



April 12, 2017

**SUBJECT: UNITED STATES AFRICAN DEVELOPMENT FOUNDATION (USADF)**

**COUNTRY PROGRAM COORDINATOR (CPC) POSITION FOR SENEGAL**

**Dear Potential Applicants,**

The Bureau of the Fiscal Service, on behalf of the United States African Development Foundation (USADF), is seeking applications from qualified Senegalese citizens living in Senegal to provide services as a Country Program Coordinator (CPC) in Dakar, Senegal under a Personal Services Contract (PSC), as described in the following solicitation: RFP-ADF-FOP-17-0023 This document describes the job of the Senegal CPC. Please read it carefully. This contract will be awarded for a Base Period of one (1) year and four (4), one (1) year Option Periods in accordance with the following Statement of Work (SOW) and Contract Terms and Conditions. Option periods are not guaranteed and will be exercised at the discretion of USADF based on the CPC's performance.

The applicant assumes full responsibility for ensuring that their responses are received at the place as delineated herein and by the date and time identified below. The Respondent assumes full responsibility for ensuring electronic submissions are formatted in accordance with Security Requirements. The preferred format for application submissions are Microsoft Office Word (.doc/.docx) or Adobe (.pdf). The following file extensions are unacceptable: **.bat, .cmd, .com, .exe, .gif, .rar, .scr, .vbs, .hta, .cpl, .html, and .mhtml** and application materials with these file extensions will not be considered. Files may be "zipped"; however, the file must be renamed with a file extension other than ".zip", as ".zip" extensions will be quarantined by IT Security and timely delivery cannot be guaranteed for consideration. Submitted materials with unacceptable or unreadable formats may be found non-responsive.

Applications shall be e-mailed to [purchasing@fiscal.treasury.gov](mailto:purchasing@fiscal.treasury.gov), with the subject line "**Applications for RFP-ADF-FOP-17-0023 Senegal CPC, Attention JMCCLAD/TAYERS**" and received **on or before 10:00 am EST (14:00 Senegal time) on April 26, 2017**. Late or incomplete applications will not be considered. Although this request for applications is being posted in the Senegal field office, only complete applications submitted to the e-mail address above will be considered

A complete application shall include the following items:

1. In submitting your response by email, the subject line must reference: **Applications for RFP- ADF-FOP-17-0023 Senegal CPC, Attention JMCCLAD/TAYERS.**
2. Provide a Cover Letter in English that demonstrates the applicant's capability to perform each of the required work responsibilities identified in Section 3.0 of the statement of work.
3. Provide a resume or Curriculum Vitae (CV) that demonstrates the applicant has the required qualifications identified in Section 4.0 of the statement of work. Furthermore,
  - a. The resume or CV must be written in **English**
  - b. Write "RFP-ADF-FOP-17-0023 Senegal CPC" on the front page of the resume or CV.
  - c. Applicant should hand sign the last page of the resume or CV.
4. Provide a signed statement that you are a citizen of the Country of Senegal (Please **do not** send a copy of an identification card with a photograph such as a driver's license, national identification card, or passport with your initial application. The Government will request a hard copy of one of the aforementioned items as proof at the Interview Phase of the Evaluation Process).
5. Provide a copy of applicant's educational diploma
6. Provide salary history for last three positions similar to the position as described herein;
7. Provide a list of three (3) references with contact information (telephone number and if available, email).

Thank you for your interest in USADF. We look forward to reviewing your application.

Taten J. Ayers  
Contracting Officer  
Fiscal Service/OAS/DPS

## INSTRUCTIONS TO APPLICANTS

**1.0 Capability to Perform** - Applicants shall provide a **Cover Letter** that clearly and sufficiently addresses in written form their capabilities to perform each of the work responsibilities identified in **Section 3.0 of the Statement of Work (pages 4-5 herein)**.

**2.0. Qualifications:** Applicants shall provide clear and sufficient evidence in written form to support that they have the following qualifications as identified in **Section 4.0 of the Statement of Work (page 5 herein) and below (resume or CV, certificates):**

### **2.1 REQUIRED MINIMUM QUALIFICATIONS**

1. Citizen of the Country of Senegal (signed statement only with initial application)
2. A bachelor's degree from an accredited university in agriculture, business administration, management, public administration, finance, accounting, community development, economics, or a related field
3. High level of motivation, personal commitment, and ethical standards.
4. Fluency in written and spoken French.
5. Good working knowledge of English and a high level of fluency at least one major national language
6. Willingness to travel extensively throughout Senegal.
7. Demonstrated ability to operate independently in high visibility, high-pressure environments and operate in a complex office environment, emergency and/or political crisis situations with minimal supervision;
8. Knowledge of grant management or commercial/micro-lending;
9. Experience working with marginalized groups and/or community-based enterprises.
10. Experience managing client relationships, especially in a grants management, banking, business development, or international development context.
11. Experience with or education related to financial management/accounting
12. Experience auditing, monitoring, or evaluating international development programs.
13. Five years of professional experience in business development, finance, banking, auditing, monitoring and evaluation, and/or management of international development program.
14. Knowledge of community needs assessment, mobilization, community enterprises participatory development, and/or monitoring the implementation of an assistance activity under a grant or cooperative agreement.

### **3.0. Past Performance**

Applicants shall provide a list of three (3) professional references with contact information (telephone and if available, email).

### **4.0. Salary History**

Applicants shall provide salary history for last three positions.

## APPLICANT EVALUATION PROCESS/AWARD DETERMINATION

### APPLICANT EVALUATION PROCESS

The Government will evaluate Applications following these four (4) phases:

**Phase I - Complete Application:** The Government will evaluate each application to ensure that it includes the following items as attachments to their email:

1. In submitting your response by email, the subject line must reference: **Applications for RFP- ADF-FOP-17-0023 Senegal CPC, Attention JMCCLEAD/TAYERS.**
2. Provide a Cover Letter in English that demonstrates the applicant's capability to perform each of the required work responsibilities identified in Section 3.0 of the statement of work.
3. Provide a resume or Curriculum Vitae (CV) that demonstrates the applicant has the required qualifications identified in Section 4.0 of the statement of work. Furthermore,
  - a. The resume or CV must be written in **English.**
  - b. Write "RFP-ADF- FOP-17-0023 Senegal CPC" on the front page of the resume or CV.
  - c. Applicant should hand sign the last page of the resume or CV.
4. Provide a signed statement that you are a citizen of the Country of Senegal. (Please **do not** send a copy of an identification card with a photograph such as a driver's license, national identification card, or passport with your initial application. The Government will request a hard copy of one of the aforementioned items as proof at the Interview Phase of the Evaluation Process).
5. Provide a copy of applicant's educational diploma.
6. Provide salary history for last three positions similar to the position as described herein;
7. Provide a list of three (3) references with contact information (telephone number and if available, email).

Applicants that meet the requirements listed above will move onto Phase II for further consideration.

**Phase II – Initial Review of Capabilities to Perform & Qualifications:** Applications will be evaluated based on the degree in which they provided clear and sufficient information in written form their capabilities to perform and qualifications, as requested in Sections 3.0 & 4.0 above in the instructions to applicants.

Applicants (maximum of 5) with the highest initial review score will move onto Phase III for further consideration.

**Phase III - Interview** - Applicants will be evaluated based on the degree in which they articulate in the interview their capabilities, qualifications, communication skills, and experience relative to performing the work. Applicants shall provide proof of their citizenship by bringing a copy of an identification card with a photograph such like a driver's license, national identification card, or passport with them to the interview or by sending through an encrypted email or secure mail to the Regional Program Director's Washington, DC office.

The interview may take place at the USADF partner office or by telephone/video conference (e.g., Skype):

Villa No. 8333 Sacre Coeur 1 Dakar, Senegal

Applicants (maximum of 2) who receive the highest interview score will move onto Phase IV for further consideration.

**Phase IV: Past Performance:** The Government will conduct their due diligence to contact all references provided by the Applicants being considered for award. However, time will dictate the number of contacts actually made. At a minimum, 1 direct past performance contact will be made for all Applicants considered for award.

An Applicant must not receive or have any negative past performance responses to receive further consideration for contract award.

The Government reserves the right to clarify certain aspects of Applicants' application to clear up details relative to Phase 2 if necessary at the Government's discretion. The Government also reserves the right to hold discussions with the Applicants included in Phase IV prior to making a final award decision.

#### **AWARD DETERMINATION**

An offer for award will be made to the applicant receiving the highest score in Phase III, considering references and availability. If the offer is not accepted, the Government reserves the right to move on to and make an offer to the next preferred applicant without further discussion.

The actual salary of the successful candidate will be negotiated within the maximum gross salary amount of \$41,470 for the base year depending on:

- capabilities to perform,
- qualifications,
- educational background
- experience, and
- salary and work history.

The Contractor shall obtain a satisfactory background clearance through the United States Embassy within ninety (90) days of the effective date of the contract. This background check will be initiated and costs assumed by USADF. If the initial awardee does not pass the background clearance, then the Government reserves the right to offer the position to the next preferred applicant.

**STATEMENT OF WORK (SOW)**  
**JOB DESCRIPTION SENEGAL COUNTRY PROGRAM COORDINATOR (CPC)**

**1.0 BACKGROUND**

The United States African Development Foundation (USADF) is an agency of the United States Government. USADF provides grant funding to private businesses, farmers' cooperatives, associations, and community-based organizations, especially those serving marginalized peoples engaged in economic and social development activities.

The Foundation began its funding activities in Senegal in 1986. USADF's office in Dakar provides on-going support to projects that have been financed and also continues to identify viable local community development and small and medium-sized enterprises that show potential to create employment opportunities, generate incomes and have broad social impact beyond the project activity.

**2.0 SCOPE OF WORK**

USADF has a need for a Country Program Coordinator (CPC) to assist USADF in fulfilling its administrative oversight and program management responsibilities of grant agreements in Africa.

The CPC reports to the USADF Regional Program Director (RPD). The CPC manages the one Field Office staff, which includes a part-time Administrative Assistant.

**3.0 SUMMARY OF WORK RESPONSIBILITIES**

**The CPC shall perform the following:**

Project Identification and Screening (30%): The CPC shall support and document the receipt of grant applications, conduct the initial screening and sorting of applications, and present candidate applications to the Regional Program Director (RPD). In accordance with RPD instructions, the CPC conducts site visits and prepares site visit reports of select applications. The CPC is responsible for maintaining correspondence with all applicants on the status of grant applications. Under the direction of the RPD the CPC shall orient the grantee to the USADF grant agreement. The CPC may also be asked to conduct outreach activities to publicize USADF's country program and encourage groups to apply.

Monitoring (40%): The CPC shall use site visits to gather observations and grantee feedback and report to the RPD on 1) the quality of the financial management systems implemented by the grantee, including any potential for waste, fraud, or abuse of grant funds; and 2) the effectiveness of the in-country partner's support of grantees. The CPC shall conduct at least one site visit to every grantee at least once every two years, or as determined by an annual monitoring plan established with the RPD. The annual monitoring plan shall ensure that all grantees receive a site visit at least once per year from the CPC, the RPD, or other USADF/Washington program staff. The CPC shall provide a site visit report for each grantee site visit, as well as monthly CPC reports and bi-annual assessments of the partner's performance. In special cases the site visit may also include remediation activities as directed by the RPD. The CPC is expected to be familiar with the status of grantees by reviewing grantee quarterly reports and grantee disbursement requests on a timely basis.

Close-Out (15%): The CPC shall conduct final financial reconciliations, draft grant programmatic close-out reports, and provide other services in support of grant close-out activities and grant audit follow up activities as directed by the RPD.

Management & Coordination (15%): The CPC shall manage the Country Field Office. This includes managing the use of funds and maintaining accurate financial records, performing monthly bank reconciliations of the Field Office bank account, submitting monthly financial and activity reports, and ensuring the proper use and maintenance of USADF assets. The CPC is responsible for the supervision of support staff. The CPC shall assist in the coordination of

USADF related visits and events associated with USADF/W staff. The CPC shall also, on a limited basis, interface with outside stakeholders on behalf of USADF as directed by the RPD.

#### **4.0 MINIMUM QUALIFICATIONS**

The Contractor shall have the following minimum qualifications:

- a. Citizen of the Country of Senegal.
- b. A bachelor's degree from an accredited university in agriculture, business administration, management, public administration, finance, accounting, community development, economics, or a related field
- c. High level of motivation, personal commitment, and ethical standards.
- d. Fluency in spoken and written French.
- e. Good working knowledge of English and a high level of fluency at least one major national language
- f. Willingness to travel extensively throughout Senegal.
- g. Demonstrated ability to operate independently in high visibility, high-pressure environments and operate in a complex office environment, emergency and/or political crisis situations with minimal supervision;
- h. Knowledge of grant management or commercial/micro-lending;
- i. Experience working with marginalized groups and/or community-based enterprises.
- j. Experience managing client relationships, especially in a grants management, banking, business development, or international development context.
- k. Experience with or education related to financial management/accounting
- l. Experience auditing, monitoring, or evaluating international development programs.
- m. Five years of professional experience in business development, finance, banking, auditing, monitoring and evaluation, and/or management of international development programs
- n. Knowledge of community needs assessment, mobilization, community enterprises participatory development, and/or monitoring the implementation of an assistance activity under a grant or cooperative agreement.

#### **5.0 CONTRACT TYPE**

This personal service contract will be firm-fixed price in U.S. Dollars with Prospective Price Redetermination at option periods.

#### **6.0 CPC/ USADF RELATIONSHIP**

- a. The Contractor acknowledges that this contract is important in support of USADF/Senegal operations and agrees that their duties shall be carried out in such a manner as to be fully commensurate with the responsibilities that this entails. Favorable relations between the Foundation and the Government and people of Senegal require that the Contractor show respect for the conventions, customs, and institutions of Senegal and not become involved in any illegal activity.
- b. If the Contractor's conduct is not in accordance with 6.0.a, the contract may be terminated.
- c. It shall be recognized at all times, the Contractor is engaged by contract and that the Contractor is not an employee or official of USADF. If, at any time during the effective period of this contract, the Contractor should be appointed to a regular position in USADF or elsewhere in the service of the U.S. Government, this contract will automatically terminate.

#### **7.0 CONTRACTING OFFICER AUTHORITY**

In no event shall any understanding or agreement between the Contractor and any Government employee other than the Contracting Officer on any order modifications, change orders, letter or verbal direction to the Contractor be effective or binding upon the Government. All such actions

shall be formalized by the proper contractual document executed by the appointed Contracting Officer. The Contractor is hereby put on notice in the event a Government employee other than the Contracting Officer directs a change in the work to be performed or increases the scope of work to be performed, as described in DTAR 1052.201-70(c)(1-6); it is the Contractor's responsibility to make inquiry to the Contracting Officer no later than the beginning of the next Government work day before making the deviation. Payments will not be made without being authorized by the appointed Contracting Officer with the legal authority to bind the Government

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**ARTICLE 1: UNITED STATES AFRICAN DEVELOPMENT FOUNDATION (USADF) POINTS OF CONTACT**

**USADF Regional Program Director (RPD)**

Attn: Regional Program Director of Senegal  
African Development Foundation  
1400 I Street NW, Suite 1000  
Washington, DC 20005

**ARTICLE 2: STATEMENT OF DUTIES**

The Contractor shall perform the services as specified in the following Articles and Statement of Work for the USADF Field Office in Senegal.

**ARTICLE 3: DEFINITIONS**

- 3.1 "USADF" and "the Foundation" shall mean the African Development Foundation.
- 3.2 "Privileged" shall mean not subject to disclosure or disclosure is limited due to special circumstances.
- 3.3 "Contracting Officer" (CO) shall mean a person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings.
- 3.4 "Contracting Officer's Representative (COR)" The term means authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer in writing. The COR has no rights to change the scope of this contract in any way (actually or implied). For purposes of this contract, the Regional Program Director (RPD) is the "COR."
- 3.5 "Confidential Information" means any information declared by the CO or the COR as being privileged information – information that must be kept secret as directed by the CO and the COR.
- 3.6 "Country Program Coordinator" (CPC) shall mean the individual appointed or contracted to serve to manage the USADF Country Representative Office in the Host Country.
- 3.7 "Day" shall mean, unless otherwise specified, a calendar day.
- 3.8 "Government" shall mean the United States Government.
- 3.9 "Host Country Government" shall mean the government of the Host Country.
- 3.10 "Host Country" shall mean the foreign country in which the services hereunder are to be rendered.
- 3.11 "USD" shall mean United States Dollar.
- 3.12 "RPD" shall mean Regional Program Director.
- 3.13 "Gross Salary" shall mean salary inclusive of employee's contribution to social security and taxes which are deducted from employee's monthly salary and paid to local country by USADF on behalf of the employee.

USADF Disclosure: The Gross Salary Amount was determined by considering the current wage's being paid for the same or similar positions being filled in the geographical area where the work will be performed, the kind of work to be performed under the contract, the volatility of the area where the work will be performed, the cost of living for the geographical area (i.e. transportation cost, lodging, utilities, food, health care cost, educational cost), the level of demand for individuals with the

required knowledge, skills, and abilities (KSA), the KSAs of the individual filling the position, and the availability of agency funding.

- 3.14 "Total Compensation" shall mean gross salary, plus employer's contribution to Social Security and health benefits.

**ARTICLE 4: PERIOD OF PERFORMANCE**

- 4.1 The Contractor's period of performance includes a base period of 12 months followed by four 12-month options starting from the effective date of award. Option Periods are not guaranteed. The available contract periods are as follows:

Base Period	Date of Award - Month 12
Option Period I	Month 13 – Month 24
Option Period II	Month 25 – Month 36
Option Period III	Month 37 – Month 48
Option Period IV	Month 49 – Month 60

- 4.2. The total duration of this contract, including the exercise of any options under this clause, shall not exceed sixty (60) months. No change to the period of performance shall be made without specific written approval of the Contracting Officer.

**ARTICLE 5: PLACE OF PERFORMANCE**

The Contractor's duty station is the USADF Field Office in Senegal located at Villa No. 8333 Sacre Coeur 1 Dakar, Senegal. USADF will furnish office space, supplies, and equipment including vehicles as necessary for official use only.

**ARTICLE 6: PAYMENTS UNDER PERSONAL SERVICES CONTRACTS**

- 6.1 The Government shall pay the Contractor in USD for the services performed by the Contractor, as set forth in this contract, at the rates prescribed, upon the submission by the Contractor of proper invoices, or timesheets, and provided there is timely submission of all deliverables and reports to the office or officer designated and at the time provided for in this contract. Failure of the Contractor to submit required reports when due, or failure to perform or deliver required equipment, supplies, and services will result in the withholding of payments under this contract, unless such failure arises out of causes beyond the control of and without the fault or negligence of the Contractor.

Prior to final payment under this contract, the Contractor agrees to do the following:

- (a) Properly complete and submit any outstanding travel vouchers and liquidate any outstanding travel advances;
- (b) Return and account for all government supplies, materials, and equipment assigned to the Contractor; and
- (c) Execute and deliver to the Contracting Officer a proper Contractor's Release (See Attachment 1) discharging USADF, its officers, agents, and employees from all liability, obligations, and claims arising out of or under this contract upon final payment. The Contractor shall keep a record of all payments made by USADF for the duration of the contract.

## 6.2 **COMPENSATION**

- 6.2.1 **Compensation:** Compensation will be fixed and paid monthly, in accordance with local laws, in USD and shall not exceed amounts identified in the contract.
- 6.2.2 **Salary Increases:** The base compensation may be increased annually at the time the option is exercised based on: (1) availability of funds; (2) cost of living increases per an index of annual inflation; and/or (3) employee's annual performance appraisal.
- 6.2.3 **Performance Award:** Based on the employee's annual performance rating being determined either outstanding or meritorious, the Contractor may be eligible to receive an annual performance award within the not-to-exceed amount identified in the contract during or after the 4<sup>th</sup> quarter of each period executed under the contract at the discretion of USADF in accordance with their policy.
- 6.2.4 **Severance:** A Contractor who is separated for cause or who voluntarily terminates their Contract is not eligible for severance payment. If required by the local country law and determined eligible, a Contractor shall receive severance pay in accordance with the laws of Senegal at the end of the contract.
- 6.2.5 **Bonuses:** The Contractor will be paid a bonus equivalent to one month's base salary, one month prior to Tabaski, per the Senegal Local Compensation Plan. The bonus will be subject to all taxes applied to salary payments.

## 6.3 **LOCAL TAXES**

- 6.3.1 **Local Taxes:** The Personal Services Contractor is required to provide payment of relevant taxes in the host country per local laws and regulations. USADF will withhold the taxes from the Contractor's salary and the local office will make a monthly payment to the Senegalese Revenue Authority to ensure that the taxes are paid. This procedure is also applied to Social Security.

## ARTICLE 7: **WORK WEEK AND COMPENSATED TIME**

The anticipated work week is 8:30am-5:00pm with a half hour lunch break, Monday – Friday. The work week shall be for a total of forty (40) hours per week. From time to time, work in excess of these hours or outside the normal scheduled work week may be requested by the COR, or other USADF staff.

Provided that it is requested, scheduled, and approved in advance by the COR, such time worked will be compensated by time off. The Country Program Coordinator (CPC) shall request time off, and final approval of the request will be determined by the COR. Compensatory time off must be approved in advance by the COR.

## ARTICLE 8: **LEAVE AND HOLIDAY**

- 8.1 **Vacation Leave:** The Contractor shall earn vacation leave as of the effective date of this award, at a rate of two (2) days per month (8 hours per work day x 2 days = 16 hours) for a total twenty-four (24) work days per year (8 hours per work day x 24 work days = 192 hours), provided that the contract is in force for at least 90 days, after which the Contractor is entitled to use the accrued vacation leave. If the

contract ends before 90 days, no vacation leave shall accrue. Salary payments while on annual leave will be based on 100% of all allowances normally paid each pay period. No additional funding is provided for vacation leave. The Contractor may accrue, accumulate, use and be paid when taking vacation leave.

The Contractor shall make every effort to request and take vacation leave during the contract period when it is accrued. If it is not possible for the Contractor to take vacation leave a maximum of 192 hours of unused vacation leave may be carried over from one contract period to the next contract period.

The Contractor will be paid for up to 240 hours of unused vacation leave at the expiration of the contract at the established determined rate per day based on the current monthly base salary payment. With the written approval of the RPD, the Contractor may be granted advance vacation leave not to exceed the amount he would earn in each year of the contract and not to exceed what will be earned over the life of the contract

- 8.2 **Sick Leave:** USADF will provide Sick Leave in accordance with Senegalese laws and regulations. No additional funding is provided for sick leave. Contractor cannot carry over sick leave from one contract year to the next, and no payment will be made for sick leave at the end of the contract.
- 8.3 **Leave without Pay:** Leave without pay may be granted only with prior written approval of the RPD.
- 8.4 **Maternity/Paternity:** USADF will provide maternity or paternity leave in accordance with the laws of Senegal.
- 8.5 **Holidays:** The Contractor will be entitled to the local holidays observed in Senegal and select United States holidays after consultation with the COR. The RPD or designee must request any work on a holiday in writing in advance. In the unlikely event that the Contractor is required to work on a holiday, the Contractor will be compensated by time off in the same manner as in Article 7 above.

**ARTICLE 9: HEALTH COVERAGE**

USADF will either make a direct payment for the purchase of health insurance policy upon receipt of proper invoice for the cost of the insurance premium OR 80% reimbursement of approved individual health-related expenditures for the contractor or members of their household, paid based on receipts/proof of purchase, and shall not exceed the contracted amount per period executed under the contract. This includes the medical expenses of spouse and recognized dependent children under the age of 21 with whom the employee is living. This age limit may be raised to 25 for those showing evidence of pursuing University studies.

If reimbursement of the employee's chosen health insurance premium for 12 months is less than the annual benefit amount, the employee may receive reimbursement for other medical expenses at 80% of the cost shown on actual receipts submitted to USADF.

**ARTICLE 10: INVOICES AND TIMESHEETS**

The Contractor shall submit invoices and timesheets to the RPD or designee for time worked on a monthly basis. Any overtime hours claimed must be accompanied by the associated written request and RPD advance approval for compensatory time off as indicated in Article 7. Payment shall be made upon approval of the invoice, timesheet, and required reports by the RPD.

**ARTICLE 11: REQUIRED REPORTS**

The RPD or designee shall inform the Contractor of required reports and deadlines for submission of such reports.

**ARTICLE 12: HOST COUNTRY REQUIREMENTS/SOCIAL SECURITY**

The Contractor's share of contributions for applicable social security, retirement, pension, or other host country programs shall be deducted and withheld in accordance with laws, regulations and other rulings of the host country applicable to Employees or with any agreement between the Government of the host country and the African Development Foundation. USADF shall pay the Contractor's contributions to the required programs on behalf of the Contractor. USADF shall also pay USADF's contributions to the required programs.

**ARTICLE 13: TRAVEL AND TRANSPORTATION**

13.1 Frequent travel to field sites may be required. As necessary, the Contractor may be required to work under extreme environmental conditions and travel within the assigned country or in other countries by car, boat, or plane for extended periods of time. Site visits may require some physical exertion such as walking over rough surfaces and using uncomfortable modes of transportation. Travel associated with the contract performance will be funded separately. USADF will furnish vehicles for official business only.

The Contractor shall be reimbursed in currency consistent with the prevailing practice at the post and at the rates established by the post for authorized travel in the host country in connection with duties directly referable to work under this contract.

13.1.1 **Travel:** Travel shall be approved in advance by the COR. The Contractor shall be paid a per diem rate in lieu of subsistence for each day that the Contractor is in a travel status away from home or regular place of employment in accordance with Federal Travel Regulations (41 CFR 101-7) and USADF travel policy as authorized in appropriate travel authorizations; and any other transportation expenses if provided for in this contract. Funding for travel related expenses is provided separately under travel authorizations.

13.1.2 **Relocation:** Relocation and travel costs will not be paid for or reimbursed to the Contractor.

**ARTICLE 14: PERFORMANCE APPRAISAL**

14.1 This contract is subject to performance evaluation. All work shall be evaluated for effectiveness or results and compliance with the U.S. Government's and USADF's prevailing policies, regulations, directives and strategic plans, goals, and objectives.

14.2 An annual performance appraisal will occur each year the contact is in effect. Each performance evaluation will be completed by the RPD and discussed with the Contractor. The Contractor may submit written comments within five (5) business days after receiving the proposed evaluation. The Contractor's comments will be considered in the issuance of the final evaluation documents. Any disagreement between the parties regarding the evaluation shall be forward to the CO who will make the final determination. A copy of the final performance evaluation will be incorporated in to the contact file.

**ARTICLE 15: CONTRACTOR - USADF RELATIONSHIP**

- 15.1 The Contractor acknowledges that this contract is important in support of USADF operations and agrees that their duties shall be carried out in such a manner as to be fully commensurate with the responsibilities that this entails. Favorable relations between the Foundation, the local government and the people of the country require that the Contractor show respect for the conventions, customs, and institutions of the country and not become involved in any illegal political activity.
- 15.2 If the Contractor's conduct is not in accordance with the principles of ethical conduct for U.S. Government employees, the contract may be terminated pursuant to the provision of this contract entitled 'Termination'. The Contractor during their work under this contract shall be subject to the Standards of Ethical Conduct for Employees of the Executive Branch of the U.S. Government at 5 CFR Part 2635. During the term of this contract and outside of the Contractor's work with USADF, the Contractor shall not perform any other professional activity that could compete or interfere with providing the agreed-upon services.
- 15.3 The COR for this contract is the RPD or designee. The COR will monitor Contractor performance and notify the Contractor and CO of any deficiencies. The COR is **NOT** authorized to change any of the terms and conditions of this contract. Changes may only be made by formal written modification to the contract signed by the CO. The COR does not have the authority to make any changes in the specifications or scope of work or terms and conditions of the contract. In the event the contractor effects any changes at the instruction or request of any person other than the CO, the change will be considered to have been made without authority and no adjustment will be made in the contract price to cover any cost increase incurred.
- 15.4 The Contractor will be responsible for performing their duties in accordance with the Scope of Work in this contract.

**ARTICLE 16: RELEASE OF INFORMATION**

All rights to data and reports produced under this contract shall become the property of the U.S. Government. All information gathered under this contract by the Contractor and all reports and recommendations hereunder shall be treated as privileged information by the Contractor and shall not, without the prior written approval of the Contracting Officer, be made available to any person, party, or government, other than USADF, except as expressly provided in this contract. The Contractor shall not disclose any confidential information for the Contractor's own use or a third party's profit, which the Contractor would have gained knowledge of while working for the Foundation; and this even after expiration of the contract. All documents developed and paperwork copied by the Contractor under the terms of this contract is the sole property of the US Government. Upon expiration of this contract, the Contractor has the obligation to hand over to the Government all documents relating to USADF in their integrality and properly filed.

**ARTICLE 17: CONTRACTOR STATUS**

It shall be recognized at all times that the Contractor is engaged by contract and is not an employee or official of the African Development Foundation. If, at any time during the effective period of this contract, the Contractor should be appointed to a regular position in USADF or elsewhere in the service of the U.S. Government, this contract will automatically terminate.

**ARTICLE 18: COMPLIANCE WITH APPLICABLE LAWS**

18.1 The Contractor is subject to all laws, rules and regulations governing the behavior of regular Federal employees, including, without limitation, the Anti-Deficiency Act and the laws and regulations governing the ethical conduct of employees of the Federal Government.

18.2 However, the Contractor does not qualify as an employee for purposes of programs administered by the Federal Office of Personnel Management (for example, incentive awards, health and life insurance programs, and retirement programs). All laws and amendments to laws enacted after the date of this contract, which are applicable to the Contractor, shall be incorporated herein by law without the need to amend the contract. Nothing in this clause shall give the Contractor rights which the Contractor is not otherwise entitled to under law.

18.3 The Contractor agrees, during the period of service under this contract, to abide by all applicable laws and regulations of the host country. The Contractor agrees to notify the RPD and the CO immediately if the Contractor is arrested or charged with an offense during the term of this contract.

**ARTICLE 19: WARRANTY AGAINST DUAL COMPENSATION**

The Contractor agrees that no part of the total contract amount provided herein shall be paid directly or indirectly to any officer or employee of the African Development Foundation as wages, compensation or gifts for acting in any capacity in connection with any work contemplated or performed under or in connection with this contract.

**ARTICLE 20: SUBCONTRACTS OR ASSIGNMENT**

No part of this contract shall be subcontracted or assigned by the Contractor.

**ARTICLE 21: PUBLICITY**

The Contractor shall make no publicity announcements or issue other public relations material mentioning the Contractor's connection to the USADF without the advance written concurrence of the Regional Program Director (RPD).

**ARTICLE 22: CONTRACTOR'S TAX AND OTHER LEGAL OBLIGATIONS**

The Contractor shall be responsible for meeting Senegalese income tax and any other legal obligations associated with performance under this contract. If the Contractor holds dual citizenship with the United States, USADF shall withhold the required amount(s) and make payments to the proper authorities on behalf of the Contractor. USADF shall report the Contractor's income to the Internal Revenue Service and shall issue a W-2 to the Contractor at the appropriate time.

## **ARTICLE 23: CORRESPONDENCE AND/OR NOTICES**

Any correspondence and/or Notices regarding this contract shall be submitted in writing and delivered in person or sent by registered or regular mail or email as follows:

**From the Contractor to USADF:** To the RPD with a copy to the CO.

**From USADF to the Contractor:** To the Contractor's address shown on the Cover Page to this contract. Correspondence and/or Notices hereunder shall be effective when delivered in accordance with this clause or on the effective date of the notice, whichever is later.

## **ARTICLE 24: USADF TERMINATION CLAUSE**

**24.1.** USADF may terminate performance of work under this contract in whole or, from time to time, in part:

- a. For cause, which may be effected immediately after establishing the facts warranting the termination, by giving written notice and a statement of reasons to the Contractor in the event the Contractor:
  - i. Commits a breach or violation of any obligations herein contained;
  - ii. Commits fraud in obtaining this contract;
  - iii. Is guilty as determined by USADF of misconduct in the host country.

Upon such termination, the Contractor's right to compensation shall cease when the period specified in such notice expires or the last day on which the Contractor performs services hereunder, whichever is earlier.

- b. For the convenience of USADF, by giving not less than fifteen (15) calendar days' advance written notice to the Contractor. Upon such a termination, the Contractor's right to compensation shall cease when the period specified in such notice expires except that the contractor shall be entitled to any accrued, unused vacation leave in accordance with Article 8.1 and Severance Pay in accordance with Article 6.2.4.

**24.2.** No cost of any kind incurred by the Contractor after the date such notice is delivered shall be reimbursed hereunder except as approved by the Contracting Officer. If any costs relating to the period subsequent to such date have been paid by USADF, the Contractor shall promptly refund to USADF any such prepayment as directed by the Contracting Officer.

**24.3.** The Contractor, with the written consent of the Contracting Officer, may terminate this contract upon at least fifteen (15) days' written notice to the Contracting Officer.

## **ARTICLE 25: FEDERAL ACQUISITION CLAUSES**

### **PERSONAL SERVICES CONTRACT (PSC) ADDITIONAL TERMS AND CONDITIONS**

#### **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 address: <https://www.acquisition.gov/far>

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



**1052.212-4 CONTRACT TERMS AND CONDITIONS-COMMERCIAL ITEMS. (ALTERNATE II) (DEVIATION 2016-00001) (JAN 2016)**

(e) Definitions.

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- (2) As used in this clause, "Commercial supplier agreements" means terms and conditions customarily offered to the public by vendors of supplies or services that meet the definition of commercial item set forth in FAR 2.101 and intended to create a binding legal obligation on the end user. Commercial supplier agreements (CSA) are particularly common in information technology acquisitions, including acquisitions of commercial computer software and commercial technical data, but they may apply to any supply or service. The term applies—
- (i) Regardless of the format or style of the document. For example, a CSA may be styled as standard terms of sale or lease, Terms of Service (TOS), End User License Agreement (EULA), or another similar legal instrument or agreement, and may be presented as part of an offer or quotation responding to a solicitation;
  - (ii) Regardless of the media or delivery mechanism used. For example, a CSA may be presented as one or more paper documents or may appear on a computer or other electronic device screen during a purchase, software installation, other product delivery, registration for a service, or another transaction.

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(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, Unauthorized Obligations, and Commercial Supplier Agreements – Unenforceable Clauses paragraphs of this clause,
- (3) The clause at 52.212-5.
- (4) Solicitation provisions if this is a solicitation.
- (5) Other paragraphs of this clause.
- (6) Addenda to this solicitation or contract, including any license agreements for computer software.
- (7) The Standard Form 1449.
- (8) Other documents, exhibits, and attachments.
- (9) The specification.

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(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 CSA, that includes any language, provision, or 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 language, provision, or 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 CSA. If the CSA 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 language, provision, or clause is deemed to be stricken from the CSA.

- (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.

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(w) *Commercial supplier agreements –unenforceable clauses.* When any supply or service acquired under this contract is subject to a CSA, the following language shall be deemed incorporated into the CSA. As used herein, "this agreement" means the CSA:

- (1) Notwithstanding any other provision of this agreement, when the end user is an agency or instrumentality of the Government, the following shall apply:
- (i) *Applicability.* This agreement is a part of a contract between the commercial supplier and the Government for the acquisition of the supply or service that necessitates a license (including all contracts, task orders, and delivery orders under FAR part 12).
  - (ii) *End user.* This agreement shall bind the Government as end user but shall not operate to bind a Government employee or person acting on behalf of the Government in his or her personal capacity.
  - (iii) *Law and disputes.* This agreement is governed by Federal law.
    - (A) Any language purporting to subject the Government to the laws of a U.S. state, U.S. territory, district, or municipality, or a foreign nation, except where Federal law expressly provides for the application of such laws, is hereby deleted.
    - (B) Any language requiring dispute resolution in a specific forum or venue that is different from that prescribed by applicable Federal law is hereby deleted.
    - (C) Any language prescribing a different time period for bringing an action than that prescribed by applicable Federal law in relation to a dispute is hereby deleted.
  - (iv) *Continued performance.* If the supplier or licensor believes the Government to be in breach of the agreement, it shall pursue its rights under the Contract Disputes Act or other applicable Federal statute while continuing performance as set forth in paragraph (d) of this clause.
  - (v) *Arbitration; equitable or injunctive relief.* In the event of a claim or dispute arising under or relating to this agreement, (A) binding arbitration shall not be used unless specifically authorized by agency guidance, and (B) equitable or injunctive relief, including the award of attorney fees, costs or interest, may be awarded against the Government only when explicitly provided by statute (e.g., Prompt Payment Act or Equal Access to Justice Act).
  - (vi) *Additional terms.*
    - (A) This agreement may unilaterally incorporate additional terms by reference. Terms may be included by reference using electronic means (e.g., via web links, click and accept, etc.). Such terms shall be enforceable only to the extent that:
      - (1) When included by reference using electronic means, the terms are readily available at referenced locations; and
      - (2) Terms do not materially change government obligations; and
      - (3) Terms do not increase government prices; and
      - (4) Terms do not decrease overall level of service; and
      - (5) Terms do not limit any other Government rights addressed elsewhere in this contract.
    - (B) The order of precedence clause of this contract notwithstanding, any software license terms unilaterally revised subsequent to award that is inconsistent with any material term or provision of this contract is not enforceable against the Government.
  - (vii) *No automatic renewals.* If any license or service tied to periodic payment is provided under this agreement (e.g., annual software maintenance or annual lease term), such license or service shall not renew automatically upon expiration of its current term without prior express Government approval.

- (viii) *Indemnification.* Any clause of this agreement requiring the commercial supplier or licensor to defend or indemnify the end user is hereby amended to provide that the U.S. Department of Justice has the sole right to represent the United States in any such action, in accordance with 28 U.S.C.516.
- (ix) *Audits.* Any clause of this agreement permitting the commercial supplier or licensor to audit the end user's compliance with this agreement is hereby amended as follows:
  - (A) Discrepancies found in an audit may result in a charge by the commercial supplier or licensor to the Government. Any resulting invoice must comply with the proper invoicing requirements specified in the underlying Government contract or order.
  - (B) This charge, if disputed by the Government, will be resolved through paragraph (d) of this clause; no payment obligation shall arise on the part of the Government until the conclusion of the dispute process.
  - (C) Any audit requested by the commercial supplier or licensor will be performed at the commercial supplier's or licensor's expense, without reimbursement by the Government and must be performed within the parameters of the Government's security procedures.
  - (D) The Contractor must notify the Contracting Officer of any audit request.
- (x) *Taxes or surcharges.* Any taxes or surcharges which the commercial supplier or licensor seeks to pass along to the Government as end user will be governed by the terms of the underlying Government contract and, in any event, must be submitted to the Contracting Officer for a determination of applicability prior to invoicing unless specifically agreed to otherwise in the underlying contract.
- (xi) *Non-assignment.* This agreement may not be assigned, nor may any rights or obligations thereunder be delegated, without the Government's prior approval, except as expressly permitted under paragraph (b) of this clause.
- (xii) *Confidential information.* If this agreement includes a confidentiality clause, such clause is hereby amended to state that neither the agreement nor the contract price shall be deemed "confidential information." Issues regarding release of "unit pricing" will be resolved consistent with the Freedom of Information Act. Notwithstanding anything in this agreement to the contrary, the Government may retain any confidential information as required by law, regulation or its internal document retention procedures for legal, regulatory or compliance purposes; provided, however, that all such retained confidential information will continue to be subject to the confidentiality obligations of this agreement.

(2) If any language, provision, or clause of this agreement conflicts or is inconsistent with the preceding paragraph (w)(1) of this clause, the language, provisions, or clause of paragraph (w)(1) of this clause shall prevail to the extent of such inconsistency.

**1052.201-70 CONTRACTING OFFICER'S REPRESENTATIVE (COR) APPOINTMENT AND AUTHORITY (APR 2015)**

- (a) The COR(s) will be named on the award form. Should a change to the COR(s) be necessary in the future, they will be named on the modification SF-30.
- (b) Performance of work under this contract is subject to the technical direction of the COR identified above, or a representative designated in writing. The term "technical direction" includes, without limitation, direction to the contractor that directs or redirects the labor effort, shifts the work between work areas or locations, and/or fills in details and otherwise serves to ensure that tasks outlined in the work statement are accomplished satisfactorily.
- (c) Technical direction must be within the scope of the contract specification(s)/work statement. The COR does not have authority to issue technical direction that:
  - (1) Constitutes a change of assignment or additional work outside the contract specification(s)/work statement;
  - (2) Constitutes a change as defined in the clause entitled "Changes";

- (3) In any manner causes an increase or decrease in the contract price, or the time required for contract performance;
  - (4) Changes any of the terms, conditions, or specification(s)/work statement of the contract;
  - (5) Interferes with the contractor's right to perform under the terms and conditions of the contract; or
  - (6) Directs, supervises or otherwise controls the actions of the contractor's employees.
- (d) Technical direction may be oral or in writing. The COR must confirm oral direction in writing within five workdays, with a copy to the Contracting Officer.
- (e) The Contractor shall proceed promptly with performance resulting from the technical direction issued by the COR. If, in the opinion of the contractor, any direction of the COR or the designated representative falls within the limitations of (c) above, the contractor shall immediately notify the Contracting Officer no later than the beginning of the next Government work day.
- (f) Failure of the Contractor and the Contracting Officer to agree that technical direction is within the scope of the contract shall be subject to the terms of the clause entitled "Disputes."

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

#### **1052.210-70 CONTRACTOR PUBLICITY (APR 2015)**

The Contractor, or any entity or representative acting on behalf of the Contractor, shall not refer to the supplies or services furnished pursuant to the provisions of this contract in any news release or commercial advertising, or in connection with any news release or commercial advertising, without first obtaining explicit written consent to do so from the Contracting Officer. Should any reference to such supplies or services appear in any news release or commercial advertising issued by or on behalf of the Contractor without the required consent, the Government shall consider institution of all remedies available under applicable law, including 31 U.S.C. 333, and this contract. Further, any violation of this clause may be considered during the evaluation of past performance.

#### **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 before contract expiration.

#### **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 the final 30 days of each contract period; provided, that the Government gives the Contractor a preliminary written notice of its intent to extend at least 30 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 60 months.

#### **52.232-18 AVAILABILITY OF FUNDS (APR 1984)**

#### **LAPSE FUNDING**

In the event of a lapse funding resulting in a government shutdown, the status of Fiscal Year funding and any necessary action required of the Contractor will be made available at the following website: [https://www.fiscal.treasury.gov/fsfaq/fs\\_doing\\_business.htm](https://www.fiscal.treasury.gov/fsfaq/fs_doing_business.htm). It is the Contractor's responsibility to monitor this website for information regarding Fiscal Year funding.

**1052.232-39 UNENFORCEABILITY OF UNAUTHORIZED OBLIGATIONS.(DEVIATION 00002)(JANUARY 2016)**

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

"Commercial supplier agreements" means terms and conditions customarily offered to the public by vendors of supplies or services that meet the definition of commercial item set forth in FAR 2.101 and intended to create a binding legal obligation on the end user. Commercial supplier agreements (CSA) are particularly common in information technology acquisitions, including acquisitions of commercial computer software and commercial technical data, but they may apply to any supply or service. The term applies—

- (1) Regardless of the format or style of the document. For example, a CSA may be styled as standard terms of sale or lease, Terms of Service (TOS), End User License Agreement (EULA), or another similar legal instrument or agreement, and may be presented as part of an offer or quotation responding to a solicitation;
  - (2) Regardless of the media or delivery mechanism used. For example, a CSA may be presented as one or more paper documents or may appear on a computer or other electronic device screen during a purchase, software installation, other product delivery, registration for a service, or another transaction.
- (b) Except as stated in paragraph (c) of this clause, when any supply or service acquired under this contract is subject to any CSA, that includes any language, provision, or 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:
- (1) Any such language, provision, or clause is unenforceable against the Government.
  - (2) 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 CSA. If the CSA 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.
  - (3) Any such language, provision, or clause is deemed to be stricken from the CSA.
- (c) Paragraph (b) 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.

**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.

**1052.232-7003 ELECTRONIC SUBMISSION OF PAYMENT REQUESTS (APR 2015)**

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

- (1) "Payment request" means a bill, voucher, invoice, or request for contract financing payment with associated supporting documentation. The payment request must comply with the requirements identified in FAR 32.905(b), "Content of Invoices" and the applicable Payment clause included in this contract.

- (b) Except as provided in paragraph (c) of this clause, the Contractor shall submit payment requests electronically using the Invoice Processing Platform (IPP). Information regarding IPP, including IPP Customer Support is available at [www.ipp.gov](http://www.ipp.gov) or any successor site.
- (c) The Contractor may submit payment requests using other than IPP only when the Contracting Officer authorizes alternate procedures in writing in accordance with Treasury procedures.
- (d) If alternate payment procedures are authorized, the Contractor shall include a copy of the Contracting Officer's written authorization with each payment request.

#### **PAYMENT AND INVOICE QUESTIONS (FOREIGN BANK ACCOUNT)**

For Payment and Invoice questions, contact Accounting Services Division, Pensions, Grants and Loans branch at 304-480-8300 or via email at [ForeignMisc@fiscal.treasury.gov](mailto:ForeignMisc@fiscal.treasury.gov). Invoices shall be submitted via email to [ForeignMisc@fiscal.treasury.gov](mailto:ForeignMisc@fiscal.treasury.gov).

#### **OVERPAYMENTS**

In accordance with 52.212-4 section (i) 5 Overpayments: Accounts Receivable Conversion of Check Payments to electronic funds transfer (EFT): If the Contractor sends the Government a check to remedy duplicate contract financing or an overpayment by the government, it will be converted into an EFT. This means the Government will copy the check and use the account information on it to electronically debit the Contractor's account for the amount of the check. The debit from the Contractor's account will usually occur within 24 hours and will be shown on the regular account statement.

The Contractor will not receive the original check back. The Government shall destroy the Contractor's original check, but will keep a copy of it. If the EFT cannot be processed for technical reasons, the Contractor authorizes the Government to process the copy in place of the original check.

#### **52.212-5 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS -- COMMERCIAL ITEMS (JAN 2017)**

- (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) [52.203-19](#), Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (JAN 2017) (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)).
  - (2) [52.209-10](#), Prohibition on Contracting with Inverted Domestic Corporations (Nov 2015).
  - (3) [52.233-3](#), Protest After Award (AUG 1996) ([31 U.S.C. 3553](#)).
  - (4) [52.233-4](#), Applicable Law for Breach of Contract Claim (OCT 2004)(Public Laws 108-77 and 108-78 ([19 U.S.C. 3805 note](#))).
- (b) The Contractor shall comply with the FAR clauses in this paragraph (b) that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:
  - \_\_\_ (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 (June 2010) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)

- X\_\_ (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 (Oct 2016) (Pub. L. 111-117, section 743 of Div. C).
- X\_\_ (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 Set-Aside (Nov 2011) ([15 U.S.C. 644](#)).
- \_\_ (ii) Alternate I (Nov 2011).
- \_\_ (iii) Alternate II (Nov 2011).
- \_\_ (15)(i) [52.219-7](#), Notice of Partial Small Business Set-Aside (June 2003) ([15 U.S.C. 644](#)).
- \_\_ (ii) Alternate I (Oct 1995) of [52.219-7](#).
- \_\_ (iii) Alternate II (Mar 2004) of [52.219-7](#).
- \_\_ (16) [52.219-8](#), Utilization of Small Business Concerns (Nov 2016) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)).
- \_\_ (17)(i) [52.219-9](#), Small Business Subcontracting Plan (Jan 2017) ([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 (Jan 2017) ([15 U.S.C. 637\(a\)\(14\)](#)).
- \_\_ (20) [52.219-16](#), Liquidated Damages—Subcontracting Plan (Jan 1999) ([15 U.S.C. 637\(d\)\(4\)\(F\)\(ii\)](#)).
- \_\_ (21) [52.219-27](#), Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (Nov 2011) ([15 U.S.C. 657 f](#)).
- \_\_ (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).
- X\_\_ (27) [52.222-21](#), Prohibition of Segregated Facilities (Apr 2015).
- X\_\_ (28) [52.222-26](#), Equal Opportunity (Sept 2016) (E.O. 11246).
- \_\_ (29) [52.222-35](#), Equal Opportunity for Veterans (Oct 2015)([38 U.S.C. 4212](#)).
- X\_\_ (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).
- X\_\_ (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). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in [22.1803](#).)
- \_\_\_ (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).  
**Note to paragraph (b)(35):** By a court order issued on October 24, 2016, 52.222-59 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, GSA, DoD and NASA will publish a document in the Federal Register advising the public of the termination of the injunction.
- \_\_\_ (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 Televisions (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](#).
- X\_\_\_ (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. 13693).
- \_\_\_ (47)(i) [52.224-3](#), Privacy Training (JAN 2017) (5 U.S.C. 552a).
- \_\_\_ (ii) Alternate I (JAN 2017) of 52.224-3.
- \_\_\_ (48) [52.225-1](#), Buy American—Supplies (May 2014) ([41 U.S.C. chapter 83](#)).
- \_\_\_ (49)(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](#).
- \_\_\_ (50) [52.225-5](#), Trade Agreements (OCT 2016) ([19 U.S.C. 2501](#), et seq., [19 U.S.C. 3301](#) note).
- \_\_\_ (51) [52.225-13](#), Restrictions on Certain Foreign Purchases (June 2008) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).
- \_\_\_ (52) [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](#)).
- \_\_\_ (53) [52.226-4](#), Notice of Disaster or Emergency Area Set-Aside (Nov 2007) ([42 U.S.C. 5150](#)).
- \_\_\_ (54) [52.226-5](#), Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) ([42 U.S.C. 5150](#)).



- \_\_\_ (55) [52.232-29](#), Terms for Financing of Purchases of Commercial Items (Feb 2002) ([41 U.S.C. 4505](#), [10 U.S.C. 2307\(f\)](#)).
- \_\_\_ (56) [52.232-30](#), Installment Payments for Commercial Items (Jan 2017) ([41 U.S.C. 4505](#), [10 U.S.C. 2307\(f\)](#)).
- \_\_\_ (57) [52.232-33](#), Payment by Electronic Funds Transfer—System for Award Management (Jul 2013) ([31 U.S.C. 3332](#)).
- X\_\_\_ (58) [52.232-34](#), Payment by Electronic Funds Transfer—Other than System for Award Management (Jul 2013) ([31 U.S.C. 3332](#)).
- \_\_\_ (59) [52.232-36](#), Payment by Third Party (May 2014) ([31 U.S.C. 3332](#)).
- \_\_\_ (60) [52.239-1](#), Privacy or Security Safeguards (Aug 1996) ([5 U.S.C. 552a](#)).
- \_\_\_ (61) [52.242-5](#), Payments to Small Business Subcontractors (JAN 2017)(15 U.S.C. 637(d)(12)).
- \_\_\_ (62)(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:

- \_\_\_ (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).
- \_\_\_ (9) [52.222-62](#), Paid Sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706).
- \_\_\_ (10) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (May 2014) ([42 U.S.C. 1792](#)).
- \_\_\_ (11) [52.237-11](#), Accepting and Dispensing of \$1 Coin (Sept 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) [52.203-19](#), Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017) (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)).
  - (iii) [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.
  - (iv) [52.222-17](#), Nondisplacement of Qualified Workers (May 2014) (E.O. 13495). Flow down required in accordance with paragraph (l) of FAR clause [52.222-17](#).
  - (v) [52.222-21](#), Prohibition of Segregated Facilities (Apr 2015)
  - (vi) [52.222-26](#), Equal Opportunity (Sept 2016) (E.O. 11246).
  - (vii) [52.222-35](#), Equal Opportunity for Veterans (Oct 2015) ([38 U.S.C. 4212](#)).
  - (viii) [52.222-36](#), Equal Opportunity for Workers with Disabilities (Jul 2014) ([29 U.S.C. 793](#)).
  - (ix) [52.222-37](#), Employment Reports on Veterans (Feb 2016) ([38 U.S.C. 4212](#))
  - (x) [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](#).
  - (xi) [52.222-41](#), Service Contract Labor Standards (May 2014) ([41 U.S.C. chapter 67](#)).
  - (xii) [52.222-50](#), Combating Trafficking in Persons (Mar 2015) ([22 U.S.C. chapter 78](#) and E.O 13627). Alternate I (Mar 2015) of [52.222-50](#) ([22 U.S.C. chapter 78 and E.O 13627](#)).
  - (xiii) [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](#)).
  - (xiv) [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](#)).
  - (xv) [52.222-54](#), Employment Eligibility Verification (OCT 2015) (E.O. 12989).
  - (xvi) [52.222-55](#), Minimum Wages Under Executive Order 13658 (Dec 2015).
  - (xvii) [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).  
**Note to paragraph (e)(1)(xvii):** By a court order issued on October 24, 2016, 52.222-59 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, GSA, DoD and NASA will publish a document in the Federal Register advising the public of the termination of the injunction.
  - (xviii) [52.222-60](#), Paycheck Transparency (Executive Order 13673) (OCT 2016)).
  - (xix) [52.222-62](#), Paid Sick Leave Under Executive Order 13706 (JAN 2017) (E.O. 13706).
  - (xx)(A) [52.224-3](#), Privacy Training (JAN 2017) (5 U.S.C. 552a).
  - (B) Alternate I (JAN 2017) of [52.224-3](#).

- (xxi) [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](#)).
  - (xxii) [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](#).
  - (xxiii) [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.

#### **52.249-12 TERMINATION PERSONAL SERVICES (APR 1984)**

The Government may terminate this contract at any time upon at least 15 days' written notice by the Contracting Officer to the Contractor. The Contractor, with the written consent of the Contracting Officer, may terminate this contract upon at least 15 days' written notice to the Contracting Officer.

#### **ATTACHMENTS**

Attachment 1- Contractor Release Form