that --

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

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

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

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

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

(e) *Certification Regarding Payments to Influence Federal Transactions* (31 U.S.C. 1352). (Applies only if the contract is expected to exceed \$150,000.) By submission of its offer, the offeror certifies to the best of its knowledge and belief that no Federal appropriated funds have been

paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress on his or her behalf in connection with the award of any resultant contract. If any registrants under the Lobbying Disclosure Act of 1995 have made a lobbying contact on behalf of the offeror with respect to this contract, the offeror shall complete and submit, with its offer, OMB Standard Form LLL, Disclosure of Lobbying Activities, to provide the name of the registrants. The offeror need not report regularly employed officers or employees of the offeror to whom payments of reasonable compensation were made.

(f) *Buy American Certificate.* (Applies only if the clause at Federal Acquisition Regulation (FAR) 52.225-1, Buy American – Supplies, is included in this solicitation.)

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

(2) Foreign End Products:

LINE ITEM NO.	COUNTRY OF ORIGIN

[List as necessary]

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

(g)

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

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

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

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

LINE ITEM NO.	COUNTRY OF ORIGIN

--	--

[List as necessary]

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

Other Foreign End Products:

LINE ITEM NO.	COUNTRY OF ORIGIN

[List as necessary]

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

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

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

Canadian End Products:

Line Item No.:

\_\_\_\_\_

[List as necessary]

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

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

Canadian or Israeli End Products:

Line Item No.:	Country of Origin:

[List as necessary]

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

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

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

Line Item No.:	Country of Origin:

[List as necessary]

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

(i) The offeror certifies that each end product, except those listed in paragraph (g)(5)(ii) of this provision, is a U.S.-made or designated country end product as defined in the clause of this solicitation entitled “Trade Agreements.”

(ii) The offeror shall list as other end products those end products that are not U.S.-made or designated country end products.

Other End Products

Line Item No.:	Country of Origin:

[List as necessary]

(iii) The Government will evaluate offers in accordance with the policies and procedures of FAR Part 25. For line items covered by the WTO GPA, the Government will evaluate offers of U.S.-made or designated country end products without regard to the restrictions of the Buy American statute. The Government will consider for award only offers of U.S.-made or designated country end products unless the Contracting Officer determines that there are no offers for such products or that the offers for such products are insufficient to fulfill the requirements of the solicitation.

(h) *Certification Regarding Responsibility Matters (Executive Order 12689).* (Applies only if the contract value is expected to exceed the simplified acquisition threshold.) The offeror certifies, to the best of its knowledge and belief, that the offeror and/or any of its principals--

(1)  Are,  are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal agency;

(2)  Have,  have not, within a three-year period preceding this offer, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a Federal, state or local government contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating Federal criminal tax laws, or receiving stolen property; and

(3)  Are,  are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses enumerated in paragraph (h)(2) of this clause; and

(4)  Have,  have not, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,500 for which the liability remains unsatisfied.

(i) Taxes are considered delinquent if both of the following criteria apply:

(A) *The tax liability is finally determined.* The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(B) *The taxpayer is delinquent in making payment.* A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(ii) Examples.

(A) The taxpayer has received a statutory notice of deficiency, under I.R.C. §6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(B) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. §6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals Contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(C) The taxpayer has entered into an installment agreement pursuant to I.R.C. §6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(D) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. §362 (the Bankruptcy Code).

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

(1) Listed End Product

Listed End Product:	Listed Countries of Origin:

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

(i) The offeror will not supply any end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.

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

(j) *Place of manufacture.* (Does not apply unless the solicitation is predominantly for the acquisition of manufactured end products.) For statistical purposes only, the offeror shall indicate whether the place of manufacture of the end products it expects to provide in response to this solicitation is predominantly—

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

(2)  Outside the United States.

(k) Certificates regarding exemptions from the application of the Service Contract Labor Standards. (Certification by the offeror as to its compliance with respect to the contract also constitutes its certification as to compliance by its subcontractor if it subcontracts out the exempt services.) [The contracting officer is to check a box to indicate if paragraph (k)(1) or (k)(2) applies.]

(1)  Maintenance, calibration, or repair of certain equipment as described in FAR 22.1003-4(c)(1). The offeror  does  does not certify that—

(i) The items of equipment to be serviced under this contract are used regularly for other than Governmental purposes and are sold or traded by the offeror (or subcontractor in the case of an exempt subcontract) in substantial quantities to the general public in the course of normal business operations;

(ii) The services will be furnished at prices which are, or are based on, established catalog or market prices (see FAR 22.1003-4(c)(2)(ii)) for the maintenance, calibration, or repair of such equipment; and

(iii) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract will be the same as that used for these employees and equivalent employees servicing the same equipment of commercial customers.

(2)  Certain services as described in FAR 22.1003-4(d)(1). The offeror  does  does not certify that—

(i) The services under the contract are offered and sold regularly to non-Governmental customers, and are provided by the offeror (or subcontractor in the case of an exempt subcontract) to the general public in substantial quantities in the course of normal business operations;

(ii) The contract services will be furnished at prices that are, or are based on, established catalog or market prices (see FAR 22.1003-4(d)(2)(iii));

(iii) Each service employee who will perform the services under the contract will spend only a small portion of his or her time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the Government contract; and

(iv) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract is the same as that used for these employees and equivalent employees servicing commercial customers.

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

(i) If the offeror does not certify to the conditions in paragraph (k)(1) or (k)(2) and the Contracting Officer did not attach a Service Contract Labor Standards wage determination to the solicitation, the offeror shall notify the Contracting Officer as soon as possible; and

(ii) The Contracting Officer may not make an award to the offeror if the offeror fails to execute the certification in paragraph (k)(1) or (k)(2) of this clause or to contact the Contracting Officer as required in paragraph (k)(3)(i) of this clause.

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

(1) All offerors must submit the information required in paragraphs (l)(3) through (l)(5) of this provision to comply with debt collection requirements of 31 U.S.C. 7701(c) and 3325(d), reporting requirements of 26 U.S.C. 6041, 6041A, and 6050M, and implementing regulations issued by the Internal Revenue Service (IRS).

(2) The TIN may be used by the government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government (31 U.S.C. 7701(c)(3)). If the resulting contract is subject to the payment reporting requirements described in FAR 4.904, the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

(3) Taxpayer Identification Number (TIN).

TIN: \_\_\_\_\_.

TIN has been applied for.

TIN is not required because:

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

Offeror is an agency or instrumentality of a foreign government;

Offeror is an agency or instrumentality of the Federal Government;

(4) Type of organization.

Sole proprietorship;

Partnership;

Corporate entity (not tax-exempt);

Corporate entity (tax-exempt);

Government entity (Federal, State, or local);

Foreign government;

International organization per 26 CFR 1.6049-4;

Other \_\_\_\_\_.

(5) Common parent.

Offeror is not owned or controlled by a common parent:

Name and TIN of common parent:

Name \_\_\_\_\_

TIN \_\_\_\_\_

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

(n) Prohibition on Contracting with Inverted Domestic Corporations—

(1) Government agencies are not permitted to use appropriated (or otherwise made available) funds for contracts with either an inverted domestic corporation, or a subsidiary of an inverted domestic corporation, unless the exception at 9.108-2(b) applies or the requirement is waived in accordance with the procedures at 9.108-4.

(2) *Representation.* The offeror represents that—

(i) It [ ] is, [ ] is not an inverted domestic corporation; and

(ii) It [ ] is, [ ] is not a subsidiary of an inverted domestic corporation.

(o) Prohibition on contracting with entities engaging in certain activities or transactions relating to Iran.

(1) The offeror shall email questions concerning sensitive technology to the Department of State at [CISADA106@state.gov](mailto:CISADA106@state.gov).

(2) Representation and Certification. Unless a waiver is granted or an exception applies as provided in paragraph (o)(3) of this provision, by submission of its offer, the offeror—

(i) Represents, to the best of its knowledge and belief, that the offeror does not export any sensitive technology to the government of Iran or any entities or individuals owned or controlled by, or acting on behalf or at the direction of, the government of Iran;

(ii) Certifies that the offeror, or any person owned or controlled by the offeror, does not engage in any activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act; and

(iii) Certifies that the offeror, and any person owned or controlled by the offeror, does not knowingly engage in any transaction that exceeds \$3,500 with Iran's Revolutionary Guard Corps or any of its officials, agents, or affiliates, the property and interests in property of which are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (see OFAC's Specially Designated Nationals and Blocked Persons List at <http://www.treasury.gov/ofac/downloads/t11sdn.pdf>).

(3) The representation and certification requirements of paragraph (o)(2) of this provision do not apply if—

(i) This solicitation includes a trade agreements certification (e.g., 52.212-3(g) or a comparable agency provision); and

(ii) The offeror has certified that all the offered products to be supplied are designated country end products.

(p) *Ownership or Control of Offeror.* (Applies in all solicitations when there is a requirement to be registered in SAM or a requirement to have a unique entity identifier in the solicitation.

(1) The Offeror represents that it [ ] has or [ ] does not have an immediate owner. If the Offeror has more than one immediate owner (such as a joint venture), then the Offeror shall respond to paragraph (2) and if applicable, paragraph (3) of this provision for each participant in the joint venture.

(2) If the Offeror indicates "has" in paragraph (p)(1) of this provision, enter the following information:

Immediate owner CAGE code: \_\_\_\_\_

Immediate owner legal name: \_\_\_\_\_

(Do not use a "doing business as" name)

Is the immediate owner owned or controlled by another entity:

Yes or  No.

(3) If the Offeror indicates "yes" in paragraph (p)(2) of this provision, indicating that the immediate owner is owned or controlled by another entity, then enter the following information:

Highest level owner CAGE code: \_\_\_\_\_

Highest level owner legal name: \_\_\_\_\_

(Do not use a "doing business as" name)

*(q) Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law.*

(1) As required by section 744 and 745 of Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235), and similar provisions, if contained in subsequent appropriations acts, the Government will not enter into a contract with any corporation that—

(i) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless and agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government; or

(ii) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless an agency has considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interests of the Government.

(2) The Offeror represents that--

(i) It is  is not  a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

(ii) It is  is not  a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.

*(r) Predecessor of Offeror. (Applies in all solicitations that include the provision at 52.204-16, Commercial and Government Entity Code Reporting.)*

(1) The Offeror represents that it  is or  is not a successor to a predecessor that held a Federal contract or grant within the last three years.

(2) If the Offeror has indicated "is" in paragraph (r)(1) of this provision, enter the following information for all predecessors that held a Federal contract or grant within the last three years (if more than one predecessor, list in reverse chronological order):

Predecessor CAGE code \_\_\_\_\_ (or mark "Unknown").

Predecessor legal name: \_\_\_\_\_.

(Do not use a "doing business as" name).

(s) Representation regarding compliance with labor laws (Executive Order 13673). If the offeror is a joint venture that is not itself a separate legal entity, each concern participating in the joint venture shall separately comply with the requirements of this provision.

(1)(i) For solicitations issued on or after October 25, 2016 through April 24, 2017: The Offeror  does  does not anticipate submitting an offer with an estimated contract value of greater than \$50 million.

(ii) For solicitations issued after April 24, 2017: The Offeror  does  does not anticipate submitting an offer with an estimated contract value of greater than \$500,000.

(2) If the Offeror checked "does" in paragraph (s)(1)(i) or (ii) of this provision, the Offeror represents to the best of the Offeror's knowledge and belief  Offeror to check appropriate block]:

(i) There has been no administrative merits determination, arbitral award or decision, or civil judgment for any labor law violation(s) rendered against the offeror (see definitions in paragraph (a) of this section) during the period beginning on October 25, 2015 to the date of the offer, or for three years preceding the date of the offer, whichever period is shorter; or

(ii) There has been an administrative merits determination, arbitral award or decision, or civil judgment for any labor law violation(s) rendered against the Offeror during the period beginning on October 25, 2015 to the date of the offer, or for three years preceding the date of the offer, whichever period is shorter.

(3)(i) If the box at paragraph (s)(2)(ii) of this provision is checked and the Contracting Officer has initiated a responsibility determination and has requested additional information, the Offeror shall provide--

(A) The following information for each disclosed labor law decision in the System for Award Management (SAM) at [www.sam.gov](http://www.sam.gov), unless the information is already current, accurate, and complete in SAM. This information will be publicly available in the Federal Awardee Performance and Integrity Information System (FAPIIS):

(1) The labor law violated.

(2) The case number, inspection number, charge number, docket number, or other unique identification number.

(3) The date rendered.

(4) The name of the court, arbitrator(s), agency, board, or commission that rendered the determination or decision;

(B) The administrative merits determination, arbitral award or decision, or civil judgment document, to the Contracting Officer, if the Contracting Officer requires it;

(C) In SAM, such additional information as the Offeror deems necessary to demonstrate its responsibility, including mitigating factors and remedial measures such as offeror actions taken to address the violations, labor compliance agreements, and other steps taken to achieve compliance with labor laws. Offerors may provide explanatory text and upload documents. This information will not be made public unless the contractor determines that it wants the information to be made public; and

(D) The information in paragraphs (s)(3)(i)(A) and (s)(3)(i)(C) of this provision to the Contracting Officer, if the Offeror meets an exception to SAM registration (see FAR 4.1102(a)).

(ii)(A) The Contracting Officer will consider all information provided under (s)(3)(i) of this provision as part of making a responsibility determination.

(B) A representation that any labor law decision(s) were rendered against the Offeror will not necessarily result in withholding of an award under this solicitation. Failure of the Offeror to furnish a representation or provide such additional information as requested by the Contracting Officer may render the Offeror nonresponsible.

(C) The representation in paragraph (s)(2) of this provision is a material representation of fact upon which reliance was placed when making award. If it is later determined that the Offeror knowingly rendered an erroneous representation, in addition to other remedies available to the Government, the Contracting Officer may terminate the contract resulting from this solicitation in accordance with the procedures set forth in FAR 12.403.

(4) The Offeror shall provide immediate written notice to the Contracting Officer if at any time prior to contract award the Offeror learns that its representation at paragraph (s)(2) of this provision is no longer accurate.

(5) The representation in paragraph (s)(2) of this provision will be public information in the Federal Awardee Performance and Integrity Information System (FAPIIS).

**Note to paragraph (s):** By a court order issued on October 24, 2016, this paragraph (s) is enjoined indefinitely as of the date of the order. The enjoined paragraph will become effective immediately if the court terminates the injunction. At that time, DoD, GSA, and NASA will publish a document in the Federal Register advising the public of the termination of the injunction.

(t) Public Disclosure of Greenhouse Gas Emissions and Reduction Goals. Applies in all solicitations that require offerors to register in SAM (52.212-1(k)).

(1) This representation shall be completed if the Offeror received \$7.5 million or more in contract awards in the prior Federal fiscal year. The representation is optional if the Offeror received less than \$7.5 million in Federal contract awards in the prior Federal fiscal year.

(2) Representation. [*Offeror to check applicable block(s) in paragraph (t)(2)(i) and (ii)*].

(i) The Offeror (itself or through its immediate owner or highest-level owner) [ ] does, [ ] does not publicly disclose greenhouse gas emissions, i.e., makes available on a publicly accessible Web site the results of a greenhouse gas inventory, performed in accordance with an accounting standard with publicly available and consistently applied criteria, such as the Greenhouse Gas Protocol Corporate Standard.

(ii) The Offeror (itself or through its immediate owner or highest-level owner) [ ] does, [ ] does not publicly disclose a quantitative greenhouse gas emissions reduction goal, i.e., make available on a publicly accessible Web site a target to reduce absolute emissions or emissions intensity by a specific quantity or percentage.

(iii) A publicly accessible Web site includes the Offeror's own Web site or a recognized, third-party greenhouse gas emissions reporting program.

(3) If the Offeror checked "does" in paragraphs (t)(2)(i) or (t)(2)(ii) of this provision, respectively, the Offeror shall provide the publicly accessible Web site(s) where greenhouse gas emissions and/or reduction goals are reported: \_\_\_\_\_.

(u)

(1) In accordance with section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions), Government agencies are not permitted to use appropriated (or otherwise made available) funds for contracts with an entity that requires employees or subcontractors of such entity seeking to report waste, fraud, or abuse to sign internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting such waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(2) The prohibition in paragraph (u)(1) of this provision does not contravene requirements applicable to Standard Form 312 (Classified Information Nondisclosure Agreement), Form 4414 (Sensitive Compartmented Information Nondisclosure Agreement), or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

(3) Representation. By submission of its offer, the Offeror represents that it will not require its employees or subcontractors to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting such employees or subcontractors from lawfully reporting waste, fraud, or abuse related to the performance of a Government contract to a designated investigative or law

enforcement representative of a Federal department or agency authorized to receive such information (e.g., agency Office of the Inspector General).

## 52.219-1 SMALL BUSINESS PROGRAM REPRESENTATIONS (OCT 2014)

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

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

“Service-disabled veteran-owned small business concern”—

(1) Means a small business concern—

(i) Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

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

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

“Small disadvantaged business concern, consistent with 13 CFR 124.1002,” means a small business concern under the size standard applicable to the acquisition, that—

(1) Is at least 51 percent unconditionally and directly owned (as defined at 13 CFR 124.105) by—

(i) One or more socially disadvantaged (as defined at 13 CFR 124.103) and economically disadvantaged (as defined at 13 CFR 124.104) individuals who are citizens of the United States, and

(ii) Each individual claiming economic disadvantage has a net worth not exceeding \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and

(2) The management and daily business operations of which are controlled (as defined at 13 CFR 124.106) by individuals who meet the criteria in paragraphs (1)(i) and (ii) of this definition.

“Veteran-owned small business concern” means a small business concern—

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

(2) The management and daily business operations of which are controlled by one or more veterans.

“Women-owned small business concern” means a small business concern—

(1) That is at least 51 percent owned by one or more women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and

(2) Whose management and daily business operations are controlled by one or more women.

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

(b)

(1) The North American Industry Classification System (NAICS) code for this acquisition is 493190.

(2) The small business size standard is NOT APPLICABLE.

(3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.

**(c) Representations.**

- (1) The offeror represents as part of its offer that it  is,  is not a small business concern.
- (2) *[Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.]* The offeror represents that it  is,  is not, a small disadvantaged business concern as defined in 13 CFR 124.1002.
- (3) *[Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.]* The offeror represents as part of its offer that it  is,  is not a women-owned small business concern.
- (4) Women-owned small business (WOSB) concern eligible under the WOSB Program. *[Complete only if the offeror represented itself as a women-owned small business concern in paragraph (c)(3) of this provision.]* The offeror represents as part of its offer that—
- (i) It  is,  is not a WOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and
- (ii) It  is,  is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (c)(4)(i) of this provision is accurate for each WOSB concern eligible under the WOSB Program participating in the joint venture. *[The offeror shall enter the name or names of the WOSB concern eligible under the WOSB Program and other small businesses that are participating in the joint venture: \_\_\_\_\_.]* Each WOSB concern eligible under the WOSB Program participating in the joint venture shall submit a separate signed copy of the WOSB representation.
- (5) Economically disadvantaged women-owned small business (EDWOSB) concern. *[Complete only if the offeror represented itself as a women-owned small business concern eligible under the WOSB Program in (c)(4) of this provision.]* The offeror represents as part of its offer that—
- (i) It  is,  is not an EDWOSB concern eligible under the WOSB Program, has provided all the required documents to the WOSB Repository, and no change in circumstances or adverse decisions have been issued that affects its eligibility; and
- (ii) It  is,  is not a joint venture that complies with the requirements of 13 CFR part 127, and the representation in paragraph (c)(5)(i) of this provision is accurate for each EDWOSB concern participating in the joint venture. *[The offeror shall enter the name or names of the EDWOSB concern and other small businesses that are participating in the joint venture: \_\_\_\_\_.]* Each EDWOSB concern participating in the joint venture shall submit a separate signed copy of the EDWOSB representation.
- (6) *[Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.]* The offeror represents as part of its offer that it  is,  is not a veteran-owned small business concern.
- (7) *[Complete only if the offeror represented itself as a veteran-owned small business concern in paragraph (c)(6) of this provision.]* The offeror represents as part of its offer that it  is,  is not a service-disabled veteran-owned small business concern.
- (8) *[Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.]* The offeror represents, as part of its offer, that —
- (i) It  is,  is not a HUBZone small business concern listed, on the date of this representation, on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration, and no material changes in ownership and control, principal office, or HUBZone employee percentage have occurred since it was certified in accordance with 13 CFR part 126; and
- (ii) It  is,  is not a HUBZone joint venture that complies with the requirements of 13 CFR part 126, and the representation in paragraph (c)(8)(i) of this provision is accurate for each HUBZone small business concern participating in the HUBZone joint venture. *[The offeror shall enter the names of each of the HUBZone small business concerns participating in the HUBZone joint venture: \_\_\_\_\_.]* Each HUBZone small business concern participating in the HUBZone joint venture shall submit a separate signed copy of the HUBZone representation.

**(d) Notice.**

- (1) If this solicitation is for supplies and has been set aside, in whole or in part, for small business concerns, then the clause in this solicitation providing notice of the set-aside contains restrictions on the source of the end items to be furnished.
- (2) Under 15 U.S.C. 645(d), any person who misrepresents a firm's status as a business concern that is small, HUBZone small, small disadvantaged, service-disabled veteran-owned small, economically disadvantaged women-owned small, or women-owned small eligible under the WOSB Program in order to obtain a contract to be awarded under the preference programs established pursuant to section 8, 9, 15, 31, and 36 of the Small Business Act or any other provision of Federal law that specifically references section 8(d) for a definition of program eligibility, shall —
- (i) Be punished by imposition of fine, imprisonment, or both;
- (ii) Be subject to administrative remedies, including suspension and debarment; and
- (iii) Be ineligible for participation in programs conducted under the authority of the Act.

**252.209-7998 REPRESENTATION REGARDING CONVICTION OF A FELONY CRIMINAL VIOLATION UNDER ANY FEDERAL OR STATE LAW (DEVIATION 2012-O0007) (MAR 2012)**

- (a) In accordance with section 514 of Division H of the Consolidated Appropriations Act, 2012, none of the funds made available by that Act may be

used to enter into a contract with any corporation that was convicted of a felony criminal violation under any Federal or State law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government.

(b) The Offeror represents that it is  is not  a corporation that was convicted of a felony criminal violation under a Federal or State law within the preceding 24 months.

**252.209-7999 REPRESENTATION BY CORPORATIONS REGARDING AN UNPAID DELINQUENT TAX LIABILITY OR A FELONY CONVICTION UNDER ANY FEDERAL LAW (DEVIATION 2012-O0004) (JAN 2012)**

(a) In accordance with sections 8124 and 8125 of Division A of the Consolidated Appropriations Act, 2012,(Pub. L. 112-74) none of the funds made available by that Act may be used to enter into a contract with any corporation that-

(1) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless the agency has considered suspension or debarment of the corporation and made a determination that this further action is not necessary to protect the interests of the Government.

(2) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless the agency has considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interests of the Government.

(b) The Offeror represents that-

(1) It is  is not  a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability,

(2) It is  is not  a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.

**252.247-7022 REPRESENTATION OF EXTENT OF TRANSPORTATION BY SEA (AUG 1992)**

(b) *Representation.* The Offeror represents that it—

Does anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

Does not anticipate that supplies will be transported by sea in the performance of any contract or subcontract resulting from this solicitation.

**K-0001 K15 RELEASE OF PRICES (DLA ENERGY MAR 2009)**

The Defense Energy Support Center will release prices of successful offerors after contract award pursuant to 10 U.S.C. 2305(g)(2), FAR 15.506(d)(2) and 32 CFR 286h-3. Prices are the bottom-line price and do not include any breakout of costs, such as transportation or overhead, and do not disclose the offeror’s anticipated profit or any pricing factors.

**K-0002 K33.01 AUTHORIZED NEGOTIATORS (DLA ENERGY APR 2007)**

The offeror or quoter represents that the following persons are authorized to negotiate on its behalf with the Government in connection with this request for proposals or quotations.

NAME	TITLE	PHONE NUMBER	E-MAIL ADDRESS
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**K-0003 K150 WIDE AREA WORKFLOW (WAWF) SUPPLEMENTAL INVOICE SUBMISSION (DLA ENERGY MAY 2014)**

(a) When a vendor becomes aware that an invoice was submitted for a price or quantity that is lower than the correct amount, the following needs to be done:

1. The vendor will go to WAWF and try to recall the invoice and do changes in price or quantity. If the vendor is unable to recall the invoice:
2. The vendor will submit via fax (Fuels EDM FAX Line: 614-701-2638 or DSN 791-2638/ Toll Free 855-234-5592) a manual invoice to the payment office, SL4701, which identifies the invoice as an adjustment with an invoice number that is a derivation of the original invoice number that was submitted and paid. (For example, if the original invoice number was 12345, then adjustment invoice number shall be 12345ADJ).
3. The adjustment invoice should have the original price or quantity cited as well as the corrected price or quantity and the net adjustment,
4. All other proper invoice criteria, in accordance with the Prompt Payment Act, remain required for adjustment invoices.
5. The vendor can print the WAWF invoice and use it to make the adjustments as described above.

If a vendor has payment status questions, they may contact either DFAS-Customer Service at [DFAS-CO\\_LC@DFAS.MIL](mailto:DFAS-CO_LC@DFAS.MIL) or dial 1-800-756-4571 option 2, or contact their DLA Energy Contracting Officer, to obtain contract information from their contract.

Note: The aforementioned email address contains an **underscore “\_”** between the “CO” and “LC”.

**SECTION L - INSTRUCTIONS, CONDITIONS AND NOTICES TO OFFERORS****52.212-1 INSTRUCTIONS TO OFFERORS - COMMERCIAL ITEMS (JAN 2017)**

(a) *North American Industry Classification System (NAICS) code and small business size standard.* The NAICS code and small business size standard for this acquisition appear in Block 10 of the solicitation cover sheet (SF 1449). However, the small business size standard for a concern which submits an offer in its own name, but which proposes to furnish an item which it did not itself manufacture, is 500 employees.

(b) *Submission of offers.* Submit signed and dated offers to the office specified in this solicitation at or before the exact time specified in this solicitation. Offers may be submitted on the SF 1449, letterhead stationery, or as otherwise specified in the solicitation. As a minimum, offers must show --

- (1) The solicitation number;
- (2) The time specified in the solicitation for receipt of offers;
- (3) The name, address, and telephone number of the offeror;
- (4) A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary;
- (5) Terms of any express warranty;
- (6) Price and any discount terms;
- (7) "Remit to" address, if different than mailing address;
- (8) A completed copy of the representations and certifications at FAR 52.212-3 (see FAR 52.212-3(b) for those representations and certifications that the offeror shall complete electronically);
- (9) Acknowledgment of Solicitation Amendments;
- (10) Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and other references (including contract numbers, points of contact with telephone numbers and other relevant information); and
- (11) If the offer is not submitted on the SF 1449, include a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offers that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.

(c) *Period for acceptance of offers.* The offeror agrees to hold the prices in its offer firm for 180 calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation.

(d) *Product samples.* When required by the solicitation, product samples shall be submitted at or prior to the time specified for receipt of offers. Unless otherwise specified in this solicitation, these samples shall be submitted at no expense to the Government, and returned at the sender's request and expense, unless they are destroyed during preaward testing.

(e) *Multiple offers.* Offerors are encouraged to submit multiple offers presenting alternative terms and conditions, including alternative line items (provided that the alternative line items are consistent with subpart 4.10 of the Federal Acquisition Regulation), or alternative commercial items for satisfying the requirements of this solicitation. Each offer submitted will be evaluated separately.

(f) *Late submissions, modifications, revisions, and withdrawals of offers.*

(1) Offerors are responsible for submitting offers, and any modifications, revisions, or withdrawals, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that offers or revisions are due.

(2)

(i) Any offer, modification, revision, or withdrawal of an offer received at the Government office designated in the solicitation after the exact time specified for receipt of offers is “late” and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and—

(A) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of offers; or

(B) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government’s control prior to the time set for receipt of offers; or

(C) If this solicitation is a request for proposals, it was the only proposal received.

(ii) However, a late modification of an otherwise successful offer, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(3) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the offer wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(4) If an emergency or unanticipated event interrupts normal Government processes so that offers cannot be received at the Government office designated for receipt of offers by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(5) Offers may be withdrawn by written notice received at any time before the exact time set for receipt of offers. Oral offers in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for receipt of offers, subject to the conditions specified in the solicitation concerning facsimile offers. An offer may be withdrawn in person by an offeror or its authorized representative if, before the exact time set for receipt of offers, the identity of the person requesting withdrawal is established and the person signs a receipt for the offer.

(g) *Contract award (not applicable to Invitation for Bids)*. The Government intends to evaluate offers and award a contract without discussions with offerors. Therefore, the offeror’s initial offer should contain the offeror’s best terms from a price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary. The Government may reject any or all offers if such action is in the public interest; accept other than the lowest offer; and waive informalities and minor irregularities in offers received.

(h) *Multiple awards*. The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule, offers may not be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.

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

(1)

(i) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29, and copies of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained for a fee by submitting a request to--

GSA Federal Supply Service Specifications Section

Suite 8100  
470 L'Enfant Plaza, SW  
Washington, DC 20407  
Telephone (202) 619-8925)

Facsimile (202 619-8978).

(ii) If the General Services Administration, Department of Agriculture, or Department of Veterans Affairs issued this solicitation, a single copy of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained free of charge by submitting a request to the addressee in paragraph (i)(1)(i) of this provision. Additional copies will be issued for a fee.

(2) Most unclassified Defense specifications and standards may be downloaded from the following ASSIST websites--

(i) ASSIST (<https://assist.dla.mil/online/start/>).

(ii) Quick Search (<http://quicksearch.dla.mil/>).

(iii) ASSISTdocs.com (<http://assistdocs.com>).

(3) Documents not available from ASSIST may be ordered from the Department of Defense Single Stock Point (DoDSSP) by—

(i) Using the ASSIST Shopping Wizard ( <https://assist.dla.mil/wizard/index.cfm> );

(ii) Phoning the DoDSSP Customer Service Desk (215) 697-2179, Mon-Fri, 0730 to 1600 EST; or

(iii) Ordering from DoDSSP, Building 4 Section D, 700 Robbins Avenue, Philadelphia, PA 19111-5094, Telephone (215) 697/2197, Facsimile (215) 697-1462.

(4) Nongovernment (voluntary) standards must be obtained from the organization responsible for their preparation, publication, or maintenance.

(j) *Unique entity identifier.* (Applies to all offers exceeding \$3,500, and offers of \$3,500 or less if the solicitation requires the Contractor to be registered in the System for Award Management (SAM) database.) The Offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation "Unique Entity Identifier" followed by the unique entity identifier that identifies the Offeror's name and address. The Offeror also shall enter its Electronic Funds Transfer (EFT) indicator, if applicable. The EFT indicator is a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the Offeror to establish additional SAM records for identifying alternative EFT accounts (see subpart 32.11) for the same entity. If the Offeror does not have a unique entity identifier, it should contact the entity designated at [www.sam.gov](http://www.sam.gov) for unique entity identifier establishment directly to obtain one. The Offeror should indicate that it is an offeror for a Government contract when contacting the entity designated at [www.sam.gov](http://www.sam.gov) for establishing the unique entity identifier.

(k) *System for Award Management.* Unless exempted by an addendum to this solicitation, by submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the SAM database prior to award, during performance and through final payment of any contract resulting from this solicitation. If the Offeror does not become registered in the SAM database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror. Offerors may obtain information on registration and annual confirmation requirements via the SAM database accessed through <https://www.acquisition.gov>.

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

(1) The agency's evaluation of the significant weak or deficient factors in the debriefed offeror's offer.

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

#### **ADDENDUM TO 52.212-1 – INSTRUCTIONS TO OFFERS – COMMERCIAL ITEMS (JAN 2017)**

Award will be made on the basis of the proposal that conforms to the solicitation and is determined to be the “Best Value” to the Government. The Government will establish a competitive range comprised of all of the highly rated proposals unless the competitive range may be further reduced for purposes of efficiency (IAW FAR 15.306(c)(2) – Exchanges with Offerors after Receipt of Proposals). This solicitation does not commit the Government to pay any costs incurred in the preparation and submission of a proposal or any other costs incurred by any firm submitting a proposal in response to this solicitation.

Please submit your proposal submission by the closing date via either email or hard copy. If you choose the option of an email submission, e-mail your proposal to [bidcustodian@dla.mil](mailto:bidcustodian@dla.mil) as well as [jeremy.baxter@dla.mil](mailto:jeremy.baxter@dla.mil) and [heather.adams@dla.mil](mailto:heather.adams@dla.mil). All e-mail proposals MUST be followed-up with the hard copy (consisting of two volumes as outlined below) NO LATER THAN FIVE (5) business days after solicitation closing. Late proposals will be processed in accordance with FAR 15.208 – Submission, Modification, Revision, and Withdrawal of Proposals. Offeror’s proposals shall be prepared in two separate volumes and provided in the quantities shown below:

- a. Offeror’s proposals shall be prepared in three separate volumes and provided in the quantities shown below. Technical/Management proposals shall provide information following the technical proposal factors format. Proposals that do not provide the required information in the prescribed format may be excluded from further consideration.

Volume	Title	No. of Copies	Required Page Limit
I	Technical Proposal	1 hard copy and 1 PDF electronic copy	70
II	Offeror Submission Package (OSP) includes Price Proposal	1 original and 1 PDF electronic copy of Attachment II – OFFEROR SUBMISSION PACKAGE	None
III	Past Performance	1 PDF electronic copy	None

- b. During proposal evaluation, each volume will be reviewed separately. All cost/price information shall be in Volume II – OFFEROR SUBMISSION PACKAGE. No reference to cost/price shall be included in the technical proposal. Each volume shall be separately bound to facilitate evaluation.
- c. Proposals will be evaluated for technical approach and related risk, past performance recency and relevancy, socioeconomic/subcontracting plan (if applicable) and price reasonableness in accordance with the evaluation criteria outlined in Section M – Evaluation of this solicitation. Proposals will be evaluated in accordance with the factors listed in this solicitation.
- d. In order to receive full consideration, firms are encouraged to ensure that information provided in the Technical proposal is factual and complete. To ensure that an accurate evaluation of the proposal is made, please address the items in the order in which they appear in the solicitation.
- e. A proposal will be considered UNACCEPTABLE for award if it contains deficiencies that preclude award of the contract on the present terms of the proposal, that are not correctable or the corrective action would require essentially rewriting the proposal or require the submission of an approach which would be new or almost entirely different from that previously proposed.
- f. Offerors may provide additional technical information that will enhance the proposal. Unnecessarily elaborate brochures or other presentation beyond those sufficient to present a complete and effective response to this solicitation are not desired and may be construed as an indication of the Offeror’s lack of cost consciousness. Elaborate

artwork, expensive paper or bindings, and expensive visual or other presentation aids are neither necessary nor desired. Hasty responses or responses that merely repeat the Performance Work Statement will not be considered responsive to the requirements of this Request for Proposal (RFP). Failure to provide the information requested may render the proposal UNACCEPTABLE and may lead to a rejection of the offer.

- g. Offerors are informed that performance or capabilities proposed above mandatory minimums may be incorporated into the contract.
- h. The proposal must demonstrate to the Government's satisfaction that the offer is able to provide services that will ensure the successful accomplishment of the stated objectives consistent with the stated performance and technical parameters of the Performance Work Statement. The Government will evaluate offerors on the basis of material presented in the written proposal. Proposal information provided for one factor may be used to assess other factors if the Government deems it appropriate.
- i. The Government may reject any proposal that is evaluated to be unreasonable in terms of program commitments, including contract terms and conditions such that the proposal is deemed to reflect an inherent lack of technical competence or a failure to comprehend the complexity and performance requirements of the program. The Government reserves the right to conduct a price realism analysis to determine whether the offeror understands the contract requirements. If a price realism analysis is performed and an offeror's price is determined to be unrealistic, the offeror's proposal will be ineligible for award.
- j. The Government reserves the right to verify any information presented in the Technical/Management, Past Performance, Subcontracting Plan (if applicable) and Price Proposals.

Proposal Organization:

#### **1. Volume I, Technical Proposal:**

a. The Technical proposal shall demonstrate the offeror's ability to meet the Government's requirements as set forth in this solicitation. An offeror's Technical/Management proposal shall provide, at a minimum, the information requested in this Addendum to Provision 52.212-1 – INSTRUCTIONS TO OFFERS – COMMERCIAL ITEMS (JAN 2017). Failure to provide the information requested by any of the evaluation factors may be considered a "No response" and a rating of UNACCEPTABLE will be given to the applicable factor or sub-factor.

b. A Technical proposal shall be submitted in response to this RFP. Technical/Management proposals in this RFP shall be limited to 70 double sided, 8 ½" x 11" pages, including Appendices and Attachments. Proposals less than 70 pages are permitted provided all required material is covered. The Table of Contents and Section I – Exceptions (required) will NOT be considered in the page limit. Resumes will NOT be considered in the page limit. Type font shall be 12 point Times New Roman with 1" margins around the page. The Non-Price Proposal shall contain two sections:

i. Section I – Exceptions – Section I shall state any exceptions taken to the Performance Work Statement. If no exceptions are being taken to the Performance Work Statement, Offerors shall state so in an affirmative statement in this section.

ii. Section II – Technical/Management – The Technical Proposal shall demonstrate the Offeror's approach and ability to perform the tasks referenced in the Performance Work Statement for Fuel Management Services. Please provide resumes for the Key Personnel in this section.

**NOTE:** The Technical Proposal shall not contain any pricing information. Technical Management Proposals containing pricing information will not be considered or evaluated. The Technical Proposal shall include and address the following in separate sections:

- (i) Staffing
- (ii) Operations
- (iii) Maintenance
- (iv) Safety
- (v) Security
- (vi) Environmental
- (vii) Training
- (viii) Furnished Items
- (ix) Other Performance Requirements

#### **2. Volume II –Price Proposal:**

The Price Proposal shall include and address the following in separate sections:

**a. Section I – OFFEROR SUBMISSION PACKAGE**

**i. Cover Page –**

Offerors shall submit a cover page providing the following information regarding the offeror: (1) RFP Number; (2) Proposal Title; (3) Technical Point of Contact, including name, telephone number, FAX number, e-mail address, and mailing address; (4) Administrative/Contracting Point of Contact, including name, telephone number, FAX number, e-mail address, and mailing address; and (5) if proposing as a team, or sub-contractor arrangement, offeror MUST provide a summary of the responsibility of each teaming partner and sub-contractor.

**ii. SF 1449 and Amendments –**

Offerors shall provide a signed copy of the SF 1449 and all posted amendments in this section.

**iii. Exceptions –**

Offerors shall state any exceptions taken to the Terms and Conditions of the Solicitation. If no exceptions are being taken to the Terms and Conditions of the Solicitation, offerors shall state so in an affirmative statement in this section.

**iv. Representations and Certifications –**

Offerors shall include a completed copy of the provisions to include FAR 52.212-3 – OFFEROR REPRESENTATIONS AND CERTIFICATIONS – COMMERCIAL ITEMS (JAN 2017) ALTERNATE 1 (OCT 2014) provided in ATTACHMENT II – OFFEROR SUBMISSION PACKAGE, for the offeror's convenience.

**b. Section II – PRICE**

The offeror is required to submit a price proposal addressing all pricing involved in the execution of the technical requirements. Offerors are to provide a firm-fixed price for each Contract Line Item listed in provision B 34.01 SERVICES TO BE FURNISHED located within ATTACHMENT II – OFFEROR SUBMISSION PACKAGE. Offerors do not have to offer on both locations of F.E. Warren AFB ,WY and Malmstrom AFB, MT, however, must offer on the Base Period CLIN and Option Period CLIN to be considered for award of a specific AFB location. PLEASE DO NOT SUBMIT YOUR PRICES IN ANY OTHER FORMAT. DO NOT SUBMIT PRICING ON YOUR COMPANY LETTERHEAD.

**c. Section III – PAST PERFORMANCE**

The offeror shall demonstrate that their firm has performed projects and/or tasks of similar scope and complexity. The Offeror shall at a minimum provide:

**i.** A list of three (3) contracts that the Offeror has held in the past 3 years, in which the services of similar scope and complexity were performed. A minimum of three (3) referenced contracts with a point of contact information (i.e. phone number and e-mail address) shall be included.

**ii.** A summary description of the task requirements of each referenced contract. Reference the similarities of these tasks to the requirements in ATTACHMENT I – PERFORMANCE WORK STATEMENT of this solicitation. Within past performance, the offeror must demonstrate relevant experience and success in performing tasks that are similar to those in the Performance Work Statement (PWS). The offeror shall demonstrate evidence of experience in performing Environmental Response Services for DoD bulk storage terminals or fuel storage terminals of similar size and complexity.

**iii.** The total dollar value of each contract referenced.

**iv.** ATTACHMENT V – PAST PERFORMANCE QUESTIONNAIRE included in this solicitation is provided for the offeror to submit to the references provided above (first bullet of this section, i). Completed Past Performance Questionnaires must be submitted by the reference DIRECTLY to the Government. Offerors should follow-up with references to ensure timely submittal of questionnaires. While the Government may elect to consider data from other sources, the burden of providing detailed, current, accurate and complete past performance information rests with the offeror. Past Performance Questionnaires must be provided directly to the Government and sent to [jeremy.baxter@dla.mil](mailto:jeremy.baxter@dla.mil).

To receive credit for past performance by a subcontractor, or work which the prime contractor previously performed as a subcontractor to another prime, the Past Performance Experience Form must state in detail the nature of the work performed as a subcontractor, the total percentage of the overall contract performed as a subcontractor and the total amount of work performed as a subcontractor.

To receive credit for past performance by a Joint Venture (see Attachment V), the Past Performance Questionnaire must state in detail the nature of the work performed by either of the Joint Venture, the total percentage of the work performed by either of the Joint Venture and the total amount of work performed by either of the Joint Venture. The Government may supplement past performance information provided with any other information it may obtain from any other source including its own experience with your firm.

**d. Section IV – SOCIOECONOMIC/SUBCONTRACTING PROPOSAL**

The offeror (if a large business) shall complete and submit to DLA Energy Form 19.3 to describe the extent of any planned subcontracting with small, small disadvantaged, veteran-owned small, service-disabled veteran-owned small, and HUBZone small businesses and historically Black Colleges and Universities and Minority Institutions. Figures stated on the Form 19.3 should refer to intended subcontracted amounts for the base period only.

Note: Offers submitted by Small Businesses need to address this in their proposal, however the DLA Energy Form 19.3 – Small Business Subcontracting Plan is not required.

**52.216-1 TYPE OF CONTRACT (APR 1984)**

The Government contemplates award of a FIRM-FIXED-PRICE contract resulting from this solicitation.

**52.222-24 PREAWARD ON-SITE EQUAL OPPORTUNITY COMPLIANCE EVALUATION (FEB 1999)**

If a contract in the amount of \$10 million or more will result from this solicitation, the prospective Contractor and its known first-tier subcontractors with anticipated subcontracts of \$10 million or more shall be subject to a preaward compliance evaluation by the Office of Federal Contract Compliance Programs (OFCCP), unless, within the preceding 24 months, OFCCP has conducted an evaluation and found the prospective Contractor and subcontractors to be in compliance with Executive Order 11246.

**52.233-2 SERVICE OF PROTEST (SEP 2006)**

(a) Protests, as defined in section 31.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the Government Accountability Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from DLA Energy Legal Counsel. [Contracting Officer designate the official or location where a protest may be served on the Contracting Officer.] (b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

**52.237-1 SITE VISIT (APR 1984)**

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

**52.252-5 AUTHORIZED DEVIATIONS IN PROVISIONS (APR 1984)**

(a) The use in this solicitation of any Federal Acquisition Regulation (48 CFR Chapter 1) provision with an authorized deviation is indicated by the addition of "(DEVIATION)" after the date of the provision. (b) The use in this solicitation of any DoD FAR Supplement (DFARS) (48 CFR Chapter 2) provision with an authorized deviation is indicated by the addition of "(DEVIATION)" after the name of the regulation.

**52.233-9000 AGENCY PROTESTS (NOV 2011)**

a) Companies protesting this procurement may file a protest

(1) With the Contracting Officer,

(2) With the Government Accountability Office (GAO), or

(3) Pursuant to Executive Order Number 12979, with the Agency for a decision by the Activity's Chief of the Contracting Office.

(b) Protests filed with the agency should clearly state that they are an "Agency Level Protest under Executive Order Number 12979."

(c) Defense Logistics Agency (DLA) procedures for Agency Level Protests filed under Executive Order Number 12979 allow for a higher level decision on the initial protest than would occur with a protest to the Contracting Officer; this process is not an appellate review of a Contracting

Officer's decision on a protest previously filed with the Contracting Officer. Absent a clear indication of the intent to file an agency level protest, protests will be presumed to be protests to the Contracting Officer.

### **52.233-9001 DISPUTES - AGREEMENT TO USE ALTERNATIVE DISPUTE RESOLUTION (NOV 2011)**

(a) The parties agree to negotiate with each other to try to resolve any disputes that may arise. If unassisted negotiations are unsuccessful, the parties will use alternative dispute resolution (ADR) techniques to try to resolve the dispute. Litigation will only be considered as a last resort when ADR is unsuccessful or has been documented by the party rejecting ADR to be inappropriate for resolving the dispute.

(b) Before either party determines ADR inappropriate, that party must discuss the use of ADR with the other party. The documentation rejecting ADR must be signed by an official authorized to bind the Contractor (see Federal Acquisition Regulation (FAR) clause 52.233- 1), or, for the Agency, by the Contracting Officer, and approved at a level above the Contracting Officer after consultation with the ADR Specialist and with legal. Contractor personnel are also encouraged to include the ADR Specialist in their discussions with the Contracting Officer before determining ADR to be inappropriate.

(c) **The offeror should check here to opt out of this clause:** [ ]. Alternate wording may be negotiated with the contracting officer.

### **252.209-7002 DISCLOSURE OF OWNERSHIP OR CONTROL BY A FOREIGN GOVERNMENT (JUN 2010)**

(a) Definitions. As used in this provision—

(1) “Effectively owned or controlled” means that a foreign government or any entity controlled by a foreign government has the power, either directly or indirectly, whether exercised or exercisable, to control the election, appointment, or tenure of the Offeror’s officers or a majority of the Offeror’s board of directors by any means, e.g., ownership, contract, or operation of law (or equivalent power for unincorporated organizations).

(2) “Entity controlled by a foreign government”—

(i) Means—

(A) Any domestic or foreign organization or corporation that is effectively owned or controlled by a foreign government; or

(B) Any individual acting on behalf of a foreign government.

(ii) Does not include an organization or corporation that is owned, but is not controlled, either directly or indirectly, by a foreign government if the ownership of that organization or corporation by that foreign government was effective before October 23, 1992.

(3) “Foreign government” includes the state and the government of any country (other than the United States and its outlying areas) as well as any political subdivision, agency, or instrumentality thereof.

(4) “Proscribed information” means—

(i) Top Secret information;

(ii) Communications security (COMSEC) material, excluding controlled cryptographic items when unkeyed or utilized with unclassified keys;

(iii) Restricted Data as defined in the U.S. Atomic Energy Act of 1954, as amended;

(iv) Special Access Program (SAP) information; or

(v) Sensitive Compartmented Information (SCI).

(b) Prohibition on award. No contract under a national security program may be awarded to an entity controlled by a foreign government if that entity requires access to proscribed information to perform the contract, unless the Secretary of Defense or a designee has waived application of 10 U.S.C. 2536(a).

(c) Disclosure. The Offeror shall disclose any interest a foreign government has in the Offeror when that interest constitutes control by a foreign government as defined in this provision. If the Offeror is a subsidiary, it shall also disclose any reportable interest a foreign government has in any entity that owns or controls the subsidiary, including reportable interest concerning the Offeror’s immediate parent, intermediate parents, and the ultimate parent. Use separate paper as needed, and provide the information in the following format:

Offeror’s Point of Contact for Questions about Disclosure

(Name and Phone Number with Country Code, City Code

and Area Code, as applicable)

Name and Address of Offeror

Name and Address of Entity Controlled by a Foreign Government

Description of Interest, Ownership Percentage, and Identification of Foreign Government

**L-0001 L1.02 PROPOSAL ACCEPTANCE PERIOD (DLA ENERGY NOV 1991)**

(a) **Acceptance period**, as used in this provision, means the number of calendar days available to the Government for awarding a contract from the date specified in this solicitation for receipt of proposals.

(b) This provision supersedes any language pertaining to the acceptance period that may appear elsewhere in this solicitation.

(c) The Government requires a minimum acceptance period of **180** calendar days.

(d) If the offeror specifies an acceptance period which is less than that required by the Government, such offer may be rejected.

(e) The offeror agrees to execute all that it has undertaken to do, in compliance with its offer, if such offer is acceptable to the Government and is accepted within the acceptance period stated in (c) above or within any extension thereof that has been agreed to by the offeror.

**L-0002 L2.01-1 PROPOSAL PREPARATION INSTRUCTIONS AND PAST PERFORMANCE AND SOCIOECONOMIC PLAN SUBMISSIONS (DLA ENERGY FEB 2015)**

(a) **THE OFFER.** The offer (proposal) shall consist of the following items:

(1) **Standard Form (SF) 1449**, Solicitation/Contract Order for Commercial Items, Blocks 12, 17 through 24, and 30.

(2) **Schedule contract provision.** The offeror shall insert its proposed unit prices for each contract line item in the spaces provided in the SUPPLIES TO BE FURNISHED contract provision or as specified in the solicitation.

(3) **Offeror Submission Package.** The offeror shall complete the representations and other statements of offerors contained in the Offeror Submission Package enclosed with this solicitation. The contract provisions found in the Offeror Submission Package are duplicated in the basic solicitation.

(4) **Other Required Documents.** The offeror shall submit all other documents required by the terms and conditions of this solicitation.

(5) **Exceptions.**

(i) Any exceptions the offeror takes to the terms and conditions of the solicitation must be submitted with the offer.

Only exceptions detailed in the offer will be treated as exceptions to the terms and conditions of the solicitation. Any exceptions taken by the offeror will be considered by the Government and either accepted or rejected. Exceptions that are accepted by the Government will be incorporated into any resultant contract; exceptions that are rejected by the Government must be withdrawn by the offeror or the offer will be rejected.

(ii) If the offeror does not take any exceptions, completion of Blocks 12, 17 through 24, and 30 of the SF 1449 signifies the offeror's agreement to the terms and conditions contained in the solicitation.

(b) **PAST PERFORMANCE SUBMISSION.**

(1) In addition to its offer, each offeror must complete the applicable past performance information and submit a separate description of any past efforts to subcontract with small businesses, veteran-owned small business, HUBZone small businesses, small disadvantaged businesses, and women-owned small businesses identifying highly successful efforts or any regulatory or subcontracting plan noncompliance. The contracts and/or subcontracts submitted on the Contractor Performance Data Sheet (CPDS) should be similar in nature to the solicitation requirements and completed within the last **(3) three** years of the closing date of this solicitation. All contracts/subcontracts submitted should have a minimum of one year's performance history. The Government reserves the right to consider contracts still in progress and to consider contract and/or subcontract information outside the specified time periods. The contracts may include efforts undertaken on behalf of the Defense Logistics Agency Energy (DLA Energy), other Federal agencies (including those performed for non-DoD activities), quasi-government organizations, State or local governments, and/or private industry. By submitting the CPDS, the offeror agrees to permit the Government's representatives to contact the references listed and inquire as to the past performance of the offeror.

(2) If the offeror determines that it has not performed any contracts or subcontracts for the same or similar work required by the solicitation, the offeror should indicate this on the CPDS by marking the appropriate box.

(c) **SOCIOECONOMIC PLAN SUBMISSION (APPLICABLE TO LARGE, SMALL, VETERAN-OWNED SMALL, HUBZONE SMALL, SMALL DISADVANTAGED, AND WOMEN-OWNED SMALL BUSINESSES).** If this procurement is for a domestic location, the offeror must provide a description of its efforts to ensure that: small businesses; HUBZone businesses; women-owned small businesses; veteran-owned small businesses; service-disabled veteran-owned small businesses (SDVOSB); economically-disadvantaged, women-owned small businesses (EDWOSB); and historically-black colleges/universities or minority institutions (HBCUs/MIs) will have an equal opportunity to compete for subcontracts under any resultant contract. The description should include any partnering arrangements with such companies and include specific names to the extent they are known.

**L-0003 L2.06 EVIDENCE OF RESPONSIBILITY (AARD) (DLA ENERGY NOV 1989)**

(a) Each offeror must show evidence of a capability to provide the mandatory requirements set forth in the statement of work and elsewhere in this solicitation.

(b) A review board composed of one or more Government personnel will thoroughly review the adequacy of the proposal. Proposals will be categorized, following evaluation, as--

(1) Acceptable as submitted.

(2) Marginal (Reasonably susceptible to being made acceptable by submissions of clarifying or supplemental information which does not basically change the proposal as submitted).

(3) Not acceptable.

(c) Upon final determination that a proposal is "not acceptable," the Contracting Officer shall promptly notify the firm submitting the proposal that it will not be considered and shall indicate, in general terms, the basis for the determination.

(d) The Contracting Officer may request offerors of marginal proposals to submit additional information by identifying areas requiring clarification. In initiating a request for more information, the Contracting Officer shall set an appropriate time for submission of such information as part of the proposal. If additional information incorporated as part of the proposal within this time establishes that the proposal is acceptable,

it shall be so categorized. Otherwise, the proposal shall be deemed unacceptable.

#### **L-0004 L2.11-4 E-MAIL PROPOSALS (DLA ENERGY OCT 2010)**

- (a) Offerors may submit proposals via e-mail. E-mail proposals are subject to the same rules as paper proposals.
- (b) E-mail receiving data and compatibility characteristics are as follows:
  - (1) E-mail address: [jeremy.baxter@dla.mil](mailto:jeremy.baxter@dla.mil), [heather.adams@dla.mil](mailto:heather.adams@dla.mil) and [bidcustodian@dla.mil](mailto:bidcustodian@dla.mil).
  - (2) The DLA Energy accepts attachments in—
    - (i) Adobe Acrobat;
    - (ii) Microsoft Excel;
    - (iii) Microsoft Word; and
    - (iv) Microsoft PowerPoint.
- (c) Initial proposals, modifications and proposal revisions submitted via e-mail must contain offeror's signature included in the attachment to the e-mail communication.
- (d) Attachments that are not in .pdf file format must be sent password protected for "read only" to ensure the integrity of the data submitted.
- (e) Proposals submitted electronically through a single e-mail must be no more than 10 MB. DLA Energy's mail server will reject messages larger than 10 MB.
- (f) The DLA Energy e-mail filter will scan the incoming e-mail and attachments for viruses and key words. Abbreviations for terms such as "Analysts" or using "3Xs" as placeholders in a document are found in the filter's adult content library and may result in the e-mail delivery being delayed. Offerors are encouraged to verify receipt of e-mail offers by contacting the Contracting Officer prior to the solicitation closing time.
- (g) If any portion of an e-mail proposal received by the Contracting Officer is unreadable, the Contracting Officer will immediately notify the offeror and permit the offeror to resubmit the proposal. The method and time for resubmission shall be prescribed by the Contracting Officer after consultation with the offeror and the resubmission shall be considered as if it were received at the date and time of the original unreadable submission for the purpose of determining timeliness, provided the offeror complied with the e-mail submissions instructions provided in this paragraph and with the time and format requirements for resubmission prescribed by the Contracting Officer.
- (h) The Government reserves the right to make award solely on the e-mail proposal. However, if requested to do so by the Contracting Officer, the apparently successful offeror promptly shall submit the complete signed original proposal.

#### **L-0005 L198 PREPROPOSAL CONFERENCE (SERVICES) (DLA ENERGY FEB 2009)**

Preproposal conferences, in conjunction with the site visits, will be held to provide offerors an opportunity to be briefed on the work covered by the solicitation. Attendance at the conference is strongly encouraged. Any comments/remarks made by Government representatives at the conference should not be construed as a change. Any changes in terms or conditions must be accomplished by a written amendment to the solicitation. Offerors are requested to submit acceptance to the Contracting Officer by email of the name(s), e-mail address(es) and contact phone number during the conference of the individual(s) who plan to attend. Attendance is limited to a maximum of two (2) representatives per company. The conference date and time is as set forth below:

A pre-proposal conference is scheduled at Malmstrom AFB, MT and F.E.Warren AFB WY for this solicitation. The pre-proposal conference will be at F.E Warren on June 12th 2017 at 9:00 am and on June 14th, 2017 at Malmstrom AFB, MT starting at 9:00 am local time. For Base access individuals must have a Federal Government pictured Identification Card i.e. CAC, Retired Military ID etc. If you do not have a Federal Government pictured Identification Card please contact Mr. Jeremy Baxter more than 15 days from pre-proposal conference. For more information or if you have any questions please contact Mr. Jeremy Baxter at [jeremy.baxter@dla.mil](mailto:jeremy.baxter@dla.mil) or 703-767-8324.

**\*\*\*All technical questions pertaining to the solicitation must be submitted in writing to [jeremy.baxter@dla.mil](mailto:jeremy.baxter@dla.mil) not later than TBD. Note: (An amendment to the solicitation will be issued regarding the question submission closing date). Answers to technical questions will be posted to FBO as an amendment to solicitation SPE600-17-R-0504. PLEASE note solicitation number and location in subject of email.**

#### **L-0006 L82 WAGE DETERMINATION (DLA ENERGY FEB 2009)**

The CBA Wage Determination (WD) CBA-2017-9958 is the current CBA with Addendum in effect at F.E. Warren AFB, WY.

The CBA Wage Determination (WD) CBA-2017-9952 is the current CBA with Addendum which will take effect on October 1, 2017 at Malmstrom AFB, MT.

### **SECTION M - EVALUATION FACTORS FOR AWARD**

#### **52.212-2 EVALUATION – COMMERCIAL ITEMS (OCT 2014)**

(a) Basis for Award. The Government will award a contract resulting from this solicitation to the responsible offeror whose offer conforming to the solicitation will be most advantageous to the Government. Formal source selection procedures will be used for this procurement. As such this is a best value acquisition, employing a Lowest Price Technically Acceptable process in accordance with FAR 15.101-2. There are three (3) evaluation factors for this acquisition: Factor 1, Technical Management, Factor 2, Past Performance, and Factor 3, Price. These following factors shall be used to evaluate offers:

- (i) Factor 1-Technical/Management
  - (1) Staffing
  - (2) Operations
  - (3) Maintenance
  - (4) Safety
  - (5) Security
  - (6) Environmental
  - (7) Training
  - (8) Furnished Items
  - (9) Other Performance Requirements
- (ii) Factor 2-Past Performance
- (iii) Factor 3- Price.

Proposals submitted in response to this solicitation should be prepared in accordance with the ADDENDUM to FAR 52.212-1 INSTRUCTIONS TO OFFERS – COMMERCIAL ITEMS (JAN 2017) provision, and will be evaluated by a board of one or more Government personnel. The Source Selection Authority shall make a final selection based on each offeror’s ability to satisfy the requirements of the solicitation.

Each proposal will be evaluated for compliance with solicitation terms and conditions, the Performance Work Statement, FAR 52.212-2 EVALUATION – COMMERCIAL ITEMS (OCT 2014), and applicable DLA Energy Contract Provisions, established evaluation criteria and standards, as well as evaluation of any exceptions/deviations in accordance with DLA ENERGY M-0003 M72 – EVALUATION OF OFFERS (EXCEPTIONS/DEVIATIONS) (DLA ENERGY APR 1997) to determine if the offered exceptions/deviations are acceptable or material enough to make the offer completely or partially unacceptable.

**FACTOR 1: TECHNICAL /MANAGEMENT**

For purposes of this solicitation, Factor 1, Technical/Management and Factor 2, Past Performance are hereby combined to determine technical acceptability. All seven sub-factors of Factor 1 are equal in importance to each other. After all sub-factors have been rated, an overall Technical/Management rating will be assigned to the proposals to ensure technical capability.

Table A-1

Technical Acceptable/Unacceptable Ratings	
RATING	DESCRIPTION
Acceptable	Proposal meets the requirements of the solicitation.
Unacceptable	Proposal does not meet the requirements of the solicitation.

The sub-factors under Factor 1 – Technical/Management (Table A-1.1) to be addressed in the Technical Proposal are as follows:

Table A-1.1

SUB-FACTORS	ACCEPTABLE	UNACCCEPABLE
1. Staffing		
2. Operations		
3. Maintenance		
4. Safety		
5. Security		
6. Environmental		
7. Training		
8. Furnished Items		
9. Other Performance Requirements		
OVERALL RATING		

**Technical/Management**

All sub-factors will initially be evaluated using the ratings description below. After all sub-factors have been rated, an overall proposal rating of “Acceptable” or “Unacceptable” will be given. To be rated as Acceptable overall, the proposal must rate

Acceptable in all sub-factors.

**Technical/Management Evaluation Sub-factor 1: Staffing** - Technical, managerial, and operational details of manpower related issues to meet mission requirements.

ACCEPTABLE: The proposal must provide a staffing approach which demonstrates understanding of the personnel requirements to successfully accomplish all PWS tasks. The proposal must provide a staffing matrix identifying manning by positions and shifts to perform all required tasks and cover required hours of operation for normal daily operations. The proposal must identify all required personnel positions and qualifications. The proposal must address requirements to provide after-hours support or to respond to surge or contingency operations to ensure no mission delay or failure. The proposal must address any manpower issues such as compliance with Service specific requirements, impact of Status of Forces Agreements, recognition of security clearance requirements, or negotiating a Collective Bargaining Agreement.

UNACCEPTABLE: The proposal does not meet the minimum requirements for acceptable as described above.

**Technical/Management Evaluation Sub-factor 2: Operations** - Technical, managerial, and operational details of supporting normal and contingency operations to meet mission requirements.

ACCEPTABLE: The proposal must provide a concept of operations that demonstrates knowledge of product receipt, storage, issue, and transfer functions and should ensure requirements for normal daily operations are met. The proposal must address response to contingency and extended operations. The proposal must address procedures to maintain accountability and quality of fuels and cryogenics products which will ensure compliance with DLA Energy Policies. Where applicable, the proposal must also provide sufficient details to indicate understanding of Fuels Service Center (FSC) tasks.

UNACCEPTABLE: The proposal does not meet the minimum requirements for acceptable as described above.

**Technical/Management Evaluation Sub-factor 3: Maintenance** - Technical, managerial, and operational details of maintaining operational capability of facilities, vehicles, and equipment to meet mission requirements.

ACCEPTABLE: The proposal must demonstrate understanding of planning, conducting, monitoring, and documenting operator, preventive, and other maintenance of systems, equipment, buildings, and grounds as required and in accordance with regulations and best commercial practices.

UNACCEPTABLE: The proposal does not meet the minimum requirements for acceptable as described above.

**Technical/Management Evaluation Sub-factor 4: Safety** - Technical, managerial, and operational details incorporating federal, state, and local laws and regulations to ensure safe working environment.

ACCEPTABLE: The proposal must provide procedures to be implemented to ensure all operations are conducted in accordance with federal, state, local, and international safety laws, regulations, and best commercial practices. The proposal must demonstrate knowledge and understanding of safety issues and specifically address hazards of products, lockout/tagout procedures, and confined space work rules.

UNACCEPTABLE: The proposal does not meet the minimum requirements for acceptable as described above.

**Technical/Management Evaluation Sub-factor 5: Security** - Technical, managerial, and operational details of meeting physical, information, and personnel security requirements.

ACCEPTABLE: The proposal must provide procedures to be implemented to ensure all aspects of security are maintained. The proposal must indicate a good knowledge of security performance requirements and must specifically address key control, visitor access control, Force Protection condition requirements, contractor personnel security/background checks, and protection of government computer systems and information.

UNACCEPTABLE: The proposal does not meet the criteria for acceptable as described above.

**Technical/Management Evaluation Sub-factor 6: Environmental** - Technical, managerial, and operational details of planning and conducting operations in compliance with environmental laws and regulations.

ACCEPTABLE: The proposal must provide environmental performance requirements details pertaining to fuel receipt, storage, and issue operations and must specifically address spill prevention, spill response, and spill reporting as applicable to appropriate Tiers/Classes of spills to ensure strict compliance with all applicable base, local, state, federal, and international environmental laws, regulations, and plans.

UNACCEPTABLE: The proposal does not meet the minimum requirements for acceptable as described above.

**Technical/Management Evaluation Sub-factor 7: Training** - Technical, managerial, and operational details to ensure contractor personnel have requisite skills and associated training to accomplish all government requirements.

ACCEPTABLE: The proposal must provide procedures to be implemented to ensure all contractor personnel are qualified and certified to accomplish all required tasks. The proposal must identify required courses and frequencies for maintaining personnel competence and method of documentation and certification. The proposal must also address the requirements for providing training to government personnel.

UNACCEPTABLE: The proposal does not meet the minimum requirements for acceptable as described above.

**Technical/Management Evaluation Sub-factor 8: Furnished Items** - Technical, managerial, and operational details of providing and maintaining Contractor furnished items; maintaining and handling government-owned items to support normal and contingency operations to meet mission requirements.

ACCEPTABLE: The proposal identify any Contractor furnished vehicles, equipment, and supplies for use in performing operations. The proposal must also identify any Contractor furnished safety items such as Personal Protective Equipment (PPE) or confined space equipment. The proposal should address quantity, condition, age, capabilities, maintenance, and/or replacement of contractor-furnished items to ensure sufficient support is continually provided. The proposal should address appropriate documentation and handling requirements for government-owned items being operated and maintained by the contractor.

UNACCEPTABLE: The proposal does not meet the minimum requirements for acceptable as described above.

**Technical/Management Evaluation Sub-factor 9: Other Performance Requirements** - Technical, managerial, and operational details to ensure Contractor is familiar with special programs and periodic requirements.

ACCEPTABLE: The proposal must demonstrate Contractor awareness of special program requirements related to federal contracts and base operations such as Combatting Trafficking in Persons, Sexual Harassment Prevention, Energy Conservation, etc. The proposal must also demonstrate Contractor knowledge of fuels specific requirements such as periodic reporting of fuels capabilities and vehicle/facility status. The proposal should also indicate Contractor understanding of customer service through planned attendance at various meetings and prompt response to taskers. The proposal should also acknowledge Contractor implementation of document control practices for auditability purposes.

UNACCEPTABLE: The proposal does not meet the requirements for acceptable as described above.

## **FACTOR 2 PAST PERFORMANCE:**

Past Performance will be rated as Acceptable or Unacceptable. To be considered awardable, offerors must have an Acceptable Past Performance rating.

Offerors are instructed to submit three (3) Past Performance Questionnaires that may include the performance still in progress, however, it should have a minimum of one (1) year of performance history and be no more than three (3) years old from the closing date of this solicitation. Contracts listed may include those entered into with Government agencies or private sectors. The Government will evaluate the offeror's submitted past performance to include questionnaire from (3) current or previous contracts for relevancy based on how well the contractor performed on projects of similar dollar value, scope, and complexity. The Past Performance questionnaire located Attachment IV of this solicitation will be used to solicit information from Offeror's submitted references in the following areas: (1) Quality, (2) Schedule, (3) Cost Control, (4) Management of Key Personnel, (5) Small Business (if applicable), (6) Regulatory Compliance, and (7) Business Relationships.

Additionally, the Government may use other data available to its evaluators, including but not limited to, the Past Performance Information Retrieval System (PIIRS), Federal Awardee Performance and Integrity System (FAPIIS), Electronic Subcontract Reporting System (eSRS), or other databases; interviews with Program Managers, Contracting Officers, the Defense Contract Management Agency, past and present customers and their employees, other subcontractors, and any others who may have useful and relevant information

NOTE: The adjectival ratings Exceptional, Very Good, Satisfactory, Marginal, and Unacceptable reflect the ratings in the Contractor Performance Rating System (CPARS). However, under the DOD's streamlined process for evaluating Past Performance under Lowest Price Technically Acceptable, ratings of Acceptable and Unacceptable must be used. The Contracting Officer has reviewed the CPARS rating standards at <https://www.cpars.gov/pdfs/CPARSQualityChecklist.pdf> and the Contractor Past Performance Questionnaire, Attachment V, and determined that CPARS and Questionnaire ratings of Exceptional, Very Good, Satisfactory and Marginal will equate to an Acceptable rating. Ratings of Unacceptable will equate to an Unacceptable rating.

A record of poor performance may be considered an indication that the offeror has failed to conform to contract requirements and/or to standards of good workmanship; adhere to contract schedules, including the administrative aspects of performance; provide reasonable and cooperative behavior and commitment to customer satisfaction; and/or display a business-like concern for the interests of the customer. Offerors

are advised that the Government may use past performance information obtained from centralized past performance databases and sources other than those identified by the offeror.

Recency and Relevancy are evaluated as part of the Acceptable/Unacceptable ratings. Recent past performance is defined as past performance on contracts performed within the past three years. The evaluation will determine the degree to which a recent effort accomplished by the offeror is relevant to the effort to be acquired through this acquisition. In establishing what is relevant for the acquisition, consideration shall be given to those aspects of an offeror's contract history that would give the greatest ability to measure whether the offeror will satisfy the current procurement. This relevancy assessment shall measure the extent of similarity between the service effort, complexity, dollar value, contract type, and subcontract/teaming arrangements, and a measure of the likelihood that the past performance is an indicator of future performance. Relevancy and non-relevancy are defined in Table A-2.

Upon determining how recent past performance was, relevancy, and how well the offeror performed, past performance will be rated "Acceptable" or "Unacceptable" using the ratings and descriptions outlined in the DoD Source Selection Procedures, the Past Performance factor shall be evaluated using the following adjectival ratings in Table A-2 as follows:

Table A-2

Past Performance Evaluation Ratings	
RATING	DESCRIPTION
Acceptable	Based on the offeror's performance record, the Government has a reasonable expectation that the offeror will successfully perform the required effort, or the offeror's performance record is unknown. (See note below)
Unacceptable	Based on the offeror's performance record, the Government does not have a reasonable expectation that the offeror will be able to successfully perform the required effort.

Note 1: In the case of an offeror without a record of relevant past performance or for whom information on past performance is not available or so sparse that no meaningful past performance rating can be reasonably assigned, the offeror may not be evaluated favorably or unfavorably on past performance (see FAR 15.305 (a)(2)(iv)). Therefore, the offeror shall be determined to have unknown (or "neutral") past performance. In the context of acceptability/unacceptability, a neutral rating shall be considered "Acceptable."

Evaluation for Joint Ventures and Teaming Arrangements will be performed by evaluating the performance of each partner in accordance with the procedures outlined above. The ratings for each partner will be combined and the Joint Venture or Teaming Arrangement will receive one rating. As a Joint Venture, each partner's experience and past performance may be evaluated and weighted against their respective roles identified in the Joint Venture agreement. This evaluation may be combined for a final past performance rating.

Note 2: A proposal receiving a rating of Unacceptable in this factor after final proposal revisions will be ineligible for award.

### FACTOR 3: PRICE

A Firm Fixed Price (FFP) contract(s) will result from this solicitation. The SSEB will perform the evaluation of the offered prices. Price will always be evaluated for reasonableness. The Government will evaluate offers for award purposes IAW FAR 52.212-2 – EVALUATION – COMMERCIAL ITEMS (OCT 2014) as follows:

A total Monthly Use Charge (MUCG) offered price for F.E. Warren AFB, WY, Contract Line Item Number (CLIN) 0001 (Base period, years 1-4) will be multiplied by 48 months to determine the total price for this performance period. The total MUCG price offered for CLIN 0002 (Option period, years 5-9) will be multiplied by 60 months to determine the total price for this performance period.

Option (Extension Provision) price: In accordance with FAR 52.217-8, OPTION TO EXTEND SERVICES (NOV 1999), the Government has the unilateral right to extend any resulting contract under the same terms and conditions for a total of not more than six months. To account for the option period(s) possible under 52.217-8 (maximum of six months), the Government will evaluate the option to extend by adding six months of Offeror's performance period to the Offeror's total price for F.E. Warren AFB, WY.

A total Monthly Use Charge (MUCG) offered price for Malmstrom AFB, MT, Contract Line Item Number (CLIN) 0004 (Base period, years 1-4) will be multiplied by 48 months to determine the total price for this performance period. The total MUCG price offered for CLIN 0005 (Option period, years 5-9) will be multiplied by 60 months to determine the total price for this performance period.

Option (Extension Provision) price: In accordance with FAR 52.217-8, OPTION TO EXTEND SERVICES (NOV 1999), the Government has the unilateral right to extend any resulting contract under the same terms and conditions for a total of not more than six months. To account for the

option period(s) possible under 52.217-8 (maximum of six months), the Government will evaluate the option to extend by adding six months of Offeror's performance period to the Offeror's total price for Malmstrom AFB, MT.

Option price: In accordance with FAR 52.217-9 OPTION TO EXTEND THE TERM OF THE CONTRACT (MAR 2000), the Government may extend the term of this contract by written notice to the Contractor within thirty (30) days; provided the Government gives the contractor a preliminary written notice of its intent to extend at least sixty (60) days before the contract expires. The preliminary notice does not commit the Government to an extension. If the Government exercises this option, the extended contract shall be considered to include this option clause.

The Government reserves the right to conduct a price realism analysis to determine whether the offeror understands the contract requirements. If a price realism analysis is performed and an offeror's price is determined to be unrealistic, the offeror's proposal will be ineligible for award.

The Government may determine that an offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options does not obligate the Government to exercise the option(s).

Competitive Range: If discussions are conducted, the Government will establish a competitive range comprised of all the highly rated proposals unless the competitive range is further reduced for purposes of efficiency in accordance with FAR 15.306(c)(2) – Exchanges with Offerors after Receipt of Proposals.

A written notice of acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

#### **52.217-5 EVALUATION OF OPTIONS (JUL 1990)**

Except when it is determined in accordance with FAR 17.206(b) not to be in the Government's best interests, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. Evaluation of options will not obligate the Government to exercise the option(s).

#### **M-0001 M72 EVALUATION OF OFFERS (EXCEPTIONS/DEVIATIONS) (DLA ENERGY APR 1997)**

(a) Offerors are expected to submit offers in full compliance with all terms and conditions of this solicitation.

(b) Any exceptions/deviations to the terms and conditions of this solicitation will result in the Government's determination that either—

(1) The exception/deviation is material enough to warrant rejection of the offer in part or in full; or

(2) The exception/deviation is acceptable.

(c) If the exception/deviation is in reference to a specification contained in this solicitation and the offeror cannot supply product fully meeting the required specification(s), the product can be offered for consideration provided the offeror clearly indicates, by attachment to the offer, the extent to which any product offered differs from the required specification(s).

(d) If the exception/deviation is in reference to a particular test, inspection, or testing method contained in this solicitation, the offer can be considered provided the offeror clearly indicates, by attachment to the offer, the extent to which its offer differs from those requirements.

(e) If the exception/deviation is determined acceptable, offered prices may be adjusted, for evaluation purposes only, by the Government's best estimate of the quantitative impact of the advantage or disadvantage to the Government that might result from making an award under those circumstances.