

# FEDERAL ACQUISITION CIRCULAR

October 14, 2014

Number 2005-77  
Effective October 14, 2014  
Looseleaf pages

Federal Acquisition Circular (FAC) 2005-77 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-77 is effective October 14, 2014 except for Items II and III which are effective November 13, 2014.

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**FAC 2005-77 List of Subjects**

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## FAC 2005-77 SUMMARY OF ITEMS

Federal Acquisition Circular (FAC) 2005-77 amends the Federal Acquisition Regulation (FAR) as specified below:

### **Item I—Federal Contracting Programs for Minority-Owned and Other Small Businesses (FAR Case 2009-016)**

This final rule amends the FAR to remove certain coverage involving procurements with small disadvantaged business concerns and certain institutions of higher education that is based on authority which has expired and been found to be unconstitutional by the Court of Appeals for the Federal Circuit. These changes harmonize the FAR with current statutory authorities. The impact of this rule on small businesses should be minimal, given that the coverage applied only to prime contracting opportunities in specific North American Industry Classification System codes, and was applicable to only three Government agencies, (DoD, NASA and U.S. Coast Guard). The obligation of Federal Agencies to meet or exceed the statutory five percent small disadvantaged business goals at the prime and subcontracting levels are not affected by this rule.

**Replacement pages:** 1.1-3 thru 1.1-6; 2.1-8.1 and 2.1-8.2; 2.1-13 thru 2.1-16; 4.12-1 and 4.12-2; 12.3-1 thru 12.3-4; 14.5-1 and 14.5-2; 15.3-1 thru 15.3-4; 15.5-1 and 15.5-2; TOC 19-1 and 19-2; 19.1-1 and 19.1-2; 19.2-1 thru 19.2-4; 19.3-3 thru 19.3-12; 19.7-1 thru 19.7-6; 19.7-9 and 19.7-10; 19.11-1 and 19.11-2; 19.12-1 and 19.12-2; 19.13-1 and 19.13-2; 22.10-5 thru 22.10-8; 26.3-1 and 26.3-2; 36.5-1 and 36.5-2; 52.2-11 thru 52.2-12.6; 52.2-29 thru 52.2-42.4; and 52.2-89 thru 52.2-104.2.

### **Item II—Irrevocable Letters of Credit (FAR Case 2011-023)**

This final rule amends the FAR to remove all references to Office of Federal Procurement Policy (OFPP) Pamphlet No. 7, Use of Irrevocable Letters of Credit (ILC). This change is necessary to update the sources of data required to verify the credit worthiness of a financial entity issuing or confirming an ILC.

This final rule has no significant impact on the Government and contractors including small business entities and imposes no new requirements. Contracting Officers are currently required to verify the credit worthiness of a financial entity issuing or confirming an ILC and will benefit from this updated information to conduct an accurate analysis.

**Replacement pages:** THE 30-DAY PAGES WILL BE POSTED ON THEIR EFFECTIVE DATE OF November 13, 2014.

**Item III—Uniform Procurement Identification (FAR Case 2012-023)**

This final rule amends the FAR to implement a uniform Procurement Instrument Identification (PIID) numbering system, which will require the use of Activity Address Codes (AACs) as the unique identifier for contracting offices and other offices, in order to standardize procurement transactions across the Federal Government. Agencies shall comply with the new PIID procedures in FAR subpart 4.16 by November 1, 2017, for new solicitations and contract awards.

**Replacement pages:** THE 30-DAY PAGES WILL BE POSTED ON THEIR EFFECTIVE DATE OF November 13, 2014.

**Loose-leaf Only Corrections**

**12.505 [Amended]**

1. Amend section 12.505 by revising paragraphs (a)(1) and (2).

**Replacement pages:** 12.5-1 and 12.5-2.

**31.205-6 [Amended]**

2. Amend section 31.205-6 by revising paragraphs (p)(1), (p)(1)(ii), (p)(2), (p)(2)(ii), (p)(3), and (p)(3)(ii).

**Replacement pages:** 31.2-9 and 31.2-10.

**52.222-41 [Amended]**

3. Amend section 52.222-41 by removing from paragraph (p)(1) "By By entering" and adding "By entering" in its place.

**Replacement pages:** 52.2-125 and 52.2-126.

**FAC 2005-77 FILING INSTRUCTIONS**

**NOTE:** The FAR is segmented by subparts. The FAR page numbers reflect FAR Subparts. For example, "1.1-3" is page 3 of subpart 1.1.

Remove Pages

1.1-3 thru 1.1-6

2.1-8.1 and 2.1-8.2  
2.1-13 thru 2.1-16

4.12-1 and 4.12-2

12.3-1 thru 12.3-4

12.5-1 and 12.5-2

14.5-1 and 14.5-2

15.3-1 thru 15.3-4  
15.5-1 and 15.5-2

Part 19 TOC

pp. 19-1 and 19-2  
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19.2-1 thru 19.2-4  
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19.7-1 thru 19.7-6  
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19.13-1 and 19.13-2

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26.3-1 and 26.3-2

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36.5-1 and 36.5-2

Part 52 TOC

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52.2-29 thru 52.2-42.4  
52.2-89 thru 52.2-104.2  
52.2-125 and 52.2-126  
52.2-152.11 and 52.2-152.12

Insert Pages

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2.1-8.1 and 2.1-8.2  
2.1-13 thru 2.1-16

4.12-1 and 4.12-2

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Part 19 TOC

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52.2-263 and 52.2-264

Matrix

pp. 52.3-11 thru 52.3-34

Part 53 TOC

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53.2-3 and 53.2-4

53.3-47 and 53.3-48

53.3-171 and 53.3-172

52.2-263 and 52.2-264

Matrix

pp. 52.3-11 thru 52.3-34

Part 53 TOC

pp. 53-3 and 53-4

53.2-3 and 53.2-4

53.3-47 and 53.3-48

53.3-171 and 53.3-172



**1.104 Applicability.**

The FAR applies to all acquisitions as defined in [Part 2](#) of the FAR, except where expressly excluded.

**1.105 Issuance.****1.105-1 Publication and code arrangement.**

(a) The FAR is published in—

- (1) The daily issue of the *Federal Register*;
- (2) Cumulated form in the *Code of Federal Regulations* (CFR); and
- (3) A separate loose-leaf edition.

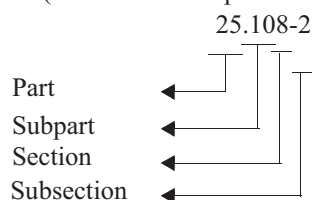
(b) The FAR is issued as Chapter 1 of Title 48, CFR. Subsequent chapters are reserved for agency acquisition regulations that implement or supplement the FAR (see [Subpart 1.3](#)). The CFR Staff will assign chapter numbers to requesting agencies.

(c) Each numbered unit or segment (*e.g.*, part, subpart, section, etc.) of an agency acquisition regulation that is codified in the CFR shall begin with the chapter number. However, the chapter number assigned to the FAR will not be included in the numbered units or segments of the FAR.

**1.105-2 Arrangement of regulations.**

(a) *General.* The FAR is divided into subchapters, parts (each of which covers a separate aspect of acquisition), subparts, sections, and subsections.

(b) *Numbering.* (1) The numbering system permits the discrete identification of every FAR paragraph. The digits to the left of the decimal point represent the part number. The numbers to the right of the decimal point and to the left of the dash represent, in order, the subpart (one or two digits), and the section (two digits). The number to the right of the dash represents the subsection. Subdivisions may be used at the section and subsection level to identify individual paragraphs. The following example illustrates the make-up of a FAR number citation (note that subchapters are not used with citations):



(2) Subdivisions below the section or subsection level consist of parenthetical alpha numerics using the following sequence:

(a)(1)(i)(A)(I)(i)

(c) *References and citations.* (1) Unless otherwise stated, cross-references indicate parts, subparts, sections, subsections, paragraphs, subparagraphs, or subdivisions of this regulation.

(2) This regulation may be referred to as the Federal Acquisition Regulation or the FAR.

(3) Using the FAR coverage at 9.106-4(d) as a typical illustration, reference to the—

(i) Part would be “FAR part 9” outside the FAR and “part 9” within the FAR.

(ii) Subpart would be “FAR subpart 9.1” outside the FAR and “subpart 9.1” within the FAR.

(iii) Section would be “FAR 9.106” outside the FAR and “9.106” within the FAR.

(iv) Subsection would be “FAR 9.106-4” outside the FAR and “9.106-4” within the FAR.

(v) Paragraph would be “FAR 9.106-4(d)” outside the FAR and “9.106-4(d)” within the FAR.

(4) Citations of authority (*e.g.*, statutes or Executive orders) in the FAR shall follow the *Federal Register* form guides.

**1.105-3 Copies.**

Copies of the FAR in *Federal Register*, loose-leaf, CD-ROM, and CFR form may be purchased from the—

Superintendent of Documents  
Government Printing Office (GPO)  
Washington, DC 20402.

**1.106 OMB approval under the Paperwork Reduction Act.**

The Paperwork Reduction Act of 1980 ([44 U.S.C. chapter 35](#)) imposes a requirement on Federal agencies to obtain approval from the Office of Management and Budget (OMB) before collecting information from 10 or more members of the public. The information collection and recordkeeping requirements contained in this regulation have been approved by the OMB. The following OMB control numbers apply:

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<a href="#">3.103</a>	9000-0018
<a href="#">3.11</a>	9000-0181
<a href="#">3.4</a>	9000-0003
<a href="#">4.102</a>	9000-0033
<a href="#">4.14</a>	9000-0177
<a href="#">4.5</a>	9000-0137
<a href="#">4.605</a>	9000-0145
<a href="#">4.607</a>	9000-0145
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<a href="#">8.5</a>	9000-0113
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<a href="#">15.2</a>	9000-0037	<a href="#">48</a>	9000-0027
<a href="#">15.209</a>	9000-0034	<a href="#">49</a>	9000-0028
<a href="#">15.4</a>	9000-0013	<a href="#">50</a>	9000-0029
<a href="#">15.404-1(f)</a>	9000-0080	<a href="#">51.1</a>	9000-0031
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<a href="#">22.12</a>	1235-0007 and 1235-0025	<a href="#">52.204-12</a>	9000-0145
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<a href="#">52.246-10</a>	9000-0077	SF 1407	9000-0011
<a href="#">52.246-12</a>	9000-0077	SF 1408	9000-0011
<a href="#">52.246-15</a>	9000-0077	SF 1413	9000-0014
<a href="#">52.247-2</a>	9000-0053	SF 1416	9000-0045
<a href="#">52.247-29</a>	9000-0061	SF 1418	9000-0045
<a href="#">52.247-30</a>	9000-0061	SF 1428	9000-0075
<a href="#">52.247-31</a>	9000-0061	SF 1429	9000-0075
<a href="#">52.247-32</a>	9000-0061	SF 1435	9000-0012
<a href="#">52.247-33</a>	9000-0061	SF 1436	9000-0012
<a href="#">52.247-34</a>	9000-0061	SF 1437	9000-0012
<a href="#">52.247-35</a>	9000-0061	SF 1438	9000-0012
<a href="#">52.247-36</a>	9000-0061	SF 1439	9000-0012
<a href="#">52.247-37</a>	9000-0061	SF 1440	9000-0012
<a href="#">52.247-38</a>	9000-0061	SF 1443	9000-0010
<a href="#">52.247-39</a>	9000-0061	SF 1444	9000-0089
<a href="#">52.247-40</a>	9000-0061	SF 1445	9000-0089
<a href="#">52.247-41</a>	9000-0061	SF 1446	9000-0089
<a href="#">52.247-42</a>	9000-0061	OF 312	9000-0150
<a href="#">52.247-43</a>	9000-0061		
<a href="#">52.247-44</a>	9000-0061		
<a href="#">52.247-48</a>	9000-0061		
<a href="#">52.247-51</a>	9000-0057		
<a href="#">52.247-53</a>	9000-0055		
<a href="#">52.247-57</a>	9000-0061		
<a href="#">52.247-63</a>	9000-0054		
<a href="#">52.247-64</a>	9000-0061		
<a href="#">52.247-68</a>	9000-0056		
<a href="#">52.248-1</a>	9000-0027		

### 1.107 Certifications.

In accordance with [41 U.S.C. 1304](#), a new requirement for a certification by a contractor or offeror may not be included in this chapter unless—

(a) The certification requirement is specifically imposed by statute; or

(b) Written justification for such certification is provided to the Administrator for Federal Procurement Policy by the Federal Acquisition Regulatory Council, and the Administra-

been completed or when the contractor will not agree to a forward pricing rate agreement.

“Freight” means supplies, goods, and transportable property.

“Full and open competition,” when used with respect to a contract action, means that all responsible sources are permitted to compete.

“General and administrative (G&A) expense” means any management, financial, and other expense which is incurred by or allocated to a business unit and which is for the general management and administration of the business unit as a whole. G&A expense does not include those management expenses whose beneficial or causal relationship to cost objectives can be more directly measured by a base other than a cost input base representing the total activity of a business unit during a cost accounting period.

“Governmentwide acquisition contract (GWAC)” means a task-order or delivery-order contract for information technology established by one agency for Governmentwide use that is operated—

(1) By an executive agent designated by the Office of Management and Budget pursuant to [40 U.S.C. 11302\(e\)](#); or

(2) Under a delegation of procurement authority issued by the General Services Administration (GSA) prior to August 7, 1996, under authority granted GSA by former section [40 U.S.C. 759](#), repealed by Pub. L. 104-106. The Economy Act does not apply to orders under a Governmentwide acquisition contract.

“Governmentwide point of entry (GPE)” means the single point where Government business opportunities greater than \$25,000, including synopses of proposed contract actions, solicitations, and associated information, can be accessed electronically by the public. The GPE is located at <http://www.fedbizopps.gov>.

“Head of the agency” (see “agency head”).

“Head of the contracting activity” means the official who has overall responsibility for managing the contracting activity.

“Historically black college or university” means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2.

“HUBZone” means a historically underutilized business zone that is an area located within one or more qualified census tracts, qualified nonmetropolitan counties, lands within the external boundaries of an Indian reservation, qualified base closure areas, or redesignated areas, as defined in 13 CFR 126.103.

“HUBZone contract” means a contract awarded to a “HUBZone small business” concern through any of the following procurement methods:

(1) A sole source award to a HUBZone small business concern.

(2) Set-aside awards based on competition restricted to HUBZone small business concerns.

(3) Awards to HUBZone small business concerns through full and open competition after a price evaluation preference in favor of HUBZone small business concerns.

“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 (13 CFR 126.103).

“Humanitarian or peacekeeping operation” means a military operation in support of the provision of humanitarian or foreign disaster assistance or in support of a peacekeeping operation under Chapter VI or VII of the Charter of the United Nations. The term does not include routine training, force rotation, or stationing ([10 U.S.C. 2302\(8\)](#) and [41 U.S.C. 153\(2\)](#)).

“In writing,” “writing,” or “written” means any worded or numbered expression that can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

“Indirect cost” means any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective.

“Indirect cost rate” means the percentage or dollar factor that expresses the ratio of indirect expense incurred in a given period to direct labor cost, manufacturing cost, or another appropriate base for the same period (see also “final indirect cost rate”).

“Ineligible” means excluded from Government contracting (and subcontracting, if appropriate) pursuant to statutory, Executive order, or regulatory authority other than this regulation ([48 CFR chapter 1](#)) and its implementing and supplementing regulations; for example, pursuant to—

(1) [40 U.S.C. chapter 31](#), subchapter IV, Wage Rate Requirements (Construction), and its related statutes and implementing regulations;

(2) [41 U.S.C. chapter 67](#), Service Contract Labor Standards;

(3) The Equal Employment Opportunity Acts and Executive orders;

(4) [41 U.S.C. chapter 65](#), Contracts for Material, Supplies, Articles, and Equipment Exceeding \$15,000;

(5) [41 U.S.C. chapter 83](#), Buy American; or

(6) The Environmental Protection Acts and Executive orders.

“Information security” means protecting information and information systems from unauthorized access, use, disclosure, disruption, modification, or destruction in order to provide—

(1) Integrity, which means guarding against improper information modification or destruction, and includes ensuring information nonrepudiation and authenticity;

(2) Confidentiality, which means preserving authorized restrictions on access and disclosure, including means for protecting personal privacy and proprietary information; and

(3) Availability, which means ensuring timely and reliable access to, and use of, information.

“Information technology” means any equipment, or interconnected system(s) or subsystem(s) of equipment, that is used in the automatic acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the agency.

(1) For purposes of this definition, equipment is used by an agency if the equipment is used by the agency directly or is used by a contractor under a contract with the agency that requires—

(i) Its use; or

(ii) To a significant extent, its use in the performance of a service or the furnishing of a product.

(2) The term “information technology” includes computers, ancillary equipment (including imaging peripherals, input, output, and storage devices necessary for security and surveillance), peripheral equipment designed to be controlled by the central processing unit of a computer, software, firmware and similar procedures, services (including support services), and related resources.

(3) The term “information technology” does not include any equipment that—

(i) Is acquired by a contractor incidental to a contract; or

(ii) Contains imbedded information technology that is used as an integral part of the product, but the principal

function of which is not the acquisition, storage, analysis, evaluation, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment, such as thermostats or temperature control devices, and medical equipment where information technology is integral to its operation, are not information technology.

“Inherently governmental function” means, as a matter of policy, a function that is so intimately related to the public interest as to mandate performance by Government employees. This definition is a policy determination, not a legal determination. An inherently governmental function includes activities that require either the exercise of discretion in applying Government authority, or the making of value judgments in making decisions for the Government. Governmental functions normally fall into two categories: the act of governing, *i.e.*, the discretionary exercise of Government authority, and monetary transactions and entitlements.

(1) An inherently governmental function involves, among other things, the interpretation and execution of the laws of the United States so as to—

(i) Bind the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;

(ii) Determine, protect, and advance United States economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;

(1) \$300,000 for any contract to be awarded and performed, or purchase to be made, inside the United States; and

(2) \$1 million for any contract to be awarded and performed, or purchase to be made, outside the United States.

“Single, Governmentwide point of entry,” means the one point of entry to be designated by the Administrator of OFPP that will allow the private sector to electronically access procurement opportunities Governmentwide.

“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 and size standards in 13 CFR part 121 (see [19.102](#)). 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 must 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. (See [15 U.S.C. 632](#).)

“Small business subcontractor” means a concern, including affiliates, that for subcontracts valued at—

(1) \$10,000 or less, does not have more than 500 employees; and

(2) More than \$10,000, does not have employees or average annual receipts exceeding the size standard in 13 CFR Part 121 (see [19.102](#)) for the product or service it is providing on the subcontract.

“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.

“Sole source acquisition” means a contract for the purchase of supplies or services that is entered into or proposed to be entered into by an agency after soliciting and negotiating with only one source.

“Solicitation” means any request to submit offers or quotations to the Government. Solicitations under sealed bid procedures are called “invitations for bids.” Solicitations under

negotiated procedures are called “requests for proposals.” Solicitations under simplified acquisition procedures may require submission of either a quotation or an offer.

“Solicitation provision or provision” means a term or condition used only in solicitations and applying only before contract award.

“Source selection information” means any of the following information that is prepared for use by an agency for the purpose of evaluating a bid or proposal to enter into an agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(1) Bid prices submitted in response to an agency invitation for bids, or lists of those bid prices before bid opening.

(2) Proposed costs or prices submitted in response to an agency solicitation, or lists of those proposed costs or prices.

(3) Source selection plans.

(4) Technical evaluation plans.

(5) Technical evaluations of proposals.

(6) Cost or price evaluations of proposals.

(7) Competitive range determinations that identify proposals that have a reasonable chance of being selected for award of a contract.

(8) Rankings of bids, proposals, or competitors.

(9) Reports and evaluations of source selection panels, boards, or advisory councils.

(10) Other information marked as “Source Selection Information—See FAR [2.101](#) and [3.104](#)” based on a case-by-case determination by the head of the agency or the contracting officer, that its disclosure would jeopardize the integrity or successful completion of the Federal agency procurement to which the information relates.

“Special competency” means a special or unique capability, including qualitative aspects, developed incidental to the primary functions of the Federally Funded Research and Development Centers to meet some special need.

“Special test equipment” means either single or multipurpose integrated test units engineered, designed, fabricated, or modified to accomplish special purpose testing in performing a contract. It consists of items or assemblies of equipment including foundations and similar improvements necessary for installing special test equipment, and standard or general purpose items or components that are interconnected and interdependent so as to become a new functional entity for special testing purposes. Special test equipment does not include material, special tooling, real property, and equipment items used for general testing purposes or property that with relatively minor expense can be made suitable for general purpose use.

“Special tooling” means jigs, dies, fixtures, molds, patterns, taps, gauges, and all components of these items including foundations and similar improvements necessary for installing special tooling, and which are of such a specialized nature that without substantial modification or alteration their use is limited to the development or production of particular supplies or parts thereof or to the performance of particular

services. Special tooling does not include material, special test equipment, real property, equipment, machine tools, or similar capital items.

“State and local taxes” means taxes levied by the States, the District of Columbia, outlying areas of the United States, or their political subdivisions.

“Statement of Objectives (SOO)” means a Government-prepared document incorporated into the solicitation that states the overall performance objectives. It is used in solicitations when the Government intends to provide the maximum flexibility to each offeror to propose an innovative approach.

“Substantial evidence” means information sufficient to support the reasonable belief that a particular act or omission has occurred.

“Substantially as follows” or “substantially the same as,” when used in the prescription and introductory text of a provision or clause, means that authorization is granted to prepare and utilize a variation of that provision or clause to accommodate requirements that are peculiar to an individual acquisition; provided that the variation includes the salient features of the FAR provision or clause, and is not inconsistent with the intent, principle, and substance of the FAR provision or clause or related coverage of the subject matter.

“Supplemental agreement” means a contract modification that is accomplished by the mutual action of the parties.

“Supplies” means all property except land or interest in land. It includes (but is not limited to) public works, buildings, and facilities; ships, floating equipment, and vessels of every character, type, and description, together with parts and accessories; aircraft and aircraft parts, accessories, and equipment; machine tools; and the alteration or installation of any of the foregoing.

“Supporting a diplomatic or consular mission” means performing outside the United States under a contract administered by Federal agency personnel who are subject to the direction of a Chief of Mission.

“Surety” means an individual or corporation legally liable for the debt, default, or failure of a principal to satisfy a contractual obligation. The types of sureties referred to are as follows:

(1) An individual surety is one person, as distinguished from a business entity, who is liable for the entire penal amount of the bond.

(2) A corporate surety is licensed under various insurance laws and, under its charter, has legal power to act as surety for others.

(3) A cosurety is one of two or more sureties that are jointly liable for the penal sum of the bond. A limit of liability for each surety may be stated.

“Surplus property” means excess personal property not required by any Federal agency as determined by the Administrator of the General Services Administration (GSA). (See 41 CFR 102-36.40).

“Suspension” means action taken by a suspending official under [9.407](#) to disqualify a contractor temporarily from Government contracting and Government-approved subcontracting; a contractor that is disqualified is “suspended.”

“Sustainable acquisition” means acquiring goods and services in order to create and maintain conditions—

(1) Under which humans and nature can exist in productive harmony; and

(2) That permit fulfilling the social, economic, and other requirements of present and future generations.

“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

Identification of those parties excluded from receiving Federal contracts, certain subcontracts, and certain types of Federal financial and non-financial assistance and benefits.

“Task order” means an order for services placed against an established contract or with Government sources.

“Taxpayer Identification Number (TIN)” means the number required by the IRS to be used by the offeror in reporting income tax and other returns. The TIN may be either a Social Security Number or an Employer Identification Number.

“Technical data” means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases and computer software documentation). This term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration. The term includes recorded information of a scientific or technical nature that is included in computer databases (See [41 U.S.C. 116](#)).

“Termination for convenience” means the exercise of the Government’s right to completely or partially terminate performance of work under a contract when it is in the Government’s interest.

“Termination for default” means the exercise of the Government’s right to completely or partially terminate a contract because of the contractor’s actual or anticipated failure to perform its contractual obligations.

“Termination inventory” means any property purchased, supplied, manufactured, furnished, or otherwise acquired for the performance of a contract subsequently terminated and properly allocable to the terminated portion of the contract. It includes Government-furnished property. It does not include any facilities, material, special test equipment, or special tooling that are subject to a separate contract or to a special contract requirement governing their use or disposition.



“Terminated portion of the contract” means the portion of a contract that the contractor is not to perform following a partial termination. For construction contracts that have been completely terminated for convenience, it means the entire contract, notwithstanding the completion of, and payment for, individual items of work before termination.

“Unallowable cost” means any cost that, under the provisions of any pertinent law, regulation, or contract, cannot be included in prices, cost-reimbursements, or settlements under a Government contract to which it is allocable.

“Unique and innovative concept,” when used relative to an unsolicited research proposal, means that—

- (1) In the opinion and to the knowledge of the Government evaluator, the meritorious proposal—
  - (i) Is the product of original thinking submitted confidentially by one source;
  - (ii) Contains new, novel, or changed concepts, approaches, or methods;
  - (iii) Was not submitted previously by another; and
  - (iv) Is not otherwise available within the Federal Government.

(2) In this context, the term does not mean that the source has the sole capability of performing the research.

“United States,” when used in a geographic sense, means the 50 States and the District of Columbia, except as follows:

- (1) For use in [subpart 3.10](#), see the definition at [3.1001](#).
- (2) For use in [subpart 22.8](#), see the definition at [22.801](#).
- (3) For use in [subpart 22.10](#), see the definition at [22.1001](#).
- (4) For use in [subpart 22.12](#), see the definition at [22.1201](#).
- (5) For use in [subpart 22.13](#), see the definition at [22.1301](#).
- (6) For use in [subpart 22.16](#), see the definition at [22.1601](#).
- (7) For use in [subpart 22.18](#), see the definition at [22.1801](#).
- (8) For use in part [23](#), see definition at [23.001](#).
- (9) For use in [Part 25](#), see the definition at [25.003](#).
- (10) For use in [Part 27](#), see the definition at [27.001](#).
- (11) For use in [subpart 47.4](#), see the definition at [47.401](#).

“Unsolicited proposal” means a written proposal for a new or innovative idea that is submitted to an agency on the initiative of the offeror for the purpose of obtaining a contract with the Government, and that is not in response to a request for proposals, Broad Agency Announcement, Small Business Innovation Research topic, Small Business Technology Transfer Research topic, Program Research and Development Announcement, or any other Government-initiated solicitation or program.

“Value engineering” means an analysis of the functions of a program, project, system, product, item of equipment, build-

ing, facility, service, or supply of an executive agency, performed by qualified agency or contractor personnel, directed at improving performance, reliability, quality, safety, and life-cycle costs ([41 U.S.C. 1711](#)). For use in the clause at [52.248-2](#), see the definition at [52.248-2\(b\)](#).

“Value engineering change proposal (VECP)”—

- (1) Means a proposal that—
  - (i) Requires a change to the instant contract to implement; and
  - (ii) Results in reducing the overall projected cost to the agency without impairing essential functions or characteristics, provided, that it does not involve a change—
    - (A) In deliverable end item quantities only;
    - (B) In research and development (R&D) items or R&D test quantities that are due solely to results of previous testing under the instant contract; or
    - (C) To the contract type only.
- (2) For use in the clauses at—
  - (i) [52.248-2](#), see the definition at [52.248-2\(b\)](#); and
  - (ii) [52.248-3](#), see the definition at [52.248-3\(b\)](#).

“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.

“Virgin material” means—

- (1) Previously unused raw material, including previously unused copper, aluminum, lead, zinc, iron, other metal or metal ore; or
- (2) Any undeveloped resource that is, or with new technology will become, a source of raw materials.

“Voluntary consensus standards” means common and repeated use of rules, conditions, guidelines or characteristics for products, or related processes and production methods and related management systems. Voluntary Consensus Standards are developed or adopted by domestic and international voluntary consensus standard making bodies (*e.g.*, International Organization for Standardization (ISO) and ASTM-International). See OMB Circular A-119.

“Warranty” means a promise or affirmation given by a contractor to the Government regarding the nature, usefulness, or condition of the supplies or performance of services furnished under the contract.

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

“Water consumption intensity” means water consumption per square foot of building space.

“Women-owned small business concern” means—

(1) A small business concern—

(i) 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

(ii) Whose management and daily business operations are controlled by one or more women; or

(2) A small business concern eligible under the Women-Owned Small Business Program in accordance with 13 CFR part 127 (see subpart [19.15](#)).

“Women-Owned Small Business (WOSB) Program.”

(1) “Women-Owned Small Business Program (WOSB Program)” means a program that authorizes contracting officers to limit competition to—

(i) Eligible economically disadvantaged women-owned small business concerns for Federal contracts assigned a North American Industry Classification Systems (NAICS) code in an industry in which the Small Business Administration (SBA) has determined that WOSB concerns are underrepresented in Federal procurement; and

(ii) Eligible WOSB concerns eligible under the WOSB Program for Federal contracts assigned a NAICS code in an industry in which SBA has determined that WOSB concerns are substantially underrepresented.

(2) “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.

(3) “Women-owned small business (WOSB)” concern eligible under the WOSB Program 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 (13 CFR part 127).

## Subpart 4.12—Representations and Certifications

### 4.1200 Scope.

This subpart prescribes policies and procedures for requiring submission and maintenance of representations and certifications via the System for Award Management (SAM) to—

(a) Eliminate the administrative burden for contractors of submitting the same information to various contracting offices; and

(b) Establish a common source for this information to procurement offices across the Government.

### 4.1201 Policy.

(a) Prospective contractors shall complete electronic annual representations and certifications at SAM accessed via <https://www.acquisition.gov> as a part of required registration (see FAR [4.1102](#)).

(b)(1) Prospective contractors shall update the representations and certifications submitted to SAM as necessary, but at least annually, to ensure they are kept current, accurate, and complete. The representations and certifications are effective until one year from date of submission or update to SAM.

(2) When any of the conditions in paragraph (b) of the clause at [52.219-28](#), Post-Award Small Business Program Rerepresentation, apply, contractors that represented they were small businesses prior to award of a contract must update the representations and certifications in SAM as directed by the clause. Contractors that represented they were other than small businesses prior to award of a contract may update the representations and certifications in SAM as directed by the clause, if their size status has changed since contract award.

(c) Data in SAM is archived and is electronically retrievable. Therefore, when a prospective contractor has completed representations and certifications electronically via SAM, the contracting officer must reference the date of SAM verification in the contract file, or include a paper copy of the electronically-submitted representations and certifications in the file. Either of these actions satisfies contract file documentation requirements of [4.803\(a\)\(11\)](#). However, if an offeror identifies changes to SAM data pursuant to the FAR provisions at [52.204-8\(d\)](#) or [52.212-3\(b\)](#), the contracting officer must include a copy of the changes in the contract file.

### 4.1202 Solicitation provision and contract clause.

Except for commercial item solicitations issued under FAR part [12](#), insert in solicitations the provision at [52.204-8](#), Annual Representations and Certifications. The contracting officer shall check the applicable provisions at [52.204-8\(c\)\(2\)](#). When the provision at [52.204-7](#), System for

Award Management, is included in the solicitation, do not include the following representations and certifications:

(a) [52.203-2](#), Certificate of Independent Price Determination.

(b) [52.203-11](#), Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.

(c) [52.204-3](#), Taxpayer Identification.

(d) [52.204-5](#), Women-Owned Business (Other Than Small Business).

(e) [52.209-2](#), Prohibition on Contracting with Inverted Domestic Corporations—Representation.

(f) [52.209-5](#), Certification Regarding Responsibility Matters.

(g) [52.214-14](#), Place of Performance—Sealed Bidding.

(h) [52.215-6](#), Place of Performance.

(i) [52.219-1](#), Small Business Program Representations (Basic & Alternate I).

(j) [52.219-2](#), Equal Low Bids.

(k) [52.222-18](#), Certification Regarding Knowledge of Child Labor for Listed End Products.

(l) [52.222-22](#), Previous Contracts and Compliance Reports.

(m) [52.222-25](#), Affirmative Action Compliance.

(n) [52.222-38](#), Compliance with Veterans' Employment Reporting Requirements.

(o) [52.222-48](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Certification.

(p) [52.222-52](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Certification.

(q) [52.223-1](#), Biobased Product Certification.

(r) [52.223-4](#), Recovered Material Certification.

(s) [52.223-9](#), Estimate of Percentage of Recovered Material Content for EPA-Designated Items (Alternate I only).

(t) [52.225-2](#), Buy American Certificate.

(u) [52.225-4](#), Buy American—Free Trade Agreements—Israeli Trade Act Certificate (Basic, Alternates I, II, and III).

(v) [52.225-6](#), Trade Agreements Certificate.

(w) [52.225-20](#), Prohibition on Conducting Restricted Business Operations in Sudan—Certification.

(x) [52.225-25](#), Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran-Representation and Certifications.

(y) [52.226-2](#), Historically Black College or University and Minority Institution Representation.

(z) [52.227-6](#), Royalty Information (Basic & Alternate I).

(aa) [52.227-15](#), Representation of Limited Rights Data and Restricted Computer Software.

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## Subpart 12.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

### 12.300 Scope of subpart.

This subpart establishes provisions and clauses to be used when acquiring commercial items.

### 12.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(a) In accordance with [41 U.S.C. 3307](#), contracts for the acquisition of commercial items shall, to the maximum extent practicable, include only those clauses—

(1) Required to implement provisions of law or executive orders applicable to the acquisition of commercial items; or

(2) Determined to be consistent with customary commercial practice.

(b) Insert the following provisions in solicitations for the acquisition of commercial items, and clauses in solicitations and contracts for the acquisition of commercial items:

(1) *The provision at [52.212-1](#), Instructions to Offerors—Commercial Items.* This provision provides a single, streamlined set of instructions to be used when soliciting offers for commercial items and is incorporated in the solicitation by reference (see Block 27a, [SF 1449](#)). The contracting officer may tailor these instructions or provide additional instructions tailored to the specific acquisition in accordance with [12.302](#).

(2) *The provision at [52.212-3](#), Offeror Representations and Certifications—Commercial Items.* This provision provides a single, consolidated list of representations and certifications for the acquisition of commercial items and is attached to the solicitation for offerors to complete. This provision may not be tailored except in accordance with [subpart 1.4](#). Use the provision with its Alternate I in solicitations issued by DoD, NASA, or the Coast Guard.

(3) *The clause at [52.212-4](#), Contract Terms and Conditions—Commercial Items.* This clause includes terms and conditions which are, to the maximum extent practicable, consistent with customary commercial practices and is incorporated in the solicitation and contract by reference (see Block 27, [SF 1449](#)). Use this clause with its Alternate I when a time-and-materials or labor-hour contract will be awarded. The contracting officer may tailor this clause in accordance with [12.302](#).

(4) *The clause at [52.212-5](#), Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.* This clause incorporates by reference only those clauses required to implement provisions of law or Executive orders applicable to the acquisition of commercial items. The contracting officer shall attach this clause to the

solicitation and contract and, using the appropriate clause prescriptions, indicate which, if any, of the additional clauses cited in [52.212-5](#)(b) or (c) are applicable to the specific acquisition. Some of the clauses require fill-in; the fill-in language should be inserted as directed by [52.104](#)(d). When cost information is obtained pursuant to [Part 15](#) to establish the reasonableness of prices for commercial items, the contracting officer shall insert the clauses prescribed for this purpose in an addendum to the solicitation and contract. This clause may not be tailored.

(i) Use the clause with its Alternate I when the head of the agency has waived the examination of records by the Comptroller General in accordance with [25.1001](#).

(ii)(A) If the acquisition will use funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), the contracting officer shall use the clause with its Alternate II.

(B) (1) In the case of a bilateral contract modification that will use funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, the contracting officer shall specify applicability of Alternate II to that modification.

(2) In the case of a task- or delivery-order contract in which not all orders will use funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, the contracting officer shall specify the task or delivery orders to which Alternate II applies.

(C) The contracting officer may not use Alternate I when Alternate II applies.

(c) When the use of evaluation factors is appropriate, the contracting officer may—

(1) Insert the provision at [52.212-2](#), Evaluation—Commercial Items, in solicitations for commercial items (see [12.602](#)); or

(2) Include a similar provision containing all evaluation factors required by [13.106](#), [subpart 14.2](#) or [subpart 15.3](#), as an addendum (see [12.302](#)(d)).

(d) *Other required provisions and clauses.* (1) Notwithstanding prescriptions contained elsewhere in the FAR, when acquiring commercial items, contracting officers shall be required to use only those provisions and clauses prescribed in this part. The provisions and clauses prescribed in this part shall be revised, as necessary, to reflect the applicability of statutes and executive orders to the acquisition of commercial items.

(2) Insert the clause at [52.225-19](#), Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission outside the United States, as prescribed in [25.301-4](#).

(3) Insert the provision at [52.209-7](#), Information Regarding Responsibility Matters, as prescribed in [9.104-7](#)(b).

(4) Insert the clause at [52.232-40](#), Providing Accelerated Payments to Small Business Subcontractors, as prescribed in [32.009-2](#).

(e) *Discretionary use of FAR provisions and clauses.* The contracting officer may include in solicitations and contracts by addendum other FAR provisions and clauses when their use is consistent with the limitations contained in [12.302](#). For example:

(1) The contracting officer may include appropriate clauses when an indefinite-delivery type of contract will be used. The clauses prescribed at [16.506](#) may be used for this purpose.

(2) The contracting officer may include appropriate provisions and clauses when the use of options is in the Government's interest. The provisions and clauses prescribed in [17.208](#) may be used for this purpose. If the provision at [52.212-2](#) is used, paragraph (b) provides for the evaluation of options.

(3) The contracting officer may use the provisions and clauses contained in [Part 23](#) regarding the use of products containing recovered materials and biobased products when appropriate for the item being acquired.

(4) When setting aside under the Stafford Act ([subpart 26.2](#)), include the provision at [52.226-3](#), Disaster or Emergency Area Representation, in the solicitation. The representation in this provision is not in the System for Award Management database.

(f) Agencies may supplement the provisions and clauses prescribed in this part (to require use of additional provisions and clauses) only as necessary to reflect agency unique statutes applicable to the acquisition of commercial items or as may be approved by the agency senior procurement executive, or the individual responsible for representing the agency on the FAR Council, without power of delegation.

### 12.302 Tailoring of provisions and clauses for the acquisition of commercial items.

(a) *General.* The provisions and clauses established in this subpart are intended to address, to the maximum extent practicable, commercial market practices for a wide range of potential Government acquisitions of commercial items. However, because of the broad range of commercial items acquired by the Government, variations in commercial practices, and the relative volume of the Government's acquisitions in the specific market, contracting officers may, within the limitations of this subpart, and after conducting appropriate market research, tailor the provision at [52.212-1](#), Instructions to Offerors—Commercial Items, and the clause at [52.212-4](#), Contract Terms and Conditions—Commercial Items, to adapt to the market conditions for each acquisition.

(b) *Tailoring 52.212-4, Contract Terms and Conditions—Commercial Items.* The following paragraphs of the clause at [52.212-4](#), Contract Terms and Conditions—Commercial

Items, implement statutory requirements and shall not be tailored—

- (1) Assignments;
- (2) Disputes;
- (3) Payment (except as provided in [subpart 32.11](#));
- (4) Invoice;
- (5) Other compliances;
- (6) Compliance with laws unique to Government contracts; and
- (7) Unauthorized obligations.

(c) *Tailoring inconsistent with customary commercial practice.* The contracting officer shall not tailor any clause or otherwise include any additional terms or conditions in a solicitation or contract for commercial items in a manner that is inconsistent with customary commercial practice for the item being acquired unless a waiver is approved in accordance with agency procedures. The request for waiver must describe the customary commercial practice found in the marketplace, support the need to include a term or condition that is inconsistent with that practice and include a determination that use of the customary commercial practice is inconsistent with the needs of the Government. A waiver may be requested for an individual or class of contracts for that specific item.

(d) Tailoring shall be by addenda to the solicitation and contract. The contracting officer shall indicate in Block 27a of the [SF 1449](#) if addenda are attached. These addenda may include, for example, a continuation of the schedule of supplies/services to be acquired from blocks 18 through 21 of the [SF 1449](#); a continuation of the description of the supplies/services being acquired; further elaboration of any other item(s) on the [SF 1449](#); any other terms or conditions necessary for the performance of the proposed contract (such as options, ordering procedures for indefinite-delivery type contracts, warranties, contract financing arrangements, etc.).

### 12.303 Contract format.

Solicitations and contracts for the acquisition of commercial items prepared using this [Part 12](#) shall be assembled, to the maximum extent practicable, using the following format:

- (a) [Standard Form \(SF\) 1449](#);
- (b) Continuation of any block from [SF 1449](#), such as—
  - (1) Block 10 if an incentive subcontracting clause is used (the contracting officer shall indicate the applicable percentage);
  - (2) Block 18B for remittance address;
  - (3) Block 19 for contract line item numbers;
  - (4) Block 20 for schedule of supplies/services; or
  - (5) Block 25 for accounting data;
- (c) Contract clauses—
  - (1) [52.212-4](#), Contract Terms and Conditions—Commercial Items, by reference (see [SF 1449](#) block 27a);
  - (2) Any addendum to [52.212-4](#); and

- (3) [52.212-5](#), Contract Terms and Conditions Required to Implement Statutes and Executive orders;
- (d) Any contract documents, exhibits or attachments; and
- (e) Solicitation provisions—
  - (1) [52.212-1](#), Instructions to Offerors—Commercial Items, by reference (see [SF 1449](#), Block 27a);

- (2) Any addendum to [52.212-1](#);
- (3) [52.212-2](#), Evaluation—Commercial Items, or other description of evaluation factors for award, if used; and
- (4) [52.212-3](#), Offeror Representations and Certifications—Commercial Items.

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## Subpart 12.5—Applicability of Certain Laws to the Acquisition of Commercial Items and Commercially Available Off-The-Shelf Items

### 12.500 Scope of subpart.

(a) As required by [41 U.S.C. 1906](#) and [1907](#), this subpart lists provisions of law that are not applicable to—

- (1) Contracts for the acquisition of commercial items;
- (2) Subcontracts, at any tier, for the acquisition of commercial items; and
- (3) Contracts and subcontracts, at any tier, for the acquisition of COTS items.

(b) This subpart also lists provisions of law that have been amended to eliminate or modify their applicability to either contracts or subcontracts for the acquisition of commercial items.

### 12.501 Applicability.

(a) This subpart applies to any contract or subcontract at any tier for the acquisition of commercial items.

(b) Nothing in this subpart shall be construed to authorize the waiver of any provision of law with respect to any subcontract if the prime contractor is reselling or distributing commercial items of another contractor without adding value. This limitation is intended to preclude establishment of unusual contractual arrangements solely for the purpose of Government sales.

(c) For purposes of this subpart, contractors awarded subcontracts under [subpart 19.8](#), Contracting with the Small Business Administration (the 8(a) Program), shall be considered prime contractors.

### 12.502 Procedures.

(a) The FAR prescription for the provision or clause for each of the laws listed in [12.503](#) has been revised in the appropriate part to reflect its proper application to prime contracts for the acquisition of commercial items.

(b) For subcontracts for the acquisition of commercial items or commercial components, the clauses at [52.212-5](#), Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, and [52.244-6](#), Subcontracts for Commercial Items, reflect the applicability of the laws listed in [12.504](#) by identifying the only provisions and clauses that are required to be included in a subcontract at any tier for the acquisition of commercial items or commercial components.

(c) The FAR prescription for the provision or clause for each of the laws listed in [12.505](#) has been revised in the appropriate part to reflect its proper application to contracts and subcontracts for the acquisition of COTS items.

### 12.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial items.

(a) The following laws are not applicable to Executive agency contracts for the acquisition of commercial items:

(1) [41 U.S.C. chapter 65](#), Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000 (see [subpart 22.6](#)).

(2) [41 U.S.C. 3901\(b\)](#) and [10 U.S.C. 2306\(b\)](#), Contingent Fees (see [3.404](#)).

(3) [41 U.S.C. 1708\(e\)\(3\)](#), Minimum Response Time for Offers (see [5.203](#)).

(4) [41 U.S.C. chapter 81](#), Drug-Free Workplace (see [23.501](#)).

(5) [31 U.S.C. 1354\(a\)](#), Limitation on use of appropriated funds for contracts with entities not meeting veterans' employment reporting requirements (see [22.1302](#)).

(6) [Reserved]

(7) Section 806(a)(3) of Pub. L. 102-190, as amended by Sections 2091 and 8105 of Pub. L. 103-355, ([10 U.S.C. 2302](#) note), Payment Protections for Subcontractors and Suppliers (see [28.106-6](#)).

(8) [41 U.S.C. 4706\(d\)\(1\)](#) and [10 U.S.C. 2313\(c\)\(1\)](#), GAO Access to Contractor Employees, Section 871 of Pub. L. 110-417 (see [52.214-26](#) and [52.215-2](#)).

(9) [41 U.S.C. 2303](#), Policy on Personal Conflicts of Interest by Contractor Employees (see subpart [3.11](#)).

(b) Certain requirements of the following laws are not applicable to executive agency contracts for the acquisition of commercial items:

(1) [40 U.S.C. chapter 37](#), Requirement for a certificate and clause under the Contract Work Hours and Safety Standards statute (see [22.305](#)).

(2) [41 U.S.C. 8703](#) and [8703](#), Requirement for a clause and certain other requirements related to kickbacks (see [3.502](#)).

(3) [49 U.S.C. 40118](#), Requirement for a clause under the Fly American provisions (see [47.405](#)).

(c) The applicability of the following laws have been modified in regards to Executive agency contracts for the acquisition of commercial items:

(1) [41 U.S.C. 4704](#) and [10 U.S.C. 2402](#), Prohibition on Limiting Subcontractor Direct Sales to the United States (see [3.503](#)).

(2) [41 U.S.C. chapter 35](#), Truthful Cost or Pricing Data, and [10 U.S.C. 2306a](#), Truth in Negotiations Act (see [15.403](#)).

(3) [41 U.S.C. chapter 15](#), Cost Accounting Standards (48 CFR Chapter 99) (see [12.214](#)).

### 12.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

(a) The following laws are not applicable to subcontracts at any tier for the acquisition of commercial items or commercial components at any tier:

(1) [10 U.S.C. 2631](#), Transportation of Supplies by Sea (except for the types of subcontracts listed at [47.504\(d\)](#)).

(2) [15 U.S.C. 644\(d\)](#), Requirements relative to labor surplus areas under the Small Business Act (see [subpart 19.2](#)).

(3) [Reserved]

(4) [41 U.S.C. 6505](#), Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000 (see [subpart 22.6](#)).

(5) [41 U.S.C. 4703](#), Validation of Proprietary Data restrictions (see [subpart 27.4](#)).

(6) [41 U.S.C. 3901\(b\)](#) and [10 U.S.C. 2306\(b\)](#), Contingent Fees (see [subpart 3.4](#)).

(7) [41 U.S.C. 4706\(d\)](#) and [10 U.S.C. 2313\(c\)](#), Examination of Records of Contractor, when a subcontractor is not required to provide certified cost or pricing data (see [15.209\(b\)](#)), unless using funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).

(8) [41 U.S.C. 1708\(e\)\(3\)](#), Minimum Response Time for Offers (see [subpart 5.2](#)).

(9) [41 U.S.C. 2302](#), Rights in Technical Data (see [subpart 27.4](#)).

(10) [41 U.S.C. chapter 81](#), Drug-Free Workplace Act (see [subpart 23.5](#)).

(11) [46 U.S.C. App. 1241\(b\)](#), Transportation in American Vessels of Government Personnel and Certain Cargo (see [subpart 47.5](#)) (except for the types of subcontracts listed at [47.504\(d\)](#)).

(12) [49 U.S.C. 40118](#), Fly American provisions (see [subpart 47.4](#)).

(13) Section 806(a)(3) of Pub. L. 102-190, as amended by Sections 2091 and 8105 of Pub. L. 103-355 ([10 U.S.C. 2302](#) note), Payment Protections for Subcontractors and Suppliers (see [28.106-6](#)).

(b) The requirements for a certificate and clause under the Contract Work Hours and Safety Standards statute,

[40 U.S.C. 37](#), (see [subpart 22.3](#)) are not applicable to subcontracts at any tier for the acquisition of commercial items or commercial components.

(c) The applicability of the following laws has been modified in regards to subcontracts at any tier for the acquisition of commercial items or commercial components:

(1) [41 U.S.C. 4704](#) and [10 U.S.C. 2402](#), Prohibition on Limiting Subcontractor Direct Sales to the United States (see [subpart 3.5](#)).

(2) [41 U.S.C. chapter 35](#), Truthful Cost or Pricing Data, and [10 U.S.C. 2306a](#), Truth in Negotiations (see [subpart 15.4](#)).

(3) [41 U.S.C. chapter 15](#), Cost Accounting Standards (48 CFR Chapter 99) (see [12.214](#)).

### **12.505 Applicability of certain laws to contracts for the acquisition of COTS items.**

COTS items are a subset of commercial items. Therefore, any laws listed in sections [12.503](#) and [12.504](#) are also inapplicable or modified in their applicability to contracts or subcontracts for the acquisition of COTS items. In addition, the following laws are not applicable to contracts for the acquisition of COTS items:

(a)(1) The portion of [41 U.S.C. 8302\(a\)\(1\)](#), that reads “substantially all from articles, materials, or supplies mined, produced, or manufactured, in the United States,” Buy American-Supplies, component test (see [52.225-1](#) and [52.225-3](#)).

(2) The portion of [41 U.S.C. 8303\(a\)\(2\)](#), that reads “substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States,” Buy American-Construction Materials, component test (see [52.225-9](#) and [52.225-11](#)).

(b) [42 U.S.C. 6962\(c\)\(3\)\(A\)](#), Certification and Estimate of Percentage of Recovered Material.

## Subpart 14.5—Two-Step Sealed Bidding

### 14.501 General.

Two-step sealed bidding is a combination of competitive procedures designed to obtain the benefits of sealed bidding when adequate specifications are not available. An objective is to permit the development of a sufficiently descriptive and not unduly restrictive statement of the Government's requirements, including an adequate technical data package, so that subsequent acquisitions may be made by conventional sealed bidding. This method is especially useful in acquisitions requiring technical proposals, particularly those for complex items. It is conducted in two steps:

(a) Step one consists of the request for, submission, evaluation, and (if necessary) discussion of a technical proposal. No pricing is involved. The objective is to determine the acceptability of the supplies or services offered. As used in this context, the word "technical" has a broad connotation and includes, among other things, the engineering approach, special manufacturing processes, and special testing techniques. It is the proper step for clarification of questions relating to technical requirements. Conformity to the technical requirements is resolved in this step, but not responsibility as defined in 9.1.

(b) Step two involves the submission of sealed priced bids by those who submitted acceptable technical proposals in step one. Bids submitted in step two are evaluated and the awards made in accordance with [subparts 14.3](#) and [14.4](#).

### 14.502 Conditions for use.

(a) Unless other factors require the use of sealed bidding, two-step sealed bidding may be used in preference to negotiation when all of the following conditions are present:

(1) Available specifications or purchase descriptions are not definite or complete or may be too restrictive without technical evaluation, and any necessary discussion, of the technical aspects of the requirement to ensure mutual understanding between each source and the Government.

(2) Definite criteria exist for evaluating technical proposals.

(3) More than one technically qualified source is expected to be available.

(4) Sufficient time will be available for use of the two-step method.

(5) A firm-fixed-price contract or a fixed-price contract with economic price adjustment will be used.

(b) None of the following precludes the use of two-step sealed bidding:

(1) Multi-year contracting.

(2) Government property to be made available to the successful bidder.

(3) A total small business set-aside (see [19.502-2](#)).

(4) The use of a set-aside or price evaluation preference for HUBZone small business concerns (see [subpart 19.13](#)).

(5) The use of a set-aside for service-disabled veteran-owned small business concerns (see [subpart 19.14](#)).

(6) The use of a set-aside for economically disadvantaged women-owned small business concerns and women-owned small business concerns eligible under the Women-Owned Small Business Program (see [subpart 19.15](#)).

(7) A first or subsequent production quantity is being acquired under a performance specification.

### 14.503 Procedures.

#### 14.503-1 Step one.

(a) Requests for technical proposals shall be synopsisized in accordance with [Part 5](#). The request must include, as a minimum, the following:

(1) A description of the supplies or services required.

(2) A statement of intent to use the two-step method.

(3) The requirements of the technical proposal.

(4) The evaluation criteria, to include all factors and any significant subfactors.

(5) A statement that the technical proposals shall not include prices or pricing information.

(6) The date, or date and hour, by which the proposal must be received (see [14.201-6\(r\)](#)).

(7) A statement that—

(i) In the second step, only bids based upon technical proposals determined to be acceptable, either initially or as a result of discussions, will be considered for awards, and

(ii) Each bid in the second step must be based on the bidder's own technical proposals.

(8) A statement that—

(i) Offerors should submit proposals that are acceptable without additional explanation or information,

(ii) The Government may make a final determination regarding a proposal's acceptability solely on the basis of the proposal as submitted; and

(iii) The Government may proceed with the second step without requesting further information from any offeror; however, the Government may request additional information from offerors of proposals that it considers reasonably susceptible of being made acceptable, and may discuss proposals with their offerors.

(9) A statement that a notice of unacceptability will be forwarded to the offeror upon completion of the proposal evaluation and final determination of unacceptability.

(10) A statement either that only one technical proposal may be submitted by each offeror or that multiple technical proposals may be submitted. When specifications permit different technical approaches, it is generally in the Government's interest to authorize multiple proposals. If multiple proposals are authorized, see [14.201-6\(s\)](#).

(b) Information on delivery or performance requirements may be of assistance to bidders in determining whether or not to submit a proposal and may be included in the request. The request shall also indicate that the information is not binding on the Government and that the actual delivery or performance requirements will be contained in the invitation issued under step two.

(c) Upon receipt, the contracting officer shall—

(1) Safeguard proposals against disclosure to unauthorized persons;

(2) Accept and handle data marked in accordance with [15.609](#) as provided in that section; and

(3) Remove any reference to price or cost.

(d) The contracting officer shall establish a time period for evaluating technical proposals. The period may vary with the complexity and number of proposals involved. However, the evaluation should be completed quickly.

(e)(1) Evaluations shall be based on the criteria in the request for proposals but not consideration of responsibility as defined in 9.1, Proposals, shall be categorized as—

(i) Acceptable;

(ii) Reasonably susceptible of being made acceptable; or

(iii) Unacceptable.

(2) Any proposal which modifies, or fails to conform to the essential requirements or specifications of, the request for technical proposals shall be considered nonresponsive and categorized as unacceptable.

(f)(1) The contracting officer may proceed directly with step two if there are sufficient acceptable proposals to ensure adequate price competition under step two, and if further time, effort and delay to make additional proposals acceptable and thereby increase competition would not be in the Government's interest. If this is not the case, the contracting officer shall request bidders whose proposals may be made acceptable to submit additional clarifying or supplementing information. The contracting office shall identify the nature of the deficiencies in the proposal or the nature of the additional information required. The contracting officer may also arrange discussions for this purpose. No proposal shall be discussed with any offeror other than the submitter.

(2) In initiating requests for additional information, the contracting officer shall fix an appropriate time for bidders to conclude discussions, if any, submit all additional information, and incorporate such additional information as part of their proposals submitted. Such time may be extended in the discretion of the contracting officer. If the additional information incorporated as part of a proposal within the final time fixed by the contracting officer establishes that the proposal is acceptable, it shall be so categorized. Otherwise, it shall be categorized as unacceptable.

(g) When a technical proposal is found unacceptable (either initially or after clarification), the contracting officer shall promptly notify the offeror of the basis of the determination and that a revision of the proposal will not be considered. Upon written request, the contracting officer shall debrief unsuccessful offerors (see [15.505](#) and [15.506](#)).

(h) Late technical proposals are governed by [15.208](#)(b), (c), and (f).

(i) If it is necessary to discontinue two-step sealed bidding, the contracting officer shall include a statement of the facts and circumstances in the contract file. Each offeror shall be notified in writing. When step one results in no acceptable technical proposal or only one acceptable technical proposal, the acquisition may be continued by negotiation.

#### 14.503-2 Step two.

(a) Sealed bidding procedures shall be followed except that invitations for bids shall—

(1) Be issued only to those offerors submitting acceptable technical proposals in step one;

(2) Include the provision prescribed in [14.201-6](#)(t);

(3) Prominently state that the bidder shall comply with the specifications and the bidder's technical proposal; and

(4) Not be synopsisized through the Governmentwide point of entry (GPE) as an acquisition opportunity nor publicly posted (see [5.101](#)(a)).

(b) The names of firms that submitted acceptable proposals in step one will be listed through the GPE for the benefit of prospective subcontractors (see [5.207](#)).

\* \* \* \* \*

## Subpart 15.3—Source Selection

### 15.300 Scope of subpart.

This subpart prescribes policies and procedures for selection of a source or sources in competitive negotiated acquisitions.

### 15.301 [Reserved]

### 15.302 Source selection objective.

The objective of source selection is to select the proposal that represents the best value.

### 15.303 Responsibilities.

(a) Agency heads are responsible for source selection. The contracting officer is designated as the source selection authority, unless the agency head appoints another individual for a particular acquisition or group of acquisitions.

(b) The source selection authority shall—

(1) Establish an evaluation team, tailored for the particular acquisition, that includes appropriate contracting, legal, logistics, technical, and other expertise to ensure a comprehensive evaluation of offers;

(2) Approve the source selection strategy or acquisition plan, if applicable, before solicitation release;

(3) Ensure consistency among the solicitation requirements, notices to offerors, proposal preparation instructions, evaluation factors and subfactors, solicitation provisions or contract clauses, and data requirements;

(4) Ensure that proposals are evaluated based solely on the factors and subfactors contained in the solicitation ([10 U.S.C. 2305\(b\)\(4\)\(C\)](#) and [41 U.S.C. 3703\(c\)](#));

(5) Consider the recommendations of advisory boards or panels (if any); and

(6) Select the source or sources whose proposal is the best value to the Government ([10 U.S.C. 2305\(b\)\(4\)\(C\)](#) and [41 U.S.C. 3703\(c\)](#)).

(c) The contracting officer shall—

(1) After release of a solicitation, serve as the focal point for inquiries from actual or prospective offerors;

(2) After receipt of proposals, control exchanges with offerors in accordance with [15.306](#); and

(3) Award the contract(s).

### 15.304 Evaluation factors and significant subfactors.

(a) The award decision is based on evaluation factors and significant subfactors that are tailored to the acquisition.

(b) Evaluation factors and significant subfactors must—

(1) Represent the key areas of importance and emphasis to be considered in the source selection decision; and

(2) Support meaningful comparison and discrimination between and among competing proposals.

(c) The evaluation factors and significant subfactors that apply to an acquisition and their relative importance, are within the broad discretion of agency acquisition officials, subject to the following requirements:

(1) Price or cost to the Government shall be evaluated in every source selection ([10 U.S.C. 2305\(a\)\(3\)\(A\)\(ii\)](#) and [41 U.S.C. 3306\(c\)\(1\)\(B\)](#)) (also see [part 36](#) for architect-engineer contracts);

(2) The quality of the product or service shall be addressed in every source selection through consideration of one or more non-cost evaluation factors such as past performance, compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience ([10 U.S.C. 2305\(a\)\(3\)\(A\)\(i\)](#) and [41 U.S.C. 3306\(c\)\(1\)\(A\)](#)); and

(3)(i) Except as set forth in paragraph (c)(3)(iii) of this section, past performance shall be evaluated in all source selections for negotiated competitive acquisitions expected to exceed the simplified acquisition threshold.

(ii) For solicitations involving bundling that offer a significant opportunity for subcontracting, the contracting officer must include a factor to evaluate past performance indicating the extent to which the offeror attained applicable goals for small business participation under contracts that required subcontracting plans ([15 U.S.C. 637\(d\)\(4\)\(G\)\(ii\)](#)).

(iii) Past performance need not be evaluated if the contracting officer documents the reason past performance is not an appropriate evaluation factor for the acquisition.

(4) For solicitations involving bundling that offer a significant opportunity for subcontracting, the contracting officer must include proposed small business subcontracting participation in the subcontracting plan as an evaluation factor ([15 U.S.C. 637\(d\)\(4\)\(G\)\(i\)](#)).

(5) If telecommuting is not prohibited, agencies shall not unfavorably evaluate an offer that includes telecommuting unless the contracting officer executes a written determination in accordance with FAR [7.108\(b\)](#).

(d) All factors and significant subfactors that will affect contract award and their relative importance shall be stated clearly in the solicitation ([10 U.S.C. 2305\(a\)\(2\)\(A\)\(i\)](#) and [41 U.S.C. 3306\(b\)\(1\)\(A\)](#)) (see [15.204-5\(c\)](#)). The rating method need not be disclosed in the solicitation. The general approach for evaluating past performance information shall be described.

(e) The solicitation shall also state, at a minimum, whether all evaluation factors other than cost or price, when combined, are—

(1) Significantly more important than cost or price;

(2) Approximately equal to cost or price; or

(3) Significantly less important than cost or price ([10 U.S.C. 2305\(a\)\(3\)\(A\)\(iii\)](#) and [41 U.S.C. 3306\(c\)\(1\)\(C\)](#)).

**15.305 Proposal evaluation.**

(a) Proposal evaluation is an assessment of the proposal and the offeror's ability to perform the prospective contract successfully. An agency shall evaluate competitive proposals and then assess their relative qualities solely on the factors and subfactors specified in the solicitation. Evaluations may be conducted using any rating method or combination of methods, including color or adjectival ratings, numerical weights, and ordinal rankings. The relative strengths, deficiencies, significant weaknesses, and risks supporting proposal evaluation shall be documented in the contract file.

(1) *Cost or price evaluation.* Normally, competition establishes price reasonableness. Therefore, when contracting on a firm-fixed-price or fixed-price with economic price adjustment basis, comparison of the proposed prices will usually satisfy the requirement to perform a price analysis, and a cost analysis need not be performed. In limited situations, a cost analysis (see [15.403-1\(c\)\(1\)\(i\)\(B\)](#)) may be appropriate to establish reasonableness of the otherwise successful offeror's price. When contracting on a cost-reimbursement basis, evaluations shall include a cost realism analysis to determine what the Government should realistically expect to pay for the proposed effort, the offeror's understanding of the work, and the offeror's ability to perform the contract. (See [37.115](#) for uncompensated overtime evaluation.) The contracting officer shall document the cost or price evaluation.

(2) *Past performance evaluation.* (i) Past performance information is one indicator of an offeror's ability to perform the contract successfully. The currency and relevance of the information, source of the information, context of the data, and general trends in contractor's performance shall be considered. This comparative assessment of past performance information is separate from the responsibility determination required under [subpart 9.1](#).

(ii) The solicitation shall describe the approach for evaluating past performance, including evaluating offerors with no relevant performance history, and shall provide offerors an opportunity to identify past or current contracts (including Federal, State, and local government and private) for efforts similar to the Government requirement. The solicitation shall also authorize offerors to provide information on problems encountered on the identified contracts and the offeror's corrective actions. The Government shall consider this information, as well as information obtained from any other sources, when evaluating the offeror's past performance. The source selection authority shall determine the relevance of similar past performance information.

(iii) The evaluation should take into account past performance information regarding predecessor companies, key personnel who have relevant experience, or subcontractors that will perform major or critical aspects of the requirement when such information is relevant to the instant acquisition.

(iv) In the case of an offeror without a record of relevant past performance or for whom information on past performance is not available, the offeror may not be evaluated favorably or unfavorably on past performance.

(v) The evaluation should include the past performance of offerors in complying with subcontracting plan goals for small disadvantaged business (SDB) concerns (see [subpart 19.7](#)).

(3) *Technical evaluation.* When tradeoffs are performed (see [15.101-1](#)), the source selection records shall include—

(i) An assessment of each offeror's ability to accomplish the technical requirements; and

(ii) A summary, matrix, or quantitative ranking, along with appropriate supporting narrative, of each technical proposal using the evaluation factors.

(4) *Cost information.* Cost information may be provided to members of the technical evaluation team in accordance with agency procedures.

(5) *Small business subcontracting evaluation.* Solicitations must be structured to give offers from small business concerns the highest rating for the evaluation factors in [15.304\(c\)\(3\)\(ii\)](#) and (c)(5).

(b) The source selection authority may reject all proposals received in response to a solicitation, if doing so is in the best interest of the Government.

(c) For restrictions on the use of support contractor personnel in proposal evaluation, see [37.203\(d\)](#).

**15.306 Exchanges with offerors after receipt of proposals.**

(a) *Clarifications and award without discussions.*

(1) Clarifications are limited exchanges, between the Government and offerors, that may occur when award without discussions is contemplated.

(2) If award will be made without conducting discussions, offerors may be given the opportunity to clarify certain aspects of proposals (e.g., the relevance of an offeror's past performance information and adverse past performance information to which the offeror has not previously had an opportunity to respond) or to resolve minor or clerical errors.

(3) Award may be made without discussions if the solicitation states that the Government intends to evaluate proposals and make award without discussions. If the solicitation contains such a notice and the Government determines it is necessary to conduct discussions, the rationale for doing so shall be documented in the contract file (see the provision at [52.215-1](#)) ([10 U.S.C. 2305\(b\)\(4\)\(A\)\(ii\)](#)) and [41 U.S.C. 3703\(a\)\(2\)](#)).

(b) *Communications with offerors before establishment of the competitive range.* Communications are exchanges, between the Government and offerors, after receipt of proposals, leading to establishment of the competitive range. If a competitive range is to be established, these communications—

(1) Shall be limited to the offerors described in paragraphs (b)(1)(i) and (b)(1)(ii) of this section and—

(i) Shall be held with offerors whose past performance information is the determining factor preventing them from being placed within the competitive range. Such communications shall address adverse past performance information to which an offeror has not had a prior opportunity to respond; and

(ii) May only be held with those offerors (other than offerors under paragraph (b)(1)(i) of this section) whose exclusion from, or inclusion in, the competitive range is uncertain;

(2) May be conducted to enhance Government understanding of proposals; allow reasonable interpretation of the proposal; or facilitate the Government's evaluation process. Such communications shall not be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, and/or otherwise revise the proposal. Such communications may be considered in rating proposals for the purpose of establishing the competitive range;

(3) Are for the purpose of addressing issues that must be explored to determine whether a proposal should be placed in the competitive range. Such communications shall not provide an opportunity for the offeror to revise its proposal, but may address—

(i) Ambiguities in the proposal or other concerns (e.g., perceived deficiencies, weaknesses, errors, omissions, or mistakes (see [14.407](#))); and

(ii) Information relating to relevant past performance; and

(4) Shall address adverse past performance information to which the offeror has not previously had an opportunity to comment.

(c) *Competitive range.* (1) Agencies shall evaluate all proposals in accordance with [15.305\(a\)](#), and, if discussions are to be conducted, establish the competitive range. Based on the ratings of each proposal against all evaluation criteria, the contracting officer shall establish a competitive range comprised of all of the most highly rated proposals, unless the range is further reduced for purposes of efficiency pursuant to paragraph (c)(2) of this section.

(2) After evaluating all proposals in accordance with [15.305\(a\)](#) and paragraph (c)(1) of this section, the contracting officer may determine that the number of most highly rated proposals that might otherwise be included in the competitive range exceeds the number at which an efficient competition can be conducted. Provided the solicitation notifies offerors that the competitive range can be limited for purposes of efficiency (see [52.215-1\(f\)\(4\)](#)), the contracting officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the

most highly rated proposals ([10 U.S.C. 2305\(b\)\(4\)](#) and [41 U.S.C. 3703](#)).

(3) If the contracting officer, after complying with paragraph (d)(3) of this section, decides that an offeror's proposal should no longer be included in the competitive range, the proposal shall be eliminated from consideration for award. Written notice of this decision shall be provided to unsuccessful offerors in accordance with [15.503](#).

(4) Offerors excluded or otherwise eliminated from the competitive range may request a debriefing (see [15.505](#) and [15.506](#)).

(d) *Exchanges with offerors after establishment of the competitive range.* Negotiations are exchanges, in either a competitive or sole source environment, between the Government and offerors, that are undertaken with the intent of allowing the offeror to revise its proposal. These negotiations may include bargaining. Bargaining includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract. When negotiations are conducted in a competitive acquisition, they take place after establishment of the competitive range and are called discussions.

(1) Discussions are tailored to each offeror's proposal, and must be conducted by the contracting officer with each offeror within the competitive range.

(2) The primary objective of discussions is to maximize the Government's ability to obtain best value, based on the requirement and the evaluation factors set forth in the solicitation.

(3) At a minimum, the contracting officer must, subject to paragraphs (d)(5) and (e) of this section and [15.307\(a\)](#), indicate to, or discuss with, each offeror still being considered for award, deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond. The contracting officer also is encouraged to discuss other aspects of the offeror's proposal that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposal's potential for award. However, the contracting officer is not required to discuss every area where the proposal could be improved. The scope and extent of discussions are a matter of contracting officer judgment.

(4) In discussing other aspects of the proposal, the Government may, in situations where the solicitation stated that evaluation credit would be given for technical solutions exceeding any mandatory minimums, negotiate with offerors for increased performance beyond any mandatory minimums, and the Government may suggest to offerors that have exceeded any mandatory minimums (in ways that are not integral to the design), that their proposals would be more competitive if the excesses were removed and the offered price decreased.

(5) If, after discussions have begun, an offeror originally in the competitive range is no longer considered to be among the most highly rated offerors being considered for award, that offeror may be eliminated from the competitive range whether or not all material aspects of the proposal have been discussed, or whether or not the offeror has been afforded an opportunity to submit a proposal revision (see [15.307\(a\)](#) and [15.503\(a\)\(1\)](#)).

(e) *Limits on exchanges.* Government personnel involved in the acquisition shall not engage in conduct that—

(1) Favors one offeror over another;

(2) Reveals an offeror's technical solution, including unique technology, innovative and unique uses of commercial items, or any information that would compromise an offeror's intellectual property to another offeror;

(3) Reveals an offeror's price without that offeror's permission. However, the contracting officer may inform an offeror that its price is considered by the Government to be too high, or too low, and reveal the results of the analysis supporting that conclusion. It is also permissible, at the Government's discretion, to indicate to all offerors the cost or price that the Government's price analysis, market research, and other reviews have identified as reasonable ([41 U.S.C. 2102](#) and 2107);

(4) Reveals the names of individuals providing reference information about an offeror's past performance; or

(5) Knowingly furnishes source selection information in violation of [3.104](#) and [41 U.S.C. 2102](#) and 2107).

### **15.307 Proposal revisions.**

(a) If an offeror's proposal is eliminated or otherwise removed from the competitive range, no further revisions to that offeror's proposal shall be accepted or considered.

(b) The contracting officer may request or allow proposal revisions to clarify and document understandings reached during negotiations. At the conclusion of discussions, each offeror still in the competitive range shall be given an opportunity to submit a final proposal revision. The contracting officer is required to establish a common cut-off date only for receipt of final proposal revisions. Requests for final proposal revisions shall advise offerors that the final proposal revisions shall be in writing and that the Government intends to make award without obtaining further revisions.

### **15.308 Source selection decision.**

The source selection authority's (SSA) decision shall be based on a comparative assessment of proposals against all source selection criteria in the solicitation. While the SSA may use reports and analyses prepared by others, the source selection decision shall represent the SSA's independent judgment. The source selection decision shall be documented, and the documentation shall include the rationale for any business judgments and tradeoffs made or relied on by the SSA, including benefits associated with additional costs. Although the rationale for the selection decision must be documented, that documentation need not quantify the tradeoffs that led to the decision.



### Subpart 15.5—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

#### 15.501 Definition.

“Day,” as used in this subpart, has the meaning set forth at [33.101](#).

#### 15.502 Applicability.

This subpart applies to competitive proposals, as described in [6.102\(b\)](#), and a combination of competitive procedures, as described in [6.102\(c\)](#). The procedures in [15.504](#), [15.506](#), [15.507](#), [15.508](#), and [15.509](#), with reasonable modification, should be followed for sole source acquisitions and acquisitions described in [6.102\(d\)\(1\)](#) and (2).

#### 15.503 Notifications to unsuccessful offerors.

(a) *Preaward notices*—(1) *Preaward notices of exclusion from competitive range*. The contracting officer shall notify offerors promptly in writing when their proposals are excluded from the competitive range or otherwise eliminated from the competition. The notice shall state the basis for the determination and that a proposal revision will not be considered.

(2) *Preaward notices for small business programs*.

(i) In addition to the notice in paragraph (a)(1) of this section, the contracting officer shall notify each offeror in writing prior to award and upon completion of negotiations and determinations of responsibility—

(A) When using a small business set-aside (see [Subpart 19.5](#));

(B) When using the HUBZone procedures in [19.1305](#) or [19.1307](#);

(C) When using the service-disabled veteran-owned small business procedures in [19.1405](#); or

(D) When using the Women-Owned Small Business Program procedures in [19.1505](#).

(ii) The notice shall state—

(A) The name and address of the apparently successful offeror;

(B) That the Government will not consider subsequent revisions of the offeror’s proposal; and

(C) That no response is required unless a basis exists to challenge the size status or small business status of the apparently successful offeror (*e.g.*, small business concern, small disadvantaged business concern, HUBZone small business concern, service-disabled veteran-owned small business concern, economically disadvantaged women-owned small business concern, or women-owned small business con-

cern eligible under the Women-Owned Small Business Program).

(iii) The notice is not required when the contracting officer determines in writing that the urgency of the requirement necessitates award without delay or when the contract is entered into under the 8(a) program (see [19.805-2](#)).

(b) *Postaward notices*.(1) Within 3 days after the date of contract award, the contracting officer shall provide written notification to each offeror whose proposal was in the competitive range but was not selected for award ([10 U.S.C. 2305\(b\)\(5\)](#) and [41 U.S.C. 3704](#)) or had not been previously notified under paragraph (a) of this section. The notice shall include—

(i) The number of offerors solicited;

(ii) The number of proposals received;

(iii) The name and address of each offeror receiving an award;

(iv) The items, quantities, and any stated unit prices of each award. If the number of items or other factors makes listing any stated unit prices impracticable at that time, only the total contract price need be furnished in the notice. However, the items, quantities, and any stated unit prices of each award shall be made publicly available, upon request; and

(v) In general terms, the reason(s) the offeror’s proposal was not accepted, unless the price information in paragraph (b)(1)(iv) of this section readily reveals the reason. In no event shall an offeror’s cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other offeror.

(2) Upon request, the contracting officer shall furnish the information described in paragraph (b)(1) of this section to unsuccessful offerors in solicitations using simplified acquisition procedures in [part 13](#).

(3) Upon request, the contracting officer shall provide the information in paragraph (b)(1) of this section to unsuccessful offerors that received a preaward notice of exclusion from the competitive range.

#### 15.504 Award to successful offeror.

The contracting officer shall award a contract to the successful offeror by furnishing the executed contract or other notice of the award to that offeror.

(a) If the award document includes information that is different than the latest signed proposal, as amended by the offeror’s written correspondence, both the offeror and the contracting officer shall sign the contract award.

(b) When an award is made to an offeror for less than all of the items that may be awarded and additional items are being withheld for subsequent award, each notice shall state

that the Government may make subsequent awards on those additional items within the proposal acceptance period.

(c) If the [Optional Form \(OF\) 307](#), Contract Award, [Standard Form \(SF\) 26](#), Award/Contract, or [SF 33](#), Solicitation, Offer and Award, is not used to award the contract, the first page of the award document shall contain the Government's acceptance statement from Block 15 of that form, exclusive of the Item 3 reference language, and shall contain the contracting officer's name, signature, and date. In addition, if the award document includes information that is different than the signed proposal, as amended by the offeror's written correspondence, the first page shall include the contractor's agreement statement from Block 14 of the [OF 307](#) and the signature of the contractor's authorized representative.

### 15.505 Preaward debriefing of offerors.

Offerors excluded from the competitive range or otherwise excluded from the competition before award may request a debriefing before award ([10 U.S.C. 2305\(b\)\(6\)\(A\)](#) and [41 U.S.C. 3705](#)).

(a)(1) The offeror may request a preaward debriefing by submitting a written request for debriefing to the contracting officer within 3 days after receipt of the notice of exclusion from the competition.

(2) At the offeror's request, this debriefing may be delayed until after award. If the debriefing is delayed until after award, it shall include all information normally provided in a postaward debriefing (see [15.506\(d\)](#)). Debriefings delayed pursuant to this paragraph could affect the timeliness of any protest filed subsequent to the debriefing.

(3) If the offeror does not submit a timely request, the offeror need not be given either a preaward or a postaward debriefing. Offerors are entitled to no more than one debriefing for each proposal.

(b) The contracting officer shall make every effort to debrief the unsuccessful offeror as soon as practicable, but may refuse the request for a debriefing if, for compelling reasons, it is not in the best interests of the Government to conduct a debriefing at that time. The rationale for delaying the debriefing shall be documented in the contract file. If the contracting officer delays the debriefing, it shall be provided no later than the time postaward debriefings are provided under [15.506](#). In that event, the contracting officer shall include the information at [15.506\(d\)](#) in the debriefing.

(c) Debriefings may be done orally, in writing, or by any other method acceptable to the contracting officer.

(d) The contracting officer should normally chair any debriefing session held. Individuals who conducted the evaluations shall provide support.

(e) At a minimum, preaward debriefings shall include—

(1) The agency's evaluation of significant elements in the offeror's proposal;

(2) A summary of the rationale for eliminating the offeror from the competition; and

(3) Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed in the process of eliminating the offeror from the competition.

(f) Preaward debriefings shall not disclose—

(1) The number of offerors;

(2) The identity of other offerors;

(3) The content of other offerors' proposals;

(4) The ranking of other offerors;

(5) The evaluation of other offerors; or

(6) Any of the information prohibited in [15.506\(e\)](#).

(g) An official summary of the debriefing shall be included in the contract file.

### 15.506 Postaward debriefing of offerors.

(a)(1) An offeror, upon its written request received by the agency within 3 days after the date on which that offeror has received notification of contract award in accordance with [15.503\(b\)](#), shall be debriefed and furnished the basis for the selection decision and contract award.

(2) To the maximum extent practicable, the debriefing should occur within 5 days after receipt of the written request. Offerors that requested a postaward debriefing in lieu of a preaward debriefing, or whose debriefing was delayed for compelling reasons beyond contract award, also should be debriefed within this time period.

(3) An offeror that was notified of exclusion from the competition (see [15.505\(a\)](#)), but failed to submit a timely request, is not entitled to a debriefing.

(4)(i) Untimely debriefing requests may be accommodated.

(ii) Government accommodation of a request for delayed debriefing pursuant to [15.505\(a\)\(2\)](#), or any untimely debriefing request, does not automatically extend the deadlines for filing protests. Debriefings delayed pursuant to [15.505\(a\)\(2\)](#) could affect the timeliness of any protest filed subsequent to the debriefing.

(b) Debriefings of successful and unsuccessful offerors may be done orally, in writing, or by any other method acceptable to the contracting officer.

(c) The contracting officer should normally chair any debriefing session held. Individuals who conducted the evaluations shall provide support.

(d) At a minimum, the debriefing information shall include—

(1) The Government's evaluation of the significant weaknesses or deficiencies in the offeror's proposal, if applicable;

(2) The overall evaluated cost or price (including unit prices) and technical rating, if applicable, of the successful offeror and the debriefed offeror, and past performance information on the debriefed offeror;

**PART 19—SMALL BUSINESS PROGRAMS**

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**19.000 Scope of part.**

(a) This part implements the acquisition-related sections of the Small Business Act ([15 U.S.C. 631](#), *et seq.*), applicable sections of the Armed Services Procurement Act ([10 U.S.C. 2302](#), *et seq.*), [41 U.S.C. 3104](#), and Executive Order 12138, May 18, 1979. It covers—

- (1) The determination that a concern is eligible for participation in the programs identified in this part;
  - (2) The respective roles of executive agencies and the Small Business Administration (SBA) in implementing the programs;
  - (3) Setting acquisitions aside for exclusive competitive participation by small business, 8(a) business development participants, HUBZone small business concerns, service-disabled veteran-owned small business concerns, and economically disadvantaged women-owned small business concerns and women-owned small business concerns eligible under the Women-Owned Small Business Program;
  - (4) The certificate of competency program;
  - (5) The subcontracting assistance program;
  - (6) The “8(a)” business development program (hereafter referred to as 8(a) program), under which agencies contract with the SBA for goods or services to be furnished under a subcontract by a small disadvantaged business concern;
  - (7) The use of women-owned small business concerns;
  - (8) The use of a price evaluation preference for HUBZone small business concerns;
  - (9) The use of veteran-owned small business concerns; and
  - (10) Sole source awards to HUBZone small business and service-disabled veteran-owned small business concerns.
- (b) This part, except for [Subpart 19.6](#), applies only in the United States or its outlying areas. [Subpart 19.6](#) applies worldwide.

**19.001 Definitions.**

As used in this part—

“Concern” means any business entity organized for profit (even if its ownership is in the hands of a nonprofit entity) with a place of business located in the United States or its outlying areas and that makes a significant contribution to the U.S. economy through payment of taxes and/or use of American products, material and/or labor, etc. “Concern” includes but is not limited to an individual, partnership, corporation, joint venture, association, or cooperative. For the purpose of making affiliation findings (see [19.101](#)), include any business entity, whether organized for profit or not, and any foreign business entity, *i.e.*, any entity located outside the United States and its outlying areas.

“Fair market price” means a price based on reasonable costs under normal competitive conditions and not on lowest possible cost (see [19.202-6](#)).

“Industry” means all concerns primarily engaged in similar lines of activity, as listed and described in the North American Industry Classification System (NAICS) manual.

“Nonmanufacturer rule” means that a contractor under a small business set-aside or 8(a) contract shall be a small business under the applicable size standard and shall provide either its own product or that of another domestic small business manufacturing or processing concern (see 13 CFR 121.406).

**Subpart 19.1—Size Standards****19.101 Explanation of terms.**

As used in this subpart—

“Affiliates.” Business concerns are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or another concern controls or has the power to control both. In determining whether affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationships; provided, that restraints imposed by a franchise agreement are not considered in determining whether the franchisor controls or has the power to control the franchisee, if the franchisee has the right to profit from its effort, commensurate with ownership, and bears the risk of loss or failure. Any business entity may be found to be an affiliate, whether or not it is organized for profit or located in the United States or its outlying areas.

(1) *Nature of control.* Every business concern is considered as having one or more parties who directly or indirectly control or have the power to control it. Control may be affirmative or negative and it is immaterial whether it is exercised so long as the power to control exists.

(2) *Meaning of “party or parties.”* The term “party” or “parties” includes, but is not limited to, two or more persons with an identity of interest such as members of the same family or persons with common investments in more than one concern. In determining who controls or has the power to control a concern, persons with an identity of interest may be treated as though they were one person.

(3) *Control through stock ownership.* (i) A party is considered to control or have the power to control a concern, if the party controls or has the power to control 50 percent or more of the concern’s voting stock.

(ii) A party is considered to control or have the power to control a concern, even though the party owns, controls, or has the power to control less than 50 percent of the concern’s voting stock, if the block of stock the party owns, controls, or has the power to control is large, as compared with any other outstanding block of stock. If two or more parties each owns,

controls, or has the power to control, less than 50 percent of the voting stock of a concern, and such minority block is equal or substantially equal in size, and large as compared with any other block outstanding, there is a presumption that each such party controls or has the power to control such concern; however, such presumption may be rebutted by a showing that such control or power to control, in fact, does not exist.

(iii) If a concern's voting stock is distributed other than as described above, its management (officers and directors) is deemed to be in control of such concern.

(4) *Stock options and convertible debentures.* Stock options and convertible debentures exercisable at the time or within a relatively short time after a size determination and agreements to merge in the future, are considered as having a present effect on the power to control the concern. Therefore, in making a size determination, such options, debentures, and agreements are treated as though the rights held thereunder had been exercised.

(5) *Voting trusts.* If the purpose of a voting trust, or similar agreement, is to separate voting power from beneficial ownership of voting stock for the purpose of shifting control of or the power to control a concern in order that such concern or another concern may qualify as a small business within the size regulations, such voting trust shall not be considered valid for this purpose regardless of whether it is or is not valid within the appropriate jurisdiction. However, if a voting trust is entered into for a legitimate purpose other than that described above, and it is valid within the appropriate jurisdiction, it may be considered valid for the purpose of a size determination, provided such consideration is determined to be in the best interest of the small business program.

(6) *Control through common management.* A concern may be found as controlling or having the power to control another concern when one or more of the following circumstances are found to exist, and it is reasonable to conclude that under the circumstances, such concern is directing or influencing, or has the power to direct or influence, the operation of such other concern.

(i) *Interlocking management.* Officers, directors, employees, or principal stockholders of one concern serve as a working majority of the board of directors or officers of another concern.

(ii) *Common facilities.* One concern shares common office space and/or employees and/or other facilities with another concern, particularly where such concerns are in the same or related industry or field of operation, or where such concerns were formerly affiliated.

(iii) *Newly organized concern.* Former officers, directors, principal stockholders, and/or key employees of one concern organize a new concern in the same or a related industry or field operation, and serve as its officers, directors, principal stockholders, and/or key employees, and one concern is

furnishing or will furnish the other concern with subcontracts, financial or technical assistance, and/or facilities, whether for a fee or otherwise.

(7) *Control through contractual relationships—*  
(i) *Definition of a joint venture for size determination purposes.* A joint venture for size determination purposes is an association of persons or concerns with interests in any degree or proportion by way of contract, express or implied, consenting to engage in and carry out a single specific business venture for joint profit, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. A joint venture is viewed as a business entity in determining power to control its management.

(A) For bundled requirements, apply size standards for the requirement to individual persons or concerns, not to the combined assets, of the joint venture.

(B) For other than bundled requirements, apply size standards for the requirement to individual persons or concerns, not to the combined assets, of the joint venture, if—

(1) A revenue-based size standard applies to the requirement and the estimated contract value, including options, exceeds one-half the applicable size standard; or

(2) An employee-based size standard applies to the requirement and the estimated contract value, including options, exceeds \$10 million.

(ii) *HUBZone joint venture.* A HUBZone joint venture of two or more HUBZone small business concerns may submit an offer for a HUBZone contract as long as each concern is small under the size standard corresponding to the NAICS code assigned to the contract, provided one of the following conditions apply:

(A) The aggregate total of the joint venture is small under the size standard corresponding to the NAICS code assigned to the contract.

(B) The aggregate total of the joint venture is not small under the size standard corresponding to the NAICS code assigned to the contract and either—

(1) For a revenue-based size standard, the estimated contract value exceeds half the size standard corresponding to the NAICS code assigned to the contract; or

(2) For an employee-based size standard, the estimated contract value exceeds \$10 million.

(iii) *Joint venture.* Concerns submitting offers on a particular acquisition as joint ventures are considered as affiliated and controlling or having the power to control each other with regard to performance of the contract. Moreover, an ostensible subcontractor which is to perform primary or vital requirements of a contract may have a controlling role such to be considered a joint venturer affiliated on the contract with the prime contractor. A joint venture affiliation finding is lim-

## Subpart 19.2—Policies

### 19.201 General policy.

(a) It is the policy of the Government to provide maximum practicable opportunities in its acquisitions to small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. Such concerns must also have the maximum practicable opportunity to participate as subcontractors in the contracts awarded by any executive agency, consistent with efficient contract performance. The Small Business Administration (SBA) counsels and assists small business concerns and assists contracting personnel to ensure that a fair proportion of contracts for supplies and services is placed with small business.

(b) Heads of contracting activities are responsible for effectively implementing the small business programs within their activities, including achieving program goals. They are to ensure that contracting and technical personnel maintain knowledge of small business program requirements and take all reasonable action to increase participation in their activities' contracting processes by these businesses.

(c) The Small Business Act requires each agency with contracting authority to establish an Office of Small and Disadvantaged Business Utilization (see section (k) of the Small Business Act). For the Department of Defense, in accordance with section 904 of the National Defense Authorization Act for Fiscal Year 2006 (Public Law 109-163) ([10 U.S.C. 144 note](#)), the Office of Small and Disadvantaged Business Utilization has been redesignated as the Office of Small Business Programs. Management of the office shall be the responsibility of an officer or employee of the agency who shall, in carrying out the purposes of the Act—

(1) Be known as the Director of Small and Disadvantaged Business Utilization, or for the Department of Defense, the Director of Small Business Programs;

(2) Be appointed by the agency head;

(3) Be responsible to and report directly to the agency head or the deputy to the agency head;

(4) Be responsible for the agency carrying out the functions and duties in sections 8, 15, and 31 of the Small Business Act.

(5) Work with the SBA procurement center representative (or, if a procurement center representative is not assigned, see [19.402\(a\)](#)) to—

(i) Identify proposed solicitations that involve bundling;

(ii) Facilitate small business participation as contractors including small business contract teams, where appropriate; and

(iii) Facilitate small business participation as subcontractors and suppliers where participation by small business concerns as contractors is unlikely;

(6) Assist small business concerns in obtaining payments under their contracts, late payment, interest penalties, or information on contractual payment provisions;

(7) Have supervisory authority over agency personnel to the extent that their functions and duties relate to sections 8, 15, and 31 of the Small Business Act.

(8) Assign a small business technical advisor to each contracting activity within the agency to which the SBA has assigned a representative (see [19.402](#))—

(i) Who shall be a full-time employee of the contracting activity, well qualified, technically trained, and familiar with the supplies or services contracted for by the activity; and

(ii) Whose principal duty is to assist the SBA's assigned representative in performing functions and duties relating to sections 8, 15, and 31 of the Small Business Act;

(9) Cooperate and consult on a regular basis with the SBA in carrying out the agency's functions and duties in sections 8, 15, and 31 of the Small Business Act;

(10) Make recommendations in accordance with agency procedures as to whether a particular acquisition should be awarded under subpart [19.5](#) as a small business set-aside, under subpart [19.8](#) as a Section 8(a) award, under subpart [19.13](#) as a HUBZone set-aside, under subpart [19.14](#) as a service-disabled veteran-owned small business set-aside, or under subpart [19.15](#) as a set-aside for economically disadvantaged women-owned small business (EDWOSB) concerns or women-owned small business (WOSB) concerns eligible under the WOSB Program.

(11) Conduct annual reviews to assess the—

(i) Extent to which small businesses are receiving a fair share of Federal procurements, including contract opportunities under the programs administered under the Small Business Act;

(ii) Adequacy of contract bundling documentation and justifications; and

(iii) Actions taken to mitigate the effects of necessary and justified contract bundling on small businesses.

(12) Provide a copy of the assessment made under paragraph (c)(11) of this section to the Agency Head and SBA Administrator.

(d) Small Business Specialists must be appointed and act in accordance with agency regulations.

### 19.202 Specific policies.

In order to further the policy in [19.201\(a\)](#), contracting officers shall comply with the specific policies listed in this section and shall consider recommendations of the agency Director of Small and Disadvantaged Business Utilization, or the Director's designee, as to whether a particular acquisition should be awarded under subpart [19.5](#), [19.8](#), [19.13](#), [19.14](#), or [19.15](#). Agencies shall establish procedures including dollar thresholds for review of acquisitions by the Director or the Director's designee for the purpose of making these recommendations. The contracting officer shall document the con-

tract file whenever the Director's recommendations are not accepted.

### **19.202-1 Encouraging small business participation in acquisitions.**

Small business concerns shall be afforded an equitable opportunity to compete for all contracts that they can perform to the extent consistent with the Government's interest. When applicable, the contracting officer shall take the following actions:

(a) Divide proposed acquisitions of supplies and services (except construction) into reasonably small lots (not less than economic production runs) to permit offers on quantities less than the total requirement.

(b) Plan acquisitions such that, if practicable, more than one small business concern may perform the work, if the work exceeds the amount for which a surety may be guaranteed by SBA against loss under [15 U.S.C. 694b](#).

(c) Ensure that delivery schedules are established on a realistic basis that will encourage small business participation to the extent consistent with the actual requirements of the Government.

(d) Encourage prime contractors to subcontract with small business concerns (see [Subpart 19.7](#)).

(e)(1) Provide a copy of the proposed acquisition package to the SBA procurement center representative (or, if a procurement center representative is not assigned, see [19.402\(a\)](#)) at least 30 days prior to the issuance of the solicitation if—

(i) The proposed acquisition is for supplies or services currently being provided by a small business and the proposed acquisition is of a quantity or estimated dollar value, the magnitude of which makes it unlikely that small businesses can compete for the prime contract;

(ii) The proposed acquisition is for construction and seeks to package or consolidate discrete construction projects and the magnitude of this consolidation makes it unlikely that small businesses can compete for the prime contract; or

(iii) The proposed acquisition is for a bundled requirement. (See [10.001\(c\)\(2\)\(i\)](#) for mandatory 30-day notice requirement to incumbent small business concerns.) The contracting officer shall provide all information relative to the justification of contract bundling, including the acquisition plan or strategy, and if the acquisition involves substantial bundling, the information identified in [7.107\(e\)](#). When the acquisition involves substantial bundling, the contracting officer shall also provide the same information to the agency Office of Small and Disadvantaged Business Utilization.

(2) The contracting officer also must provide a statement explaining why the—

(i) Proposed acquisition cannot be divided into reasonably small lots (not less than economic production runs) to permit offers on quantities less than the total requirement;

(ii) Delivery schedules cannot be established on a realistic basis that will encourage small business participation

to the extent consistent with the actual requirements of the Government;

(iii) Proposed acquisition cannot be structured so as to make it likely that small businesses can compete for the prime contract;

(iv) Consolidated construction project cannot be acquired as separate discrete projects; or

(v) Bundling is necessary and justified.

(3) The 30-day notification process shall occur concurrently with other processing steps required prior to the issuance of the solicitation.

(4) If the contracting officer rejects the SBA representative's recommendation made in accordance with [19.402\(c\)\(2\)](#), the contracting officer shall document the basis for the rejection and notify the SBA representative in accordance with [19.505](#).

### **19.202-2 Locating small business sources.**

The contracting officer must, to the extent practicable, encourage maximum participation by small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in acquisitions by taking the following actions:

(a) Before issuing solicitations, make every reasonable effort to find additional small business concerns, unless lists are already excessively long and only some of the concerns on the list will be solicited. This effort should include contacting the SBA procurement center representative (or, if a procurement center representative is not assigned, see [19.402\(a\)](#)).

(b) Publicize solicitations and contract awards through the Governmentwide point of entry (see [Subparts 5.2](#) and [5.3](#)).

### **19.202-3 Equal low bids.**

In the event of equal low bids (see [14.408-6](#)), awards shall be made first to small business concerns which are also labor surplus area concerns, and second to small business concerns which are not also labor surplus area concerns.

### **19.202-4 Solicitation.**

The contracting officer must encourage maximum response to solicitations by small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by taking the following actions:

(a) Allow the maximum amount of time practicable for the submission of offers.

(b) Furnish specifications, plans, and drawings with solicitations, or furnish information as to where they may be obtained or examined.

(c) Provide to any small business concern, upon its request, a copy of bid sets and specifications with respect to any con-



tract to be let, the name and telephone number of an agency contact to answer questions related to such prospective contract and adequate citations to each major Federal law or agency rule with which such business concern must comply in performing such contract other than laws or agency rules with which the small business must comply when doing business with other than the Government.

#### 19.202-5 Data collection and reporting requirements.

Agencies must measure the extent of small business participation in their acquisition programs by taking the following actions:

(a) Require each prospective contractor to represent whether it is a small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, women-owned small business, EDWOSB concern, or WOSB concern eligible under the WOSB Program (see the provision at [52.219-1](#), Small Business Program Representations).

(b) Accurately measure the extent of participation by small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in Government acquisitions in terms of the total value of contracts placed during each fiscal year, and report data to the SBA at the end of each fiscal year (see [Subpart 4.6](#)).

(c) When the contract includes the clause at [52.219-28](#), Post Award Small Business Program Rerepresentation, and the conditions in the clause for rerepresenting are met—

(1) Require a contractor that represented itself as a small business concern prior to award of the contract to rerepresent its size status; and

(2) Permit a contractor that represented itself as other than a small business concern prior to award to rerepresent its size status.

#### 19.202-6 Determination of fair market price.

(a) The fair market price shall be the price achieved in accordance with the reasonable price guidelines in [15.404-1\(b\)](#) for—

(1) Total and partial small business set-asides (see [Subpart 19.5](#));

(2) HUBZone set-asides (see [Subpart 19.13](#));

(3) Contracts utilizing the price evaluation preference for HUBZone small business concerns (see [Subpart 19.13](#));

(4) Service-disabled veteran-owned small business set-asides (see subpart [19.14](#));

(5) Set-asides for EDWOSB concerns and WOSB concerns eligible under the WOSB Program (see subpart [19.15](#)).

(b) For 8(a) contracts, both with respect to meeting the requirement at [19.806\(b\)](#) and in order to accurately estimate the current fair market price, contracting officers shall follow the procedures at [19.807](#).

#### 19.203 Relationship among small business programs.

(a) There is no order of precedence among the 8(a) Program (subpart [19.8](#)), HUBZone Program (subpart [19.13](#)), Service-Disabled Veteran-Owned Small Business (SDVOSB) Procurement Program (subpart [19.14](#)), or the Women-Owned Small Business (WOSB) Program (subpart [19.15](#)).

(b) *At or below the simplified acquisition threshold.* For acquisitions of supplies or services that have an anticipated dollar value exceeding \$3,000 (\$15,000 for acquisitions as described in [13.201\(g\)\(1\)](#)), but not exceeding \$150,000 (\$300,000 for acquisitions described in paragraph (1) of the simplified acquisition threshold definition at [2.101](#)), the requirement at [19.502-2\(a\)](#) to exclusively reserve acquisitions for small business concerns does not preclude the contracting officer from awarding a contract to a small business under the 8(a) Program, HUBZone Program, SDVOSB Program, or WOSB Program.

(c) *Above the simplified acquisition threshold.* For acquisitions of supplies or services that have an anticipated dollar value exceeding the simplified acquisition threshold definition at [2.101](#), the contracting officer shall first consider an acquisition for the small business socioeconomic contracting programs (*i.e.*, 8(a), HUBZone, SDVOSB, or WOSB programs) before considering a small business set-aside (see [19.502-2\(b\)](#)). However, if a requirement has been accepted by the SBA under the 8(a) Program, it must remain in the 8(a) Program unless the SBA agrees to its release in accordance with 13 CFR parts 124, 125, and 126.

(d) In determining which socioeconomic program to use for an acquisition, the contracting officer should consider, at a minimum—

(1) Results of market research that was done to determine if there are socioeconomic firms capable of satisfying the agency's requirement; and

(2) Agency progress in fulfilling its small business goals.

(e) Small business set-asides have priority over acquisitions using full and open competition. See requirements for establishing a small business set-aside at subpart [19.5](#).

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held when the contracting officer determines in writing that an award must be made to protect the public interest.

(2) If SBA has not made a determination within 15 business days, or within any extension of time granted by the contracting officer, the contracting officer may award the contract after determining in writing that there is an immediate need to award the contract and that waiting until SBA makes its determination will be disadvantageous to the Government.

(3) SBA may, at its sole discretion, reopen a formal size determination to correct an error or mistake, if it is within the appeal period and no appeal has been filed with OHA or, a final decision has not been rendered by the SBA Area Office or OHA.

(4) If a protest is received that challenges the small business status of an offeror not being considered for award, the contracting officer is not required to suspend contract action. The contracting officer shall forward the protest to the SBA (see paragraph (c)(1) of this section) with a notation that the concern is not being considered for award, and shall notify the protester of this action.

(h) An appeal from an SBA size determination may be filed by any concern or other interested party whose protest of the small business representation of another concern has been denied by an SBA Government Contracting Area Director, any concern or other interested party that has been adversely affected by an SBA Government Contracting Area Director's decision, or the SBA Associate Administrator for the SBA program involved. The appeal must be filed with the Office of Hearings and Appeals, Small Business Administration, Suite 5900, 409 3rd Street, SW., Washington, DC 20416, within the time limits and in strict accordance with the procedures contained in Subpart C of 13 CFR 134. It is within the discretion of the SBA Judge whether to accept an appeal from a size determination. If a post-award appeal is submitted to OHA within the time limits specified in Subpart C of 13 CFR 134, the contracting officer shall consider suspending contract performance until an SBA Judge decides the appeal. SBA will inform the contracting officer of its ruling on the appeal. SBA's decision, if received before award, will apply to the pending acquisition. If the contracting officer has made a written determination in accordance with (g)(1) or (2) of this section, the contract has been awarded, the SBA rulings is received after award, and OHA finds the protested concern to be ineligible for award, the contracting officer shall terminate the contract unless termination is not in the best interests of the Government, in keeping with the circumstances described in the written determination. However, the contracting officer shall not exercise any options or award further task or delivery orders.

(i) SBA will dismiss untimely protests. A protest that is not timely, even though received before award, shall be forwarded to the SBA Government Contracting Area Office (see paragraph (c)(1) of this section), with a notation on it that the protest is not timely. A protest received by a contracting officer after award of a contract shall be forwarded to the SBA

Government Contracting Area Office with a notation that award has been made.

(j) When a concern is found to be other than small under a protest concerning a size status rerepresentation made in accordance with the clause at [52.219-28](#), Post-Award Small Business Program Rerepresentation, a contracting officer may permit contract performance to continue, issue orders, or exercise option(s), because the contract remains a valid contract.

### **19.303 Determining North American Industry Classification System codes and size standards.**

(a)(1) The contracting officer shall determine the appropriate North American Industry Classification System (NAICS) code and related small business size standard and include them in solicitations above the micro-purchase threshold. For information on size standards matched to industry NAICS codes, including the use of new NAICS codes, see also 19.102(a).

(2) The contracting officer shall select the NAICS code which best describes the principal purpose of the product or service being acquired. Primary consideration is given to the industry descriptions in the U.S. NAICS Manual, the product or service description in the solicitation and any attachments to it, the relative value and importance of the components of the procurement making up the end item being procured, and the function of the goods or services being purchased. A procurement is usually classified according to the component which accounts for the greatest percentage of contract value. A concern that submits an offer or quote for a contract where the NAICS code assigned to the contract is one for supplies, and furnishes a product it did not itself manufacture or produce, is categorized as a nonmanufacturer and deemed small if it meets the requirements of 19.102(f).

(b) If different products or services are required in the same solicitation, the solicitation shall identify the appropriate small business size standard for each product or service.

(c) The contracting officer's determination is final unless appealed as follows: (1) An appeal from a contracting officer's NAICS code designation and the applicable size standard must be served and filed within 10 calendar days after the issuance of the initial solicitation or any amendment affecting the NAICS code or size standard. However, SBA may file a NAICS code appeal at any time before offers are due.

(2) Appeals from a contracting officer's NAICS code designation or applicable size standard may be filed with SBA's Office of Hearings and Appeals by—

(i) Any person adversely affected by a NAICS code designation or applicable size standard. However, with respect to a particular sole source 8(a) contract, only the SBA Associate Administrator for Business Development may appeal a NAICS code designation; or

(ii) The Associate or Assistant Director for the SBA program involved, through SBA's Office of General Counsel.

(3) Contracting officers shall advise the public, by amendment to the solicitation, of the existence of a NAICS code appeal (see 5.102(a)(1)). Such notices shall include the procedures and the deadline for interested parties to file and serve arguments concerning the appeal.

(4) SBA's Office of Hearings and Appeals (OHA) will dismiss summarily an untimely NAICS code appeal.

(5)(i) The appeal petition must be in writing and must be addressed to the Office of Hearings and Appeals, Small Business Administration, Suite 5900, 409 3rd Street, SW., Washington, DC 20416.

(ii) There is no required format for the appeal; however, the appeal must include—

(A) The solicitation or contract number and the name, address, email address, and telephone number of the contracting officer;

(B) A full and specific statement as to why the NAICS code designation is allegedly erroneous and argument supporting the allegation; and

(C) The name, address, telephone number, and signature of the appellant or its attorney.

(6) The appellant must serve the appeal petition upon—

(i) The contracting officer who assigned the NAICS code to the acquisition; and

(ii) SBA's Office of General Counsel, Associate General Counsel for Procurement Law, 409 Third Street, SW., Washington, DC 20416, facsimile 202-205-6873, or email at [OPLService@sba.gov](mailto:OPLService@sba.gov).

(7) Upon receipt of a NAICS code appeal, OHA will notify the contracting officer by a notice and order of the date OHA received the appeal, the docket number, and Judge assigned to the case. The contracting officer's response to the appeal, if any, must include argument and evidence (see 13 CFR Part 134), and must be received by OHA within 15 calendar days from the date of the docketing notice and order, unless otherwise specified by the Administrative Judge. Upon receipt of OHA's docketing notice and order, the contracting officer must withhold award, unless withholding award is not in the best interests of the Government, and immediately send to OHA an electronic link to or a paper copy of both the original solicitation and all amendments relating to the NAICS code appeal. The contracting officer will inform OHA of any amendments, actions, or developments concerning the procurement in question.

(8) After close of record, OHA will issue a decision and inform the contracting officer. If OHA's decision is received by the contracting officer before the date the offers are due, the decision shall be final and the solicitation must be amended to reflect the decision, if appropriate. OHA's decision received after the due date of the initial offers shall not apply to the

pending solicitation but shall apply to future solicitations of the same products or services.

(d) SBA's regulations concerning appeals of NAICS code designations are found at 13 CFR 121.1101 to 121.1103 and 13 CFR part 134.

#### **19.304 Small disadvantaged business status.**

(a) The contracting officer may accept an offeror's representation that it is a small disadvantaged business concern (SDB) concern.

(b) The provision at [52.219-1](#), Small Business Program Representations, or [52.212-3\(c\)\(4\)](#), Offeror Representations and Certifications-Commercial Items, is used to collect SDB data.

(c) A representation of SDB status on a Federal prime contract will be deemed a misrepresentation of SDB status if the firm does not meet the requirements of 13 CFR 124.1001(b).

(d) Any person or entity that misrepresents a firm's status as an SDB concern in order to obtain a contracting opportunity in accordance with section 8(d) of the Small Business Act, ([15 U.S.C. 637\(d\)](#)) will be subject to the penalties imposed by section 16(d) of the Small Business Act, ([15 U.S.C. 645\(d\)](#)), as well as any other penalty authorized by law.

#### **19.305 Reviews and protests of SDB status.**

This section applies to reviews and protests of a small business concern's SDB status as a prime contractor or subcontractor.

(a) SBA may initiate the review of SDB status on any firm that has represented itself to be an SDB on a prime contract or subcontract to a Federal prime contract whenever it receives credible information calling into question the SDB status of the firm.

(b) Requests for an SBA review of SDB status may be forwarded to the Small Business Administration, Assistant Administrator for SDBCE, 409 Third Street, SW, Washington, DC 20416.

(c) An SBA review of a subcontractor's SDB status differs from a formal protest. Protests of a small business concern's SDB status as a subcontractor are processed under [19.703\(a\)\(2\)](#). Protests of a concern's size as a prime contractor are processed under [19.302](#). Protests of a concern's size as a subcontractor are processed under [19.703\(b\)](#).

#### **19.306 Protesting a firm's status as a HUBZone small business concern.**

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

“Interested party” has the meaning given in 13 CFR 126.103.

(b)(1) An offeror that is an interested party, the contracting officer, or the SBA may protest the apparently successful offeror's status as a qualified historically underutilized business

zone (HUBZone) small business concern (see 13 CFR 126.800).

(2) SBA's protest regulations are found in subpart H "Protests" at 13 CFR 126.800 through 126.805.

(c) Protests relating to small business size status are subject to the procedures of 19.302. An interested party seeking to protest both the small business size and HUBZone status of an apparent successful offeror shall file two separate protests. Protests relating to small business size status for the acquisition and the HUBZone qualifying requirements will be processed concurrently by SBA.

(d) All protests must be in writing and must state all specific grounds for the protest.

(1) SBA will consider protests challenging the status of a concern if the protest presents evidence that—

(i) The concern is not a qualified HUBZone small business concern as described at 13 CFR 126.103 and 13 CFR 126.200;

(ii) The principal office is not located in a HUBZone;

or

(iii) At least 35 percent of the employees do not reside in a HUBZone.

(2) Assertions that a protested concern is not a qualified HUBZone small business concern, without setting forth specific facts or allegations, will not be considered by SBA (see 13 CFR 126.801(b)).

(e) *Protest by an interested party.* (1) An interested party shall submit its protest to the contracting officer—

(i) For sealed bids—

(A) By the close of business on the fifth business day after bid opening; or

(B) By the close of business on the fifth business day from the date of identification of the apparent successful offeror, if the price evaluation preference was not applied at the time of bid opening; or

(ii) For negotiated acquisitions, by the close of business on the fifth business day after notification by the contracting officer of the apparently successful offeror.

(2) Any protest received after the designated time limits is untimely, unless it is from the contracting officer or SBA.

(f)(1) The contracting officer shall forward all protests to SBA. The protests are to be submitted to the Director, HUBZone Program, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416 or by fax to 202-205-7167, Attn: HUBZone Small Business Status Protest.

(2) The protest shall include a referral letter written by the contracting officer with information pertaining to the solicitation. The referral letter must include the following information to allow SBA to determine timeliness and standing:

(i) The solicitation number (or an electronic link to or a paper copy of the solicitation).

(ii) The name, address, telephone number, fax number, and email address, of the contracting officer.

(iii) The type of HUBZone contract.

(iv) Whether the procurement was conducted using full and open competition with a HUBZone price evaluation preference, and whether the protester's opportunity for award was affected by the preference.

(v) If a HUBZone set-aside, whether the protester submitted an offer.

(vi) Whether the protested concern was the apparent successful offeror.

(vii) Whether the procurement was conducted using sealed bid or negotiated procedures.

(viii) The bid opening date, if applicable. If a price evaluation preference was applied after the bid opening date, also provide the date of identification of the apparent successful offeror.

(ix) The date the contracting officer received the protest.

(x) Whether a contract has been awarded.

(g) SBA will notify the protester and the contracting officer of the date SBA received the protest.

(h) *Before SBA decision.* (1) After receiving a protest involving the apparent successful offeror's status as a HUBZone small business concern, the contracting officer shall either—

(i) Withhold award of the contract until SBA determines the status of the protested concern; or

(ii) Award the contract after receipt of the protest but before SBA issues its decision if the contracting officer determines in writing that an award must be made to protect the public interest.

(2) SBA will determine the merits of the status protest within 15 business days after receipt of a protest, or within any extension of time granted by the contracting officer.

(3) If SBA does not issue its determination within 15 business days, or within any extension of time granted, the contracting officer may award the contract after determining in writing that there is an immediate need to award the contract and that waiting until SBA makes its determination will be disadvantageous to the Government. This determination shall be provided to the SBA's HUBZone Program Director.

(i) *After SBA decision.* The HUBZone Program Director will notify the contracting officer, the protester, and the protested concern of the SBA determination. The determination is effective immediately and is final unless overturned on appeal by SBA's Associate Administrator, Office of Government Contracting and Business Development (AA/GCBD).

(1) If the contracting officer has withheld contract award and SBA has determined that the protested concern is an eligible HUBZone or dismissed all protests against the protested concern, the contracting officer may award the contract to the protested concern. If AA/GCBD subsequently over-

turns the decision of the HUBZone Program Director, the contracting officer may apply the AA/GCBD decision to the procurement in question.

(2) If the contracting officer has withheld award and the HUBZone Program Director has determined that the protested concern is ineligible, and a timely AA/GCBD appeal has not been filed, then the contracting officer shall not award the contract to the protested concern.

(3) If the contracting officer has made a written determination in accordance with (h)(1)(ii) or (h)(3) of this section, awarded the contract, and the HUBZone Program Director's ruling sustaining the protest is received after award—

(i) The contracting officer shall terminate the contract, unless the contracting officer has made a written determination that termination is not in the best interests of the Government. However, the contracting officer shall not exercise any options or award further task or delivery orders under the contract;

(ii) The contracting officer shall update the Federal Procurement Data System to reflect the final decision of the HUBZone Program Director if no appeal is filed; and

(iii) The concern's designation as a certified HUBZone small business concern will be removed by SBA from the Dynamic Small Business Database. The concern shall not submit an offer as a HUBZone small business concern, until SBA issues a decision that the ineligibility is resolved.

(4) If the contracting officer has made a written determination in accordance with (h)(1)(ii) or (h)(3) of this section, awarded the contract, SBA has sustained the protest and determined that the concern is not a HUBZone small business, and a timely AA/GCBD appeal has been filed, then the contracting officer shall consider whether performance can be suspended until an AA/GCBD decision is rendered.

(5) If AA/GCBD affirms the decision of the HUBZone Program Director, finding the protested concern is ineligible, and contract award has occurred—

(i) The contracting officer shall terminate the contract, unless the contracting officer has made a written determination that termination is not in the best interest of the Government. However, the contracting officer shall not exercise any options or award further task or delivery orders.

(ii) The contracting officer shall update the FPDS to reflect the AA/GCBD decision; and

(iii) The SBA will remove the concern's designation as a certified HUBZone small business concern. The concern shall not submit an offer as a HUBZone small business concern until SBA issues a decision that the ineligibility is resolved or AA/GCBD finds the concern is eligible on appeal.

(6) A concern found to be ineligible during a HUBZone status protest is precluded from applying for HUBZone certification for 90 calendar days from the date of the SBA final decision.

(j) *Appeals of HUBZone status determinations.* The protested HUBZone small business concern, the protester, or the contracting officer may file appeals of protest determinations with SBA's AA/GC&BD. The AA/GC&BD must receive the appeal no later than 5 business days after the date of receipt of the protest determination. SBA will dismiss any untimely appeal.

(k) *The appeal must be in writing.* The appeal must identify the protest determination being appealed and must set forth a full and specific statement as to why the decision is erroneous or what significant fact the HUBZone Program Director failed to consider.

(l)(1) The party appealing the decision must provide notice of the appeal to—

(i) The contracting officer;

(ii) HUBZone Program Director, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416 or by fax to 202-205-7167; and

(iii) The protested HUBZone small business concern or the original protester, as appropriate.

(2) SBA will not consider additional information or changed circumstances that were not disclosed at the time of the Director/HUB's decision or that are based on disagreement with the findings and conclusions contained in the determination.

(m) The AA/GCBD will make its decision within 5 business days of the receipt of the appeal, if practicable, and will base its decision only on the information and documentation in the protest record as supplemented by the appeal. SBA will provide a copy of the decision to the contracting officer, the protester, and the protested HUBZone small business concern. The SBA decision, if received before award, will apply to the pending acquisition. The AA/GCBD's decision is the final decision.

(n) The AA/GC&BD will make its decision within 5 business days of the receipt of the appeal, if practicable, and will base its decision only on the information and documentation in the protest record as supplemented by the appeal. SBA will provide a copy of the decision to the contracting officer, the protester, and the protested HUBZone small business concern. The SBA decision, if received before award, will apply to the pending acquisition. SBA rulings received after award will not apply to that acquisition. The AA/GC&BD's decision is the final decision.

### **19.307 Protesting a firm's status as a service-disabled veteran-owned small business concern.**

(a) *Definition.* *Interested party*, as used in this section, has the meaning given in 13 CFR 125.8(b).

(b)(1) An offeror that is an interested party, the contracting officer, or the SBA may protest the apparently successful offeror's status as a service-disabled veteran-owned small business (SDVOSB) concern (see 13 CFR 125.24).

(2) SBA's protest regulations are found in subpart D "Protests" at 13 CFR 125.24 through 125.28.

(c) Protests relating to small business size status are subject to the procedures of 19.302. An interested party seeking to protest both the small business size and service-disabled veteran-owned small business status of an apparent successful offeror shall file two separate protests.

(d) All protests must be in writing and must state all specific grounds for the protest.

(1) SBA will consider protests challenging the service disabled veteran-owned status or the ownership and control of a concern if—

(i) For status protests, the protester presents evidence supporting the contention that the owner(s) cannot provide documentation from the Department of Veterans Affairs, Department of Defense determinations, or the U.S. National Archives and Records Administration to show that they meet the definition of "service-disabled veteran" or "service disabled veteran with a permanent and severe disability" as set forth in 13 CFR 125.8; or

(ii) For ownership and control protests, the protester presents evidence that the concern is not 51 percent owned and controlled by one or more service-disabled veterans. In the case of a veteran with a permanent and severe disability, the protester presents evidence that the concern is not controlled by the veteran, spouse, or permanent caregiver of such veteran.

(2) Assertions that a protested concern is not a service-disabled veteran-owned small business concern, without setting forth specific facts or allegations, will not be considered by SBA (see 13 CFR 125.25(b)).

(e) *Protest by an interested party.* (1) An offeror shall submit its protest to the contracting officer

(i) To be received by close of business on the fifth business day after bid opening (in sealed bid acquisitions); or

(ii) To be received by close of business on the fifth business day after notification by the contracting officer of the apparently successful offeror for negotiated acquisitions).

(2) Any protest received after the designated time limits is untimely, unless it is from the contracting officer or SBA.

(f)(1) The contracting officer shall forward all protests to SBA. The protests are to be submitted to SBA's Director, Office of Government Contracting, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416 or by fax to 202-205-6390, Attn: Service-Disabled Veteran Status Protest.

(2) The protest shall include a referral letter written by the contracting officer with information pertaining to the solicitation. The referral letter must include the following information to allow SBA to determine timeliness and standing:

(i) The solicitation number (or an electronic link to or a paper copy of the solicitation).

(ii) The name, address, telephone number, fax number, and email address of the contracting officer.

(iii) Whether the contract was sole-source or set-aside.

(iv) Whether the protestor submitted an offer.

(v) Whether the protested concern was the apparent successful offeror.

(vi) When the protested concern submitted its offer.

(vii) Whether the acquisition was conducted using sealed bid or negotiated procedures.

(viii) The bid opening date, if applicable.

(ix) The date the contracting officer received the protest.

(x) The date the protestor received notification about the apparent successful offeror, if applicable.

(xi) Whether a contract has been awarded.

(g) SBA will notify the protester and the contracting officer of the date SBA received the protest.

(h) *Before SBA decision.* (1) After receiving a protest involving the apparent successful offeror's status as a service-disabled veteran-owned small business concern, the contracting officer shall either—

(i) Withhold award of the contract until SBA determines the status of the protested concern; or

(ii) Award the contract after receipt of the protest but before SBA issues its decision if the contracting officer determines in writing that an award must be made to protect the public interest.

(2) SBA will determine the merits of the status protest within 15 business days after receipt of a protest, or within any extension of time granted by the contracting officer.

(3) If SBA does not issue its determination within 15 business days, or within any extension of time that is granted, the contracting officer may award the contract after determining in writing that there is an immediate need to award the contract and that waiting until SBA makes its determination will be disadvantageous to the government. This determination shall be provided to the SBA's Director, Office of Government Contracting and a copy shall be included in the contract file.

(i) *After SBA decision.* SBA will notify the contracting officer, the protester, and the protested concern of its determination. The determination is effective immediately and is final unless overturned on appeal by SBA's Office of Hearings and Appeals (OHA) pursuant to 13 CFR part 134.

(1) If the contracting officer has withheld contract award and SBA has determined that the protested concern is an eligible SDVOSB or dismissed all protests against the protested concern, the contracting officer may award the contract to the protested concern. If OHA subsequently overturns the SBA Director for Government Contracting's determination or dismissal, the contracting officer may apply the OHA decision to the procurement in question.

(2) If the contracting officer has withheld contract award, SBA has sustained the protest and determined that the concern is not an SDVOSB, and no OHA appeal has been filed, then the contracting officer shall not award the contract to the protested concern.

(3) If the contracting officer has made a written determination in accordance with (h)(1)(ii) or (h)(3) of this section, the contract has been awarded, and SBA's ruling sustaining the protest is received after award—

(i) The contracting officer shall terminate the contract, unless the contracting officer has made a written determination that termination is not in the best interests of the Government. However, the contracting officer shall not exercise any options or award further task or delivery orders;

(ii) The contracting officer shall update the FPDS to reflect the final SBA decision; and

(iii) The concern must remove its designation in the System for Award Management (SAM) as a SDVOSB concern, and shall not submit an offer as a SDVOSB concern, until SBA issues a decision that the ineligibility is resolved.

(4) If the contracting officer has made a written determination in accordance with (h)(1)(ii) or (h)(3) of this section and awarded the contract to the protested firm, SBA has sustained the protest and determined that the concern is not a SDVOSB, and a timely OHA appeal has been filed, then the contracting officer shall consider whether performance can be suspended until an OHA decision is rendered.

(5) If OHA affirms the SBA Director for Government Contracting's determination finding the protested concern is ineligible—

(i) The contracting officer shall terminate the contract unless the contracting officer has made a written determination that it is not in the best interest of the Government. However, the contracting officer shall not exercise any options or award further task or delivery orders;

(ii) The contracting officer shall update the FPDS to reflect OHA's decision; and

(iii) The concern shall remove its designation in SAM as a SDVOSB concern, until SBA issues a decision that the ineligibility is resolved or OHA finds the concern is eligible on appeal.

(6) A concern found to be ineligible may not submit future offers as an SDVOSB concern until the concern demonstrates to SBA's satisfaction that it has overcome the reason for the protest and SBA issues a decision to this effect.

(j) *Appeals of SDVOSB status determinations.* The protested SDVOSB small business concern, the protester, or the contracting officer may file appeals of protest determinations to OHA. OHA must receive the appeal no later than 10 business days after the date of receipt of the protest determination. SBA will dismiss an untimely appeal. See Subpart E "Rules of Practice for Appeals From Service-Disabled Veteran

Owned Small Business Concerns Protests" at 13 CFR 134.501 through 134.515 for SBA's appeals regulations.

(k) *The appeal must be in writing.* The appeal must identify the protest determination being appealed and must set forth a full and specific statement as to why the SDVOSB protest determination is alleged to be based on a clear error of fact or law, together with an argument supporting such allegation.

(l) The party appealing the decision must provide notice of the appeal to—

(1) The contracting officer;

(2) Director, Office of Government Contracting, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, facsimile 202-205-6390;

(3) The protested SDVOSB concern or the original protester, as appropriate; and

(4) Associate General Counsel for Procurement Law, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, facsimile 202-205-6873, or e-mail at [OPLService@sba.gov](mailto:OPLService@sba.gov).

(m) OHA will make its decision within 15 business days of the receipt of the appeal, if practicable. SBA will provide a copy of the decision to the contracting officer, the protester, and the protested SDVOSB small business concern. The OHA decision regarding the status of the concern is final and is binding on the parties.

**19.308 Protesting a firm's status as an economically disadvantaged women-owned small business concern or women-owned small business concern eligible under the WOSB Program.**

(a) *Definition.* *Interested party*, as used in this section, has the meaning given in 13 CFR 127.102.

(b)(1) An offeror that is an interested party, the contracting officer, or the SBA may protest the apparent successful offeror's status as an economically disadvantaged women-owned small business (EDWOSB) concern or women-owned small business (WOSB) concern eligible under the WOSB Program.

(2) SBA's protest regulations are found in subpart F "Protests" at 13 CFR 127.600 through 127.605.

(c) Protests relating to small business size status are subject to the procedures of 19.302. An interested party seeking to protest both the small business size and WOSB or EDWOSB status of an apparent successful offeror shall file two separate protests.

(d) All protests shall be in writing and must state all specific grounds for the protest.

(1) SBA will consider protests challenging the status of a concern if—

(i) The protest presents evidence that the concern is not at least 51 percent owned and controlled by one or more women who are United States citizens; or



(ii) The protest presents evidence that the concern is not at least 51 percent owned and controlled by one or more economically disadvantaged women, when it is in connection with an EDWOSB contract.

(2) SBA shall consider protests by a contracting officer when the apparent successful offeror has failed to provide all of the required documents, as set forth in [19.1503\(c\)](#).

(3) Assertions that a protested concern is not a EDWOSB or WOSB concern eligible under the WOSB Program, without setting forth specific facts or allegations, will not be considered by SBA (see 13 CFR 127.603(a)).

(e) Protest by an interested party.

(1) An offeror shall submit its protest to the contracting officer—

(i) To be received by the close of business by the fifth business day after bid opening (in sealed bid acquisitions); or

(ii) To be received by the close of business by the fifth business day after notification by the contracting officer of the apparent successful offeror (in negotiated acquisitions).

(2) Any protest received after the designated time limit is untimely, unless it is from the contracting officer or SBA.

(f)(1) The contracting officer shall forward all protests to SBA. The protests are to be submitted to SBA's Director for Government Contracting, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416 or by fax to 202-205-6390, Attn: Women-owned Small Business Status Protest.

(2) The protest shall include a referral letter written by the contracting officer with information pertaining to the solicitation. The referral letter must include the following information to allow SBA to determine timeliness and standing:

(i) The solicitation number or electronic link to or a paper copy of the solicitation.

(ii) The name, address, telephone number, email address, and facsimile number of the contracting officer.

(iii) Whether the protestor submitted an offer.

(iv) Whether the protested concern was the apparent successful offeror.

(v) When the protested concern submitted its offer.

(vi) Whether the acquisition was conducted using sealed bid or negotiated procedures.

(vii) The bid opening date, if applicable.

(viii) The date the contracting officer received the protest.

(ix) The date the protestor received notification about the apparent successful offeror, if applicable.

(x) Whether a contract has been awarded.

(g) SBA will notify the protestor and the contracting officer of the date SBA received the protest.

(h) *Before SBA decision.* (1) After receiving a protest involving the apparent successful offeror's status as an

EDWOSB or WOSB concern eligible under the WOSB Program, the contracting officer shall either—

(i) Withhold award of the contract until SBA determines the status of the protested concern; or

(ii) Award the contract after receipt of the protest but before SBA issues its decision if the contracting officer determines in writing that an award must be made to protect the public interest.

(2) SBA will determine the merits of the status protest within 15 business days after receipt of a protest, or within any extension of that time granted by the contracting officer.

(3) If SBA does not issue its determination within 15 business days, or within any extension of time granted, the contracting officer may award the contract after determining in writing that there is an immediate need to award the contract and that waiting until SBA makes its determination will be disadvantageous to the Government. This determination shall be provided to the SBA Director for Government Contracting and a copy shall be included in the contract file.

(i) *After SBA decision.* SBA will notify the contracting officer, the protestor, and the protested concern of its determination. The determination is effective immediately and is final unless overturned on appeal by SBA's Office of Hearings and Appeals (OHA) pursuant to 13 CFR part 134.

(1) If the contracting officer has withheld contract award and SBA has denied or dismissed the protest, the contracting officer may award the contract to the protested concern. If OHA subsequently overturns the SBA Director for Government Contracting's determination or dismissal, the contracting officer may apply the OHA decision to the procurement in question.

(2) If the contracting officer has withheld contract award, SBA has sustained the protest and determined that the concern is not eligible under the WOSB Program, and no OHA appeal has been filed, then the contracting officer shall not award the contract to the protested concern.

(3) If the contracting officer has made a written determination in accordance with (h)(1)(ii) or (h)(3) of this section, awarded the contract, and SBA's ruling is received after award, and no OHA appeal has been filed, then—

(i) The contracting officer shall terminate the contract, unless the contracting officer has made a written determination that termination is not in the best interests of the Government. However, the contracting officer shall not exercise any options or award further task or delivery orders;

(ii) The contracting officer shall update the FPDS to reflect the final SBA decision; and

(iii) The concern must remove its designation in the System for Award Management (SAM) as an EDWOSB or WOSB concern eligible under the WOSB Program, and shall not submit an offer as an EDWOSB concern or WOSB concern eligible under the WOSB Program, until SBA issues a decision that the ineligibility is resolved.

(4) If the contracting officer has made a written determination in accordance with (h)(1)(ii) or (h)(3) of this section, contract award has occurred, SBA has sustained the protest and determined that the concern is not eligible under the WOSB Program, and a timely OHA appeal has been filed, then the contracting officer shall consider whether performance can be suspended until an OHA decision is rendered.

(5) If OHA affirms the SBA Director for Government Contracting's determination finding the protested concern is ineligible, then—

(i) The contracting officer shall terminate the contract, unless the contracting officer has made a written determination that termination is not in the best interests of the Government. However, the contracting officer shall not exercise any options or award further task or delivery orders;

(ii) The contracting officer shall update the FPDS to reflect OHA's decision; and

(iii) The concern must remove its designation in SAM as an EDWOSB or WOSB concern eligible under the WOSB Program, and shall not submit an offer as an EDWOSB concern or WOSB concern eligible under the WOSB Program, until SBA issues a decision that the ineligibility is resolved or OHA finds the concern is eligible on appeal.

(j) *Appeals of EDWOSB or WOSB concerns eligible under the WOSB Program status determinations.* (1) The protested EDWOSB concern or WOSB concern eligible under the WOSB program, the protester, or the contracting officer may file an appeal of a WOSB or EDWOSB status protest determination with OHA.

(2) OHA must receive the appeal no later than 10 business days after the date of receipt of the protest determination. SBA will dismiss an untimely appeal.

(3) See subpart G “Rules of Practice for Appeals From Women-Owned Small Business Concerns (WOSB) and Economically Disadvantaged WOSB Concern (EDWOSB) Protests” at 13 CFR 134.701 through 134.715 for SBA's appeals regulations.

(k) *The appeal must be in writing.* The appeal must identify the protest determination being appealed and must set forth a full and specific statement as to why the EDWOSB

concern or WOSB concern eligible under the WOSB program protest determination is alleged to be based on a clear error of fact or law, together with an argument supporting such allegation.

(l) The party appealing the decision must provide notice of the appeal to—

(1) The contracting officer;

(2) Director, Office of Government Contracting, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, facsimile 202-205-6390;

(3) The protested EDWOSB concern or WOSB concern eligible under the WOSB program, or the original protester, as appropriate; and

(4) SBA's Office of General Counsel, Associate General Counsel for Procurement Law, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, facsimile 202-205-6873, or e-mail at [OPLService@sba.gov](mailto:OPLService@sba.gov).

(m) OHA will make its decision within 15 business days of the receipt of the appeal, if practicable. SBA will provide a copy of the decision to the contracting officer, the protester, and the protested EDWOSB concern or WOSB concern eligible under the WOSB program. The OHA decision is the final agency decision and is binding on the parties.

#### **19.309 Solicitation provisions and contract clauses.**

(a)(1) Insert the provision at [52.219-1](#), Small Business Program Representations, in solicitations exceeding the micro-purchase threshold when the contract will be performed in the United States or its outlying areas.

(2) Use the provision with its Alternate I in solicitations issued by DoD, NASA, or the Coast Guard.

(b) When contracting by sealed bidding, insert the provision at [52.219-2](#), Equal Low Bids, in solicitations when the contract will be performed in the United States or its outlying areas.

(c) Insert the clause at [52.219-28](#), Post-Award Small Business Program Rerepresentation, in solicitations and contracts exceeding the micro-purchase threshold when the contract will be performed in the United States or its outlying areas.

## Subpart 19.7—The Small Business Subcontracting Program

### 19.701 Definitions.

As used in this subpart—

“Alaska Native Corporation (ANC)” means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended ([43 U.S.C. 1601](#), *et seq.*) and which is considered a minority and economically disadvantaged concern under the criteria at [43 U.S.C. 1626\(e\)\(1\)](#). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of [43 U.S.C. 1626\(e\)\(2\)](#).

“Commercial plan” means a subcontracting plan (including goals) that covers the offeror’s fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (*e.g.*, division, plant, or product line).

“Electronic Subcontracting Reporting System (eSRS)” means the Governmentwide, electronic, web-based system for small business subcontracting program reporting.

“Failure to make a good faith effort to comply with the subcontracting plan” means willful or intentional failure to perform in accordance with the requirements of the subcontracting plan, or willful or intentional action to frustrate the plan.

“Indian tribe” means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act ([43 U.S.C.A. 1601 et seq.](#)), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with [25 U.S.C. 1452\(c\)](#). This definition also includes Indian-owned economic enterprises that meet the requirements of [25 U.S.C. 1452\(e\)](#).

“Individual contract plan” means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror’s planned subcontracting in support of the specific contract, except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

“Master plan” means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

“Subcontract” means any agreement (other than one involving an employer-employee relationship) entered into by a Government prime contractor or subcontractor calling for

supplies and/or services required for performance of the contract, contract modification, or subcontract.

### 19.702 Statutory requirements.

Any contractor receiving a contract for more than the simplified acquisition threshold must agree in the contract that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns will have the maximum practicable opportunity to participate in contract performance consistent with its efficient performance. 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, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(a) Except as stated in paragraph (b) of this section, Section 8(d) of the Small Business Act ([15 U.S.C. 637\(d\)](#)) imposes the following requirements regarding subcontracting with small businesses and small business subcontracting plans:

(1) In negotiated acquisitions, each solicitation of offers to perform a contract or contract modification, that individually is expected to exceed \$650,000 (\$1.5 million for construction) and that has subcontracting possibilities, shall require the apparently successful offeror to submit an acceptable subcontracting plan. If the apparently successful offeror fails to negotiate a subcontracting plan acceptable to the contracting officer within the time limit prescribed by the contracting officer, the offeror will be ineligible for award.

(2) In sealed bidding acquisitions, each invitation for bids to perform a contract or contract modification, that individually is expected to exceed \$650,000 (\$1.5 million for construction) and that has subcontracting possibilities, shall require the bidder selected for award to submit a subcontracting plan. If the selected bidder fails to submit a plan within the time limit prescribed by the contracting officer, the bidder will be ineligible for award.

(b) Subcontracting plans (see paragraphs (a)(1) and (2) of this section) are not required—

(1) From small business concerns;

(2) For personal services contracts;

(3) For contracts or contract modifications that will be performed entirely outside of the United States and its outlying areas; or

(4) For modifications to contracts within the general scope of the contract that do not contain the clause at [52.219-8](#), Utilization of Small Business Concerns (or equiva-

lent prior clauses; *e.g.*, contracts awarded before the enactment of Public Law 95-507).

(c) As stated in [15 U.S.C. 637\(d\)\(8\)](#), any contractor or subcontractor failing to comply in good faith with the requirements of the subcontracting plan is in material breach of its contract. Further, [15 U.S.C. 637\(d\)\(4\)\(F\)](#) directs that a contractor's failure to make a good faith effort to comply with the requirements of the subcontracting plan shall result in the imposition of liquidated damages.

(d) As authorized by [15 U.S.C. 637\(d\)\(11\)](#), certain costs incurred by a mentor firm in providing developmental assistance to a protégé firm under the Department of Defense Pilot Mentor-Protégé Program, may be credited as if they were subcontract awards to a protégé firm for the purpose of determining whether the mentor firm attains the applicable goals under any subcontracting plan entered into with any executive agency. However, the mentor-protégé agreement must have been approved by the Director, Small Business Programs of the cognizant DoD military department or defense agency, before developmental assistance costs may be credited against subcontract goals. A list of approved agreements may be obtained at [http://www.acq.osd.mil/osbp/mentor\\_protege/](http://www.acq.osd.mil/osbp/mentor_protege/).

#### **19.703 Eligibility requirements for participating in the program.**

(a) Except as provided in paragraph (c) of this section, to be eligible as a subcontractor under the program, a concern must represent itself as a small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concern.

(1) To represent itself as a small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concern, a concern must meet the appropriate definition (see [2.101](#) and [19.001](#)).

(2) In connection with a subcontract, the contracting officer or the SBA may protest the disadvantaged status of a proposed subcontractor. Such protests will be processed in accordance with 13 CFR 124.1007 through 124.1014. Other interested parties may submit information to the contracting officer or the SBA in an effort to persuade the contracting officer or the SBA to initiate a protest. Such protests, in order to be considered timely, must be submitted to the SBA prior to completion of performance by the intended subcontractor.

(b) A contractor acting in good faith may rely on the written representation of its subcontractor regarding the subcontractor's status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small busi-

ness concern. The contractor, the contracting officer, or any other interested party can challenge a subcontractor's size status representation by filing a protest, in accordance with 13 CFR 121.1001 through 121.1008. Protests challenging a subcontractor's small disadvantaged business representation must be filed in accordance with 13 CFR 124.1007 through 124.1014.

(c)(1) In accordance with [43 U.S.C. 1626](#), the following procedures apply:

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business (SDB) concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe.

(ii) Where one or more subcontractors are in the subcontract tier between the prime contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate contractor is the contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each contractor. The sum of the amounts designated to various contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the contracting officer, the prime contractor, and the subcontractors in between the prime contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the contracting officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated contractor.

(2) A contractor acting in good faith may rely on the written representation of an ANC or an Indian tribe as to the status of the ANC or Indian tribe unless an interested party challenges its status or the contracting officer has independent reason to question its status. In the event of a challenge of a representation of an ANC or Indian tribe, the interested parties shall follow the procedures at [26.103\(b\)](#) through (e).

(d)(1) 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/dsp\\_searchhubzone.cfm](http://dsbs.sba.gov/dsbs/dsp_searchhubzone.cfm) or [www.sba.gov/hubzone](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) E-mail at [hubzone@sba.gov](mailto:hubzone@sba.gov).

(2) Protests challenging HUBZone small business concern size status must be filed in accordance with 13 CFR 121.411.

### 19.704 Subcontracting plan requirements.

(a) Each subcontracting plan required under [19.702\(a\)\(1\)](#) and (2) must include—

(1) Separate percentage goals for using small business (including ANCs and Indian tribes), veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business (including ANCs and Indian tribes) and women-owned small business concerns as subcontractors;

(2) A statement of the total dollars planned to be subcontracted and a statement of the total dollars planned to be subcontracted to small business (including ANCs and Indian tribes), veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business (including ANCs and Indian tribes) and women-owned small business concerns;

(3) A description of the principal types of supplies and services to be subcontracted and an identification of types planned for subcontracting to small business (including ANCs and Indian tribes), veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business (including ANCs and Indian tribes), and women-owned small business concerns;

(4) A description of the method used to develop the subcontracting goals;

(5) A description of the method used to identify potential sources for solicitation purposes;

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with small business (including ANCs and Indian tribes), veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business (including ANCs and Indian tribes), and women-owned small business concerns;

(7) The name of an individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual;

(8) A description of the efforts the offeror will make to ensure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts;

(9) Assurances that the offeror will include the clause at [52.219-8](#), Utilization of Small Business Concerns (see [19.708\(a\)](#)), in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$650,000 (\$1.5 million for construction) to adopt a plan that complies with the requirements of the clause at [52.219-9](#), Small Business Subcontracting Plan (see [19.708\(b\)](#));

(10) Assurances that the offeror will—

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;

(iii) Submit the Individual Subcontract Report (ISR), and the Summary Subcontract Report (SSR) using the Electronic Subcontracting Reporting System (eSRS) (<http://www.esrs.gov>), following the instructions in the eSRS;

(A) The ISR shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the contracting officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period.

(B) The SSR shall be submitted as follows: For DoD and NASA, the report shall be submitted semi-annually for the six months ending March 31 and the twelve months ending September 30. For civilian agencies, except NASA, it shall be submitted annually for the twelve-month period ending September 30. Reports are due 30 days after the close of each reporting period.

(iv) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using the eSRS;

(v) Provide its prime contract number, its DUNS number, and the e-mail address of the offeror's official responsible for acknowledging receipt of or rejecting the ISRs to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their ISRs; and

(vi) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own DUNS number, and the e-mail address of the subcontractor's official responsible for acknowledging receipt of or rejecting the ISRs, to its subcontractors with subcontracting plans.

(11) A description of the types of records that will be maintained concerning procedures adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and to award subcontracts to them.

(b) Contractors may establish, on a plant or division-wide basis, a master plan (see [19.701](#)) that contains all the elements required by the clause at [52.219-9](#), Small Business Subcontracting Plan, except goals. Master plans shall be effective for a 3-year period after approval by the contracting officer; however, it is incumbent upon contractors to maintain and update master plans. Changes required to update master plans are not effective until approved by the contracting officer. A master plan, when incorporated in an individual plan, shall apply to that contract throughout the life of the contract.

(c) For multiyear contracts or contracts containing options, the cumulative value of the basic contract and all options is considered in determining whether a subcontracting plan is necessary (see [19.705-2\(a\)](#)). If a plan is necessary and the offeror is submitting an individual contract plan, the plan shall contain all the elements required by paragraph (a) of this section and shall contain separate statements and goals for the basic contract and for each option.

(d) A commercial plan (as defined in [19.701](#)) is the preferred type of subcontracting plan for contractors furnishing commercial items. Once a contractor's commercial plan has been approved, the Government shall not require another subcontracting plan from the same contractor while the plan remains in effect, as long as the product or service being provided by the contractor continues to meet the definition of a commercial item. The contractor shall—

(1) Submit the commercial plan to either the first contracting officer awarding a contract subject to the plan during the contractor's fiscal year, or, if the contractor has ongoing contracts with commercial plans, to the contracting officer responsible for the contract with the latest completion date. The contracting officer shall negotiate the commercial plan for the Government. The approved commercial plan shall remain in effect during the contractor's fiscal year for all Government contracts in effect during that period;

(2) Submit a new commercial plan, 30 working days before the end of the Contractor's fiscal year, to the contract-

ing officer responsible for the uncompleted Government contract with the latest completion date. The contractor must provide to each contracting officer responsible for an ongoing contract subject to the plan, the identity of the contracting officer that will be negotiating the new plan;

(3) When the new commercial plan is approved, provide a copy of the approved plan to each contracting officer responsible for an ongoing contract that is subject to the plan; and

(4) Comply with the reporting requirements stated in paragraph (a)(10) of this section by submitting one SSR in eSRS, for all contracts covered by its commercial plan. This report will be acknowledged or rejected in eSRS by the contracting officer who approved the plan. The report shall be submitted within 30 days after the end of the Government's fiscal year.

### **19.705 Responsibilities of the contracting officer under the subcontracting assistance program.**

#### **19.705-1 General support of the program.**

The contracting officer may encourage the development of increased subcontracting opportunities in negotiated acquisition by providing monetary incentives such as payments based on actual subcontracting achievement or award-fee contracting (see the clause at [52.219-10](#), Incentive Subcontracting Program, and [19.708\(c\)](#)). When using any contractual incentive provision based upon rewarding the contractor monetarily for exceeding goals in the subcontracting plan, the contracting officer must ensure that (a) the goals are realistic and (b) any rewards for exceeding the goals are commensurate with the efforts the contractor would not have otherwise expended. Incentive provisions should normally be negotiated after reaching final agreement with the contractor on the subcontracting plan.

#### **19.705-2 Determining the need for a subcontracting plan.**

The contracting officer must take the following actions to determine whether a proposed contractual action requires a subcontracting plan:

(a) Determine whether the proposed contractual action will meet the dollar threshold in [19.702\(a\)\(1\)](#) or (2). If the action includes options or similar provisions, include their value in determining whether the threshold is met.

(b) Determine whether subcontracting possibilities exist by considering relevant factors such as—

(1) Whether firms engaged in the business of furnishing the types of items to be acquired customarily contract for performance of part of the work or maintain sufficient in-house capability to perform the work; and

(2) Whether there are likely to be product prequalification requirements.

(c) If it is determined that there are no subcontracting possibilities, the determination must be approved at a level above the contracting officer and placed in the contract file.

(d) In solicitations for negotiated acquisitions, the contracting officer may require the submission of subcontracting plans with initial offers, or at any other time prior to award. In determining when subcontracting plans should be required, as well as when and with whom plans should be negotiated, the contracting officer must consider the integrity of the competitive process, the goal of affording maximum practicable opportunity for small business, veteran-owned small business, service-disabled veteran-owned small business, HUB-Zone small business, small disadvantaged business, and women-owned small business concerns to participate, and the burden placed on offerors.

(e) A contract may have no more than one plan. When a modification meets the criteria in [19.702](#) for a plan, or an option is exercised, the goals associated with the modification or option shall be added to those in the existing subcontract plan.

### 19.705-3 Preparing the solicitation.

The contracting officer shall provide the Small Business Administration's (SBA's) procurement center representative (or, if a procurement center representative is not assigned, see [19.402\(a\)](#)) a reasonable period of time to review any solicitation requiring submission of a subcontracting plan and to submit advisory findings before the solicitation is issued.

### 19.705-4 Reviewing the subcontracting plan.

The contracting officer shall review the subcontracting plan for adequacy, ensuring that the required information, goals, and assurances are included (see [19.704](#)).

(a) No detailed standards apply to every subcontracting plan. Instead, the contracting officer shall consider each plan in terms of the circumstances of the particular acquisition, including—

- (1) Previous involvement of small business concerns as prime contractors or subcontractors in similar acquisitions;
- (2) Proven methods of involving small business concerns as subcontractors in similar acquisitions; and
- (3) The relative success of methods the contractor intends to use to meet the goals and requirements of the plan, as evidenced by records maintained by contractors.

(b) If, under a sealed bid solicitation, a bidder submits a plan that does not cover each of the 11 required elements (see [19.704](#)), the contracting officer shall advise the bidder of the deficiency and request submission of a revised plan by a specific date. If the bidder does not submit a plan that incorporates the required elements within the time allotted, the bidder shall be ineligible for award. If the plan, although responsive, evidences the bidder's intention not to comply

with its obligations under the clause at [52.219-8](#), Utilization of Small Business Concerns, the contracting officer may find the bidder nonresponsible.

(c) In negotiated acquisitions, the contracting officer shall determine whether the plan is acceptable based on the negotiation of each of the 11 elements of the plan (see [19.704](#)). Subcontracting goals should be set at a level that the parties reasonably expect can result from the offeror expending good faith efforts to use small business, veteran-owned small business, service-disabled veteran-owned small business, HUB-Zone small business, small disadvantaged business, and women-owned small business subcontractors to the maximum practicable extent. The contracting officer shall take particular care to ensure that the offeror has not submitted unreasonably low goals to minimize exposure to liquidated damages and to avoid the administrative burden of substantiating good faith efforts. Additionally, particular attention should be paid to the identification of steps that, if taken, would be considered a good faith effort. No goal should be negotiated upward if it is apparent that a higher goal will significantly increase the Government's cost or seriously impede the attainment of acquisition objectives. An incentive subcontracting clause (see [52.219-10](#), Incentive Subcontracting Program), may be used when additional and unique contract effort, such as providing technical assistance, could significantly increase subcontract awards to small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, or women-owned small business concerns.

(d) In determining the acceptability of a proposed subcontracting plan, the contracting officer should take the following actions:

(1) Obtain information available from the cognizant contract administration office, as provided for in [19.706\(a\)](#), and evaluate the offeror's past performance in awarding subcontracts for the same or similar products or services to small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If information is not available on a specific type of product or service, evaluate the offeror's overall past performance and consider the performance of other contractors on similar efforts.

(2) In accordance with [15 U.S.C. 637\(d\)\(4\)\(F\)\(iii\)](#), ensure that the goals offered are attainable in relation to—

(i) The subcontracting opportunities available to the contractor, commensurate with the efficient and economical performance of the contract;

(ii) The pool of eligible subcontractors available to fulfill the subcontracting opportunities; and

(iii) The actual performance of such contractor in fulfilling the subcontracting goals specified in prior plans.

(3) Ensure that the subcontracting goals are consistent with the offeror's certified cost or pricing data or data other than certified cost or pricing data.

(4) Evaluate the offeror's make-or-buy policy or program to ensure that it does not conflict with the offeror's proposed subcontracting plan and is in the Government's interest. If the contract involves products or services that are particularly specialized or not generally available in the commercial market, consider the offeror's current capacity to perform the work and the possibility of reduced subcontracting opportunities.

(5) Evaluate subcontracting potential, considering the offeror's make-or-buy policies or programs, the nature of the supplies or services to be subcontracted, the known availability of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in the geographical area where the work will be performed, and the potential contractor's long-standing contractual relationship with its suppliers.

(6) Advise the offeror of available sources of information on potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors, as well as any specific concerns known to be potential subcontractors. If the offeror's proposed goals are questionable, the contracting officer must emphasize that the information should be used to develop realistic and acceptable goals.

(7) Obtain advice and recommendations from the SBA procurement center representative (or, if a procurement center representative is not assigned, see [19.402\(a\)](#)) and the agency small business specialist.

#### **19.705-5 Awards involving subcontracting plans.**

(a) In making an award that requires a subcontracting plan, the contracting officer shall be responsible for the following:

(1) Consider the contractor's compliance with the subcontracting plans submitted on previous contracts as a factor in determining contractor responsibility.

(2) Assure that a subcontracting plan was submitted when required.

(3) Notify the SBA procurement center representative (or, if a procurement center representative is not assigned, see [19.402\(a\)](#)) of the opportunity to review the proposed contract (including the plan and supporting documentation). The notice shall be issued in sufficient time to provide the representative a reasonable time to review the material and submit advisory recommendations to the contracting officer. Failure of the representative to respond in a reasonable period of time shall not delay contract award.

(4) Determine any fee that may be payable if an incentive is used in conjunction with the subcontracting plan.

(5) Ensure that an acceptable plan is incorporated into and made a material part of the contract.

(b) Letter contracts and similar undefinitized instruments, which would otherwise meet the requirements of [19.702\(a\)\(1\)](#) and (2), shall contain at least a preliminary basic plan addressing the requirements of [19.704](#) and in such cases require the negotiation of the final plan within 90 days after award or before definitization, whichever occurs first.

#### **19.705-6 Postaward responsibilities of the contracting officer.**

After a contract or contract modification containing a subcontracting plan is awarded, the contracting officer who approved the plan is responsible for the following:

(a) Notifying the SBA of the award by sending a copy of the award document to the Area Director, Office of Government Contracting, in the SBA area office where the contract will be performed.

(b) Forwarding a copy of each commercial plan and any associated approvals to the Area Director, Office of Government Contracting, in the SBA area office where the contractor's headquarters is located.

(c) Giving to the SBA procurement center representative (or, if a procurement center representative is not assigned, see [19.402\(a\)](#)) a copy of—

(1) Any subcontracting plan submitted in response to a sealed bid solicitation; and

(2) The final negotiated subcontracting plan that was incorporated into a negotiated contract or contract modification.

(d) Notifying the SBA procurement center representative (or, if a procurement center representative is not assigned, see [19.402\(a\)](#)) of the opportunity to review subcontracting plans in connection with contract modifications.

(e) Forwarding a copy of each plan, or a determination that there is no requirement for a subcontracting plan, to the cognizant contract administration office.

(f) Initiating action to assess liquidated damages in accordance with [19.705-7](#) upon a recommendation by the administrative contracting officer or receipt of other reliable evidence to indicate that such action is warranted.

(g) Taking action to enforce the terms of the contract upon receipt of a notice under [19.706\(f\)](#).

(h) Acknowledging receipt of or rejecting the ISR and the SSR in the eSRS. Acknowledging receipt does not mean acceptance or approval of the report. The report shall be rejected if it is not adequately completed, for instance, if there are errors, omissions, or incomplete data. Failure to meet the goals of the subcontracting plan is not a valid reason for rejecting the report.



(2) Insert the clause at [52.219-16](#), Liquidated Damages—Subcontracting Plan, in all solicitations and contracts containing the clause at [52.219-9](#), Small Business Subcontracting Plan, or the clause with its Alternate I, II, or III.

(c)(1) The contracting officer may, when contracting by negotiation, insert in solicitations and contracts a clause substantially the same as the clause at [52.219-10](#), Incentive Subcontracting Program, when a subcontracting plan is required (see [19.702](#)), and inclusion of a monetary incentive is, in the judgment of the contracting officer, necessary to increase subcontracting opportunities for small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, and is commensurate with the efficient and economical performance of the contract; unless the conditions in paragraph (c)(3) of this section are applicable. The contracting officer may vary the terms of the clause as specified in paragraph (c)(2) of this section.

(2) Various approaches may be used in the development of small business, veteran-owned small business, service-dis-

abled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns' subcontracting incentives. They can take many forms, from a fully quantified schedule of payments based on actual subcontract achievement to an award-fee approach employing subjective evaluation criteria (see paragraph (c)(3) of this section). The incentive should not reward the contractor for results other than those that are attributable to the contractor's efforts under the incentive subcontracting program.

(3) As specified in paragraph (c)(2) of this section, the contracting officer may include small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontracting as one of the factors to be considered in determining the award fee in a cost-plus-award-fee contract; in such cases, however, the contracting officer shall not use the clause at [52.219-10](#), Incentive Subcontracting Program.

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SUBPART 19.11—[RESERVED]

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**Subpart 19.11—[Reserved]**

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SUBPART 19.12—[RESERVED]

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**Subpart 19.12—[Reserved]**

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## Subpart 19.13—Historically Underutilized Business Zone (HUBZone) Program

### 19.1301 General.

(a) The Historically Underutilized Business Zone (HUBZone) Act of 1997 ([15 U.S.C. 631](#) note) created the HUBZone Program.

(b) The purpose of the HUBZone Program is to provide Federal contracting assistance for qualified small business concerns located in historically underutilized business zones, in an effort to increase employment opportunities, investment, and economic development in those areas.

### 19.1302 Applicability.

The procedures in this subpart apply to all Federal agencies that employ one or more contracting officers.

### 19.1303 Status as a HUBZone small business concern.

(a) Status as a HUBZone small business concern is determined by the Small Business Administration (SBA) in accordance with 13 CFR Part 126.

(b) If the SBA determines that a concern is a HUBZone small business concern, it will issue a certification to that effect and will add the concern to the List of Qualified HUBZone Small Business Concerns at [http://dsbs.sba.gov/dsbs/search/dsp\\_searchhubzone.cfm](http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm). Only firms on the list are HUBZone small business concerns, eligible for HUBZone preferences. HUBZone preferences apply without regard to the place of performance. Information on HUBZone small business concerns can also be obtained at [www.sba.gov/hubzone](http://www.sba.gov/hubzone) or by writing to the Director for the HUBZone Program (Director/HUB) at U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416 or at [hubzone@sba.gov](mailto:hubzone@sba.gov).

(c) A joint venture may be considered a HUBZone small business concern if it meets the criteria in the explanation of affiliates (see [19.101](#)).

(d) To be eligible for a HUBZone contract under this section, a HUBZone small business concern must be a HUBZone small business concern both at the time of its initial offer and at the time of contract award.

(e) A HUBZone small business concern may submit an offer for supplies as a nonmanufacturer if it meets the requirements of the nonmanufacturer rule set forth at 13 CFR 121.406(b)(1) and if the small business manufacturer providing the end item is also a HUBZone small business concern.

(1) There are no waivers to the nonmanufacturer rule for HUBZone contracts.

(2) For HUBZone contracts at or below \$25,000 in total value, a HUBZone small business concern may supply the end item of any manufacturer, including a large business, so long as the product acquired is manufactured or produced in the United States.

### 19.1304 Exclusions.

This subpart does not apply to—

(a) Requirements that can be satisfied through award to—  
 (1) Federal Prison Industries, Inc. (see [Subpart 8.6](#)); or  
 (2) AbilityOne participating non-profit agencies for the blind or severely disabled (see [Subpart 8.7](#));

(b) Orders under indefinite-delivery contracts (see subpart [16.5](#)). (But see [16.505\(b\)\(2\)\(i\)\(F\)](#) for discretionary set-asides of orders);

(c) Orders against Federal Supply Schedules (see subpart [8.4](#)). (But see [8.405-5](#) for discretionary set-asides of orders);

(d) Requirements currently being performed by an 8(a) participant or requirements SBA has accepted for performance under the authority of the 8(a) Program, unless SBA has consented to release the requirements from the 8(a) Program;

(e) Requirements that do not exceed the micro-purchase threshold; or

(f) Requirements for commissary or exchange resale items.

### 19.1305 HUBZone set-aside procedures.

(a) The contracting officer—

(1) Shall comply with [19.203](#) before deciding to set aside an acquisition under the HUBZone Program;

(2) May set aside acquisitions exceeding the micro-purchase threshold for competition restricted to HUBZone small business concerns when the requirements of paragraph (b) of this section can be satisfied; and

(3) Shall consider HUBZone set-asides before considering HUBZone sole source awards (see [19.1306](#)) or small business set-asides (see subpart [19.5](#)).

(b) To set aside an acquisition for competition restricted to HUBZone small business concerns, the contracting officer must have a reasonable expectation that—

(1) Offers will be received from two or more HUBZone small business concerns; and

(2) Award will be made at a fair market price.

(c) If the contracting officer receives only one acceptable offer from a qualified HUBZone small business concern in response to a set aside, the contracting officer should make an award to that concern. If the contracting officer receives no acceptable offers from HUBZone small business concerns, the HUBZone set-aside shall be withdrawn and the requirement, if still valid, set aside for small business concerns, as appropriate (see [19.203](#)).

(d) The procedures at [19.202-1](#) and, except for acquisitions not exceeding the simplified acquisition threshold, at [19.402](#) apply to this section.

(1) When the SBA intends to appeal a contracting officer's decision to reject a recommendation of the SBA procurement center representative (or, if a procurement center representative is not assigned, see [19.402\(a\)](#)) to set aside an acquisition for competition restricted to HUBZone small busi-

ness concerns, the SBA procurement center representative shall notify the contracting officer, in writing, of its intent within 5 business days of receiving the contracting officer's notice of rejection.

(2) Upon receipt of notice of SBA's intent to appeal, the contracting officer shall suspend action on the acquisition unless the head of the contracting activity makes a written determination that urgent and compelling circumstances, which significantly affect the interests of the Government, exist.

(3) Within 15 business days of SBA's notification to the contracting officer, SBA must file its formal appeal with the head of the agency, or the appeal will be deemed withdrawn. The head of the agency shall reply to SBA within 15 business days of receiving the appeal. The decision of the head of the agency shall be final.

#### **19.1306 HUBZone sole source awards.**

(a) A contracting officer shall consider a contract award to a HUBZone small business concern on a sole source basis (see [6.302-5\(b\)\(5\)](#)) before considering a small business set-aside (see [19.203](#) and subpart [19.5](#)), provided none of the exclusions at [19.1304](#) apply; and—

(1) The contracting officer does not have a reasonable expectation that offers would be received from two or more HUBZone small business concerns;

(2) The anticipated price of the contract, including options, will not exceed—

(i) \$6.5 million for a requirement within the North American Industry Classification System (NAICS) codes for manufacturing; or

(ii) \$4 million for a requirement within all other NAICS codes;

(3) The requirement is not currently being performed by an 8(a) participant under the provisions of [Subpart 19.8](#) or has been accepted as a requirement by SBA under [Subpart 19.8](#);

(4) The acquisition is greater than the simplified acquisition threshold (see [Part 13](#));

(5) The HUBZone small business concern has been determined to be a responsible contractor with respect to performance; and

(6) Award can be made at a fair and reasonable price.

(b) The SBA has the right to appeal the contracting officer's decision not to make a HUBZone sole source award.

#### **19.1307 Price evaluation preference for HUBZone small business concerns.**

(a) The price evaluation preference for HUBZone small business concerns shall be used in acquisitions conducted

using full and open competition. The preference shall not be used—

(1) Where price is not a selection factor so that a price evaluation preference would not be considered (e.g., Architect/Engineer acquisitions); or

(2) Where all fair and reasonable offers are accepted (e.g., the award of multiple award schedule contracts).

(b) The contracting officer shall give offers from HUBZone small business concerns a price evaluation preference by adding a factor of 10 percent to all offers, except—

(1) Offers from HUBZone small business concerns that have not waived the evaluation preference; or

(2) Otherwise successful offers from small business concerns.

(c) The factor of 10 percent shall be applied on a line item basis or to any group of items on which award may be made. Other evaluation factors, such as transportation costs or rent-free use of Government property, shall be added to the offer to establish the base offer before adding the factor of 10 percent.

(d) When the two highest rated offerors are a HUBZone small business concern and a large business, and the evaluated offer of the HUBZone small business concern is equal to the evaluated offer of the large business after considering the price evaluation preference, the contracting officer shall award the contract to the HUBZone small business concern.

#### **19.1308 Performance of work requirements (limitations on subcontracting) for general construction or construction by special trade contractors.**

(a) Before issuing a solicitation for general construction or construction by special trade contractors, the contracting officer shall determine if at least two HUBZone small business concerns can spend at least 50 percent of the cost of contract performance to be incurred for personnel on their own employees or subcontract employees of other HUBZone small business concerns.

(b) The clause at [52.219-3](#), Notice of HUBZone Set-Aside or Sole Source Award, or [52.219-4](#), Notice of Price Evaluation Preference for HUBZone Small Business Concerns, shall be used, as applicable, with its Alternate I to waive the 50 percent requirement (see [19.1309](#)) if at least two HUBZone small business concerns cannot meet the conditions of paragraph (a); but, the HUBZone prime contractor can still meet the following—



**22.1003-5 Some examples of contracts covered.**

The following examples, while not definitive or exclusive, illustrate some of the types of services that have been found to be covered by the Service Contract Labor Standards statute (see 29 CFR 4.130 for additional examples):

- (a) Motor pool operation, parking, taxicab, and ambulance services.
- (b) Packing, crating, and storage.
- (c) Custodial, janitorial, housekeeping, and guard services.
- (d) Food service and lodging.
- (e) Laundry, dry-cleaning, linen-supply, and clothing alteration and repair services.
- (f) Snow, trash, and garbage removal.
- (g) Aerial spraying and aerial reconnaissance for fire detection.
- (h) Some support services at installations, including grounds maintenance and landscaping.
- (i) Certain specialized services requiring specific skills, such as drafting, illustrating, graphic arts, stenographic reporting, or mortuary services.
- (j) Electronic equipment maintenance and operation and engineering support services.
- (k) Maintenance and repair of all types of equipment, for example, aircraft, engines, electrical motors, vehicles, and electronic, office and related business and construction equipment. (But see [22.1003-4\(c\)\(1\)](#) and [\(d\)\(1\)\(iv\)](#).)
- (l) Operation, maintenance, or logistics support of a Federal facility.
- (m) Data collection, processing and analysis services.

**22.1003-6 Repair distinguished from remanufacturing of equipment.**

(a) Contracts principally for remanufacturing of equipment which is so extensive as to be equivalent to manufacturing are subject to [41 U.S.C. chapter 65](#), Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000, rather than to the Service Contract Labor Standards statute. Remanufacturing shall be deemed to be manufacturing when the criteria in either subparagraphs (a)(1) or (a)(2) of this subsection are met.

(1) Major overhaul of an item, piece of equipment, or material which is degraded or inoperable, and under which all of the following conditions exist:

- (i) The item or equipment is required to be completely or substantially torn down into individual component parts.
- (ii) Substantially all of the parts are reworked, rehabilitated, altered and/or replaced.
- (iii) The parts are reassembled so as to furnish a totally rebuilt item or piece of equipment.
- (iv) Manufacturing processes similar to those which were used in the manufacturing of the item or piece of equipment are utilized.
- (v) The disassembled components, if usable (except for situations where the number of items or pieces of equip-

ment involved are too few to make it practicable) are commingled with existing inventory and, as such, lose their identification with respect to a particular piece of equipment.

(vi) The items or equipment overhauled are restored to original life expectancy, or nearly so.

(vii) Such work is performed in a facility owned or operated by the contractor.

(2) Major modification of an item, piece of equipment, or material which is wholly or partially obsolete, and under which all of the following conditions exist:

- (i) The item or equipment is required to be completely or substantially torn down.
- (ii) Outmoded parts are replaced.
- (iii) The item or equipment is rebuilt or reassembled.
- (iv) The contract work results in the furnishing of a substantially modified item in a usable and serviceable condition.
- (v) The work is performed in a facility owned or operated by the contractor.

(b) Remanufacturing does not include the repair of damaged or broken equipment which does not require a complete teardown, overhaul, and rebuild as described in subparagraphs (a)(1) and (a)(2) of this subsection, or the periodic and routine maintenance, preservation, care, adjustment, upkeep, or servicing of equipment to keep it in usable, serviceable, working order. Such contracts typically are billed on an hourly rate (labor plus materials and parts) basis. Any contract principally for this type of work is subject to the Service Contract Labor Standards statute. Examples of such work include the following:

(1) Repair of an automobile, truck, or other vehicle, construction equipment, tractor, crane, aerospace, air conditioning and refrigeration equipment, electric motors, and ground powered industrial or vehicular equipment.

(2) Repair of typewriters and other office equipment (but see [22.1003-4\(c\)\(1\)](#) and [\(d\)\(1\)\(iv\)](#)).

(3) Repair of appliances, radios, television sets, calculators, and other electronic equipment.

(4) Inspecting, testing, calibration, painting, packaging, lubrication, tune-up, or replacement of internal parts of equipment listed in subparagraphs (b)(1), (b)(2), and (b)(3) of this subsection.

(5) Reupholstering, reconditioning, repair, and refinishing of furniture.

**22.1003-7 Questions concerning applicability of the Service Contract Labor Standards statute.**

If the contracting officer questions the applicability of the Service Contract Labor Standards statute to an acquisition, the contracting officer shall request the advice of the agency labor advisor. Unresolved questions shall be submitted in a timely manner to the Administrator, Wage and Hour Division, for determination.

**22.1004 Department of Labor responsibilities and regulations.**

Under the Service Contract Labor Standards statute, the Secretary of Labor is authorized and directed to enforce the provisions of the Service Contract Labor Standards statute, make rules and regulations, issue orders, hold hearings, make decisions, and take other appropriate action. The Department of Labor has issued implementing regulations on such matters as—

- (a) Service contract labor standards provisions and procedures (29 CFR Part 4, Subpart A);
- (b) Wage determination procedures (29 CFR part 4, subparts A and B);
- (c) Application of the Service Contract Labor Standards statute (rulings and interpretations) (29 CFR Part 4, Subpart C);
- (d) Compensation standards (29 CFR Part 4, Subpart D);
- (e) Enforcement (29 CFR Part 4, Subpart E);
- (f) Safe and sanitary working conditions (29 CFR Part 1925);
- (g) Rules of practice for administrative proceedings enforcing service contract labor standards (29 CFR Part 6); and
- (h) Practice before the Administrative Review Board (29 CFR part 8).

**22.1005 [Reserved]****22.1006 Solicitation provisions and contract clauses.**

(a)(1) The contracting officer shall insert the clause at [52.222-41](#), Service Contract Labor Standards, in solicitations and contracts (except as provided in paragraph (a)(2) of this section) if the contract is subject to the Service Contract Labor Standards statute and is—

- (i) Over \$2,500; or
  - (ii) For an indefinite dollar amount and the contracting officer does not know in advance that the contract amount will be \$2,500 or less.
- (2) The contracting officer shall not insert the clause at [52.222-41](#) (or any of the associated Service Contract Labor Standards statute clauses as prescribed in this section for possible use when [52.222-41](#) applies) in the resultant contract if—

- (i) The solicitation includes the provision at—
  - (A) [52.222-48](#), Exemption from Application of the Service Contract Labor Standards statute to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Certification;
  - (B) [52.222-52](#), Exemption from Application of the Service Contract Labor Standards statute to Contracts for Certain Services—Certification; or
  - (C) Either of the comparable certifications is checked as applicable in the provision at [52.204-8\(c\)\(2\)\(ii\)](#) or (iii) or [52.212-3\(k\)](#); and

(ii) The contracting officer has made the determination, in accordance with paragraphs (c)(3) or (d)(3) of subsection [22.1003-4](#), that the Service Contract Labor Standards statute does not apply to the contract. (In such case, insert the clause at [52.222-51](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements, or [52.222-53](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Requirements, in the contract, in accordance with the prescription at paragraph (e)(2)(ii) or (e)(4)(ii) of this subsection).

(b) The contracting officer shall insert the clause at [52.222-42](#), Statement of Equivalent Rates for Federal Hires, in solicitations and contracts if the contract amount is expected to be over \$2,500 and the Service Contract Labor Standards statute is applicable. (See [22.1016](#).)

(c)(1) The contracting officer shall insert the clause at [52.222-43](#), Fair Labor Standards Act and Service Contract Labor Standards—Price Adjustment (Multiple Year and Option Contracts), or another clause which accomplishes the same purpose, in solicitations and contracts if the contract is expected to be a fixed-price, time-and-materials, or labor-hour service contract containing the clause at [52.222-41](#), Service Contract Labor Standards, and is a multiple year contract or is a contract with options to renew which exceeds the simplified acquisition threshold. The clause may be used in contracts that do not exceed the simplified acquisition threshold. The clause at [52.222-43](#), Fair Labor Standards Act and Service Contract Labor Standards—Price Adjustment (Multiple Year and Option Contracts), applies to both contracts subject to area prevailing wage determinations and contracts subject to the incumbent contractor’s collective bargaining agreement in effect during this contract’s preceding contract period (see [22.1002-2](#) and [22.1002-3](#)). Contracting officers shall ensure that contract prices or contract unit price labor rates are adjusted only to the extent that a contractor’s increases or decreases in applicable wages and fringe benefits are made to comply with the requirements set forth in the clauses at [52.222-43](#) (subparagraphs (d)(1), (2) and (3)), or [52.222-44](#) (subparagraphs (b)(1) and (2)). (For example, the prior year wage determination required a minimum wage rate of \$4.00 per hour. The contractor actually paid \$4.10. The new wage determination increases the minimum rate to \$4.50. The contractor increases the rate actually paid to \$4.75 per hour. The allowable price adjustment is \$.40 per hour.)

(2) The contracting officer shall insert the clause at [52.222-44](#), Fair Labor Standards Act and Service Contract Labor Standards—Price Adjustment, in solicitations and contracts if the contract is expected to be a fixed-price, time-and-materials, or labor-hour service contract containing the clause at [52.222-41](#), Service Contract Labor Standards, exceeds the simplified acquisition threshold, and is not a multiple year contract or is not a contract with options to renew. The clause may be used in contracts that do not exceed the simplified acquisition threshold. The clause at [52.222-44](#), Fair Labor Standards Act and Service Contract Labor Standards—Price

Adjustment, applies to both contracts subject to area prevailing wage determinations and contracts subject to contractor collective bargaining agreements (see [22.1002-2](#) and [22.1002-3](#)).

(3) The clauses prescribed in paragraph [22.1006\(c\)\(1\)](#) cover situations in which revised minimum wage rates are applied to contracts by operation of law, or by revision of a wage determination in connection with (i) exercise of a contract option or (ii) extension of a multiple year contract into a new program year. If a clause prescribed in [16.203-4\(d\)](#) is used, it must not conflict with, or duplicate payment under, the clauses prescribed in this paragraph [22.1006\(c\)](#).

(d) [Reserved]

(e)(1) The contracting officer shall insert the provision at [52.222-48](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Certification, in solicitations that—

(i) Include the clause at [52.222-41](#), Service Contract Labor Standards; and

(ii) The contract may be exempt from the Service Contract Labor Standards statute in accordance with [22.1003-4\(c\)](#).

(2) The contracting officer shall insert the clause at [52.222-51](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements—

(i) In solicitations that include the provision at [52.222-48](#), or the comparable provision is checked as applicable in the clause at [52.204-8\(c\)\(2\)\(ii\)](#) or [52.212-3\(k\)\(1\)](#); and

(ii) In resulting contracts in which the contracting officer has determined, in accordance with [22.1003-4\(c\)\(3\)](#), that the Service Contract Labor Standards statute does not apply.

(3)(i) Except as provided in paragraph (e)(3)(ii) of this section, the contracting officer shall insert the provision at [52.222-52](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services--Certification, in solicitations that—

(A) Include the clause at [52.222-41](#), Service Contract Labor Standards, and

(B) The contract may be exempt from the Service Contract Labor Standards statute in accordance with [22.1003-4\(d\)](#).

(ii) When resoliciting in accordance with [22.1003-4\(d\)\(3\)\(iii\)](#), amend the solicitation by removing the provision at [52.222-52](#) from the solicitation.

(4) The contracting officer shall insert the clause at [52.222-53](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Requirements—

(i) In solicitations that include the provision at [52.222-52](#), or the comparable provision is checked as applicable in [52.204-8\(c\)\(2\)\(iii\)](#) or [52.212-3\(k\)\(2\)](#); and

(ii) In resulting contracts in which the contracting officer has determined, in accordance with [22.1003-4\(d\)\(3\)](#), that the Service Contract Labor Standards statute does not apply.

(f) The contracting officer shall insert the clause at [52.222-49](#), Service Contract Labor Standards-Place of Performance Unknown, if using the procedures prescribed in [22.1009-4](#).

#### **22.1007 Requirement to obtain wage determinations.**

The contracting officer shall obtain wage determinations for the following service contracts:

(a) Each new solicitation and contract in excess of \$2,500.

(b) Each contract modification which brings the contract above \$2,500 and—

(1) Extends the existing contract pursuant to an option clause or otherwise; or

(2) Changes the scope of the contract whereby labor requirements are affected significantly.

(c) Each multiple year contract in excess of \$2,500 upon—

(1) Annual anniversary date if the contract is subject to annual appropriations; or

(2) Biennial anniversary date if the contract is not subject to annual appropriations and its proposed term exceeds 2 years—unless otherwise advised by the Wage and Hour Division.

#### **22.1008 Procedures for obtaining wage determinations.**

##### **22.1008-1 Obtaining wage determinations.**

(a) Contracting officers may obtain most prevailing wage determinations using the WDOL website. Contracting officers may also use the Department of Labor's e98 electronic process, located on the WDOL website, to request a wage determination directly from the Department of Labor. If the WDOL database does not contain the applicable prevailing wage determination for a contract action, the contracting officer must use the e98 process to request a wage determination from the Department of Labor.

(b) In using the e98 process to obtain prevailing wage determinations, contracting officers shall provide as complete and accurate information on the e98 as possible. Contracting officers shall ensure that the email address submitted on an e98 request is accurate.

(c) The contracting officer must anticipate the amount of time required to gather the information necessary to obtain a wage determination, including sufficient time, if necessary, to contact the Department of Labor to request wage determinations that are not available through use of the WDOL.

(d) Although the WDOL website provides assistance to the contracting agency to select the correct wage determination, the contracting agency remains responsible for the wage determination selected. If the contracting agency has used the e98 process, the Department of Labor will respond to the contracting agency based on the information provided on the e98. The contracting agency may rely upon the Department of

Labor response as the correct wage determination for the contract.

(e) To obtain the applicable wage determination for each contract action, the contracting officer shall determine the following information concerning the service employees expected to be employed by the contractor and any subcontractors in performing the contract:

(1) Determine the classes of service employees to be utilized in performance of the contract using the Wage and Hour Division's *Service Contract Act Directory of Occupations* (Directory). The Directory can be found on WDOL's Library Page, and is for sale by the Superintendent of Documents, U.S. Government Printing Office.

(2) Determine the locality where the services will be performed (see [22.1009](#)).

(3) Determine whether [41 U.S.C. 6707\(c\)](#) applies (see [22.1008-2](#), [22.1010](#) and [22.1002-2](#)).

(4) Determine the wage rate that would be paid each class if employed by the agency and subject to the wage provisions of [5 U.S.C. 5341](#) and/or 5332 (see [22.1016](#)).

(f) If the contracting officer has questions regarding the procedures for obtaining a wage determination, or questions regarding the selection of a wage determination, the contracting officer should request assistance from the agency labor advisor.

#### **22.1008-2 Successorship with incumbent contractor collective bargaining agreement.**

(a) Early in the acquisition cycle, the contracting officer shall determine whether [41 U.S.C. 6707\(c\)](#) affects the new acquisition. The contracting officer shall determine whether there is a predecessor contract covered by the Service Contract Labor Standards statute and, if so, whether the incumbent prime contractor or its subcontractors and any of their employees have a collective bargaining agreement.

(b) [41 U.S.C. 6707\(c\)](#) provides that a successor contractor must pay wages and fringe benefits (including accrued wages and benefits and prospective increases) to service employees at least equal to those agreed upon by a predecessor contractor under the following conditions:

(1) The services to be furnished under the proposed contract will be substantially the same as services being furnished by an incumbent contractor whose contract the proposed contract will succeed.

(2) The services will be performed in the same locality.

(3) The incumbent prime contractor or subcontractor is furnishing such services through the use of service employees whose wages and fringe benefits are the subject of one or more collective bargaining agreements.

(c) The application of [41 U.S.C. 6707\(c\)](#) is subject to the following limitations:

(1) [41 U.S.C. 6707\(c\)](#) will not apply if the incumbent contractor enters into a collective bargaining agreement for the first time and the agreement does not become effective until after the expiration of the incumbent's contract.

(2) If the incumbent contractor enters into a new or revised collective bargaining agreement during the period of the incumbent's performance on the current contract, the terms of the new or revised agreement shall not be effective for the purposes of [41 U.S.C. 6707\(c\)](#) under the following conditions:

(i)(A) In sealed bidding, the contracting agency receives notice of the terms of the collective bargaining agreement less than 10 days before bid opening and finds that there is not reasonable time still available to notify bidders (see [22.1002-2\(a\)](#)); or

(B) For contractual actions other than sealed bidding, the contracting agency receives notice of the terms of the collective bargaining agreement after award, provided that the start of performance is within 30 days of award (see [22.1002-2\(b\)](#)); and

(ii) The contracting officer has given both the incumbent contractor and its employees' collective bargaining agent timely written notification of the applicable acquisition dates (see [22.1010](#)).

(d)(1) If [41 U.S.C. 6707\(c\)](#) applies, the contracting officer shall obtain a copy of any collective bargaining agreement between an incumbent contractor or subcontractor and its employees. Obtaining a copy of an incumbent contractor's collective bargaining agreement may involve coordination with the administrative contracting officer responsible for administering the predecessor contract. (Paragraph (m) of the clause at [52.222-41](#), Service Contract Labor Standards, requires the incumbent prime contractor to furnish the contracting officer a copy of each collective bargaining agreement.)

(2) If the contracting officer has timely received the collective bargaining agreement, the contracting officer may use the WDOL website to prepare a wage determination referencing the agreement and incorporate that wage determination, attached to a complete copy of the collective bargaining agreement, into the successor contract action. In using the WDOL process, it is not necessary to submit a copy of the collective bargaining agreement to the Department of Labor unless requested to do so.

(3) The contracting officer may also use the e98 process on WDOL to request that the Department of Labor prepare the cover wage determination. The Department of Labor's response to the e98 may include a request for the contracting officer to submit a complete copy of the collective bargaining agreement. Any questions regarding the applicability of the Service Contract Labor Standards statute to a collective bargaining agreement should be directed to the agency labor advisor.

(e)(1) [41 U.S.C. 6707\(c\)](#) will not apply if the Secretary of Labor determines (i) after a hearing, that the wages and fringe benefits in the predecessor contractor's collective bargaining agreement are substantially at variance with those which pre-

**Subpart 26.3—Historically Black Colleges and Universities and Minority Institutions****26.300 Scope of subpart.**

(a) This subpart implements Executive Order 12928 of September 16, 1994, which promotes participation of Historically Black Colleges and Universities (HBCUs) and Minority Institutions (MIs) in Federal procurement.

(b) This subpart does not pertain to contracts performed entirely outside the United States and its outlying areas.

**26.301 [Reserved]****26.302 General policy.**

It is the policy of the Government to promote participation of HBCUs and MIs in Federal procurement.

**26.303 Data collection and reporting requirements.**

Executive Order 12928 requires periodic reporting to the President on the progress of departments and agencies in complying with the laws and requirements mentioned in the Executive order.

**26.304 Solicitation provision.**

Insert the provision at [52.226-2](#), Historically Black College or University and Minority Institution Representation, in solicitations exceeding the micro-purchase threshold, for research, studies, supplies, or services of the type normally acquired from higher educational institutions.

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are required by law, employer-employee agreement, or an established policy of the contractor.

(2) That portion of the cost of company-furnished automobiles that relates to personal use by employees (including transportation to and from work) is unallowable regardless of whether the cost is reported as taxable income to the employees (see [31.205-46\(d\)](#)).

(n) *Employee rebate and purchase discount plans.* Rebates and purchase discounts, in whatever form, granted to employees on products or services produced by the contractor or affiliates are unallowable.

(o) *Postretirement benefits other than pensions (PRB).*

(1) PRB covers all benefits, other than cash benefits and life insurance benefits paid by pension plans, provided to employees, their beneficiaries, and covered dependents during the period following the employees' retirement. Benefits encompassed include, but are not limited to, postretirement health care; life insurance provided outside a pension plan; and other welfare benefits such as tuition assistance, day care, legal services, and housing subsidies provided after retirement.

(2) To be allowable, PRB costs shall be incurred pursuant to law, employer-employee agreement, or an established policy of the contractor, and shall comply with paragraphs (o)(2)(i), (ii), or (iii) of this subsection.

(i) *Pay-as-you-go.* PRB costs are not accrued during the working lives of employees. Costs are assigned to the period in which—

(A) Benefits are actually provided; or

(B) The costs are paid to an insurer, provider, or other recipient for current year benefits or premiums.

(ii) *Terminal funding.* PRB costs are not accrued during the working lives of the employees.

(A) Terminal funding occurs when the entire PRB liability is paid in a lump sum upon the termination of employees (or upon conversion to such a terminal-funded plan) to an insurer or trustee to establish and maintain a fund or reserve for the sole purpose of providing PRB to retirees.

(B) Terminal funded costs shall be amortized over a period of 15 years.

(iii) *Accrual basis.* PRB costs are accrued during the working lives of employees. Accrued PRB costs shall comply with the following:

(A) Be measured and assigned in accordance with one of the following two methods described under paragraphs (o)(2)(iii)(A)(1) or (o)(2)(iii)(A)(2) of this subsection:

(1) Generally accepted accounting principles. However, transitions from the pay-as-you-go method to the accrual accounting method must be handled according to paragraphs (o)(2)(iii)(A)(1)(i) through (iii) of this subsection.

(i) In the year of transition from the pay-as-you-go method to accrual accounting for purposes of Government contract cost accounting, the transition obligation shall be the excess of the accumulated PRB obligation over the fair value of plan assets determined in accordance with subparagraph (E) of this section; the fair value must be reduced by the prepayment credit as determined in accordance with subparagraph (o)(2)(iii)(F) of this subsection.

(ii) PRB cost attributable to the transition obligation assigned to the current year that is in excess of the amount assignable to accounting periods on the basis of a straight line amortization of the transition obligation over the average remaining working lives of active employees covered by the PRB plan or a 20-year period, whichever period is longer, is unallowable. However, if the plan is comprised of inactive participants only, the PRB cost attributable to the transition obligation assigned to the current year that is in excess of the amount assignable to accounting periods on a straight line amortization of the transition obligation over the average future life expectancy of the participants is unallowable.

(iii) For a plan that transitioned from pay-as-you-go to accrual accounting for Government contract cost accounting prior to July 22, 2013, the unallowable amount of PRB cost attributable to the transition obligation amortization shall continue to be based on the cost principle in effect at the time of the transition until the original transition obligation schedule is fully amortized.

(2) Contributions to a welfare benefit fund determined in accordance with applicable Internal Revenue Code. Allowable PRB costs based on such contributions shall—

(i) Be measured using reasonable actuarial assumptions, which shall include a health care inflation assumption unless prohibited by the Internal Revenue Code provisions governing welfare benefit funds;

(ii) Be assigned to accounting periods on the basis of the average working lives of active employees covered by the PRB plan or a 15 year period, whichever period is longer. However, if the plan is comprised of inactive participants only, the cost shall be spread over the average future life expectancy of the participants; and

(iii) Exclude Federal income taxes, whether incurred by the fund or the contractor (including any increase in PRB costs associated with such taxes), unless the fund holding the plan assets is tax-exempt under the provisions of 26 USC §501(c).

(B) Be paid to an insurer or trustee to establish and maintain a fund or reserve for the sole purpose of providing PRB to retirees. The assets shall be segregated in the trust, or otherwise effectively restricted, so that they cannot be used by the employer for other purposes.

(C) Be calculated in accordance with generally accepted actuarial principles and practices as promulgated by the Actuarial Standards Board.

(D) Eliminate from costs of current and future periods the accumulated value of any prior period costs that were unallowable in accordance with paragraph (o)(3) of this section, adjusted for interest under paragraph (o)(4) of this section.

(E) Calculate the unfunded actuarial liability (unfunded accumulated postretirement benefit obligation) using the market (fair) value of assets that have been accumulated by funding costs assigned to prior periods for contract accounting purposes.

(F) Recognize as a prepayment credit the market (fair) value of assets that were accumulated by deposits or contributions that were not used to fund costs assigned to previous periods for contract accounting purposes.

(G) Comply with the following when changing from one accrual accounting method to another: the contractor shall—

(1) Treat the change in the unfunded actuarial liability (unfunded accumulated postretirement benefit obligation) as a gain or loss; and

(2) Present an analysis demonstrating that all costs assigned to prior periods have been accounted for in accordance with paragraphs (o)(2)(iii)(D), (E), and (F) of this section to ensure that no duplicate recovery of costs exists. Any duplicate recovery of costs due to the change from one method to another is unallowable. The analysis and new accrual accounting method may be a subject appropriate for an advance agreement in accordance with [31.109](#).

(3) To be allowable, PRB costs must be funded by the time set for filing the Federal income tax return or any extension thereof, or paid to an insurer, provider, or other recipient by the time set for filing the Federal income tax return or extension thereof. PRB costs assigned to the current year, but not funded, paid or otherwise liquidated by the tax return due date as extended are not allowable in any subsequent year.

(4) Increased PRB costs caused by delay in funding beyond 30 days after each quarter of the year to which they are assignable are unallowable.

(5) The Government shall receive an equitable share of any amount of previously funded PRB costs which revert or inure to the contractor. Such equitable share shall reflect the Government's previous participation in PRB costs through those contracts for which certified cost or pricing data were required or which were subject to [subpart 31.2](#).

(p) *Limitation on allowability of compensation.*

(1) Senior executive compensation limit for contracts awarded before June 24, 2014.

(i) *Applicability.* This paragraph (p)(1) applies to the following:

(A) To all executive agencies, other than DoD, NASA and the Coast Guard, for contracts awarded before June 24, 2014;

(B) To DoD, NASA, and the Coast Guard for contracts awarded before December 31, 2011;

(ii) *Costs incurred after January 1, 1998.* Costs incurred after January 1, 1998 for the compensation of a senior executive in excess of the benchmark compensation amount determined applicable for the contractor fiscal year by the Administrator, Office of Federal Procurement Policy (OFPP), under [41 U.S.C 1127](#) as in effect prior to June 24, 2014, are unallowable ([10 U.S.C. 2324\(e\)\(1\)\(P\)](#) and [41 U.S.C 4304\(a\)\(16\)](#)), as in effect prior to June 24, 2014). This limitation is the sole statutory limitation on allowable senior executive compensation costs incurred after January 1, 1998, under contracts awarded before June 24, 2014, and applies whether or not the affected contracts were previously subject to a statutory limitation on such costs. (Note that pursuant to section 804 of Pub. L. 105-261, the definition of "senior executive"

in paragraph (p)(4) has been changed for compensation costs incurred after January 1, 1999.)

(2) All employee compensation limit for contracts awarded before June 24, 2014.

(i) *Applicability.* This paragraph (p)(2) applies to DOD, NASA, and the Coast Guard for contracts awarded on or after December 31, 2011 and before June 24, 2014;

(ii) *Costs incurred after January 1, 2012.* Costs incurred after January 1, 2012, for the compensation of any contractor employee in excess of the benchmark compensation amount, determined applicable for the contractor fiscal year by the Administrator, Office of Federal Procurement Policy (OFPP) under [41 U.S.C 1127](#) are unallowable ([10 U.S.C. 2324\(e\)\(1\)\(P\)](#)).

(3) All employee compensation limit for contracts awarded on or after June 24, 2014.

(i) *Applicability.* This paragraph (p)(3) applies to all executive agency contracts awarded on or after June 24, 2014, and any subcontracts thereunder;

(ii) *Costs incurred on or after June 24, 2014.* Costs incurred on or after June 24, 2014, for the compensation of all employees in excess of the benchmark compensation amount determined applicable for the contractor fiscal year by the Administrator of the Office of Federal Procurement Policy are unallowable. See <http://www.whitehouse.gov/omb/procurement/cecp>.

(iii) *Exceptions.* An agency head may establish one or more narrowly targeted exceptions for scientists, engineers, or other specialists upon a determination that such exceptions are needed to ensure that the executive agency has continued access to needed skills and capabilities. In making such a determination, the agency shall consider, at a minimum, for each contractor employee in a narrowly targeted excepted position—

(A) The amount of taxpayer funded compensation to be received by each employee; and

(B) The duties and services performed by each employee.

(4) *Definitions.* As used in this paragraph (p)—

(i) "Compensation" means the total amount of wages, salary, bonuses, deferred compensation (see paragraph (k) of this subsection), and employer contributions to defined contribution pension plans (see paragraphs (j)(4) and (q) of this subsection), for the fiscal year, whether paid, earned, or otherwise accruing, as recorded in the contractor's cost accounting records for the fiscal year.

(ii) "Senior executive" means—

(A) Prior to January 2, 1999—

(1) The Chief Executive Officer (CEO) or any individual acting in a similar capacity at the contractor's headquarters;

(2) The four most highly compensated employees in management positions at the contractor's headquarters, other than the CEO; and

(3) If the contractor has intermediate home offices or segments that report directly to the contractor's headquarters, the five most highly compensated employees in



## Subpart 36.5—Contract Clauses

### 36.500 Scope of subpart.

This subpart prescribes clauses for insertion in solicitations and contracts for (a) construction and (b) dismantling, demolition, or removal of improvements contracts. Provisions and clauses prescribed elsewhere in the Federal Acquisition Regulation (FAR) shall also be used in such solicitations and contracts when the conditions specified in the prescriptions for the provisions and clauses are applicable.

### 36.501 Performance of work by the contractor.

(a) To assure adequate interest in and supervision of all work involved in larger projects, the contractor shall be required to perform a significant part of the contract work with its own forces. The contract shall express this requirement in terms of a percentage that reflects the minimum amount of work the contractor must perform with its own forces. This percentage is (1) as high as the contracting officer considers appropriate for the project, consistent with customary or necessary specialty subcontracting and the complexity and magnitude of the work, and (2) ordinarily not less than 12 percent unless a greater percentage is required by law or agency regulation. Specialties such as plumbing, heating, and electrical work are usually subcontracted, and should not normally be considered in establishing the amount of work required to be performed by the contractor.

(b) The contracting officer shall insert the clause at [52.236-1](#), Performance of Work by the Contractor, in solicitations and contracts, except those awarded pursuant to [Subparts 19.5, 19.8, 19.13, 19.14, or 19.15](#) when a fixed-price construction contract is contemplated and the contract amount is expected to exceed \$1.5 million. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction contract is contemplated and the contract amount is expected to be \$1.5 million or less.

### 36.502 Differing site conditions.

The contracting officer shall insert the clause at [52.236-2](#), Differing Site Conditions, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified acquisition threshold.

### 36.503 Site investigation and conditions affecting the work.

The contracting officer shall insert the clause at [52.236-3](#), Site Investigation and Conditions Affecting the Work, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified acquisition threshold.

### 36.504 Physical data.

The contracting officer shall insert the clause at [52.236-4](#), Physical Data, in solicitations and contracts when a fixed-price construction contract is contemplated and physical data (e.g., test borings, hydrographic data, weather conditions data) will be furnished or made available to offerors.

### 36.505 Material and workmanship.

The contracting officer shall insert the clause at [52.236-5](#), Material and Workmanship, in solicitations and contracts for construction contracts.

### 36.506 Superintendence by the contractor.

The contracting officer shall insert the clause at [52.236-6](#), Superintendence by the Contractor, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified acquisition threshold.

### 36.507 Permits and responsibilities.

The contracting officer shall insert the clause at [52.236-7](#), Permits and Responsibilities, in solicitations and contracts when a fixed-price or cost-reimbursement construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated.

### 36.508 Other contracts.

The contracting officer shall insert the clause at [52.236-8](#), Other Contracts, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified

acquisition threshold. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified acquisition threshold.

#### **36.509 Protection of existing vegetation, structures, equipment, utilities, and improvements.**

The contracting officer shall insert the clause at [52.236-9](#), Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified acquisition threshold.

#### **36.510 Operations and storage areas.**

The contracting officer shall insert the clause at [52.236-10](#), Operations and Storage Areas, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified acquisition threshold.

#### **36.511 Use and possession prior to completion.**

The contracting officer shall insert the clause at [52.236-11](#), Use and Possession Prior to Completion, in solicitations and contracts when a fixed-price construction contract is contemplated and the contract award amount is expected to exceed the simplified acquisition threshold. This clause may be inserted in solicitations and contracts when the contract amount is expected to be at or below the simplified acquisition threshold.

#### **36.512 Cleaning up.**

The contracting officer shall insert the clause at [52.236-12](#), Cleaning Up, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in solicitations and contracts when a fixed-price con-

struction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified acquisition threshold.

#### **36.513 Accident prevention.**

(a) The contracting officer shall insert the clause at [52.236-13](#), Accident Prevention, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated and the contract amount is expected to exceed the simplified acquisition threshold. The contracting officer may insert the clause in solicitations and contracts when a fixed-price construction or a fixed-price contract for dismantling, demolition, or removal of improvements is contemplated and the contract amount is expected to be at or below the simplified acquisition threshold. If the contract will involve work of a long duration or hazardous nature, the contracting officer shall use the clause with its Alternate I.

(b) The contracting officer shall insert the clause or the clause with its Alternate I in solicitations and contracts when a contract for services to be performed at Government facilities (see 48 CFR Part 37) is contemplated, and technical representatives advise that special precautions are appropriate.

(c) The contracting officer should inform the Occupational Safety and Health Administration (OSHA), or other cognizant Federal, State, or local officials, of instances where the contractor has been notified to take immediate action to correct serious or imminent dangers.

#### **36.514 Availability and use of utility services.**

The contracting officer shall insert the clause at [52.236-14](#), Availability and Use of Utility Services, in solicitations and contracts when a fixed-price construction contract or a fixed-price dismantling, demolition, or removal of improvements contract is contemplated, the contract is to be performed on Government sites, and the contracting officer decides (a) that the existing utility system(s) is adequate for the needs of both the Government and the contractor, and (b) furnishing it is in the Government's interest. When this clause is used, the contracting officer shall list the available utilities in the contract.

#### **36.515 Schedules for construction contracts.**

The contracting officer may insert the clause at [52.236-15](#), Schedules for Construction Contracts, in solicitations and contracts when a fixed-price construction contract is contemplated, the contract amount is expected to exceed the simplified acquisition threshold, and the period of actual work performance exceeds 60 days. This clause may also be inserted in such solicitations and contracts when work performance is expected to last less than 60 days and an unusual situation exists that warrants imposition of the requirements. This clause should not be used in the same contract with

52.215-20	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data.	52.217-4	Evaluation of Options Exercised at Time of Contract Award.
52.215-21	Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data—Modifications.	52.217-5	Evaluation of Options.
52.215-22	Limitations on Pass-Through Charges—Identification of Subcontract Effort.	52.217-6	Option for Increased Quantity.
52.215-23	Limitations on Pass-Through Charges.	52.217-7	Option for Increased Quantity—Separately Priced Line Item.
52.216-1	Type of Contract.	52.217-8	Option to Extend Services.
52.216-2	Economic Price Adjustment—Standard Supplies.	52.217-9	Option to Extend the Term of the Contract.
52.216-3	Economic Price Adjustment—Semistandard Supplies.	52.218	[Reserved]
52.216-4	Economic Price Adjustment—Labor and Material.	52.219-1	Small Business Program Representations.
52.216-5	Price Redetermination—Prospective.	52.219-2	Equal Low Bids.
52.216-6	Price Redetermination—Retroactive.	52.219-3	Notice of HUBZone Set-Aside or Sole Source Award.
52.216-7	Allowable Cost and Payment.	52.219-4	Notice of Price Evaluation Preference for HUBZone Small Business Concerns.
52.216-8	Fixed Fee.	52.219-5	[Reserved]
52.216-9	Fixed Fee—Construction.	52.219-6	Notice of Total Small Business Set-Aside.
52.216-10	Incentive Fee.	52.219-7	Notice of Partial Small Business Set-Aside.
52.216-11	Cost Contract—No Fee.	52.219-8	Utilization of Small Business Concerns.
52.216-12	Cost-Sharing Contract—No Fee.	52.219-9	Small Business Subcontracting Plan.
52.216-13	[Reserved]	52.219-10	Incentive Subcontracting Program.
52.216-14	[Reserved]	52.219-11	Special 8(a) Contract Conditions.
52.216-15	Predetermined Indirect Cost Rates.	52.219-12	Special 8(a) Subcontract Conditions.
52.216-16	Incentive Price Revision—Firm Target.	52.219-13	Notice of Set-Aside of Orders.
52.216-17	Incentive Price Revision—Successive Targets.	52.219-14	Limitations on Subcontracting.
52.216-18	Ordering.	52.219-15	[Reserved]
52.216-19	Order Limitations.	52.219-16	Liquidated Damages—Subcontracting Plan.
52.216-20	Definite Quantity.	52.219-17	Section 8(a) Award.
52.216-21	Requirements.	52.219-18	Notification of Competition Limited to Eligible 8(a) Concerns.
52.216-22	Indefinite Quantity.	52.219-19	[Reserved]
52.216-23	Execution and Commencement of Work.	52.219-20	[Reserved]
52.216-24	Limitation of Government Liability.	52.219-21	[Reserved]
52.216-25	Contract Definitization.	52.219-22	[Reserved]
52.216-26	Payments of Allowable Costs Before Definitization.	52.219-23	[Reserved]
52.216-27	Single or Multiple Awards.	52.219-24	[Reserved]
52.216-28	Multiple Awards for Advisory and Assistance Services.	52.219-25	[Reserved]
52.216-29	Time-and-Materials/Labor-Hour Proposal Requirements—Non-Commercial Item Acquisition With Adequate Price Competition.	52.219-26	[Reserved]
52.216-30	Time-and-Materials/Labor-Hour Proposal Requirements—Non-Commercial Item Acquisition Without Adequate Price Competition.	52.219-27	Notice of Service-Disabled Veteran-Owned Small Business Set-Aside.
52.216-31	Time-and-Materials/Labor-Hour Proposal Requirements—Commercial Item Acquisition.	52.219-28	Post-Award Small Business Program Rerepresentation.
52.217-1	[Reserved]	52.219-29	Notice of Set-Aside for Economically Disadvantaged Women-Owned Small Business Concerns.
52.217-2	Cancellation Under Multi-year Contracts.	52.219-30	Notice of Set-Aside for Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program.
52.217-3	Evaluation Exclusive of Options.	52.220	[Reserved]
		52.221	[Reserved]
		52.222-1	Notice to the Government of Labor Disputes.
		52.222-2	Payment for Overtime Premiums.
		52.222-3	Convict Labor.

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- 52.222-4 Contract Work Hours and Safety Standards — Overtime Compensation.
  - 52.222-5 Construction Wage Rate Requirements—Secondary Site of the Work.
  - 52.222-6 Construction Wage Rate Requirements.
  - 52.222-7 Withholding of Funds.
  - 52.222-8 Payrolls and Basic Records.
  - 52.222-9 Apprentices and Trainees.
  - 52.222-10 Compliance with Copeland Act Requirements.
  - 52.222-11 Subcontracts (Labor Standards).
  - 52.222-12 Contract Termination—Debarment.
  - 52.222-13 Compliance with Construction Wage Rate Requirements and Related Regulations.
  - 52.222-14 Disputes Concerning Labor Standards.
  - 52.222-15 Certification of Eligibility.
  - 52.222-16 Approval of Wage Rates.
  - 52.222-17 Nondisplacement of Qualified Workers.
  - 52.222-18 Certification Regarding Knowledge of Child Labor for Listed End Products.
  - 52.222-19 Child Labor—Cooperation with Authorities and Remedies.
  - 52.222-20 Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000.
  - 52.222-21 Prohibition of Segregated Facilities.
  - 52.222-22 Previous Contracts and Compliance Reports.
  - 52.222-23 Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity for Construction.
  - 52.222-24 Preaward On-Site Equal Opportunity Compliance Evaluation.
  - 52.222-25 Affirmative Action Compliance.
  - 52.222-26 Equal Opportunity.
  - 52.222-27 Affirmative Action Compliance Requirements for Construction.
  - 52.222-28 [Reserved]
  - 52.222-29 Notification of Visa Denial.
  - 52.222-30 Construction Wage Rate Requirements—Price Adjustment (None or Separately Specified Method).
  - 52.222-31 Construction Wage Rate Requirements—Price Adjustment (Percentage Method).
  - 52.222-32 Construction Wage Rate Requirements—Price Adjustment (Actual Method).
  - 52.222-33 Notice of Requirement for Project Labor Agreement.
  - 52.222-34 Project Labor Agreement.
  - 52.222-35 Equal Opportunity for Veterans.
  - 52.222-36 Equal Opportunity for Workers with Disabilities.
  - 52.222-37 Employment Reports on Veterans.
  - 52.222-38 Compliance with Veterans’ Employment Reporting Requirements.
  - 52.222-39 [Reserved]
  - 52.222-40 Notification of Employee Rights Under the National Labor Relations Act.
  - 52.222-41 Service Contract Labor Standards.
  - 52.222-42 Statement of Equivalent Rates for Federal Hires.
  - 52.222-43 Fair Labor Standards Act and Service Contract Labor Standards—Price Adjustment (Multiple Year and Option Contracts).
  - 52.222-44 Fair Labor Standards Act and Service Contract Labor Standards—Price Adjustment.
  - 52.222-45 [Reserved]
  - 52.222-46 Evaluation of Compensation for Professional Employees.
  - 52.222-47 [Reserved]
  - 52.222-48 Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Certification.
  - 52.222-49 Service Contract Labor Standards—Place of Performance Unknown.
  - 52.222-50 Combating Trafficking in Persons.
  - 52.222-51 Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements.
  - 52.222-52 Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Certification.
  - 52.222-53 Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Requirements.
  - 52.222-54 Employment Eligibility Verification.
  - 52.223-1 Biobased Product Certification.
  - 52.223-2 Affirmative Procurement of Biobased Products Under Service and Construction Contracts.
  - 52.223-3 Hazardous Material Identification and Material Safety Data.
  - 52.223-4 Recovered Material Certification.
  - 52.223-5 Pollution Prevention and Right-to-Know Information.
  - 52.223-6 Drug-Free Workplace.
  - 52.223-7 Notice of Radioactive Materials.
  - 52.223-8 [Reserved]
  - 52.223-9 Estimate of Percentage of Recovered Material Content for EPA-Designated Items.
  - 52.223-10 Waste Reduction Program.
  - 52.223-11 Ozone-Depleting Substances.
  - 52.223-12 Refrigeration Equipment and Air Conditioners.
  - 52.223-13 Acquisition of EPEAT®—Registered Imaging Equipment.
  - 52.223-14 Acquisition of EPEAT®-Registered Televisions.

commerce methods to submit information or data to the Government.

(End of clause)

**52.204-5 Women-Owned Business (Other Than Small Business).**

As prescribed in [4.607\(a\)](#), insert the following provision:

WOMEN-OWNED BUSINESS (OTHER THAN SMALL BUSINESS) (OCT 2014)

(a) *Definition.* “Women-owned business concern,” as used in this provision, means a concern that is at least 51 percent owned by one or more women; or in the case of any publicly owned business, at least 51 percent of its stock is owned by one or more women; and whose management and daily business operations are controlled by one or more women.

(b) *Representation.* [Complete only if the offeror is a women-owned business concern and has not represented itself as a small business concern in paragraph (c)(1) of FAR [52.219-1](#), *Small Business Program Representations, of this solicitation.*] The offeror represents that it  is a women-owned business concern.

(End of provision)

**52.204-6 Data Universal Numbering System Number.**

As prescribed in [4.607\(b\)](#), insert the following provision:

DATA UNIVERSAL NUMBERING SYSTEM NUMBER (JUL 2013)

(a) *Definition.* “Data Universal Numbering System (DUNS) number”, as used in this provision, 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.

(b) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “DUNS” or “DUNS+4” followed by the DUNS number or “DUNS+4” that identifies the offeror’s name and address exactly as stated in the offer. The DUNS number is a nine-digit number assigned by Dun and Bradstreet, Inc. The DUNS+4 is the DUNS number plus a 4-character suffix that may be assigned at the discretion of the offeror to establish additional System for Award Management records for identifying alternative Electronic Funds Transfer (EFT) accounts (see [subpart 32.11](#)) for the same concern.

(c) If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An offeror may obtain a DUNS number—

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

(ii) If located outside the United States, by contacting the local Dun and Bradstreet office. The offeror should indicate that it is an offeror for a U.S. Government contract when contacting the local Dun and Bradstreet office.

(2) The offeror should be prepared to provide the following information:

(i) Company legal business name.

(ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.

(iii) Company physical street address, city, state and ZIP Code.

(iv) Company mailing address, city, state and ZIP Code (if separate from physical).

(v) Company telephone number.

(vi) Date the company was started.

(vii) Number of employees at your location.

(viii) Chief executive officer/key manager.

(ix) Line of business (industry).

(x) Company Headquarters name and address (reporting relationship within your entity).

(End of provision)

**52.204-7 System for Award Management.**

As prescribed in [4.1105\(a\)\(1\)](#), use the following provision:

SYSTEM FOR AWARD MANAGEMENT (JUL 2013)

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

“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 System for Award Management 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 offeror 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 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”.

(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 “DUNS” or “DUNS +4” followed by the DUNS or DUNS +4 number that identifies the offeror’s name and address exactly as stated in the offer. The DUNS number 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 DUNS number, it should contact Dun and Bradstreet directly to obtain one.

(1) An offeror may obtain a DUNS number—

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

(ii) If located outside the United States, by contacting the local Dun and Bradstreet office. The offeror should indicate that it is an offeror for a U.S. Government contract when contacting the local Dun and Bradstreet office.

(2) The offeror should be prepared to provide the following information:

(i) Company legal business.

(ii) Tradestyle, doing business, or other name by which your entity is commonly recognized.

(iii) Company Physical Street Address, City, State, and ZIP Code.

(iv) Company Mailing Address, City, State and ZIP Code (if separate from physical).

(v) Company Telephone Number.

(vi) Date the company was started.

(vii) Number of employees at your location.

(viii) Chief executive officer/key manager.

(ix) Line of business (industry).

(x) Company Headquarters name and address (reporting relationship within your entity).

(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>.

(End of clause)

*Alternate I (Jul 2013).* As prescribed in [4.1105\(a\)\(2\)](#), substitute the following paragraph (b)(1) for paragraph (b)(1) of the basic provision:

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the System for Award Management 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. If registration prior to award is not possible, the awardee shall be registered in the System for Award Management within 30 days after award or before three days prior to submission of the first invoice, whichever occurs first.

**52.204-8 Annual Representations and Certifications.**

As prescribed in [4.1202](#), insert the following provision:

ANNUAL REPRESENTATIONS AND CERTIFICATIONS (OCT 2014)

(a)(1) The North American Industry Classification System (NAICS) code for this acquisition is \_\_\_\_\_  
[insert NAICS code].

(2) The small business size standard is \_\_\_\_\_  
[insert size standard].

(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.

(b)(1) If the provision at [52.204-7](#), System for Award Management, is included in this solicitation, paragraph (d) of this provision applies.

(2) If the provision at [52.204-7](#) is not included in this solicitation, and the offeror is currently registered in the System for Award Management (SAM), and has completed the Representations and Certifications section of SAM electronically, the offeror may choose to use paragraph (d) of this provision instead of completing the corresponding individual representations and certifications in the solicitation. The offeror shall indicate which option applies by checking one of the following boxes:

(i) Paragraph (d) applies.

(ii) Paragraph (d) does not apply and the offeror has completed the individual representations and certifications in the solicitation.

(c)(1) The following representations or certifications in SAM are applicable to this solicitation as indicated:

(i) [52.203-2](#), Certificate of Independent Price Determination. This provision applies to solicitations when a firm-

fixed-price contract or fixed-price contract with economic price adjustment is contemplated, unless—

(A) The acquisition is to be made under the simplified acquisition procedures in [Part 13](#);

(B) The solicitation is a request for technical proposals under two-step sealed bidding procedures; or

(C) The solicitation is for utility services for which rates are set by law or regulation.

(ii) [52.203-11](#), Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions. This provision applies to solicitations expected to exceed \$150,000.

(iii) [52.204-3](#), Taxpayer Identification. This provision applies to solicitations that do not include the provision at [52.204-7](#), System for Award Management.

(iv) [52.204-5](#), Women-Owned Business (Other Than Small Business). This provision applies to solicitations that—

(A) Are not set aside for small business concerns;

(B) Exceed the simplified acquisition threshold;

and

(C) Are for contracts that will be performed in the United States or its outlying areas.

(v) [52.209-2](#), Prohibition on Contracting with Inverted Domestic Corporations—Representation. This provision applies to solicitations using funds appropriated in fiscal years 2008, 2009, 2010, or 2012.

(vi) [52.209-5](#), Certification Regarding Responsibility Matters. This provision applies to solicitations where the contract value is expected to exceed the simplified acquisition threshold.

(vii) [52.214-14](#), Place of Performance—Sealed Bidding. This provision applies to invitations for bids except those in which the place of performance is specified by the Government.

(viii) [52.215-6](#), Place of Performance. This provision applies to solicitations unless the place of performance is specified by the Government.

(ix) [52.219-1](#), Small Business Program Representations (Basic & Alternate I). This provision applies to solicitations when the contract will be performed in the United States or its outlying areas.

(A) The basic provision applies when the solicitations are issued by other than DoD, NASA, and the Coast Guard.

(B) The provision with its Alternate I applies to solicitations issued by DoD, NASA, or the Coast Guard.

(x) [52.219-2](#), Equal Low Bids. This provision applies to solicitations when contracting by sealed bidding and the contract will be performed in the United States or its outlying areas.

(xi) [52.222-22](#), Previous Contracts and Compliance Reports. This provision applies to solicitations that include the clause at [52.222-26](#), Equal Opportunity.

(xii) [52.222-25](#), Affirmative Action Compliance. This provision applies to solicitations, other than those for construction, when the solicitation includes the clause at [52.222-26](#), Equal Opportunity.

(xiii) [52.222-38](#), Compliance with Veterans' Employment Reporting Requirements. This provision applies to solicitations when it is anticipated the contract award will exceed the simplified acquisition threshold and the contract is not for acquisition of commercial items.

(xiv) [52.223-1](#), Biobased Product Certification. This provision applies to solicitations that require the delivery or specify the use of USDA–designated items; or include the clause at [52.223-2](#), Affirmative Procurement of Biobased Products Under Service and Construction Contracts.

(xv) [52.223-4](#), Recovered Material Certification. This provision applies to solicitations that are for, or specify the use of, EPA–designated items.

(xvi) [52.225-2](#), Buy American Certificate. This provision applies to solicitations containing the clause at [52.225-1](#).

(xvii) [52.225-4](#), Buy American—Free Trade Agreements—Israeli Trade Act Certificate. (Basic, Alternates I, II, and III.) This provision applies to solicitations containing the clause at [52.225-3](#).

(A) If the acquisition value is less than \$25,000, the basic provision applies.

(B) If the acquisition value is \$25,000 or more but is less than \$50,000, the provision with its Alternate I applies.

(C) If the acquisition value is \$50,000 or more but is less than \$79,507, the provision with its Alternate II applies.

(D) If the acquisition value is \$79,507 or more but is less than \$100,000, the provision with its Alternate III applies.

(xviii) [52.225-6](#), Trade Agreements Certificate. This provision applies to solicitations containing the clause at [52.225-5](#).

(xix) [52.225-20](#), Prohibition on Conducting Restricted Business Operations in Sudan—Certification. This provision applies to all solicitations.

(xx) [52.225-25](#), Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran-Representation and Certifications. This provision applies to all solicitations.

(xxi) [52.226-2](#), Historically Black College or University and Minority Institution Representation. This provision applies to solicitations for research, studies, supplies, or services of the type normally acquired from higher educational institutions.

(2) The following certifications are applicable as indicated by the Contracting Officer:

*[Contracting Officer check as appropriate.]*

(i) [52.222-18](#), Certification Regarding Knowledge of Child Labor for Listed End Products.

\_\_ (ii) [52.222-48](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment- Certification.

\_\_ (iii) [52.222-52](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Certification.

\_\_ (iv) [52.223-9](#), with its Alternate I, Estimate of Percentage of Recovered Material Content for EPA–Designated Products (Alternate I only).

\_\_ (v) [52.227-6](#), Royalty Information.

\_\_ (A) Basic.

\_\_ (B) Alternate I.

\_\_ (vi) [52.227-15](#), Representation of Limited Rights Data and Restricted Computer Software.

(d) 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 the offer that the representations and certifications currently posted electronically that apply to this solicitation as indicated in paragraph (c) of this provision have been entered or updated within 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 the changes identified below [*offeror to insert changes, identifying change by clause number, title, date*]. 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.

FAR CLAUSE #	TITLE	DATE	CHANGE
_____	_____	_____	_____

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 on SAM.

(End of provision)

**52.204-9 Personal Identity Verification of Contractor Personnel.**

As prescribed in [4.1303](#), insert the following clause:

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 this 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.

(End of clause)

**52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards.**

As prescribed in [4.1403\(a\)](#), insert the following clause:

REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS (JUL 2013)

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

“Executive” means officers, managing partners, or any other employees in management positions.

“First-tier subcontract” means a subcontract awarded directly by the Contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the Contractor’s supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts and/or the costs of which are normally applied to a Contractor’s general and administrative expenses or indirect costs.

“Months of award” means the month in which a contract is signed by the Contracting Officer or the month in which a first-tier subcontract is signed by the Contractor.

“Total compensation” means the cash and noncash dollar value earned by the executive during the Contractor’s preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

(1) *Salary and bonus.*

(2) *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Financial Accounting Standards Board’s



Accounting Standards Codification (FASB ASC) 718, Compensation-Stock Compensation.

(3) *Earnings for services under non-equity incentive plans.* This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

(4) *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.

(5) *Above-market earnings on deferred compensation which is not tax-qualified.*

(6) Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

(b) Section 2(d)(2) of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110-252), requires the Contractor to report information on subcontract awards. The law requires all reported information be made public, therefore, the Contractor is responsible for notifying its subcontractors that the required information will be made public.

(c) Nothing in this clause requires the disclosure of classified information

(d)(1) *Executive compensation of the prime contractor.* As a part of its annual registration requirement in the System for Award Management (SAM) database (FAR provision [52.204-7](#)), the Contractor shall report the names and total compensation of each of the five most highly compensated executives for its preceding completed fiscal year, if—

(i) In the Contractor's preceding fiscal year, the Contractor received—

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

(B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 ([15 U.S.C. 78m\(a\), 78o\(d\)](#)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

(2) *First-tier subcontract information.* Unless otherwise directed by the contracting officer, or as provided in paragraph (h) of this clause, by the end of the month following the month of award of a first-tier subcontract with a value of

\$25,000 or more, the Contractor shall report the following information at <http://www.fsrs.gov> for that first-tier subcontract. (The Contractor shall follow the instructions at <http://www.fsrs.gov> to report the data.)

(i) Unique identifier (DUNS Number) for the subcontractor receiving the award and for the subcontractor's parent company, if the subcontractor has a parent company.

(ii) Name of the subcontractor.

(iii) Amount of the subcontract award.

(iv) Date of the subcontract award.

(v) A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.

(vi) Subcontract number (the subcontract number assigned by the Contractor).

(vii) Subcontractor's physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district.

(viii) Subcontractor's primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district.

(ix) The prime contract number, and order number if applicable.

(x) Awarding agency name and code.

(xi) Funding agency name and code.

(xii) Government contracting office code.

(xiii) Treasury account symbol (TAS) as reported in FPDS.

(xiv) The applicable North American Industry Classification System code (NAICS).

(3) *Executive compensation of the first-tier subcontractor.* Unless otherwise directed by the Contracting Officer, by the end of the month following the month of award of a first-tier subcontract with a value of \$25,000 or more, and annually thereafter (calculated from the prime contract award date), the Contractor shall report the names and total compensation of each of the five most highly compensated executives for that first-tier subcontractor for the first-tier subcontractor's preceding completed fiscal year at <http://www.fsrs.gov>, if—

(i) In the subcontractor's preceding fiscal year, the subcontractor received—

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

(B) \$25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

(ii) The public does not have access to information about the compensation of the executives through periodic

reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

(e) The Contractor shall not split or break down first-tier subcontract awards to a value less than \$25,000 to avoid the reporting requirements in paragraph (d).

(f) The Contractor is required to report information on a first-tier subcontract covered by paragraph (d) when the subcontract is awarded. Continued reporting on the same subcontract is not required unless one of the reported data elements changes during the performance of the subcontract. The Contractor is not required to make further reports after the first-tier subcontract expires.

(g)(1) If the Contractor in the previous tax year had gross income, from all sources, under \$300,000, the Contractor is exempt from the requirement to report subcontractor awards.

(2) If a subcontractor in the previous tax year had gross income from all sources under \$300,000, the Contractor does not need to report awards for that subcontractor.

(h) The FSRS database at <http://www.fsrs.gov> will be pre-populated with some information from SAM and FPDS databases. If FPDS information is incorrect, the contractor should notify the contracting officer. If the SAM database information is incorrect, the contractor is responsible for correcting this information.

(End of clause)

#### 52.204-11 [Reserved]

#### 52.204-12 Data Universal Numbering System Number Maintenance.

As prescribed in [4.607\(c\)](#), insert the following clause:

DATA UNIVERSAL NUMBERING SYSTEM NUMBER  
MAINTENANCE (DEC 2012)

(a) *Definition.* “Data Universal Numbering System (DUNS) number,” as used in this clause, 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.

(b) 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—

(1) 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

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

(End of clause)

#### 52.204-13 System for Award Management Maintenance.

As prescribed in [4.1105\(b\)](#), use the following clause:

SYSTEM FOR AWARD MANAGEMENT MAINTENANCE.

(JUL 2013)

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

“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 4.14](#); 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 the 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>.

(End of clause)

#### 52.204-14 Service Contract Reporting Requirements.

As prescribed in 4.1705(a), insert the following clause:

SERVICE CONTRACT REPORTING REQUIREMENTS (JAN 2014)

(a) Definition.

"First-tier subcontract" means a subcontract awarded directly by the Contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the Contractor's supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts and/or the costs of which are normally applied to a Contractor's general and administrative expenses or indirect costs.

(b) The Contractor shall report, in accordance with paragraphs (c) and (d) of this clause, annually by October 31, for services performed under this contract during the preceding Government fiscal year (October 1-September 30).

(c) The Contractor shall report the following information:

(1) Contract number and, as applicable, order number.

(2) The total dollar amount invoiced for services performed during the previous Government fiscal year under the contract.

(3) The number of Contractor direct labor hours expended on the services performed during the previous Government fiscal year.

(4) Data reported by subcontractors under paragraph (f) of this clause.

(d) The information required in paragraph (c) of this clause shall be submitted via the internet at [www.sam.gov](http://www.sam.gov). (See SAM User Guide). If the Contractor fails to submit the report in a timely manner, the contracting officer will exercise appropriate contractual remedies. In addition, the Contracting Officer will make the Contractor's failure to comply with the reporting requirements a part of the Contractor's performance information under FAR subpart 42.15.

(e) Agencies will review Contractor reported information for reasonableness and consistency with available contract information. In the event the agency believes that revisions to the Contractor reported information are warranted, the

agency will notify the Contractor no later than November 15. By November 30, the Contractor shall revise the report, or document its rationale for the agency.

(f)(1) The Contractor shall require each first-tier subcontractor providing services under this contract, with subcontract(s) each valued at or above the thresholds set forth in [4.1703\(a\)\(2\)](#), to provide the following detailed information to the Contractor in sufficient time to submit the report:

(i) Subcontract number (including subcontractor name and DUNS number); and

(ii) The number of first-tier subcontractor direct-labor hours expended on the services performed during the previous Government fiscal year.

(2) The Contractor shall advise the subcontractor that the information will be made available to the public as required by section 743 of Division C of the Consolidated Appropriations Act, 2010.

(End of clause)

#### **52.204-15 Service Contract Reporting Requirements for Indefinite-Delivery Contracts.**

As prescribed in [4.1705\(b\)](#), insert the following clause:

##### SERVICE CONTRACT REPORTING REQUIREMENTS FOR INDEFINITE-DELIVERY CONTRACTS (JAN 2014)

(a) Definitions.

“First-tier subcontract” means a subcontract awarded directly by the Contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the Contractor’s supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts and/or the costs of which are normally applied to a Contractor’s general and administrative expenses or indirect costs.

(b) The Contractor shall report, in accordance with paragraphs (c) and (d) of this clause, annually by October 31, for services performed during the preceding Government fiscal year (October 1-September 30) under this contract for orders that exceed the thresholds established in [4.1703\(a\)\(2\)](#).

(c) The Contractor shall report the following information:

(1) Contract number and order number.

(2) The total dollar amount invoiced for services performed during the previous Government fiscal year under the order.

(3) The number of Contractor direct labor hours expended on the services performed during the previous Government fiscal year.

(4) Data reported by subcontractors under paragraph (f) of this clause.

(d) The information required in paragraph (c) of this clause shall be submitted via the internet at [www.sam.gov](http://www.sam.gov). (See SAM User Guide). If the Contractor fails to submit the report in a timely manner, the Contracting Officer will exercise appropriate contractual remedies. In addition, the Contracting Officer will make the Contractor’s failure to comply with the reporting requirements a part of the Contractor’s performance information under FAR [subpart 42.15](#).

(e) Agencies will review Contractor reported information for reasonableness and consistency with available contract information. In the event the agency believes that revisions to the Contractor reported information are warranted, the agency will notify the Contractor no later than November 15. By November 30, the Contractor shall revise the report, or document its rationale for the agency.

(f)(1) The Contractor shall require each first-tier subcontractor providing services under this contract, with subcontract(s) each valued at or above the thresholds set forth in [4.1703\(a\)\(2\)](#), to provide the following detailed information to the Contractor in sufficient time to submit the report:

(i) Subcontract number (including subcontractor name and DUNS number), and

(ii) The number of first-tier subcontractor direct-labor hours expended on the services performed during the previous Government fiscal year.

(2) The Contractor shall advise the subcontractor that the information will be made available to the public as required by section 743 of Division C of the Consolidated Appropriations Act, 2010.

(End of clause)

**52.205 [Reserved]**

**52.206 [Reserved]**

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

(1) The agency’s evaluation of the significant weak or deficient factors in the debriefed offeror’s offer.

(2) The overall evaluated cost or price and technical rating of the successful and the debriefed offeror and past performance information on the debriefed offeror.

(3) The overall ranking of all offerors, when any ranking was developed by the agency during source selection.

(4) A summary of the rationale for award;

(5) For acquisitions of commercial items, the make and model of the item to be delivered by the successful offeror.

(6) Reasonable responses to relevant questions posed by the debriefed offeror as to whether source-selection procedures set forth in the solicitation, applicable regulations, and other applicable authorities were followed by the agency.

(End of provision)

**52.212-2 Evaluation—Commercial Items.**

As prescribed in 12.301(c), the Contracting Officer may insert a provision substantially as follows:

EVALUATION—COMMERCIAL ITEMS (OCT 2014)

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

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

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

(b) *Options.* The Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are significantly unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(c) A written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer’s specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award.

(End of provision)

**52.212-3 Offeror Representations and Certifications—**

**Commercial Items.**

As prescribed in 12.301(b)(2), insert the following provision:

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—  
COMMERCIAL ITEMS (OCT 2014)

An offeror shall complete only paragraph (b) of this provision if the offeror has completed the annual representations and certifications electronically via <http://www.acquisition.gov>. If an offeror has not completed the annual representations and certifications electronically at the System for Award Management (SAM) website, the offeror shall complete only paragraphs (c) through (o) of this provision.

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

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

“Forced or indentured child labor” means all work or service—

(1) Exacted from any person under the age of 18 under the menace of any penalty for its nonperformance and for which the worker does not offer himself voluntarily; or

(2) Performed by any person under the age of 18 pursuant to a contract the enforcement of which can be accomplished by process or penalties.

“Inverted domestic corporation”, as used in this section, means a foreign incorporated entity which is treated as an inverted domestic corporation under 6 U.S.C. 395(b), *i.e.*, a corporation that used to be incorporated in the United States, or used to be a partnership in the United States, but now is incorporated in a foreign country, or is a subsidiary whose parent corporation is incorporated in a foreign country, that

meets the criteria specified in [6 U.S.C. 395\(b\)](#), applied in accordance with the rules and definitions of [6 U.S.C. 395\(c\)](#). An inverted domestic corporation as herein defined does not meet the definition of an inverted domestic corporation as defined by the Internal Revenue Code at [26 U.S.C. 7874](#).

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

- (1) FSC 5510, Lumber and Related Basic Wood Materials;
- (2) Federal Supply Group (FSG) 87, Agricultural Supplies;
- (3) FSG 88, Live Animals;
- (4) FSG 89, Food and Related Consumables;
- (5) FSC 9410, Crude Grades of Plant Materials;
- (6) FSC 9430, Miscellaneous Crude Animal Products, Inedible;
- (7) FSC 9440, Miscellaneous Crude Agricultural and Forestry Products;
- (8) FSC 9610, Ores;
- (9) FSC 9620, Minerals, Natural and Synthetic; and
- (10) FSC 9630, Additive Metal Materials.

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

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

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

“Sensitive technology”—

(1) Means hardware, software, telecommunications equipment, or any other technology that is to be used specifically—

(i) To restrict the free flow of unbiased information in Iran; or

(ii) To disrupt, monitor, or otherwise restrict speech of the people of Iran; and

(2) Does not include information or informational materials the export of which the President does not have the authority to regulate or prohibit pursuant to section 203(b)(3) of the International Emergency Economic Powers Act ([50 U.S.C. 1702\(b\)\(3\)](#)).

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

(1) Means a small business concern—

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

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

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

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

“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.

“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 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.

(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 <http://www.acquisition.gov>. After reviewing the SAM database information, the offeror verifies by submission of this offer that the representations and certifications currently posted electronically at FAR 52.212-3, Offeror Representations and Certifications—Commercial Items, have been entered or updated in the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR [4.1201](#)), except for paragraphs \_\_\_\_\_.

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

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

*Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted electronically on SAM.]*

(c) Offerors must complete the following representations when the resulting contract will 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.

(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.

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

(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 prod-



ucts manufactured in the United States that do not qualify as domestic end products, *i.e.*, an end product that is not a COTS item and does not meet the component test in paragraph (2) of the definition of “domestic end product.” The terms “commercially available off-the-shelf (COTS) item” “component,” “domestic end product,” “end product,” “foreign end product,” and “United States” are defined in the clause of this solicitation entitled “Buy American—Supplies.”

(2) Foreign End Products:

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

[List as necessary]

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

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

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

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

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

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

[List as necessary]

(iii) The offeror shall list those supplies that are foreign end products (other than those listed in

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

Other Foreign End Products:

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

[List as necessary]

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

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

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

Canadian End Products:

Line Item No.

_____
_____
_____

[List as necessary]

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

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

Canadian or Israeli End Products:

Line Item No. Country of Origin

_____	_____
_____	_____
_____	_____

[List as necessary]

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

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

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

Line Item No.	Country of Origin
_____	_____
_____	_____
_____	_____

[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;

(3)  Are,  are not presently indicted for, or otherwise criminally or civilly charged by a Government entity with, commission of any of these offenses enumerated in paragraph (h)(2) of this clause; and

(4)  Have,  have not, within a three-year period preceding this offer, been notified of any delinquent Federal taxes in an amount that exceeds \$3,000 for which the liability remains unsatisfied.

(i) Taxes are considered delinquent if both of the following criteria apply:

(A) *The tax liability is finally determined.* The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(B) *The taxpayer is delinquent in making payment.* A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(ii) *Examples.* (A) The taxpayer has received a statutory notice of deficiency, under I.R.C. §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 products.*

Listed End Product	Listed Countries of Origin
_____	_____
_____	_____

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

(i) The offeror will not supply any end product listed in paragraph (i)(1) of this provision that was mined, produced, or manufactured in the corresponding country as listed for that product.

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

(j) *Place of manufacture.* (Does not apply unless the solicitation is predominantly for the acquisition of manufactured end products.) For statistical purposes only, the offeror shall indicate whether the place of manufacture of the end products it expects to provide in response to this solicitation is predominantly—

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

(2)  Outside the United States.

(k) *Certificates regarding exemptions from the application of the Service Contract Labor Standards*(Certification by the offeror as to its compliance with respect to the contract also constitutes its certification as to compliance by its subcontractor if it subcontracts out the exempt services.) [*The contracting officer is to check a box to indicate if paragraph (k)(1) or (k)(2) applies.*]

(1) Maintenance, calibration, or repair of certain equipment as described in FAR [22.1003-4\(c\)\(1\)](#). The offeror  does  does not certify that—

(i) The items of equipment to be serviced under this contract are used regularly for other than Governmental pur-

poses and are sold or traded by the offeror (or subcontractor in the case of an exempt subcontract) in substantial quantities to the general public in the course of normal business operations;

(ii) The services will be furnished at prices which are, or are based on, established catalog or market prices (see FAR [22.1003-4\(c\)\(2\)\(ii\)](#)) for the maintenance, calibration, or repair of such equipment; and

(iii) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract will be the same as that used for these employees and equivalent employees servicing the same equipment of commercial customers.

(2) Certain services as described in FAR [22.1003-4\(d\)\(1\)](#). The offeror  does  does not certify that—

(i) The services under the contract are offered and sold regularly to non-Governmental customers, and are provided by the offeror (or subcontractor in the case of an exempt subcontract) to the general public in substantial quantities in the course of normal business operations;

(ii) The contract services will be furnished at prices that are, or are based on, established catalog or market prices (see FAR [22.1003-4\(d\)\(2\)\(iii\)](#));

(iii) Each service employee who will perform the services under the contract will spend only a small portion of his or her time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the Government contract; and

(iv) The compensation (wage and fringe benefits) plan for all service employees performing work under the contract is the same as that used for these employees and equivalent employees servicing commercial customers.

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

(i) If the offeror does not certify to the conditions in paragraph (k)(1) or (k)(2) and the Contracting Officer did not attach a Service Contract Labor Standards wage determination to the solicitation, the offeror shall notify the Contracting Officer as soon as possible; and

(ii) The Contracting Officer may not make an award to the offeror if the offeror fails to execute the certification in paragraph (k)(1) or (k)(2) of this clause or to contact the Contracting Officer as required in paragraph (k)(3)(i) of this clause.

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

(1) All offerors must submit the information required in paragraphs (l)(3) through (l)(5) of this provision to comply with debt collection requirements of [31 U.S.C. 7701\(c\) and 3325\(d\)](#), reporting requirements of [26 U.S.C. 6041, 6041A, and 6050M](#), and implementing regulations issued by the Internal Revenue Service (IRS).

(2) The TIN may be used by the Government to collect and report on any delinquent amounts arising out of the offeror's relationship with the Government ([31 U.S.C. 7701\(c\)\(3\)](#)). If the resulting contract is subject to the payment reporting requirements described in FAR [4.904](#), the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror's TIN.

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

- TIN: \_\_\_\_\_.
- TIN has been applied for.
- TIN is not required because:
- Offeror is a nonresident alien, foreign corporation, or foreign partnership that does not have income effectively connected with the conduct of a trade or business in the United States and does not have an office or place of business or a fiscal paying agent in the United States;
- Offeror is an agency or instrumentality of a foreign government;
- Offeror is an agency or instrumentality of the Federal Government.

(4) *Type of organization.*

- Sole proprietorship;
- Partnership;
- Corporate entity (not tax-exempt);
- Corporate entity (tax-exempt);
- Government entity (Federal, State, or local);
- Foreign government;
- International organization per 26 CFR 1.6049-4;
- Other \_\_\_\_\_.

(5) *Common parent.*

- Offeror is not owned or controlled by a common parent;
- Name and TIN of common parent:  
Name \_\_\_\_\_  
TIN \_\_\_\_\_.

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

(n) *Prohibition on Contracting with Inverted Domestic Corporations.*(1) *Relation to Internal Revenue Code.* An inverted domestic corporation as herein defined does not meet the definition of an inverted domestic corporation as defined by the Internal Revenue Code [25 U.S.C. 7874](#).

(2) *Representation.* By submission of its offer, the offeror represents that—

- (i) It is not an inverted domestic corporation; and
- (ii) It is not a subsidiary of an inverted domestic corporation.

(o) *Prohibition on contracting with entities engaging in certain activities or transactions relating to Iran.* (1) The offeror shall e-mail questions concerning sensitive technology to the Department of State at [CISADA106@state.gov](mailto:CISADA106@state.gov).

(2) *Representation and Certifications.* Unless a waiver is granted or an exception applies as provided in paragraph (o)(3) of this provision, by submission of its offer, the offeror—

(i) Represents, to the best of its knowledge and belief, that the offeror does not export any sensitive technology to the government of Iran or any entities or individuals owned or controlled by, or acting on behalf or at the direction of, the government of Iran;

(ii) Certifies that the offeror, or any person owned or controlled by the offeror, does not engage in any activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act; and

(iii) Certifies that the offeror, and any person owned or controlled by the offeror, does not knowingly engage in any transaction that exceeds \$3,000 with Iran's Revolutionary Guard Corps or any of its officials, agents, or affiliates, the property and interests in property of which are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (see OFAC's Specially Designated Nationals and Blocked Persons List at <http://www.treasury.gov/ofac/downloads/t11sdsn.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.

*(End of provision)*

*Alternate I (Oct 2014).* As prescribed in [12.301\(b\)\(2\)](#), add the following paragraph (c)(11) to the basic provision:

(11) (Complete if the offeror has represented itself as disadvantaged in paragraph (c)(4) of this provision.)

\_\_\_\_\_ 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.

**52.212-4 Contract Terms and Conditions—Commercial Items.**

As prescribed in [12.301\(b\)\(3\)](#), insert the following clause:

CONTRACT TERMS AND CONDITIONS—COMMERCIAL  
ITEMS (MAY 2014)

(a) *Inspection/Acceptance.* The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights—

(1) Within a reasonable time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) *Assignment.* The Contractor or its assignee may assign 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.* Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) *Disputes.* This contract is subject to [41 U.S.C. chapter 71](#), Contract Disputes. Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR [52.233-1](#), Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) *Definitions.* The clause at FAR [52.202-1](#), Definitions, is incorporated herein by reference.

(f) *Excusable delays.* The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occur-

rence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) *Invoice.*(1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include—

(i) Name and address of the Contractor;

(ii) Invoice date and number;

(iii) Contract number, contract line item number and, if applicable, the order number;

(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;

(v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;

(vi) Terms of any discount for prompt payment offered;

(vii) Name and address of official to whom payment is to be sent;

(viii) Name, title, and phone number of person to notify in event of defective invoice; and

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (*e.g.*, [52.232-33](#), Payment by Electronic Funds Transfer—System for Award Management, or [52.232-34](#), Payment by Electronic Funds Transfer—Other Than System for Award Management), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act ([31 U.S.C. 3903](#)) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR Part 1315.

(h) *Patent indemnity.* The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) *Payment.*—(1) *Items accepted.* Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act

([31 U.S.C. 3903](#)) and prompt payment regulations at 5 CFR Part 1315.

(3) *Electronic Funds Transfer (EFT)*. If the Government makes payment by EFT, see [52.212-5\(b\)](#) for the appropriate EFT clause.

(4) *Discount*. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) *Overpayments*. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(A) Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected contract line item or subline item, if applicable; and

(D) Contractor point of contact.

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

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

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

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

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

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

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

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

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

(A) The date fixed under this contract.

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

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

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

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

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

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

(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 FAR [Subpart 42.12](#), the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to (A) change the name in the SAM database; (B) comply with the requirements of [Subpart 42.12](#); and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

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

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

(4) Offerors and Contractors may obtain information on registration and annual confirmation requirements via SAM 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 User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

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

(ii) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar

legal instrument or agreement is invoked through an “I agree” click box or other comparable mechanism (e.g., “click-wrap” or “browse-wrap” agreements), execution does not bind the Government or any Government authorized end user to such clause.

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

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

(End of clause)

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

(a) *Inspection/Acceptance.* (1) The Government has the right to inspect and test all materials furnished and services performed under this contract, to the extent practicable at all places and times, including the period of performance, and in any event before acceptance. The Government may also inspect the plant or plants of the Contractor or any subcontractor engaged in contract performance. The Government will perform inspections and tests in a manner that will not unduly delay the work.

(2) If the Government performs inspection or tests on the premises of the Contractor or a subcontractor, the Contractor shall furnish and shall require subcontractors to furnish all reasonable facilities and assistance for the safe and convenient performance of these duties.

(3) Unless otherwise specified in the contract, the Government will accept or reject services and materials at the place of delivery as promptly as practicable after delivery, and they will be presumed accepted 60 days after the date of delivery, unless accepted earlier.

(4) At any time during contract performance, but not later than 6 months (or such other time as may be specified in the contract) after acceptance of the services or materials last delivered under this contract, the Government may require the Contractor to replace or correct services or materials that at time of delivery failed to meet contract requirements. Except as otherwise specified in paragraph (a)(6) of this clause, the cost of replacement or correction shall be determined under paragraph (i) of this clause, but the “hourly rate” for labor hours incurred in the replacement or correction shall be reduced to exclude that portion of the rate attributable to profit. Unless otherwise specified below, the portion of the “hourly rate” attributable to profit shall be 10 percent. The Contractor shall not tender for acceptance materials and services required to be replaced or corrected without disclosing the former requirement for replacement or correction, and, when required, shall disclose the corrective action taken. [*Insert portion of labor rate attributable to profit.*]

(5)(i) If the Contractor fails to proceed with reasonable promptness to perform required replacement or correction, and if the replacement or correction can be performed within the ceiling price (or the ceiling price as increased by the Government), the Government may—

(A) By contract or otherwise, perform the replacement or correction, charge to the Contractor any increased cost, or deduct such increased cost from any amounts paid or due under this contract; or

(B) Terminate this contract for cause.

(ii) Failure to agree to the amount of increased cost to be charged to the Contractor shall be a dispute under the Disputes clause of the contract.

(6) Notwithstanding paragraphs (a)(4) and (5) above, the Government may at any time require the Contractor to remedy by correction or replacement, without cost to the Government, any failure by the Contractor to comply with the requirements of this contract, if the failure is due to—

(i) Fraud, lack of good faith, or willful misconduct on the part of the Contractor's managerial personnel; or

(ii) The conduct of one or more of the Contractor's employees selected or retained by the Contractor after any of the Contractor's managerial personnel has reasonable grounds to believe that the employee is habitually careless or unqualified.

(7) This clause applies in the same manner and to the same extent to corrected or replacement materials or services as to materials and services originally delivered under this contract.

(8) The Contractor has no obligation or liability under this contract to correct or replace materials and services that at time of delivery do not meet contract requirements, except as provided in this clause or as may be otherwise specified in the contract.

(9) Unless otherwise specified in the contract, the Contractor's obligation to correct or replace Government-furnished property shall be governed by the clause pertaining to Government property.

(e) *Definitions.* (1) The clause at FAR [52.202-1](#), Definitions, is incorporated herein by reference. As used in this clause—

(i) *Direct materials* means those materials that enter directly into the end product, or that are used or consumed directly in connection with the furnishing of the end product or service.

(ii) *Hourly rate* means the rate(s) prescribed in the contract for payment for labor that meets the labor category qualifications of a labor category specified in the contract that are—

(A) Performed by the contractor;

(B) Performed by the subcontractors; or

(C) Transferred between divisions, subsidiaries, or affiliates of the contractor under a common control.

(iii) *Materials* means—



(A) Direct materials, including supplies transferred between divisions, subsidiaries, or affiliates of the contractor under a common control;

(B) Subcontracts for supplies and incidental services for which there is not a labor category specified in the contract;

(C) Other direct costs (e.g., incidental services for which there is not a labor category specified in the contract, travel, computer usage charges, etc.);

(D) The following subcontracts for services which are specifically excluded from the hourly rate: [*Insert any subcontracts for services to be excluded from the hourly rates prescribed in the schedule.*]; and

(E) Indirect costs specifically provided for in this clause.

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

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

(i) *Hourly rate.*

(A) The amounts shall be computed by multiplying the appropriate hourly rates prescribed in the contract by the number of direct labor hours performed. Fractional parts of an hour shall be payable on a prorated basis.

(B) The rates shall be paid for all labor performed on the contract that meets the labor qualifications specified in the contract. Labor hours incurred to perform tasks for which labor qualifications were specified in the contract will not be paid to the extent the work is performed by individuals that do not meet the qualifications specified in the contract, unless specifically authorized by the Contracting Officer.

(C) Invoices may be submitted once each month (or at more frequent intervals, if approved by the Contracting Officer) to the Contracting Officer or the authorized representative.

(D) When requested by the Contracting Officer or the authorized representative, the Contractor shall substantiate invoices (including any subcontractor hours reimbursed at the hourly rate in the schedule) by evidence of actual payment, individual daily job timecards, records that verify the employees meet the qualifications for the labor categories specified in the contract, or other substantiation specified in the contract.

(E) Unless the Schedule prescribes otherwise, the hourly rates in the Schedule shall not be varied by virtue of the Contractor having performed work on an overtime basis.

(1) If no overtime rates are provided in the Schedule and the Contracting Officer approves overtime work in advance, overtime rates shall be negotiated.

(2) Failure to agree upon these overtime rates shall be treated as a dispute under the Disputes clause of this contract.

(3) If the Schedule provides rates for overtime, the premium portion of those rates will be reimbursable only to the extent the overtime is approved by the Contracting Officer.

(ii) *Materials.*

(A) If the Contractor furnishes materials that meet the definition of a commercial item at [2.101](#), the price to be paid for such materials shall not exceed the Contractor's established catalog or market price, adjusted to reflect the—

(1) Quantities being acquired; and

(2) Any modifications necessary because of contract requirements.

(B) Except as provided for in paragraph (i)(1)(ii)(A) and (D)(2) of this clause, the Government will reimburse the Contractor the actual cost of materials (less any rebates, refunds, or discounts received by the contractor that are identifiable to the contract) provided the Contractor—

(1) Has made payments for materials in accordance with the terms and conditions of the agreement or invoice; or

(2) Makes these payments within 30 days of the submission of the Contractor's payment request to the Government and such payment is in accordance with the terms and conditions of the agreement or invoice.

(C) To the extent able, the Contractor shall—

(1) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and

(2) Give credit to the Government for cash and trade discounts, rebates, scrap, commissions, and other amounts that are identifiable to the contract.

(D) *Other Costs.* Unless listed below, other direct and indirect costs will not be reimbursed.

(1) *Other Direct Costs.* The Government will reimburse the Contractor on the basis of actual cost for the following, provided such costs comply with the requirements in paragraph (i)(1)(ii)(B) of this clause: [*Insert each element of other direct costs (e.g., travel, computer usage charges, etc. Insert "None" if no reimbursement for other direct costs will be provided. If this is an indefinite delivery contract, the Contracting Officer may insert "Each order must list separately the elements of other direct charge(s) for that order or, if no reimbursement for other direct costs will be provided, insert 'None'."*]

(2) *Indirect Costs (Material Handling, Subcontract Administration, etc.).* The Government will reimburse the Contractor for indirect costs on a pro-rata basis over the period of contract performance at the following fixed price: [*Insert a fixed amount for the indirect costs and payment schedule. Insert "\$0" if no fixed price reimbursement for indirect costs will be provided. (If this is an indefinite delivery contract, the Contracting Officer may insert "Each order must list separately the fixed amount for the indirect costs and payment schedule or, if no reimbursement for indirect costs, insert 'None'."*)]

(2) *Total cost.* It is estimated that the total cost to the Government for the performance of this contract shall not exceed the ceiling price set forth in the Schedule and the Contractor agrees to use its best efforts to perform the work specified in the Schedule and all obligations under this contract within such ceiling price. If at any time the Contractor has reason to believe that the hourly rate payments and material costs that will accrue in performing this contract in the next succeeding 30 days, if added to all other payments and costs previously accrued, will exceed 85 percent of the ceiling price in the Schedule, the Contractor shall notify the Contracting Officer giving a revised estimate of the total price to the Government for performing this contract with supporting reasons and documentation. If at any time during the performance of this contract, the Contractor has reason to believe that the total price to the Government for performing this contract will be substantially greater or less than the then stated ceiling price, the Contractor shall so notify the Contracting Officer, giving a revised estimate of the total price for performing this contract, with supporting reasons and documentation. If at any time during performance of this contract, the Government has reason to believe that the work to be required in performing this contract will be substantially greater or less than the stated ceiling price, the Contracting Officer will so advise the Contractor, giving the then revised estimate of the total amount of effort to be required under the contract.

(3) *Ceiling price.* The Government will not be obligated to pay the Contractor any amount in excess of the ceiling price in the Schedule, and the Contractor shall not be obligated to continue performance if to do so would exceed the ceiling price set forth in the Schedule, unless and until the Contracting Officer notifies the Contractor in writing that the ceiling price has been increased and specifies in the notice a revised ceiling that shall constitute the ceiling price for performance under this contract. When and to the extent that the ceiling price set forth in the Schedule has been increased, any hours expended and material costs incurred by the Contractor in excess of the ceiling price before the increase shall be allowable to the same extent as if the hours expended and material costs had been incurred after the increase in the ceiling price.

(4) *Access to records.* At any time before final payment under this contract, the Contracting Officer (or authorized representative) will have access to the following (access shall be limited to the listing below unless otherwise agreed to by the Contractor and the Contracting Officer):

(i) Records that verify that the employees whose time has been included in any invoice meet the qualifications for the labor categories specified in the contract;

(ii) For labor hours (including any subcontractor hours reimbursed at the hourly rate in the schedule), when timecards are required as substantiation for payment—

(A) The original timecards (paper-based or electronic);

(B) The Contractor's timekeeping procedures;

(C) Contractor records that show the distribution of labor between jobs or contracts; and

(D) Employees whose time has been included in any invoice for the purpose of verifying that these employees have worked the hours shown on the invoices.

(iii) For material and subcontract costs that are reimbursed on the basis of actual cost—

(A) Any invoices or subcontract agreements substantiating material costs; and

(B) Any documents supporting payment of those invoices.

(5) *Overpayments/Underpayments.* Each payment previously made shall be subject to reduction to the extent of amounts, on preceding invoices, that are found by the Contracting Officer not to have been properly payable and shall also be subject to reduction for overpayments or to increase for underpayments. The Contractor shall promptly pay any such reduction within 30 days unless the parties agree otherwise. The Government within 30 days will pay any such increases, unless the parties agree otherwise. The Contractor's payment will be made by check. If the Contractor becomes aware of a duplicate invoice payment or that the Government has otherwise overpaid on an invoice payment, the Contractor shall—

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(A) Circumstances of the overpayment (*e.g.*, duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected contract line item or subline item, if applicable; and

(D) Contractor point of contact.

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

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

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

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

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt in a timely manner;

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

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

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

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

(A) The date fixed under this contract.

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

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

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

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

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

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

(viii) Upon receipt and approval of the invoice designated by the Contractor as the “completion invoice” and supporting documentation, and upon compliance by the Contractor with all terms of this contract, any outstanding balances will be paid within 30 days unless the parties agree otherwise. The completion invoice, and supporting documentation, shall be submitted by the Contractor as promptly as practicable following completion of the work under this contract, but in no event later than 1 year (or such longer period as the Contracting Officer may approve in writing) from the date of completion.

(7) *Release of claims.* The Contractor, and each assignee under an assignment entered into under this contract and in effect at the time of final payment under this contract, shall execute and deliver, at the time of and as a condition precedent to final payment under this contract, a release discharging the Government, its officers, agents, and employees of and from all liabilities, obligations, and claims arising out of or under this contract, subject only to the following exceptions.

(i) Specified claims in stated amounts, or in estimated amounts if the amounts are not susceptible to exact statement by the Contractor.

(ii) Claims, together with reasonable incidental expenses, based upon the liabilities of the Contractor to third parties arising out of performing this contract, that are not known to the Contractor on the date of the execution of the release, and of which the Contractor gives notice in writing to the Contracting Officer not more than 6 years after the date of the release or the date of any notice to the Contractor that the

Government is prepared to make final payment, whichever is earlier.

(iii) Claims for reimbursement of costs (other than expenses of the Contractor by reason of its indemnification of the Government against patent liability), including reasonable incidental expenses, incurred by the Contractor under the terms of this contract relating to patents.

(8) *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.

(9) *Electronic Funds Transfer (EFT).* If the Government makes payment by EFT, see [52.212-5\(b\)](#) for the appropriate EFT clause.

(10) *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 that appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid an amount for direct labor hours (as defined in the Schedule of the contract) determined by multiplying the number of direct labor hours expended before the effective date of termination by the hourly rate(s) in the contract, less any hourly rate payments already made to the Contractor plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system that have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred that reasonably could have been avoided.

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon 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.

#### **52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.**

As prescribed in [12.301\(b\)\(4\)](#), insert the following clause:

CONTRACT TERMS AND CONDITIONS REQUIRED TO  
IMPLEMENT STATUTES OR EXECUTIVE ORDERS—  
COMMERCIAL ITEMS (OCT2014)

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

(1) [52.222-50](#), Combating Trafficking in Persons (FEB 2009) ([22 U.S.C. 7104\(g\)](#)).

\_\_\_ Alternate I (AUG 2007) of [52.222-50](#) ([22 U.S.C. 7104\(g\)](#)).

(2) [52.233-3](#), Protest After Award (AUG 1996) ([31 U.S.C. 3553](#)).

(3) [52.233-4](#), Applicable Law for Breach of Contract Claim (OCT 2004)"(Public Laws 108-77 and 108-78 ([19 U.S.C. 3805 note](#))).

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

[Contracting Officer check as appropriate.]

\_\_\_ (1) [52.203-6](#), Restrictions on Subcontractor Sales to the Government (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 (APR 2010) ([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.)

\_\_\_ (4) [52.204-10](#), Reporting Executive Compensation and First-Tier Subcontract Awards (JUL 2013) (Pub. L. 109-282) ([31 U.S.C. 6101 note](#)).

\_\_\_ (5) [Reserved].

\_\_\_ (6) [52.204-14](#), Service Contract Reporting Requirements (JAN 2014) (PUB. L. 111-117, section 743 OF DIV. C).

\_\_\_ (7) [52.204-15](#), Service Contract Reporting Requirements for Indefinite-Delivery Contracts (JAN 2014) (PUB. L. 111-117, section 743 OF DIV. C).

\_\_\_ (8) [52.209-6](#), Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (AUG 2013) ([31 U.S.C. 6101 note](#)).

\_\_\_ (9) [52.209-9](#), Updates of Publicly Available Information Regarding Responsibility Matters (JUL 2013) ([41 U.S.C. 2313](#)).

\_\_\_ (10) [52.209-10](#), Prohibition on Contracting with Inverted Domestic Corporations (MAY 2012) (section 738 of Division C of Pub. L. 112-74, section 740 of Division C of

Pub. L. 111-117, section 743 of Division D of Pub. L. 111-8, and section 745 of Division D of Pub. L. 110-161).

\_\_\_ (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 (OCT 2014) ([15 U.S.C. 637\(d\)\(2\)](#) and (3)).

\_\_\_ (17)(i) [52.219-9](#), Small Business Subcontracting Plan (OCT 2014) ([15 U.S.C. 637\(d\)\(4\)](#)).

\_\_\_ (ii) Alternate I (OCT 2001) of [52.219-9](#).

\_\_\_ (iii) Alternate II (OCT 2001) of [52.219-9](#).

\_\_\_ (iv) Alternate III (OCT 2014) 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. 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 Economically Disadvantaged Women-Owned Small Business (EDWOSB) Concerns (JUL 2013) ([15 U.S.C. 637\(m\)](#)).

\_\_\_ (24) [52.219-30](#), Notice of Set-Aside for Women-Owned Small Business (WOSB) Concerns Eligible Under the WOSB Program (JUL 2013) ([15 U.S.C. 637\(m\)](#)).

\_\_\_ (25) [52.222-3](#), Convict Labor (JUNE 2003) (E.O. 11755).

\_\_\_ (26) [52.222-19](#), Child Labor—Cooperation with Authorities and Remedies (JAN 2014) (E.O. 13126).

\_\_\_ (27) [52.222-21](#), Prohibition of Segregated Facilities (FEB 1999).

\_\_\_ (28) [52.222-26](#), Equal Opportunity (MAR 2007) (E.O. 11246).

\_\_\_ (29) [52.222-35](#), Equal Opportunity for Veterans (JUL 2014) ([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 (JUL 2014) ([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) [52.222-54](#), Employment Eligibility Verification (AUG 2013). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in [22.1803](#).)

— (34)(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.)

— (35)(i) [52.223-13](#), Acquisition of EPEAT®-Registered Imaging Equipment (JUN 2014) (E.O. 13423 and 13514).

— (ii) Alternate I (JUN 2014) of [52.223-13](#).

— (36)(i) [52.223-14](#), Acquisition of EPEAT®-Registered Televisions (E.O. 13423 and 13514).

— (ii) Alternate I (JUN 2014) of [52.223-14](#).

— (37) [52.223-15](#), Energy Efficiency in Energy-Consuming Products (DEC 2007) ([42 U.S.C. 8259b](#)).

— (38)(i) [52.223-16](#), Acquisition of EPEAT®-Registered Personal Computer Products (JUN 2014) (E.O. 13423 and 13514).

— (ii) Alternate I (JUN 2014) of [52.223-16](#).

— (39) [52.223-18](#), Encouraging Contractor Policies to Ban Text Messaging While Driving (AUG 2011) (E.O. 13513).

— (40) [52.225-1](#), Buy American—Supplies (MAY 2014) ([41 U.S.C. chapter 83](#)).

— (41)(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](#).

— (42) [52.225-5](#), Trade Agreements (NOV 2013) ([19 U.S.C. 2501](#), *et seq.*, [19 U.S.C. 3301](#) note).

— (43) [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).

— (44) [52.225-26](#), Contractors Performing Private Security Functions Outside the United States (JUL 2013) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; [10 U.S.C. 2302 Note](#)).

— (45) [52.226-4](#), Notice of Disaster or Emergency Area Set-Aside (NOV 2007) ([42 U.S.C. 5150](#)).

— (46) [52.226-5](#), Restrictions on Subcontracting Outside Disaster or Emergency Area (NOV 2007) ([42 U.S.C. 5150](#)).

— (47) [52.232-29](#), Terms for Financing of Purchases of Commercial Items (FEB 2002) ([41 U.S.C. 4505](#), [10 U.S.C. 2307\(f\)](#)).

— (48) [52.232-30](#), Installment Payments for Commercial Items (OCT 1995) ([41 U.S.C. 4505](#), [10 U.S.C. 2307\(f\)](#)).

— (49) [52.232-33](#), Payment by Electronic Funds Transfer—System for Award Management (JUL 2013) ([31 U.S.C. 3332](#)).

— (50) [52.232-34](#), Payment by Electronic Funds Transfer—Other than System for Award Management (JUL 2013) ([31 U.S.C. 3332](#)).

— (51) [52.232-36](#), Payment by Third Party (MAY 2014) ([31 U.S.C. 3332](#)).

— (52) [52.239-1](#), Privacy or Security Safeguards (AUG 1996) ([5 U.S.C. 552a](#)).

— (53)(i) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) ([46 U.S.C. Appx. 1241\(b\)](#) and [10 U.S.C. 2631](#)).

— (ii) Alternate I (Apr 2003) of [52.247-64](#).

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

— (1) [52.222-41](#), Service Contract Labor Standards (May 2014) ([41 U.S.C. chapter 67](#)).

— (2) [52.222-42](#), Statement of Equivalent Rates for Federal Hires (MAY 2014) ([29 U.S.C. 206](#) and [41 U.S.C. chapter 67](#)).

— (3) [52.222-43](#), Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (Multiple Year and Option Contracts) (MAY 2014) ([29 U.S.C. 206](#) and [41 U.S.C. chapter 67](#)).

— (4) [52.222-44](#), Fair Labor Standards Act and Service Contract Labor Standards—Price Adjustment (MAY 2014) ([29 U.S.C. 206](#) and [41 U.S.C. chapter 67](#)).

— (5) [52.222-51](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements (MAY 2014) ([41 U.S.C. chapter 67](#)).

— (6) [52.222-53](#), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Requirements (MAY 2014) ([41 U.S.C. chapter 67](#)).

— (7) [52.222-17](#), Nondisplacement of Qualified Workers (MAY 2014) (E.O. 13495).

— (8) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (MAY 2014) ([42 U.S.C. 1792](#)).

— (9) [52.237-11](#), Accepting and Dispensing of \$1 Coin (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 (APR 2010) ([41 U.S.C. 3509](#)).

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

(iii) [52.222-17](#), Nondisplacement of Qualified Workers (MAY 2014) (E.O. 13495). Flow down required in accordance with paragraph (l) of FAR clause [52.222-17](#).

(iv) [52.222-26](#), Equal Opportunity (MAR 2007) (E.O. 11246).

(v) [52.222-35](#), Equal Opportunity for Veterans (JUL 2014) ([38 U.S.C. 4212](#)).

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

(vii) [52.222-37](#), Employment Reports on Veterans (JUL 2014) ([38 U.S.C. 4212](#)).

(viii) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O.

13496). Flow down required in accordance with paragraph (f) of FAR clause [52.222-40](#).

(ix) [52.222-41](#), Service Contract Labor Standards (MAY 2014) ([41 U.S.C. chapter 67](#)).

(x) [52.222-50](#), Combating Trafficking in Persons (FEB 2009) ([22 U.S.C. 7104\(g\)](#)).

Alternate I (AUG 2007) of [52.222-50](#) ([22 U.S.C. 7104\(g\)](#)).

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

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

(xiii) [52.222-54](#), Employment Eligibility Verification (AUG 2013).

(xiv) [52.225-26](#), Contractors Performing Private Security Functions Outside the United States (JUL 2013) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; [10 U.S.C. 2302 Note](#)).

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

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

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

(End of clause)

*Alternate I (Feb 2000).* As prescribed in [12.301\(b\)\(4\)\(i\)](#), delete paragraph (d) from the basic clause, redesignate paragraph (e) as paragraph (d), and revise the reference to “paragraphs (a), (b), (c), or (d) of this clause” in the redesignated paragraph (d) to read “paragraphs (a), (b), and (c) of this clause.”

*Alternate II (Oct 2014).* As prescribed in [12.301\(b\)\(4\)\(ii\)](#), substitute the following paragraphs (d)(1) and (e)(1) for paragraphs (d)(1) and (e)(1) of the basic clause as follows:

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

(i) Examine any of the Contractor's or any subcontractors' records that pertain to, and involve transactions relating to, this contract; and

(ii) Interview any officer or employee regarding such transactions.

(e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), and (c), of this clause, the Contractor is

not required to flow down any FAR clause in a subcontract for commercial items, other than—

(i) *Paragraph (d) of this clause.* This paragraph flows down to all subcontracts, except the authority of the Inspector General under paragraph (d)(1)(ii) does not flow down; and

(ii) *Those clauses listed in this paragraph (e)(1).* Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—

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

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

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

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

(E) [52.222-35](#), Equal Opportunity for Veterans (Jul 2014) ([38 U.S.C. 4212](#)).

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

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

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

(I) [52.222-50](#), Combating Trafficking in Persons (Feb 2009) ([22 U.S.C. 7104\(g\)](#)).

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

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

(L) [52.222-54](#), Employment Eligibility Verification (Aug 2013).

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

(N) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 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](#).

### 52.213-1 Fast Payment Procedure.

As prescribed in [13.404](#), insert the following clause:

#### FAST PAYMENT PROCEDURE (MAY 2006)

(a) *General.* The Government will pay invoices based on the Contractor's delivery to a post office or common carrier (or, if shipped by other means, to the point of first receipt by the Government).

(b) *Responsibility for supplies.*(1) Title to the supplies passes to the Government upon delivery to—

(i) A post office or common carrier for shipment to the specific destination; or

(ii) The point of first receipt by the Government, if shipment is by means other than Postal Service or common carrier.

(2) Notwithstanding any other provision of the contract, order, or blanket purchase agreement, the Contractor shall—

(i) Assume all responsibility and risk of loss for supplies not received at destination, damaged in transit, or not conforming to purchase requirements; and

(ii) Replace, repair, or correct those supplies promptly at the Contractor's expense, if instructed to do so by the Contracting Officer within 180 days from the date title to the supplies vests in the Government.

(c) *Preparation of invoice.*(1) Upon delivery to a post office or common carrier (or, if shipped by other means, the point of first receipt by the Government), the Contractor shall—

(i) Prepare an invoice as provided in this contract, order, or blanket purchase agreement; and

(ii) Display prominently on the invoice "FAST PAY." Invoices not prominently marked "FAST PAY" via manual or electronic means may be accepted by the payment office for fast payment. If the payment office declines to make fast payment, the Contractor shall be paid in accordance with procedures applicable to invoices to which the Fast Payment clause does not apply.

(2) If the purchase price excludes the cost of transportation, the Contractor shall enter the prepaid shipping cost on the invoice as a separate item. The Contractor shall not include the cost of parcel post insurance. If transportation charges are stated separately on the invoice, the Contractor shall retain related paid freight bills or other transportation billings paid separately for a period of 3 years and shall furnish the bills to the Government upon request.

(3) If this contract, order, or blanket purchase agreement requires the preparation of a receiving report, the Contractor shall either—

(i) Submit the receiving report on the prescribed form with the invoice; or

(ii) Include the following information on the invoice:

(A) Shipment number.

(B) Mode of shipment.

(C) At line item level—

- (1) National stock number and/or manufacturer's part number;
- (2) Unit of measure;
- (3) Ship-To Point;
- (4) Mark-For Point, if in the contract; and
- (5) FEDSTRIP/MILSTRIP document number, if in the contract.

(4) If this contract, order, or blanket purchase agreement does not require preparation of a receiving report on a prescribed form, the Contractor shall include on the invoice the following information at the line item level, in addition to that required in paragraph (c)(1) of this clause:

- (i) Ship-To Point.
- (ii) Mark-For Point.

(iii) FEDSTRIP/MILSTRIP document number, if in the contract.

(5) Where a receiving report is not required, the Contractor shall include a copy of the invoice in each shipment.

(d) *Certification of invoice.* The Contractor certifies by submitting an invoice to the Government that the supplies being billed to the Government have been shipped or delivered in accordance with shipping instructions issued by the ordering officer, in the quantities shown on the invoice, and that the supplies are in the quantity and of the quality designated by the contract, order, or blanket purchase agreement.

(e) *FAST PAY container identification.* The Contractor shall mark all outer shipping containers "FAST PAY" When outer shipping containers are not marked "FAST PAY," the payment office may make fast payment. If the payment office declines to make fast payment, the Contractor shall be paid in accordance with procedures applicable to invoices to which the Fast Payment clause does not apply.

(End of clause)

**52.213-2 Invoices.**

As prescribed in [13.302-5\(b\)](#), insert the following clause:

INVOICES (APR 1984)

The Contractor's invoices must be submitted before payment can be made. The Contractor will be paid on the basis of the invoice, which must state—

- (a) The starting and ending dates of the subscription delivery; and
- (b) Either that orders have been placed in effect for the addressees required, or that the orders will be placed in effect upon receipt of payment.

(End of clause)

**52.213-3 Notice to Supplier.**

As prescribed in [13.302-5\(c\)](#), insert the following clause:

NOTICE TO SUPPLIER (APR 1984)

This is a firm order ONLY if your price does not exceed the maximum line item or total price in the Schedule. Submit invoices to the Contracting Officer. If you cannot perform in exact accordance with this order, WITHHOLD PERFORMANCE, and notify the Contracting Officer immediately, giving your quotation.

(End of clause)

**52.213-4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).**

As prescribed in [13.302-5\(d\)](#), insert the following clause:

TERMS AND CONDITIONS—SIMPLIFIED ACQUISITIONS  
(OTHER THAN COMMERCIAL ITEMS) (OCT 2014)

(a) The Contractor shall comply with the following Federal Acquisition Regulation (FAR) clauses that are incorporated by reference:

(1) The clauses listed below implement provisions of law or Executive order:

- (i) [52.222-3](#), Convict Labor (JUNE 2003) (E.O. 11755).
- (ii) [52.222-21](#), Prohibition of Segregated Facilities (FEB 1999) (E.O. 11246).
- (iii) [52.222-26](#), Equal Opportunity (MAR 2007) (E.O. 11246).
- (iv) [52.222-50](#), Combating Trafficking in Persons (FEB 2009) ([22 U.S.C. 7104\(g\)](#)).
- (v) [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).
- (vi) [52.233-3](#), Protest After Award (AUG 1996) ([31 U.S.C. 3553](#)).
- (vii) [52.233-4](#), Applicable Law for Breach of Contract Claim (OCT 2004) (Pub. L. 108-77, 108-78 ([19 U.S.C. 3805 note](#))).

(2) Listed below are additional clauses that apply:

- (i) [52.232-1](#), Payments (APR 1984).
- (ii) [52.232-8](#), Discounts for Prompt Payment (FEB 2002).
- (iii) [52.232-11](#), Extras (APR 1984).
- (iv) [52.232-25](#), Prompt Payment (JUL 2013).



(v) [52.232-39](#), Unenforceability of Unauthorized Obligations (JUN 2013).

(vi) [52.232-40](#), Providing Accelerated Payments to Small Business Subcontractors (DEC 2013)

(vii) [52.233-1](#), Disputes (MAY 2014).

(viii) [52.244-6](#), Subcontracts for Commercial Items (OCT 2014).

(ix) [52.253-1](#), Computer Generated Forms (JAN 1991).

(b) The Contractor shall comply with the following FAR clauses, incorporated by reference, unless the circumstances do not apply:

(1) The clauses listed below implement provisions of law or Executive order:

(i) [52.204-10](#), Reporting Executive Compensation and First-Tier Subcontract Awards (JUL 2013) (Pub. L. 109-282) ([31 U.S.C. 6101 note](#)) (Applies to contracts valued at \$25,000 or more).

(ii) [52.222-19](#), Child Labor—Cooperation with Authorities and Remedies (JAN 2014) (E.O. 13126). (Applies to contracts for supplies exceeding the micro-purchase threshold.)

(iii) [52.222-20](#), Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000 (MAY 2014) ([41 U.S.C. chapter 65](#)) (Applies to supply contracts over \$15,000 in the United States, Puerto Rico, or the U.S. Virgin Islands).

(iv) [52.222-35](#), Equal Opportunity for Veterans (JUL 2014) ([38 U.S.C. 4212](#)) (applies to contracts of \$100,000 or more).

(v) [52.222-36](#), Equal Employment for Workers with Disabilities (Jul 2014) ([29 U.S.C. 793](#)). (Applies to contracts over \$15,000, unless the work is to be performed outside the United States by employees recruited outside the United States.) (For purposes of this clause, “United States” includes the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.)

(vi) [52.222-37](#), Employment Reports on Veterans (JUL 2014) ([38 U.S.C. 4212](#)) (applies to contracts of \$100,000 or more).

(vii) [52.222-41](#), Service Contract Labor Standards (MAY 2014) ([41 U.S.C. chapter 67](#)) (Applies to service contracts over \$2,500 that are subject to the Service Contract Labor Standards statute and will be performed in the United States, District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, Johnston Island, Wake Island, or the outer Continental Shelf.)

(viii) [52.223-5](#), Pollution Prevention and Right-to-Know Information (MAY 2011) (E.O. 13423) (Applies to services performed on Federal facilities).

(ix) [52.223-15](#), Energy Efficiency in Energy-Consuming Products (DEC 2007) ([42 U.S.C. 8259b](#)) (Unless exempt pursuant to [23.204](#), applies to contracts when energy-consuming products listed in the ENERGY STAR® Program or Federal Energy Management Program (FEMP) will be—

(A) Delivered;

(B) Acquired by the Contractor for use in performing services at a Federally-controlled facility;

(C) Furnished by the Contractor for use by the Government; or

(D) Specified in the design of a building or work, or incorporated during its construction, renovation, or maintenance.)

(x) [52.225-1](#), Buy American—Supplies (MAY 2014) ([41 U.S.C. chapter 67](#)) (Applies to contracts for supplies, and to contracts for services involving the furnishing of supplies, for use in the United States or its outlying areas, if the value of the supply contract or supply portion of a service contract exceeds the micro-purchase threshold and the acquisition—

(A) Is set aside for small business concerns; or

(B) Cannot be set aside for small business concerns (see [19.502-2](#)), and does not exceed \$25,000).

(xi) [52.226-6](#), Promoting Excess Food Donation to Nonprofit Organizations (MAY 2014) ([42 U.S.C. 1792](#)) (Applies to contracts greater than \$25,000 that provide for the provision, the service, or the sale of food in the United States.)

(xii) [52.232-33](#), Payment by Electronic Funds Transfer—System for Award Management (JUL 2013). (Applies when the payment will be made by electronic funds transfer (EFT) and the payment office uses the System for Award Management (SAM) database as its source of EFT information.)

(xiii) [52.232-34](#), Payment by Electronic Funds Transfer—Other than System for Award Management (JUL 2013). (Applies when the payment will be made by EFT and the payment office does not use the SAM database as its source of EFT information.)

(xiv) [52.247-64](#), Preference for Privately Owned U.S.-Flag Commercial Vessels (FEB 2006) ([46 U.S.C. App. 1241](#)). (Applies to supplies transported by ocean vessels (except for the types of subcontracts listed at [47.504\(d\)](#)).

(2) Listed below are additional clauses that may apply:

(i) [52.209-6](#), Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (AUG 2013) (Applies to contracts over \$30,000).

(ii) [52.211-17](#), Delivery of Excess Quantities (SEPT 1989) (Applies to fixed-price supplies).

(iii) [52.247-29](#), F.o.b. Origin (FEB 2006) (Applies to supplies if delivery is f.o.b. origin).

(iv) [52.247-34](#), F.o.b. Destination (NOV 1991) (Applies to supplies if delivery is f.o.b. destination).

(c) FAR 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):

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[Insert one or more Internet addresses]

(d) *Inspection/Acceptance*. The Contractor shall tender for acceptance only 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. The Government must exercise its postacceptance rights—

(1) Within a reasonable period of 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.

(e) *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.

(f) *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 that 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 that reasonably could have been avoided.

(g) *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.

(h) *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.

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— \_\_\_\_\_ [*insert NAICS code*].

(2) The small business size standard is \_\_\_\_\_ [*insert size standard*].

(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 participat-

ing 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 HUB-

Zone 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.

#### 52.219-2 Equal Low Bids.

As prescribed in [19.309\(b\)](#), insert the following provision:

EQUAL LOW BIDS (OCT 1995)

(a) This provision applies to small business concerns only.

(b) The bidder's status as a labor surplus area (LSA) concern may affect entitlement to award in case of tie bids. If the bidder wishes to be considered for this priority, the bidder

must identify, in the following space, the LSA in which the costs to be incurred on account of manufacturing or production (by the bidder or the first-tier subcontractors) amount to more than 50 percent of the contract price.

(c) Failure to identify the labor surplus areas as specified in paragraph (b) of this provision will preclude the bidder from receiving priority consideration. If the bidder is awarded a contract as a result of receiving priority consideration under this provision and would not have otherwise received award, the bidder shall perform the contract or cause the contract to be performed in accordance with the obligations of an LSA concern.

(End of provision)

### 52.219-3 Notice of HUBZone Set-Aside or Sole Source Award.

As prescribed in [19.1309\(a\)](#), insert the following clause:

#### NOTICE OF HUBZONE SET-ASIDE OR SOLE SOURCE AWARD (NOV 2011)

(a) *Definitions.* See 13 CFR 125.6(e) for definitions of terms used in paragraph (c).

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

(1) Contracts that have been set aside or reserved for, or awarded on a sole source basis to, HUBZone small business concerns;

(2) Part or parts of a multiple-award contract that have been set aside for HUBZone small business concerns; and

(3) Orders set-aside for HUBZone small business concerns under multiple-award contracts as described in 8.405-5 and 16.505(b)(2)(i)(F).

(c) *General.* (1) Offers are solicited only from HUBZone small business concerns. Offers received from concerns that are not HUBZone small business concerns will not be considered.

(2) Any award resulting from this solicitation will be made to a HUBZone small business concern.

(d) *Agreement.* A HUBZone small business concern agrees that in the performance of the contract, in the case of a contract for—

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other HUBZone small business concerns;

(2) Supplies (other than acquisition from a nonmanufacturer of the supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other HUBZone small business concerns;

(3) *General construction.* (i) At least 15 percent of the cost of contract performance to be incurred for personnel will be spent on the HUBZone prime contractor's employees;

(ii) At least 50 percent of the cost of the contract performance to be incurred for personnel will be spent on the HUBZone prime contractor's employees or on a combination of the HUBZone prime contractor's employees and employees of HUBZone small business concern subcontractors; and

(iii) No more than 50 percent of the cost of contract performance to be incurred for personnel will be subcontracted to concerns that are not HUBZone small business concerns; or

(4) *Construction by special trade contractors.* (i) At least 25 percent of the cost of contract performance to be incurred for personnel will be spent on the HUBZone prime contractor's employees;

(ii) At least 50 percent of the cost of the contract performance to be incurred for personnel will be spent on the HUBZone prime contractor's employees or on a combination of the HUBZone prime contractor's employees and employees of HUBZone small business concern subcontractors;

(iii) No more than 50 percent of the cost of contract performance to be incurred for personnel will be subcontracted to concerns that are not HUBZone small business concerns.

(e) A HUBZone joint venture agrees that, in the performance of the contract, the applicable percentage specified in paragraph (d) of this clause will be performed by the aggregate of the HUBZone small business participants.

(f)(1) When the total value of the contract exceeds \$25,000, a HUBZone small business concern nonmanufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business concern manufacturers.

(2) When the total value of the contract is equal to or less than \$25,000, a HUBZone small business concern nonmanufacturer may provide end items manufactured by other than a HUBZone small business concern manufacturer provided the end items are produced or manufactured in the United States.

(3) Paragraphs (f)(1) and (f)(2) of this section do not apply in connection with construction or service contracts.

(g) *Notice.* The HUBZone small business offeror acknowledges that a prospective HUBZone awardee must be a HUBZone small business concern at the time of award of this contract. The HUBZone offeror shall provide the Contracting Officer a copy of the notice required by 13 CFR 126.501 if material changes occur before contract award that could affect its HUBZone eligibility. If the apparently successful HUBZone offeror is not a HUBZone small business concern at the time of award of this contract, the Contracting Officer will proceed to award to the next otherwise successful HUBZone small business concern or other offeror.

(End of clause)

*Alternate I (Nov 2011).* As prescribed in 19.1309(a)(1), substitute the following paragraphs (d)(3) and (d)(4) for paragraphs (d)(3) and (d)(4) of the basic clause:

(d)(3) General construction, at least 15 percent of the cost of the contract performance to be incurred for personnel will be spent on the concern's employees; or

(d)(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance to be incurred for personnel will be spent on the concern's employees.

**52.219-4 Notice of Price Evaluation Preference for HUBZone Small Business Concerns.**

As prescribed in 19.1309(b), insert the following clause:

NOTICE OF PRICE EVALUATION PREFERENCE FOR  
HUBZONE SMALL BUSINESS CONCERNS (OCT 2014)

(a) *Definitions.* See 13 CFR 125.6(e) for definitions of terms used in paragraph (d).

(b) *Evaluation preference.* (1) Offers will be evaluated by adding a factor of 10 percent to the price of all offers, except—

(i) Offers from HUBZone small business concerns that have not waived the evaluation preference; and

(ii) Otherwise successful offers from small business concerns.

(2) The factor of 10 percent shall be applied on a line item basis or to any group of items on which award may be made. Other evaluation factors described in the solicitation shall be applied before application of the factor.

(3) When the two highest rated offerors are a HUBZone small business concern and a large business, and the evaluated offer of the HUBZone small business concern is equal to the evaluated offer of the large business after considering the price evaluation preference, award will be made to the HUBZone small business concern.

(c) *Waiver of evaluation preference.* A HUBZone small business concern may elect to waive the evaluation preference, in which case the factor will be added to its offer for evaluation purposes. The agreements in paragraphs (d) and (e) of this clause do not apply if the offeror has waived the evaluation preference.

☐ Offeror elects to waive the evaluation preference.

(d) *Agreement.* A HUBZone small business concern agrees that in the performance of the contract, in the case of a contract for—

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other HUBZone small business concerns;

(2) Supplies (other than procurement from a nonmanufacturer of such supplies), at least 50 percent of the cost of

manufacturing, excluding the cost of materials, will be performed by the concern or other HUBZone small business concerns;

(3) *General construction.* (i) At least 15 percent of the cost of contract performance to be incurred for personnel will be spent on the prime contractor's employees;

(ii) At least 50 percent of the cost of the contract performance to be incurred for personnel will be spent on the prime contractor's employees or on a combination of the prime contractor's employees and employees of HUBZone small business concern subcontractors;

(iii) No more than 50 percent of the cost of contract performance to be incurred for personnel will be subcontracted to concerns that are not HUBZone small business concerns; or

(4) *Construction by special trade contractors.* (i) At least 25 percent of the cost of contract performance to be incurred for personnel will be spent on the prime contractor's employees;

(ii) At least 50 percent of the cost of the contract performance to be incurred for personnel will be spent on the prime contractor's employees or on a combination of the prime contractor's employees and employees of HUBZone small business concern subcontractors;

(iii) No more than 50 percent of the cost of contract performance to be incurred for personnel will be subcontracted to concerns that are not HUBZone small business concerns.

(e) A HUBZone joint venture agrees that the aggregate of the HUBZone small business concerns to the joint venture, not each concern separately, will perform the applicable percentage of work requirements.

(f)(1) When the total value of the contract exceeds \$25,000, a HUBZone small business concern nonmanufacturer agrees to furnish in performing this contract only end items manufactured or produced by HUBZone small business concern manufacturers.

(2) When the total value of the contract is equal to or less than \$25,000, a HUBZone small business concern nonmanufacturer may provide end items manufactured by other than a HUBZone small business concern manufacturer provided the end items are produced or manufactured in the United States.

(3) Paragraphs (f)(1) and (f)(2) of this section do not apply in connection with construction or service contracts.

(g) *Notice.* The HUBZone small business offeror acknowledges that a prospective HUBZone awardee must be a HUBZone small business concern at the time of award of this contract. The HUBZone offeror shall provide the Contracting Officer a copy of the notice required by 13 CFR 126.501 if material changes occur before contract award that could affect its HUBZone eligibility. If the apparently successful HUBZone offeror is not a HUBZone small business concern at the time of award of this contract, the Contracting Officer will

proceed to award to the next otherwise successful HUBZone small business concern or other offeror.

(End of clause)

*Alternate I (Jan 2011).* As prescribed in [19.1309\(b\)\(1\)](#), substitute the following paragraphs (d)(3) and (d)(4) for paragraphs (d)(3) and (d)(4) of the basic clause:

(3) General construction, at least 15 percent of the cost of the contract performance to be incurred for personnel will be spent on the concern's employees; or

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance to be incurred for personnel will be spent on the concern's employees.

### 52.219-5 [Reserved]

### 52.219-6 Notice of Total Small Business Set-Aside.

As prescribed in [19.508\(c\)](#), insert the following clause:

#### NOTICE OF TOTAL SMALL BUSINESS SET-ASIDE (NOV 2011)

(a) *Definition.* "Small business concern," as used in this clause, 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 size standards in this solicitation.

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

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

(2) Orders set aside for small business concerns under multiple-award contracts as described in 8.405-5 and 16.505(b)(2)(i)(F).

(c) *General.* (1) Offers are solicited only from small business concerns. Offers received from concerns that are not small business concerns shall be considered nonresponsive and will be rejected.

(2) Any award resulting from this solicitation will be made to a small business concern.

(d) *Agreement.* A small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.

(End of clause)

*Alternate I (Nov 2011).* When the acquisition is for a product in a class for which the Small Business Administration has

determined that there are no small business manufacturers or processors in the Federal market in accordance with [19.502-2\(c\)](#), delete paragraph (d).

*Alternate II (Nov 2011).* As prescribed in [19.508\(c\)](#), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) *General.* (1) Offers are solicited only from small business concerns and Federal Prison Industries, Inc. (FPI). Offers received from concerns that are not small business concerns or FPI shall be considered nonresponsive and will be rejected.

(2) Any award resulting from this solicitation will be made to either a small business concern or FPI.

### 52.219-7 Notice of Partial Small Business Set-Aside.

As prescribed in [19.508\(d\)](#), insert the following clause:

#### NOTICE OF PARTIAL SMALL BUSINESS SET-ASIDE (JUNE 2003)

(a) *Definitions.* "Small business concern," as used in this clause, 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 size standards in this solicitation.

(b) *General.*(1) A portion of this requirement, identified elsewhere in this solicitation, has been set aside for award to one or more small business concerns.

(2) Offers on the non-set-aside portion will be evaluated first and award will be made on that portion in accordance with the provisions of this solicitation.

(3) The set-aside portion will be awarded at the highest unit price(s) in the contract(s) for the non-set-aside portion, adjusted to reflect transportation and other costs appropriate for the selected contractor(s).

(4) The contractor(s) for the set-aside portion will be selected from among the small business concerns that submitted responsive offers on the non-set-aside portion. Negotiations will be conducted with the concern that submitted the lowest responsive offer on the non-set-aside portion. If the negotiations are not successful or if only part of the set-aside portion is awarded to that concern, negotiations will be conducted with the concern that submitted the second-lowest responsive offer on the non-set-aside portion. This process will continue until a contract or contracts are awarded for the entire set-aside portion.

(5) The Government reserves the right to not consider token offers or offers designed to secure an unfair advantage over other offerors eligible for the set-aside portion.

(c) *Agreement.* For the set-aside portion of the acquisition, a small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm.

This paragraph does not apply to construction or service contracts.

(End of clause)

*Alternate I (Oct 1995).* When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with [19.502-2\(c\)](#), delete paragraph (c).

*Alternate II (Mar 2004).* As prescribed in [19.508\(d\)](#), add the following paragraph (d) to the basic clause:

(d) Notwithstanding paragraph (b) of this clause, offers from Federal Prison Industries, Inc., will be solicited and considered for both the set-aside and non-set-aside portion of this requirement.

### 52.219-8 Utilization of Small Business Concerns.

As prescribed in [19.708\(a\)](#), insert the following clause:

#### UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2014)

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

“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).

(End of clause)

### 52.219-9 Small Business Subcontracting Plan.

As prescribed in [19.708\(b\)](#), insert the following clause:

#### SMALL BUSINESS SUBCONTRACTING PLAN (OCT 2014)

(a) This clause does not apply to small business concerns.

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

“Alaska Native Corporation (ANC)” means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended ([43 U.S.C. 1601](#), *et seq.*) and which is considered a minority and economically disadvantaged concern under the criteria at [43 U.S.C. 1626\(e\)\(1\)](#). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of [43 U.S.C. 1626\(e\)\(2\)](#).

“Commercial item” means a product or service that satisfies the definition of commercial item in section [2.101](#) of the Federal Acquisition Regulation.

“Commercial plan” means a subcontracting plan (including goals) that covers the offeror’s fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (*e.g.*, division, plant, or product line).

“Electronic Subcontracting Reporting System (eSRS)” means the Governmentwide, electronic, web-based system for small business subcontracting program reporting. The eSRS is located at <http://www.esrs.gov>.

“Indian tribe” means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act ([43 U.S.C.A. 1601](#) *et seq.*), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with [25 U.S.C. 1452\(c\)](#). This definition also includes Indian-owned economic enterprises that meet the requirements of [25 U.S.C. 1452\(e\)](#).

“Individual contract plan” means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror’s planned subcontracting in support of the specific contract, except that indirect costs incurred for common

or joint purposes may be allocated on a prorated basis to the contract.

“Master plan” means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

“Subcontract” means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

(c) The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

(d) The offeror’s subcontracting plan shall include the following:

(1) Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with [43 U.S.C. 1626](#):

(i) Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business (SDB) concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe.

(ii) Where one or more subcontractors are in the subcontract tier between the prime contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.

(A) In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.

(B) If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.

(C) The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.

(D) If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

(2) A statement of—

(i) Total dollars planned to be subcontracted for an individual contract plan; or the offeror's total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;

(ii) Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);

(iii) Total dollars planned to be subcontracted to veteran-owned small business concerns;

(iv) Total dollars planned to be subcontracted to service-disabled veteran-owned small business;

(v) Total dollars planned to be subcontracted to HUBZone small business concerns;

(vi) Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and

(vii) Total dollars planned to be subcontracted to women-owned small business concerns.

(3) A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to—

(i) Small business concerns;

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns; and

(vi) Women-owned small business concerns.

(4) A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

(5) A description of the method used to identify potential sources for solicitation purposes (*e.g.*, existing company source lists, the System for Award Management (SAM), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in SAM as an accurate representation of a concern's size and

ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of SAM as its source list does not relieve a firm of its responsibilities (*e.g.*, outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

(6) A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with—

(i) Small business concerns (including ANC and Indian tribes);

(ii) Veteran-owned small business concerns;

(iii) Service-disabled veteran-owned small business concerns;

(iv) HUBZone small business concerns;

(v) Small disadvantaged business concerns (including ANC and Indian tribes); and

(vi) Women-owned small business concerns.

(7) The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

(8) A description of the efforts the offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

(9) Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$650,000 (\$1.5 million for construction of any public facility) with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of this clause.

(10) Assurances that the offeror will—

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;

(iii) Submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with paragraph (l) of this clause using the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>. The reports shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian

tribes that have not been certified by the Small Business Administration as small disadvantaged businesses), women-owned small business concerns, and for NASA only, Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;

(iv) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using eSRS;

(v) Provide its prime contract number, its DUNS number, and the e-mail address of the offeror's official responsible for acknowledging receipt of or rejecting the ISRs, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their ISRs; and

(vi) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own DUNS number, and the e-mail address of the subcontractor's official responsible for acknowledging receipt of or rejecting the ISRs, to its subcontractors with subcontracting plans.

(11) A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (*e.g.*, SAM), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than \$150,000, indicating—

(A) Whether small business concerns were solicited and, if not, why not;

(B) Whether veteran-owned small business concerns were solicited and, if not, why not;

(C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;

(D) Whether HUBZone small business concerns were solicited and, if not, why not;

(E) Whether small disadvantaged business concerns were solicited and, if not, why not;

(F) Whether women-owned small business concerns were solicited and, if not, why not; and

(G) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact—

(A) Trade associations;

(B) Business development organizations;

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and

(D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through—

(A) Workshops, seminars, training, etc.; and

(B) Monitoring performance to evaluate compliance with the program's requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

(e) In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

(1) Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.

(2) Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.

(3) Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.

(4) Confirm that a subcontractor representing itself as a HUBZone small business concern is identified as a certified HUBZone small business concern by accessing the SAM database or by contacting SBA.

(5) Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged, or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.

(6) For all competitive subcontracts over the simplified acquisition threshold in which a small business concern received a small business preference, upon determination of the successful subcontract offeror, the Contractor must inform each unsuccessful small business subcontract offeror in writing of the name and location of the apparent successful offeror prior to award of the contract.

(f) A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided—

(1) The master plan has been approved;

(2) The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and

(3) Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

(g) A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the Contractor's commercial plan has been approved, the Government will not require another subcontracting plan from the same Contractor while the plan remains in effect, as long as the product or service being provided by the Contractor continues to meet the definition of a commercial item. A Contractor with a commercial plan shall comply with the reporting requirements stated in paragraph (d)(10) of this clause by submitting one SSR in eSRS for all contracts covered by its commercial plan. This report shall be acknowledged or rejected in eSRS by the Contracting Officer who approved the plan. This report shall be submitted within 30 days after the end of the Government's fiscal year.

(h) Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

(i) A contract may have no more than one plan. When a modification meets the criteria in [19.702](#) for a plan, or an option is exercised, the goals associated with the modification

or option shall be added to those in the existing subcontract plan.

(j) Subcontracting plans are not required from subcontractors when the prime contract contains the clause at [52.212-5](#), Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, or when the subcontractor provides a commercial item subject to the clause at [52.244-6](#), Subcontracts for Commercial Items, under a prime contract.

(k) The failure of the Contractor or subcontractor to comply in good faith with—

(1) The clause of this contract entitled "Utilization Of Small Business Concerns;" or

(2) An approved plan required by this clause, shall be a material breach of the contract.

(l) The Contractor shall submit ISRs and SSRs using the web-based eSRS at <http://www.esrs.gov>. Purchases from a corporation, company, or subdivision that is an affiliate of the prime Contractor or subcontractor are not included in these reports. Subcontract award data reported by prime Contractors and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian Tribe. Only subcontracts involving performance in the United States or its outlying areas should be included in these reports with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas.

(1) *ISR*. This report is not required for commercial plans. The report is required for each contract containing an individual subcontract plan.

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period.

(ii) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR [19.704\(c\)](#), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(iii) The authority to acknowledge receipt or reject the ISR resides—

(A) In the case of the prime Contractor, with the Contracting Officer; and

(B) In the case of a subcontract with a subcontracting plan, with the entity that awarded the subcontract.

(2) SSR. (i) Reports submitted under individual contract plans—

(A) This report encompasses all subcontracting under prime contracts and subcontracts with the awarding agency, regardless of the dollar value of the subcontracts.

(B) The report may be submitted on a corporate, company or subdivision (*e.g.* plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

(C) If a prime Contractor and/or subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over \$650,000 (over \$1.5 million for construction of a public facility) and contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime Contractors. However, for construction and related maintenance and repair, a separate report shall be submitted for each DoD component.

(D) For DoD and NASA, the report shall be submitted semi-annually for the six months ending March 31 and the twelve months ending September 30. For civilian agencies, except NASA, it shall be submitted annually for the twelve month period ending September 30. Reports are due 30 days after the close of each reporting period.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The authority to acknowledge or reject SSRs in eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts unless stated otherwise in the contract.

(ii) Reports submitted under a commercial plan—

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year.

(B) The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency from which contracts for commercial items were received.

(D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

(End of clause)

*Alternate I (Oct 2001).* As prescribed in 19.708(b)(1)(i), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) The apparent low bidder, upon request by the Contracting Officer, shall submit a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the bidder is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be submitted within the time specified by the Contracting Officer. Failure to submit the subcontracting plan shall make the bidder ineligible for the award of a contract.

*Alternate II (Oct 2001).* As prescribed in 19.708(b)(1)(ii), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) Proposals submitted in response to this solicitation shall include a subcontracting plan that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate a subcontracting plan shall make the offeror ineligible for award of a contract.

*Alternate III (Oct 2014).* As prescribed in 19.708(b)(1)(iii), substitute the following paragraphs (d)(10) and (l) for paragraphs (d)(10) and (l) in the basic clause;

(d)(10) Assurances that the offeror will—

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;

(iii) Submit Standard Form (SF) 294 Subcontracting Report for Individual Contract in accordance with paragraph (l) of this clause. Submit the Summary Subcontract Report (SSR),

in accordance with paragraph (l) of this clause using the Electronic Subcontracting Reporting System (eSRS) at <http://www.esrs.gov>. The reports shall provide information on subcontract awards to small business concerns (including ANC and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANC and Indian tribes that have not been certified by the Small Business Administration as small disadvantaged businesses), women-owned small business concerns, and for NASA only, Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations; and

(iv) Ensure that its subcontractors with subcontracting plans agree to submit the SF 294 in accordance with paragraph (l) of this clause. Ensure that its subcontractors with subcontracting plans agree to submit the SSR in accordance with paragraph (l) of this clause using the eSRS.

(l) *The Contractor shall submit a SF 294.* The Contractor shall submit SSRs using the web-based eSRS at <http://www.esrs.gov>. Purchases from a corporation, company, or subdivision that is an affiliate of the prime Contractor or subcontractor are not included in these reports. Subcontract award data reported by prime Contractors and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors, unless the Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe. Only subcontracts involving performance in the U.S. or its outlying areas should be included in these reports with the exception of subcontracts under a contract awarded by the State Department or any other agency that has statutory or regulatory authority to require subcontracting plans for subcontracts performed outside the United States and its outlying areas.

(1) *SF 294.* This report is not required for commercial plans. The report is required for each contract containing an individual subcontract plan. For prime contractors the report shall be submitted to the contracting officer, or as specified elsewhere in this contract. In the case of a subcontract with a subcontracting plan, the report shall be submitted to the entity that awarded the subcontract.

(i) The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period.

(ii) When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR [19.704\(c\)](#), the dollar goal inserted on this report shall be

the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.

(2) *SSR.* (i) Reports submitted under individual contract plans—

(A) This report encompasses all subcontracting under prime contracts and subcontracts with the awarding agency, regardless of the dollar value of the subcontracts.

(B) The report may be submitted on a corporate, company or subdivision (*e.g.* plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.

(C) If a prime Contractor and/or subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over \$550,000 (over \$1,000,000 for construction of a public facility) and contains a subcontracting plan. For DoD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DoD prime Contractors. However, for construction and related maintenance and repair, a separate report shall be submitted for each DoD component.

(D) For DoD and NASA, the report shall be submitted semi-annually for the six months ending March 31 and the twelve months ending September 30. For civilian agencies, except NASA, it shall be submitted annually for the twelve-month period ending September 30. Reports are due 30 days after the close of each reporting period.

(E) Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.

(F) The authority to acknowledge or reject SSRs in the eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts unless stated otherwise in the contract.

(ii) Reports submitted under a commercial plan—

(A) The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year.

(B) The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.

(C) If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency from which contracts for commercial items were received.

(D) The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

**52.219-10 Incentive Subcontracting Program.**

As prescribed in [19.708\(c\)\(1\)](#), insert the following clause:

INCENTIVE SUBCONTRACTING PROGRAM (OCT 2014)

(a) Of the total dollars it plans to spend under subcontracts, the Contractor has committed itself in its subcontracting plan to try to award certain percentages to small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns, respectively.

(b) If the Contractor exceeds its subcontracting goals for small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in performing this contract, it will receive \_\_\_\_\_ [*Contracting Officer to insert the appropriate number between 0 and 10*] percent of the dollars in excess of each goal in the plan, unless the Contracting Officer determines that the excess was not due to the Contractor’s efforts (*e.g.*, a subcontractor cost overrun caused the actual subcontract amount to exceed that estimated in the subcontracting plan, or the award of subcontracts that had been planned but had not been disclosed in the subcontracting plan during contract negotiations). Determinations made under this paragraph are unilateral decisions made solely at the discretion of the Government.

(c) If this is a cost-plus-fixed-fee contract, the sum of the fixed fee and the incentive fee earned under this contract may not exceed the limitations in [15.404-4](#) of the Federal Acquisition Regulation.

(End of clause)

**52.219-11 Special 8(a) Contract Conditions.**

As prescribed in [19.811-3\(a\)](#), insert the following clause:

SPECIAL 8(A) CONTRACT CONDITIONS (FEB 1990)

The Small Business Administration (SBA) agrees to the following:

(a) To furnish the supplies or services set forth in this contract according to the specifications and the terms and conditions hereof by subcontracting with an eligible concern pursuant to the provisions of section 8(a) of the Small Business Act, as amended ([15 U.S.C. 637\(a\)](#)).

(b) That in the event SBA does not award a subcontract for all or a part of the work hereunder, this contract may be terminated either in whole or in part without cost to either party.

(c) Except for novation agreements and advance payments, delegate to the \_\_\_\_\_ [*insert name of contracting agency*] the responsibility for administering the subcontract to be awarded hereunder with complete authority to take any action on behalf of the Government under the terms and conditions of the subcontract; provided, however, that the

\_\_\_\_\_ [*insert name of contracting agency*] shall give advance notice to the SBA before it issues a final notice terminating the right of a subcontractor to proceed with further performance, either in whole or in part, under the subcontract for default or for the convenience of the Government.

(d) That payments to be made under any subcontract awarded under this contract will be made directly to the subcontractor by the \_\_\_\_\_ [*insert name of contracting agency*].

(e) That the subcontractor awarded a subcontract hereunder shall have the right of appeal from decisions of the Contracting Officer cognizable under the “Disputes” clause of said subcontract.

(f) To notify the \_\_\_\_\_ [*insert name of contracting agency*] Contracting Officer immediately upon notification by the subcontractor that the owner or owners upon whom 8(a) eligibility was based plan to relinquish ownership or control of the concern.

(End of clause)

**52.219-12 Special 8(a) Subcontract Conditions.**

As prescribed in [19.811-3\(b\)](#), insert the following clause:

SPECIAL 8(A) SUBCONTRACT CONDITIONS (FEB 1990)

(a) The Small Business Administration (SBA) has entered into Contract No. \_\_\_\_\_ [*insert number of contract*] with the \_\_\_\_\_ [*insert name of contracting agency*] to furnish the supplies or services as described therein. A copy of the contract is attached hereto and made a part hereof.

(b) The \_\_\_\_\_ [*insert name of subcontractor*], hereafter referred to as the subcontractor, agrees and acknowledges as follows:

(1) That it will, for and on behalf of the SBA, fulfill and perform all of the requirements of Contract No. \_\_\_\_\_ [*insert number of contract*] for the consideration stated therein and that it has read and is familiar with each and every part of the contract.

(2) That the SBA has delegated responsibility, except for novation agreements and advance payments, for the administration of this subcontract to the \_\_\_\_\_ [*insert name of contracting agency*] with complete authority to take any action on behalf of the Government under the terms and conditions of this subcontract.

(3) That it will not subcontract the performance of any of the requirements of this subcontract to any lower tier subcontractor without the prior written approval of the SBA and the designated Contracting Officer of the \_\_\_\_\_ [*insert name of contracting agency*].

(4) That it will notify the \_\_\_\_\_ [*insert name of contracting agency*] Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

(c) Payments, including any progress payments under this subcontract, will be made directly to the subcontractor by the \_\_\_\_\_ [*insert name of contracting agency*].

(End of clause)

#### 52.219-13 Notice of Set-Aside of Orders.

As prescribed in [19.508](#)(f), insert the following clause:

##### NOTICE OF SET-ASIDE OF ORDERS (NOV 2011)

The Contracting Officer will give notice of the order or orders, if any, to be set aside for small business concerns identified in [19.000](#)(a)(3) and the applicable small business program. This notice, and its restrictions, will apply only to the specific orders that have been set aside for any of the small business concerns identified in [19.000](#)(a)(3).

(End of clause)

#### 52.219-14 Limitations on Subcontracting.

As prescribed in [19.508](#)(e) or [19.811-3](#)(e), insert the following clause:

##### 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.

(End of clause)

#### 52.219-15 [Reserved]

#### 52.219-16 Liquidated Damages—Subcontracting Plan.

As prescribed in [19.708](#)(b)(2), insert the following clause:

##### LIQUIDATED DAMAGES—SUBCONTRACTING PLAN (JAN 1999)

(a) “Failure to make a good faith effort to comply with the subcontracting plan,” as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled “Small Business Subcontracting Plan,” or willful or intentional action to frustrate the plan.

(b) Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. If, at contract completion or, in the case of a commercial plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled “Small Business Subcontracting Plan,” the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor’s failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.

(c) Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made and to discuss the matter. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.

(d) With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies with contracts covered by the commercial plan.

(e) The Contractor shall have the right of appeal, under the clause in this contract entitled, Disputes, from any final decision of the Contracting Officer.

(f) Liquidated damages shall be in addition to any other remedies that the Government may have.

(End of clause)

#### 52.219-17 Section 8(a) Award.

As prescribed in [19.811-3](#)(c), insert the following clause:

##### SECTION 8(A) AWARD (DEC 1996)



(a) By execution of a contract, the Small Business Administration (SBA) agrees to the following:

(1) To furnish the supplies or services set forth in the contract according to the specifications and the terms and conditions by subcontracting with the Offeror who has been determined an eligible concern pursuant to the provisions of section 8(a) of the Small Business Act, as amended ([15 U.S.C. 637\(a\)](#)).

(2) Except for novation agreements and advance payments, delegates to the \_\_\_\_\_ [*insert name of contracting activity*] the responsibility for administering the contract with complete authority to take any action on behalf of the Government under the terms and conditions of the contract; *provided*, however that the contracting agency shall give advance notice to the SBA before it issues a final notice terminating the right of the subcontractor to proceed with further performance, either in whole or in part, under the contract.

(3) That payments to be made under the contract will be made directly to the subcontractor by the contracting activity.

(4) To notify the \_\_\_\_\_ [*insert name of contracting agency*] Contracting Officer immediately upon notification by the subcontractor that the owner or owners upon whom 8(a) eligibility was based plan to relinquish ownership or control of the concern.

(5) That the subcontractor awarded a subcontract hereunder shall have the right of appeal from decisions of the cognizant Contracting Officer under the “Disputes” clause of the subcontract.

(b) The offeror/subcontractor agrees and acknowledges that it will, for and on behalf of the SBA, fulfill and perform all of the requirements of the contract.

(c) The offeror/subcontractor agrees that it will not subcontract the performance of any of the requirements of this subcontract to any lower tier subcontractor without the prior written approval of the SBA and the cognizant Contracting Officer of the \_\_\_\_\_ [*insert name of contracting agency*].

(End of clause)

**52.219-18 Notification of Competition Limited to Eligible 8(a) Concerns.**

As prescribed in [19.811-3\(d\)](#), insert the following clause:

NOTIFICATION OF COMPETITION LIMITED TO ELIGIBLE 8(A) CONCERNS (JUNE 2003)

(a) Offers are solicited only from small business concerns expressly certified by the Small Business Administration (SBA) for participation in the SBA’s 8(a) Program and which meet the following criteria at the time of submission of offer—

(1) The Offeror is in conformance with the 8(a) support limitation set forth in its approved business plan; and

(2) The Offeror is in conformance with the Business Activity Targets set forth in its approved business plan or any remedial action directed by the SBA.

(b) By submission of its offer, the Offeror represents that it meets all of the criteria set forth in paragraph (a) of this clause.

(c) Any award resulting from this solicitation will be made to the Small Business Administration, which will subcontract performance to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

(d)(1) *Agreement*. A small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas. If this procurement is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, a small business concern may furnish the product of any domestic firm. This paragraph does not apply to construction or service contracts.

(2) The \_\_\_\_\_ [*insert name of SBA's contractor*] will notify the \_\_\_\_\_ [*insert name of contracting agency*] Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

(End of clause)

*Alternate I (Apr 2005)*. If the competition is to be limited to 8(a) concerns within one or more specific SBA regions or districts, add the following paragraph (a)(3) to paragraph (a) of the clause:

(3) The offeror’s approved business plan is on the file and serviced by \_\_\_\_\_ [*Contracting Officer completes by inserting the appropriate SBA District and/or Regional Office(s) as identified by the SBA*].

*Alternate II (Dec 1996)*. When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with [19.502-2\(c\)](#), delete paragraph (d)(1).

**52.219-19 [Reserved]**

**52.219-20 [Reserved]**

**52.219-21 [Reserved]**

**52.219-22 [Reserved]**

**52.219-23 [Reserved]**

**52.219-24 [Reserved]**

**52.219-25 [Reserved]**

**52.219-26 [Reserved]****52.219-27 Notice of Service-Disabled Veteran-Owned Small Business Set-Aside.**

As prescribed in [19.1407](#), insert the following clause:

NOTICE OF SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS SET-ASIDE (NOV 2011)

(a) *Definition.* “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\(16\)](#).

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

(1) Contracts that have been set aside or reserved for service-disabled veteran-owned small business concerns;

(2) Part or parts of a multiple-award contract that have been set aside for service-disabled veteran-owned small business concerns; and

(3) Orders set aside for service-disabled veteran-owned small business concerns under multiple-award contracts as described in [8.405-5](#) and [16.505\(b\)\(2\)\(i\)\(F\)](#).

(c) *General.* (1) Offers are solicited only from service-disabled veteran-owned small business concerns. Offers received from concerns that are not service-disabled veteran-owned small business concerns shall not be considered.

(2) Any award resulting from this solicitation will be made to a service-disabled veteran-owned small business concern.

(d) *Agreement.* A service-disabled veteran-owned small business concern agrees that in the performance of the contract, in the case of a contract for—

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other service-disabled veteran-owned small business concerns;

(2) Supplies (other than acquisition from a nonmanufacturer of the supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other service-disabled veteran-owned small business concerns;

(3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be

spent on the concern’s employees or the employees of other service-disabled veteran-owned small business concerns; or

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern’s employees or the employees of other service-disabled veteran-owned small business concerns.

(e) A joint venture may be considered a service-disabled veteran owned small business concern if—

(1) At least one member of the joint venture is a service-disabled veteran-owned small business concern, and makes the following representations: That it is a service-disabled veteran-owned small business concern, and that it is a small business concern under the North American Industry Classification Systems (NAICS) code assigned to the procurement;

(2) Each other concern is small under the size standard corresponding to the NAICS code assigned to the procurement; and

(3) The joint venture meets the requirements of paragraph 7 of the explanation of Affiliates in [19.101](#) of the Federal Acquisition Regulation.

(4) The joint venture meets the requirements of 13 CFR 125.15(b)

(f) Any service-disabled veteran-owned small business concern (nonmanufacturer) must meet the requirements in [19.102\(f\)](#) of the Federal Acquisition Regulation to receive a benefit under this program.

(End of clause)

**52.219-28 Post-Award Small Business Program Rerepresentation.**

As prescribed in [19.309\(c\)](#), insert the following clause:

POST-AWARD SMALL BUSINESS PROGRAM  
REREPRESENTATION (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 rerepresent 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 rerepresent its size status in accordance with the size standard in effect at the time of this rerepresentation 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 rerepresentation and submit it to the contracting office, along with the contract number and the date on which the rerepresentation was completed:

The Contractor represents that it  is,  is not a small business concern under NAICS Code \_\_\_\_\_ assigned to contract number \_\_\_\_\_.

[Contractor to sign and date and insert authorized signer's name and title].

(End of clause)

### 52.219-29 Notice of Set-Aside for Economically Disadvantaged Women-Owned Small Business Concerns.

As prescribed in [19.1506](#), insert the following clause:

#### NOTICE OF SET-ASIDE FOR ECONOMICALLY DISADVANTAGED WOMEN-OWNED SMALL BUSINESS CONCERNS (JUL 2013)

(a) *Definitions.* “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 (WOSB) concern eligible under the WOSB Program.

“WOSB Program Repository” means a secure, Web-based application that collects, stores, and disseminates documents to the contracting community and SBA, which verify the eligibility of a business concern for a contract to be awarded under the WOSB Program.

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

(1) Contracts that have been set aside or reserved for EDWOSB concerns;

(2) Part or parts of a multiple-award contract that have been set aside for EDWOSB concerns; and

(3) Orders set aside for EDWOSB concerns under multiple-award contracts as described in [8.405-5](#) and [16.505\(b\)\(2\)\(i\)\(F\)](#).

(c) *General.* (1) Offers are solicited only from EDWOSB concerns. Offers received from concerns that are not EDWOSB concerns will not be considered.

(2) Any award resulting from this solicitation will be made to an EDWOSB concern.

(3) The contracting officer will ensure that the apparent successful offeror has provided all required documents to the WOSB Program Repository. The contract will not be awarded until all required documents are received.

(d) *Agreement.* An EDWOSB concern agrees that in the performance of the contract for—

(1) Services (except construction), the concern will perform at least 50 percent of the cost of the contract incurred for personnel with its own employees;

(2) Supplies or products (other than procurement from a non-manufacturer in such supplies or products), the concern will perform at least 50 percent of the cost of manufacturing the supplies or products (not including the costs of materials);

(3) General construction, the concern will perform at least 15 percent of the cost of the contract with its own employees (not including the costs of materials); and

(4) Construction by special trade contractors, the concern will perform at least 25 percent of the cost of the contract with its own employees (not including the cost of materials).

(e) *Joint Venture*. A joint venture may be considered an EDWOSB concern if—

(1) It meets the applicable size standard corresponding to the NAICS code assigned to the contract, unless an exception to affiliation applies pursuant to 13 CFR 121.103(h)(3);

(2) The EDWOSB participant of the joint venture is designated in the System for Award Management as an EDWOSB concern;

(3) The parties to the joint venture have entered into a written joint venture agreement that contains provisions—

(i) Setting forth the purpose of the joint venture;

(ii) Designating an EDWOSB concern as the managing venturer of the joint venture, and an employee of the managing venturer as the project manager responsible for the performance of the contract;

(iii) Stating that not less than 51 percent of the net profits earned by the joint venture will be distributed to the EDWOSB;

(iv) Specifying the responsibilities of the parties with regard to contract performance, sources of labor, and negotiation of the EDWOSB contract; and

(v) Requiring the final original records be retained by the managing venturer upon completion of the EDWOSB contract performed by the joint venture.

(4) The joint venture performs the applicable percentage of work required in accordance with paragraph (d) above; and

(5) The procuring activity executes the contract in the name of the EDWOSB or joint venture.

(f) *Nonmanufacturer*. An EDWOSB concern that is a non-manufacturer, as defined in 13 CFR 121.406(b) or [19.102\(f\)](#), may submit an offer on an EDWOSB requirement with a NAICS code for supplies, if it meets the requirements under the non-manufacturer rule set forth in those regulations.

(End of clause)

### 52.219-30 Notice of Set-Aside for Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program.

As prescribed in [19.1506](#), insert the following clause:

#### NOTICE OF SET-ASIDE FOR WOMEN-OWNED SMALL BUSINESS CONCERNS ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM (JUL 2013)

(a) *Definitions*. “Women-owned small business (WOSB) concern eligible under the WOSB Program” (in accordance with 13 CFR 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.

“WOSB Program Repository” means a secure, Web-based application that collects, stores, and disseminates documents to the contracting community and SBA, which verify the eligibility of a business concern for a contract to be awarded under the WOSB Program.

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

(1) Contracts that have been set aside or reserved for WOSB concerns eligible under the WOSB Program;

(2) Part or parts of a multiple-award contract that have been set aside for WOSB concerns eligible under the WOSB Program; and

(3) Orders set aside for WOSB concerns eligible under the WOSB Program, under multiple-award contracts as described in [8.405-5](#) and [16.505\(b\)\(2\)\(i\)\(F\)](#).

(c) *General*. (1) Offers are solicited only from WOSB concerns eligible under the WOSB Program. Offers received from concerns that are not WOSB concerns eligible under the WOSB program shall not be considered.

(2) Any award resulting from this solicitation will be made to a WOSB concern eligible under the WOSB Program.

(3) The Contracting Officer will ensure that the apparent successful offeror has provided the required documents to the WOSB Program Repository. The contract shall not be awarded until all required documents are received.

(d) *Agreement*. A WOSB concern eligible under the WOSB Program agrees that in the performance of the contract for—

(1) Services (except construction), the concern will perform at least 50 percent of the cost of the contract incurred for personnel with its own employees;

(2) Supplies or products (other than procurement from a non-manufacturer in such supplies or products), the concern will perform at least 50 percent of the cost of manufacturing the supplies or products (not including the costs of materials);

(3) General construction, the concern will perform at least 15 percent of the cost of the contract with its own employees (not including the costs of materials); and

(4) Construction by special trade contractors, the concern will perform at least 25 percent of the cost of the contract with its own employees (not including cost of materials).

(e) *Joint Venture*. A joint venture may be considered a WOSB concern eligible under the WOSB Program if—

(1) It meets the applicable size standard corresponding to the NAICS code assigned to the contract, unless an exception to affiliation applies pursuant to 13 CFR 121.103(h)(3);

(2) The WOSB participant of the joint venture is designated in the System for Award Management as a WOSB concern;

(3) The parties to the joint venture have entered into a written joint venture agreement that contains provisions—

(i) Setting forth the purpose of the joint venture;

(ii) Designating a WOSB concern eligible under the WOSB Program as the managing venturer of the joint venture, and an employee of the managing venturer as the project manager responsible for the performance of the contract;

(iii) Stating that not less than 51 percent of the net profits earned by the joint venture will be distributed to the WOSB;

(iv) Specifying the responsibilities of the parties with regard to contract performance, sources of labor, and negotiation of the WOSB contract; and

(v) Requiring the final original records be retained by the managing venturer upon completion of the WOSB contract performed by the joint venture.

(4) The joint venture must perform the applicable percentage of work required in accordance with paragraph (d) above; and

(5) The procuring activity executes the contract in the name of the WOSB concern eligible under the WOSB Program or joint venture.

(f) *Nonmanufacturer*. A WOSB concern eligible under the WOSB Program that is a non-manufacturer, as defined in 13 CFR 121.406(b) or [19.102\(f\)](#), may submit an offer on a WOSB requirement with a NAICS code for supplies, if it meets the requirements under the non-manufacturer rule set forth in those regulations.

(End of clause)

**52.220 [Reserved]**

**52.221 [Reserved]**

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(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 wages otherwise required by [41 U.S.C. 6703\(1\)](#) without diminishing any fringe benefits or cash payments in lieu thereof required under [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.

(End of clause)

#### 52.222-42 Statement of Equivalent Rates for Federal Hires.

As prescribed in [22.1006\(b\)](#), insert the following clause:

##### 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
_____	_____
_____	_____
_____	_____
_____	_____

(End of clause)

#### 52.222-43 Fair Labor Standards Act and Service Contract Labor Standards—Price Adjustment (Multiple Year and Option Contracts).

As prescribed in [22.1006\(c\)\(1\)](#), insert the following clause:

##### 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



(ii) Relevant information in the possession of the Contractor regarding the incident concerned.

(d) *Remedies.* In addition to other remedies available to the Government—

(1) The Contracting Officer may direct the Contractor, at its own expense, to remove and replace any Contractor or subcontractor personnel performing private security functions who fail to comply with or violate applicable requirements of this clause or 32 CFR part 159. Such action may be taken at the Government's discretion without prejudice to its rights under any other provision of this contract.

(2) The Contractor's failure to comply with the requirements of this clause will be included in appropriate databases of past performance and considered in any responsibility determination or evaluation of past performance; and

(3) If this is an award-fee contract, the Contractor's failure to comply with the requirements of this clause shall be considered in the evaluation of the Contractor's performance during the relevant evaluation period, and the Contracting Officer may treat such failure to comply as a basis for reducing or denying award fees for such period or for recovering all or part of award fees previously paid for such period.

(e) *Rule of construction.* The duty of the Contractor to comply with the requirements of this clause shall not be reduced or diminished by the failure of a higher- or lower-tier Contractor or subcontractor to comply with the clause requirements or by a failure of the contracting activity to provide required oversight.

(f) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts that will be performed in areas of—

(1) *DoD contracts only:* Contingency operations, combat operations, as designated by the Secretary of Defense, or other significant military operations, as designated by the Secretary of Defense upon agreement of the Secretary of State; or

(2) *Non-DoD contracts:* Combat operations, as designated by the Secretary of Defense, or other significant military operations, upon agreement of the Secretaries of Defense and State that the clause applies in that area.

(End of clause)

## 52.226-1 Utilization of Indian Organizations and Indian-Owned Economic Enterprises.

As prescribed in [26.104](#), insert the following clause:

### UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES (JUNE 2000)

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

“Indian” means any person who is a member of any Indian tribe, band, group, pueblo, or community that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with [25 U.S.C. 1452\(c\)](#) and any “Native” as defined in the Alaska Native Claims Settlement Act ([43 U.S.C. 1601](#)).

“Indian organization” means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of [25 U.S.C., Chapter 17](#).

“Indian-owned economic enterprise” means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership constitutes not less than 51 percent of the enterprise.

“Indian tribe” means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, that is recognized by the Federal Government as eligible for services from BIA in accordance with [25 U.S.C. 1452\(c\)](#).

“Interested party” means a prime contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

(b) The Contractor shall use its best efforts to give Indian organizations and Indian-owned economic enterprises ([25 U.S.C. 1544](#)) the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with efficient performance of its contract.

(1) The Contracting Officer and the Contractor, acting in good faith, may rely on the representation of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status. In the event of a challenge to the representation of a subcontractor, the Contracting Officer will refer the matter to the—

U.S. Department of the Interior  
Bureau of Indian Affairs (BIA)  
Attn: Chief, Division of Contracting and Grants  
Administration  
1849 C Street, NW,  
MS-2626-MIB  
Washington, DC 20240-4000.

The BIA will determine the eligibility and notify the Contracting Officer. No incentive payment will be made within 50 working days of subcontract award or while a challenge is

pending. If a subcontractor is determined to be an ineligible participant, no incentive payment will be made under the Indian Incentive Program.

(2) The Contractor may request an adjustment under the Indian Incentive Program to the following:

(i) The estimated cost of a cost-type contract.

(ii) The target cost of a cost-plus-incentive-fee prime contract.

(iii) The target cost and ceiling price of a fixed-price incentive prime contract.

(iv) The price of a firm-fixed-price prime contract.

(3) The amount of the adjustment to the prime contract is 5 percent of the estimated cost, target cost, or firm-fixed-price included in the subcontract initially awarded to the Indian organization or Indian-owned economic enterprise.

(4) The Contractor has the burden of proving the amount claimed and must assert its request for an adjustment prior to completion of contract performance.

(c) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the amount paid to the subcontractor. The Contracting Officer will seek funding in accordance with agency procedures.

(End of clause)

**52.226-2 Historically Black College or University and Minority Institution Representation.**

As prescribed in [26.304](#), insert the following provision:

HISTORICALLY BLACK COLLEGE OR UNIVERSITY AND  
MINORITY INSTITUTION REPRESENTATION (OCT 2014)

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

“Historically black college or university” means an institution determined by the Secretary of Education to meet the requirements of 34 CFR 608.2.

“Minority institution” means an institution of higher education meeting the requirements of Section 365(3) of the Higher Education Act of 1965 ([20 U.S.C. 1067k](#)), including a Hispanic-serving institution of higher education, as defined in Section 502(a) of the Act ([20 U.S.C. 1101a](#)).

(b) *Representation.* The offeror represents that it—

is  is not a historically black college or university;

is  is not a minority institution.

(End of provision)

**52.226-3 Disaster or Emergency Area Representation.**

As prescribed in [26.206\(a\)](#), insert the following provision:

DISASTER OR EMERGENCY AREA REPRESENTATION  
(NOV 2007)

(a) *Set-aside area.* The area covered in this contract is:

[*Contracting Officer to fill in with definite geographic boundaries.*]

(b) *Representations.* The offeror represents that it  does  does not reside or primarily do business in the designated set-aside area.

(c) An offeror is considered to be residing or primarily doing business in the set-aside area if, during the last twelve months—

(1) The offeror had its main operating office in the area; and

(2) That office generated at least half of the offeror’s gross revenues and employed at least half of the offeror’s permanent employees.

(d) If the offeror does not meet the criteria in paragraph (c) of this provision, factors to be considered in determining whether an offeror resides or primarily does business in the set-aside area include—

(1) Physical location(s) of the offeror’s permanent office(s) and date any office in the set-aside area(s) was established;

(2) Current state licenses;

(3) Record of past work in the set-aside area(s) (*e.g.*, how much and for how long);

(4) Contractual history the offeror has had with subcontractors and/or suppliers in the set-aside area;

(5) Percentage of the offeror’s gross revenues attributable to work performed in the set-aside area;

(6) Number of permanent employees the offeror employs in the set-aside area;

(7) Membership in local and state organizations in the set-aside area; and

(8) Other evidence that establishes the offeror resides or primarily does business in the set-aside area. For example, sole proprietorships may submit utility bills and bank statements.

(e) If the offeror represents it resides or primarily does business in the set-aside area, the offeror shall furnish documentation to support its representation if requested by the Contracting Officer. The solicitation may require the offeror to submit with its offer documentation to support the representation.

(End of provision)

**52.226-4 Notice of Disaster or Emergency Area Set-Aside.**

As prescribed in [26.206\(b\)](#), insert the following clause:

**52.244-1 [Reserved]****52.244-2 Subcontracts.**

As prescribed in [44.204\(a\)\(1\)](#), insert the following clause:

## SUBCONTRACTS (OCT 2010)

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

“Approved purchasing system” means a Contractor’s purchasing system that has been reviewed and approved in accordance with [Part 44](#) of the Federal Acquisition Regulation (FAR).

“Consent to subcontract” means the Contracting Officer’s written consent for the Contractor to enter into a particular subcontract.

“Subcontract” means any contract, as defined in FAR [Subpart 2.1](#), entered into by a subcontractor to furnish supplies or services for performance of the prime contract or a subcontract. It includes, but is not limited to, purchase orders, and changes and modifications to purchase orders.

(b) When this clause is included in a fixed-price type contract, consent to subcontract is required only on unpriced contract actions (including unpriced modifications or unpriced delivery orders), and only if required in accordance with paragraph (c) or (d) of this clause.

(c) If the Contractor does not have an approved purchasing system, consent to subcontract is required for any subcontract that—

(1) Is of the cost-reimbursement, time-and-materials, or labor-hour type; or

(2) Is fixed-price and exceeds—

(i) For a contract awarded by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration, the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract; or

(ii) For a contract awarded by a civilian agency other than the Coast Guard and the National Aeronautics and Space Administration, either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

(d) If the Contractor has an approved purchasing system, the Contractor nevertheless shall obtain the Contracting Officer’s written consent before placing the following subcontracts:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(e)(1) The Contractor shall notify the Contracting Officer reasonably in advance of placing any subcontract or modification thereof for which consent is required under paragraph (b), (c), or (d) of this clause, including the following information:

(i) A description of the supplies or services to be subcontracted.

(ii) Identification of the type of subcontract to be used.

(iii) Identification of the proposed subcontractor.

(iv) The proposed subcontract price.

(v) The subcontractor’s current, complete, and accurate certified cost or pricing data and Certificate of Current Cost or Pricing Data, if required by other contract provisions.

(vi) The subcontractor’s Disclosure Statement or Certificate relating to Cost Accounting Standards when such data are required by other provisions of this contract.

(vii) A negotiation memorandum reflecting—

(A) The principal elements of the subcontract price negotiations;

(B) The most significant considerations controlling establishment of initial or revised prices;

(C) The reason certified cost or pricing data were or were not required;

(D) The extent, if any, to which the Contractor did not rely on the subcontractor’s certified cost or pricing data in determining the price objective and in negotiating the final price;

(E) The extent to which it was recognized in the negotiation that the subcontractor’s certified cost or pricing data were not accurate, complete, or current; the action taken by the Contractor and the subcontractor; and the effect of any such defective data on the total price negotiated;

(F) The reasons for any significant difference between the Contractor’s price objective and the price negotiated; and

(G) A complete explanation of the incentive fee or profit plan when incentives are used. The explanation shall identify each critical performance element, management decisions used to quantify each incentive element, reasons for the incentives, and a summary of all trade-off possibilities considered.

(2) The Contractor is not required to notify the Contracting Officer in advance of entering into any subcontract for which consent is not required under paragraph (b), (c), or (d) of this clause.

(f) Unless the consent or approval specifically provides otherwise, neither consent by the Contracting Officer to any subcontract nor approval of the Contractor’s purchasing system shall constitute a determination—

(1) Of the acceptability of any subcontract terms or conditions;

(2) Of the allowability of any cost under this contract; or

(3) To relieve the Contractor of any responsibility for performing this contract.

(g) No subcontract or modification thereof placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis, and any fee payable under cost-reimbursement type subcontracts shall not exceed the fee limitations in FAR [15.404-4\(c\)\(4\)\(i\)](#).

(h) The Contractor shall give the Contracting Officer immediate written notice of any action or suit filed and prompt notice of any claim made against the Contractor by any subcontractor or vendor that, in the opinion of the Contractor, may result in litigation related in any way to this contract, with respect to which the Contractor may be entitled to reimbursement from the Government.

(i) The Government reserves the right to review the Contractor’s purchasing system as set forth in FAR [Subpart 44.3](#).

(j) Paragraphs (c) and (e) of this clause do not apply to the following subcontracts, which were evaluated during negotiations:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(End of clause)

*Alternate I (June 2007).* As prescribed in [44.204\(a\)\(2\)](#), substitute the following paragraph (e)(2) for paragraph (e)(2) of the basic clause:

(e)(2) If the Contractor has an approved purchasing system and consent is not required under paragraph (c), or (d) of this clause, the Contractor nevertheless shall notify the Contracting Officer reasonably in advance of entering into any (i) cost-plus-fixed-fee subcontract, or (ii) fixed-price subcontract that exceeds either the simplified acquisition threshold or 5 percent of the total estimated cost of this contract. The notification shall include the information required by paragraphs (e)(1)(i) through (e)(1)(iv) of this clause.

**52.244-3 [Reserved]**

**52.244-4 Subcontractors and Outside Associates and Consultants (Architect-Engineer Services).**

As prescribed in [44.204\(b\)](#), insert the following clause:

SUBCONTRACTORS AND OUTSIDE ASSOCIATES AND  
 CONSULTANTS (ARCHITECT-ENGINEER SERVICES)  
 (AUG 1998)

Any subcontractors and outside associates or consultants required by the Contractor in connection with the services covered by the contract will be limited to individuals or firms that were specifically identified and agreed to during negotiations. The Contractor shall obtain the Contracting Officer’s written consent before making any substitution for these subcontractors, associates, or consultants.

(End of clause)

**52.244-5 Competition in Subcontracting.**

As prescribed in [44.204\(c\)](#), insert the following clause:

COMPETITION IN SUBCONTRACTING (DEC 1996)

(a) The Contractor shall select subcontractors (including suppliers) on a competitive basis to the maximum practical

extent consistent with the objectives and requirements of the contract.

(b) If the Contractor is an approved mentor under the Department of Defense Pilot Mentor-Protégé Program (Pub. L. 101-510, section 831 as amended), the Contractor may award subcontracts under this contract on a noncompetitive basis to its protégés.

(End of clause)

**52.244-6 Subcontracts for Commercial Items.**

As prescribed in [44.403](#), insert the following clause:

SUBCONTRACTS FOR COMMERCIAL ITEMS (OCT 2014)

(a) *Definitions.* As used in this clause—  
 “Commercial item” has the meaning contained in Federal Acquisition Regulation [2.101](#), Definitions.

“Subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of the Contractor or subcontractor at any tier.

(b) To the maximum extent practicable, the Contractor shall incorporate, and require its subcontractors at all tiers to incorporate, commercial items or nondevelopmental items as components of items to be supplied under this contract.

(c)(1) The Contractor shall insert the following clauses in subcontracts for commercial items:

(i) [52.203-13](#), Contractor Code of Business Ethics and Conduct (APR 2010) ([41 U.S.C. 3509](#)), if the subcontract exceeds \$5,000,000 and has a performance period of more than 120 days. In altering this clause to identify the appropriate parties, all disclosures of violation of the civil False Claims Act or of Federal criminal law shall be directed to the agency Office of the Inspector General, with a copy to the Contracting Officer.

(ii) [52.203-15](#), Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5), if the subcontract is funded under the Recovery Act.

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

(iv) [52.222-26](#), Equal Opportunity (MAR 2007) (E.O. 11246).

(v) [52.222-35](#), Equal Opportunity for Veterans (JUL 2014) ([38 U.S.C. 4212\(a\)](#));

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

(vii) [52.222-37](#), Employment Reports on Veterans (JUL 2014) ([38 U.S.C. 4212](#)).

(viii) [52.222-40](#), Notification of Employee Rights Under the National Labor Relations Act (DEC 2010) (E.O.

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.216-25 Contract Definition. (See Note 1.)	16.603-4(b)(3)	C	No	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
Alternate I (See Note 1.)	16.603-4(b)(3)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.216-26 Payments of Allowable Costs Before Definition. (See Note 1.)	16.603-4(c)	C	Yes	I																			
52.216-27 Single or Multiple Awards.	16.506(f)	P	Yes	L																			
52.216-28 Multiple Awards for Advisory and Assistance Services.	16.506(g)	P	Yes	L																			
52.216-29 T&M/LH Proposal Requirements—Non-commercial Item Acquisition with Adequate Price Competition	16.601(f)(1)	P	Yes	L									A										
52.216-30 T&M/LH Proposal Requirements—Non-commercial Item Acquisition without Adequate Price Competition	16.601(f)(2)	P	No	L									A										
52.216-31 T&M/LH Proposal Requirements—Commercial Item Acquisition	16.601(f)(3)	P	Yes	I									A										
52.217-2 Cancellation Under Multiyear Contracts.	17.109(a)	C	Yes	I	A				A														
52.217-3 Evaluation Exclusive of Options.	17.208(a)	P	Yes	M	A	A			A				A										
52.217-4 Evaluation of Options Exercised at Time of Contract Award.	17.208(b)	P	Yes	M	A	A			A				A										
52.217-5 Evaluation of Options.	17.208(c)	P	Yes	M	A	A			A				A										
52.217-6 Option for Increased Quantity.	17.208(d)	C	Yes	I	A				A				A										
52.217-7 Option for Increased Quantity—Separately Priced Line Item.	17.208(e)	C	Yes	I	A	A							A										
52.217-8 Option to Extend Services.	17.208(f)	C	Yes	I					A	A			A										
52.217-9 Option to Extend the Term of the Contract.	17.208(g)	C	No	I					A	A			A										
52.219-1 Small Business Program Representations.	19.309(a)(1)	P	No	K	A	A			A	A			A										
Alternate I	19.309(a)(2)	P	No	K	A	A			A	A			A										
52.219-2 Equal Low Bids.	19.309(b)✓	P	No	K	A	A			A	A			A										
52.219-3 Notice of HUBZone Set-Aside or Sole Source Award.	19.1309(a)	C	Yes	I	A	A			A	A			A										
Alternate I	19.1309(a)(1)	C	Yes	I	A	A			A	A			A										
52.219-4 Notice of Price Evaluation Preference for HUBZone Small Business Concerns.	19.1309(b)	C	Yes	I	A	A			A	A			A										
Alternate I	19.1309(b)(1)	C	Yes	I	A	A			A	A			A										

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.219-6 Notice of Total Small Business Set-Aside.	19.508(c)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate I	19.508(c)	C	Yes	I	A								A								A		
Alternate II	19.508(c)	C	Yes	I	A								A								A		
52.219-7 Notice of Partial Small Business Set-Aside.	19.508(d)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate I	19.508(d)	C	Yes	I	A								A										
Alternate II	19.508(d)	C	Yes	I	A								A										
52.219-8 Utilization of Small Business Concerns.	19.708(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.219-9 Small Business Subcontracting Plan.	19.708(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	19.708(b)(1)	C	Yes	I	A								A										
Alternate II	19.708(b)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate III	19.708(b)(1)(iii)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.219-10 Incentive Subcontracting Program.	19.708(c)(1)	C	Yes	I	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O	O
52.219-11 Special 8(a) Contract Conditions. (See Note 2.)	19.811-3(a)	C	Yes	I																			
52.219-12 Special 8(a) Subcontract Conditions. (See Note 2.)	19.811-3(b)	C	No	I																			
52.219-13 Notice of Set-Aside of Orders.	19.508(f)	C	No	I																			
52.219-14 Limitations on Subcontracting. (See Note 2.)	19.508(e) or 19.811-3(e)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.219-16 Liquidated Damages—Subcontracting Plan.	19.708(b)(2)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.219-17 Section 8(a) Award. (See Note 2.)	19.811-3(c)	C	No	I																			
52.219-18 Notification of Competition Limited to Eligible 8(a) Concerns. (See Note 2.)	19.811-3(d)	C	No	I																			
Alternate I (See Note 2.)	19.811-3(d)(1)	C	No	I																			
Alternate II (See Note 2.)	19.811-3(d)(2)	C	No	I																			
52.219-27 Notice of Service-Disabled Veteran-Owned Small Business Set Aside.	19.1407	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.219-28 Post-Award Small Business Program Rerepresentation.	19.309(c)✓	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.219-29 Notice of Set-Aside for Economically Disadvantaged Women-Owned Small Business (EDWOSB) Concerns.	19.1506(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.219-30 Notice of Set-Aside for Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program.	19.1506(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-1 Notice to the Government of Labor Disputes.	22.103-5(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-2 Payment for Overtime Premiums.	22.103-5(b)	C	Yes	I		A		A		A		A			A	A				A			
52.222-3 Convict Labor.	22.202	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-4 Contract Work Hours and Safety Standards—Overtime Compensation.	22.305	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-5 Construction Wage Rate Requirements—Secondary Site of the Work.	22.407(h)	P	No	L					A		A										A		
52.222-6 Construction Wage Rate Requirements.	22.407(a)	C	Yes	I					A		A										A		
52.222-7 Withholding of Funds.	22.407(a)	C	Yes	I					A		A												
52.222-8 Payrolls and Basic Records.	22.407(a)	C	Yes	I					A		A												
52.222-9 Apprentices and Trainees.	22.407(a)	C	Yes	I					A		A												
52.222-10 Compliance with Copeland Act Requirements.	22.407(a)	C	Yes	I					A		A												
52.222-11 Subcontracts (Labor Standards).	22.407(a)	C	Yes	I					A		A												
52.222-12 Contract Termination—Debarment.	22.407(a)	C	Yes	I					A		A										A		
52.222-13 Compliance with Construction Wage Rate Requirements and Related Regulations.	22.407(a)	C	Yes	I					A		A										A		
52.222-14 Disputes Concerning Labor Standards.	22.407(a)	C	Yes	I					A		A										A		
52.222-15 Certification of Eligibility.	22.407(a)	C	Yes	I					A		A										A		
52.222-16 Approval of Wage Rates.	22.407(b)	C	Yes	I								A											
52.222-17 Nondisplacement of Qualified Workers	22.1207	C	Yes	I					R	R								A	A				A
52.222-18 Certification Regarding Knowledge of Child Labor for Listed End Products.	22.1505(a)	P	No	K	A	A															A		A
52.222-19 Child Labor—Cooperation with Authorities and Remedies.	22.1505(b)	C	Yes	I	A	A															A		A
52.222-20 Contracts for Materials, Supplies, Articles, and Equipment Exceeding \$15,000.	22.610	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-21 Prohibition of Segregated Facilities.	22.810(a)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-22 Previous Contracts and Compliance Reports.	22.810(a)(2)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A

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52.222-23 Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity for Construction.	22.810(b)	P	Yes								A	A									A		
52.222-24 Preaward On-Site Equal Opportunity Compliance Evaluation.	22.810(c)	P	Yes	L	A	A	A	A	A	A			A	A	A	A	A	A	A	A	A		A
52.222-25 Affirmative Action Compliance.	22.810(d)	P	No	K	A	A	A	A	A	A			A	A	A	A	A	A	A	A	A	A	A
52.222-26 Equal Opportunity.	22.810(e)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	22.810(e)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-27 Affirmative Action Compliance Requirements for Construction.	22.810(f)	C	Yes								A	A									A		
52.222-29 Notification of Visa Denial.	22.810(g)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-30 Construction Wage Rate Requirements—Price Adjustment (None or Separately Specified Method).	22.407(e)	C									A	A											
52.222-31 Construction Wage Rate Requirements—Price Adjustment (Percentage Method).	22.407(f)	C									A	A											
52.222-32 Construction Wage Rate Requirements—Price Adjustment (Actual Method).	22.407(g)	C									A	A											
52.222-33 Notice of Requirement for Project Labor Agreement.	22.505(a)(1)	P	Yes								A	A											
Alternate I	22.505(a)(1)	P	Yes								A	A											
Alternate II	22.505(a)(2)	P	Yes								A	A											
52.222-34 Project Labor Agreement.	22.505(b)(1)	C	Yes								A	A											
Alternate I	22.505(b)(2)	C	Yes								A	A											
52.222-35 Equal Opportunity for Veterans.	22.1310(a)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	22.1310(a)(2)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-36 Equal Opportunity for Workers with Disabilities.	22.1408(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	22.1408(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-37 Employment Reports on Veterans.	22.1310(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-38 Compliance with Veterans' Employment Reporting Requirements.	22.1310(c)	P	Yes	K	A	A	A	A	A	A	a	A	A	A	A	A	A	A	A	A	A	A	A
52.222-40 Notification of Employee Rights Under the National Labor Relations Act.	22.1605	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-41 Service Contract Labor Standards.	22.1006(a)	C	Yes	I																			
52.222-42 Statement of Equivalent Rates For Federal Hires.	22.1006(b)	C	No	I																			



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52.222-43 Fair Labor Standards Act and Service Contract Labor Standards—Price Adjustment (Multiple Year and Option Contracts).	22.1006(c)(1)	C	Yes	I					A				A		A	A	A			A	A		
52.222-44 Fair Labor Standards Act and Service Contract Labor Standards—Price Adjustment.	22.1006(c)(2)	C	Yes	I					A				A		A	A	A			A	A		
52.222-46 Evaluation of Compensation for Professional Employees.	22.1103	P	Yes	L					A														
52.222-48 Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Certification.	22.1006(e)(1)	C	Yes	I					A				A								A		
52.222-49 Service Contract Labor Standards—Place of Performance Unknown.	22.1006(f)	C	Yes	I					A				A		A	A	A			A	A		
52.222-50 Combating Trafficking in Persons.	22.1705(a)	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
Alternate I	22.1705(b)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.222-51 Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements.	22.1006(e)(2)	C	Yes	I					A				A								A		
52.222-52 Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Certification.	22.1006(e)(3)	P	Yes	I					A				A								A		
52.222-53 Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Requirements..	22.1006(e)(4)	C	Yes	I					A				A								A		
52.222-54 Employment Eligibility Verification	22.1803	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.223-1 Biobased Product Certification.	23.406(a)	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.223-2 Affirmative Procurement of Biobased Products Under Service and Construction Contracts.	23.406(b)	C	Yes	I					A				A		A	A	A	A	A	A	A	A	A
52.223-3 Hazardous Material Identification and Material Safety Data.	23.303	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	23.303(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.223-4 Recovered Material Certification.	23.406(c)	P	Yes	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.223-5 Pollution Prevention and Right-to-Know Information.	23.1005	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	23.1005(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate II	23.1005(c)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.223-6 Drug-Free Workplace.	23.505	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.223-7 Notice of Radioactive Materials.	23.602	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A

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52.223-9 Estimate of Percentage of Recovered Material Content for EPA-Designated Products.	23.406(d)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	23.406(d)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.223-10 Waste Reduction Program.	23.705(a)	C	Yes	I					A						A								
52.223-11 Ozone-Depleting Substances.	23.804(a)	C	No	I	A																A		
52.223-12 Refrigeration Equipment and Air Conditioners.	23.804(b)	C	Yes	I					A				A			A					A		
52.223-13 Acquisition of EPEAT®-Registered Imaging Equipment.	23.705(c)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	23.705(c)(2)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.223-14 Acquisition of EPEAT®-Registered Televisions.	23.705(d)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	23.705(d)(2)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.223-15 Energy Efficiency in Energy-Consuming Products.	23.206	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.223-16 IEEE 1680 Standard for the Environmental Assessment of Personal Computer Products.	23.705(b)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	23.705(b)(2)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.223-17 Affirmative Procurement of EPA-designated Items in Service and Construction Contracts.	23.406(e)	C	Yes	I					A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.223-18 Encouraging Contractor Policies to Ban Text Messaging While Driving	23.1105	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
52.223-19 Compliance with Environmental Management Systems.	23.903	C	Yes	I					A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.224-1 Privacy Act Notification.	24.104(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.224-2 Privacy Act.	24.104(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.225-1 Buy American—Supplies.	25.1101(a)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.225-2 Buy American Certificate.	25.1101(a)(2)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.225-3 Buy American—Free Trade Agreements-Israeli Trade Act.	25.1101(b)(1)(i)	C	Yes	I	A	A																	
Alternate I	25.1101(b)(1)(ii)	C	Yes	I	A	A																	
Alternate II	25.1101(b)(1)(iii)	C	Yes	I	A	A																	
Alternate III	25.1101(b)(1)(iv)	C	Yes	I	A	A																	
52.225-4 Buy American—Free Trade Agreements-Israeli Trade Act Certificate.	25.1101(b)(2)(i)	P	No	K	A	A																	
Alternate I	25.1101(b)(2)(ii)	P	No	K	A	A																	
Alternate II	25.1101(b)(2)(iii)	P	No	K	A	A																	
Alternate III	25.1101(b)(2)(iv)	P	No	K	A	A																	
52.225-5 Trade Agreements.	25.1101(c)(1)	C	Yes	I	A	A																	
52.225-6 Trade Agreements Certificate.	25.1101(c)(2)	P	No	K	A	A																	

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.225-7 Waiver of Buy American Statute for Civil Aircraft and Related Articles.	25.1101(d)	P	Yes	L	A	A	A	A											A		A		A
52.225-8 Duty-Free Entry.	25.1101(e)	C	Yes	I	A	A	A	A					A	A	A				A		A		A
52.225-9 Buy American—Construction Materials.	25.1102(a)	C	No						A	A													
52.225-10 Notice of Buy American Requirement—Construction Materials.	25.1102(b)(1)	P	No						A	A													
Alternate I	25.1102(b)(2)	P	No						A	A													
52.225-11 Buy American—Construction Materials under Trade Agreements.	25.1102(c)	C	No						A	A													
Alternate I	25.1102(c)(3)	C	No						A	A													
52.225-12 Notice of Buy American Requirement—Construction Materials Under Trade Agreements.	25.1102(d)(1)	P	No						A	A													
Alternate I	25.1102(d)(2)	P	No						A	A													
Alternate II	25.1102(d)(3)	P	No						A	A													
52.225-13 Restrictions on Certain Foreign Purchases.	25.1103(a)	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
52.225-14 Inconsistency Between English Version and Translation of Contract.	25.1103(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.225-17 Evaluation of Foreign Currency Offers.	25.1103(c)	P	Yes	M	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.225-18 Place of Manufacture.	25.1101(f)	P	No	K	R	R							A						A		A		A
52.225-19 Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States.	25.301-4	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.225-20 Prohibition on Conducting Restricted Business Operations in Sudan—Certification.	25.1103(d)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.225-21 Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute—Construction Materials.	25.1102(e)(1)	C	No						A	A													
52.225-22 Notice of Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute—Construction Materials.	25.1102(e)(1)	P	No						A	A													
Alternate I	25.1102(e)(1)	P	No						A	A													
52.225-23 Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute—Construction Materials under Trade Agreements.	25.1102(e)(1)	C	No						A	A													

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
Alternate I	<u>25.1102(e)(1)</u>	C	No																				
<u>52.225-24</u> Notice of Required Use of American Iron, Steel, and Manufactured Goods—Buy American Statute—Construction Materials Under Trade Agreements.	<u>25.1102(e)(1)</u>	P	No																				
Alternate I	<u>25.1102(e)(1)</u>	P	No																				
Alternate II	<u>25.1102(e)(1)</u>	P	No																				
<u>52.225-25</u> Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran—Representation and Certifications	<u>25.1103</u>	P	Yes	K	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
<u>52.225-26</u> Contractors Performing Private Security Functions Outside the United States.	<u>25.302-6</u>	C	Yes	I	A	A	A	A	A	A	A	A	O	A	A	A	A	A	A	A	A	A	A
<u>52.226-1</u> Utilization of Indian Organizations and Indian-Owned Economic Enterprises.	<u>26.104</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<u>52.226-2</u> Historically Black College or University and Minority Institution Representation.	<u>26.304</u>	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<u>52.226-3</u> Disaster or Emergency Area Representation.	<u>26.206(a)</u>	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<u>52.226-4</u> Notice of Disaster or Emergency Area Set-Aside.	<u>26.206(b)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<u>52.226-5</u> Restrictions on Subcontracting Outside Disaster or Emergency Area.	<u>26.206(c)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<u>52.226-6</u> Promoting Excess Food Donation to Nonprofit Organizations.	<u>26.404</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<u>52.227-1</u> Authorization and Consent.	<u>27.201-2(a)(1)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	<u>27.201-2(a)(2)</u>	C	Yes	I			A	A			A	A					A	A					
Alternate II	<u>27.201-2(a)(3)</u>	C	Yes	I			A	A			A	A					A	A					
<u>52.227-2</u> Notice and Assistance Regarding Patent and Copyright Infringement.	<u>27.201-2(b)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<u>52.227-3</u> Patent Indemnity.	<u>27.201-2(c)(1)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	<u>27.201-2(c)(2)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate II	<u>27.201-2(c)(2)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate III	<u>27.201-2(c)(3)</u>	C	Yes	I																			
<u>52.227-4</u> Patent Indemnity—Construction Contracts.	<u>27.201-2(d)(1)</u>	C	Yes																				
Alternate I	<u>27.201-2(d)(2)</u>	C	Yes																				
<u>52.227-5</u> Waiver of Indemnity.	<u>27.201-2(e)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<u>52.227-6</u> Royalty Information.	<u>27.202-5(a)(1)</u>	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	<u>27.202-5(a)(2)</u>	P	No	K																			

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52.227-7 Patents—Notice of Government Licensee.	27.202-5(b)	P	No	K	A	A	A	A	A	A	A	A				A		A					
52.227-9 Refund of Royalties.	27.202-5(c)	C	Yes	I	A		A		A		A					A		A					
52.227-10 Filing of Patent Applications—Classified Subject Matter.	27.203-2	C	Yes	I	A	A	A	A	A	A	A	A				A		A					
52.227-11 Patent Rights—Ownership by the Contractor.	27.303(b)(1)	C	Yes	I			A				A						A						
Alternate I	27.303(b)(3)	C	Yes	I			A				A						A						
Alternate II	27.303(b)(4)	C	Yes	I			A				A						A						
Alternate III	27.303(b)(5)	C	Yes	I			A				A												
Alternate IV	27.303(b)(6)	C	Yes	I			A				A												
Alternate V	27.303(b)(7)	C	Yes	I			A				A												
52.227-13 Patent Rights—Ownership by the Government.	27.303(c)	C	Yes	I			A				A						A						
Alternate I	27.303(e)(4)	C	Yes	I			A				A						A						
Alternate II	27.303(e)(5)	C	Yes	I			A				A						A						
52.227-14 Rights in Data—General.	27.409(b)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A			A	A	A	A	
Alternate I	27.409(b)(2)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A			A	A	A	A	
Alternate II	27.409(b)(3)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A			A	A	A	A	
Alternate III	27.409(b)(4)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A			A	A	A	A	
Alternate IV	27.409(b)(5)	C	Yes	I	O	O	A	A	O	O									O	O	O	O	
Alternate V	27.409(b)(6)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A			A	A	A	A	
52.227-15 Representation of Limited Rights Data and Restricted Computer Software.	27.409(c)	P	No	K	A	A	A	A	A	A	A	A	A	A	A	A			A	A	A	A	
52.227-16 Additional Data Requirements.	27.409(d)	C	Yes	I			A																
52.227-17 Rights in Data—Special Works.	27.409(e)	C	Yes	I	A	A	A	A	A	A	O	O	A	A	A	A				O			
52.227-18 Rights in Data—Existing Works.	27.409(f)	C	Yes	I	A	A	A	A	A	A			A						A				
52.227-19 Commercial Computer Software License.	27.409(g)	C	Yes	I	A				A														
52.227-20 Rights in Data—SBIR Program.	27.409(h)	C	Yes	I			A																
52.227-21 Technical Data Declaration, Revision, and Withholding of Payment—Major Systems.	27.409(i)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A			A	A	A	A	
52.227-22 Major System—Minimum Rights.	27.409(k)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A			A	A	A	A	

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI	
																								PRINCIPLE TYPE AND/OR PURPOSE OF CONTRACT
52.227-23 Rights to Proposal Data (Technical).	27.409(i)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A			
52.228-1 Bid Guarantee.	28.101-2	P	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.228-2 Additional Bond Security.	28.106-4	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.228-3 Workers' Compensation Insurance (Defense Base Act).	28.309(a)	C	Yes	I																				
52.228-4 Workers' Compensation and War-Hazard Insurance Overseas.	28.309(b)	C	Yes	I																				
52.228-5 Insurance—Work on a Government Installation.	28.310	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A			
52.228-7 Insurance—Liability to Third Persons.	28.311-1	C	Yes	I																				
52.228-8 Liability and Insurance—Leased Motor Vehicles.	28.312	C	Yes	I																				
52.228-9 Cargo Insurance.	28.313(a)	C	Yes	I																				
52.228-10 Vehicular and General Public Liability Insurance.	28.313(b)	C	Yes	I																				
52.228-11 Pledges of Assets.	28.203-6	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.228-12 Prospective Subcontractor Requests for Bonds.	28.106-4(b)	C	Yes	I																				
52.228-13 Alternative Payment Protections.	28.102-3(b)	C	Yes	I																				
52.228-14 Irrevocable Letter of Credit.	28.204-4	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.228-15 Performance and Payment Bonds—Construction.	28.102-3(a)	C	Yes	I																				
52.228-16 Performance and Payment Bonds—Other Than Construction.	28.103-4	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
Alternate I	28.103-4	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.229-1 State and Local Taxes.	29.401-1	C	Yes	I																				
52.229-2 North Carolina State and Local Sales and Use Tax.	29.401-2	C	Yes	I																				
Alternate I	29.401-2	C	Yes	I																				
52.229-3 Federal, State, and Local Taxes.	29.401-3	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.229-4 Federal, State, and Local Taxes (State and Local Adjustments).	29.401-3	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.229-6 Taxes—Foreign Fixed-Price Contracts.	29.402-1(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.229-7 Taxes—Fixed-Price Contracts with Foreign Governments.	29.402-1(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.229-8 Taxes—Foreign Cost-Reimbursement Contracts.	29.402-2(a)	C	Yes	I																				

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
<u>52.229-9</u> Taxes—Cost-Reimbursement Contracts with Foreign Governments.	<u>29.402-2(b)</u>	C	Yes	I		A	A	A	A	A		A		A	A	A	A	A	A	A			
<u>52.229-10</u> State of New Mexico Gross Receipts and Compensating Tax.	<u>29.401-4(b)</u>	C	Yes	I		A	A	A		A		A		A	A	A	A	A	A	A			
<u>52.230-1</u> Cost Accounting Standards Notices and Certification.	<u>30.201-3</u>	P	No	K	A	A	A	A	A	A	A	A		A	A	A	A	A	A	A		A	
Alternate 1	<u>30.201-3(b)</u>	P	No	K	A	A	A	A	A	A	A	A		A	A	A	A	A	A	A		A	
<u>52.230-2</u> Cost Accounting Standards.	<u>30.201-4(a)</u>	C	Yes	I	A	A	A	A	A	A	A	A		A	A	A	A	A	A	A		A	
<u>52.230-3</u> Disclosure and Consistency in Cost Accounting Practices.	<u>30.201-4(b)(1)</u>	C	Yes	I	A	A	A	A	A	A	A	A		A	A	A	A	A	A	A		A	
<u>52.230-4</u> Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns.	<u>30.201-4(c)</u>	C	Yes	I	A	A	A	A	A	A	A	A		A	A	A	A	A	A	A		A	
<u>52.230-5</u> Cost Accounting Standards—Educational Institution.	<u>30.201-4(e)</u>	C	Yes	I	A	A	A	A	A	A	A	A		A	A	A	A	A	A	A		A	
<u>52.230-6</u> Administration of Cost Accounting Standards.	<u>30.201-4(d)</u>	C	Yes	I	A	A	A	A	A	A	A	A		A	A	A	A	A	A	A		A	
<u>52.230-7</u> Proposal Disclosure—Cost Accounting Practice Changes.	<u>30.201-3(c)</u>	P	No	K	A	A	A	A	A	A	A	A		A	A	A	A	A	A	A		A	
<u>52.232-1</u> Payments.	<u>32.111(a)(1)</u>	C	Yes	I	R				R													A	
<u>52.232-2</u> Payments under Fixed-Price Research and Development Contracts.	<u>32.111(a)(2)</u>	C	Yes	I			R																
<u>52.232-3</u> Payments under Personal Service Contracts.	<u>32.111(a)(3)</u>	C	Yes	I					A														
<u>52.232-4</u> Payments under Transportation Contracts and Transportation-Related Services Contracts.	<u>32.111(a)(4)</u>	C	Yes	I																	R		
<u>52.232-5</u> Payments under Fixed-Price Construction Contracts.	<u>32.111(a)(5)</u>	C	Yes							R													
<u>52.232-6</u> Payment under Communication Service Contracts with Common Carriers.	<u>32.111(a)(6)</u>	C	Yes	I											A							A	
<u>52.232-7</u> Payments under Time-and-Materials and Labor-Hour Contracts.	<u>32.111(a)(7)</u>	C	Yes	I									A										
<u>52.232-8</u> Discounts for Prompt Payment.	<u>32.111(b)(1)</u>	C	Yes	I	A				A													A	
<u>52.232-9</u> Limitation on Withholding of Payments.	<u>32.111(b)(2)</u>	C	Yes	I	A	A	A	A	A	A													
<u>52.232-10</u> Payments under Fixed-Price Architect-Engineer Contracts.	<u>32.111(c)(1)</u>	C	Yes														A						
<u>52.232-11</u> Extras.	<u>32.111(c)(2)</u>	C	Yes	I	A				A												A	A	A

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.232-12 Advance Payments.	32.412(a)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate I	32.412(b)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate II	32.412(c)	C	No	I																			
Alternate III	32.412(d)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate IV	32.412(e)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate V	32.412(f)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.232-13 Notice of Progress Payments.	32.502-3(a)	P	Yes	L	A																		
52.232-14 Notice of Availability of Progress Payments Exclusively for Small Business Concerns.	32.502-3(b)(2)	P	Yes	L	A																		
52.232-15 Progress Payments Not Included.	32.502-3(c)	P	Yes	M	A																		
52.232-16 Progress Payments.	32.502-4(a)	C	Yes	I	A																		
Alternate I	32.502-4(b)	C	Yes	I	A																		
Alternate II (See Note 1.)	32.502-4(c)	C	Yes	I																			
Alternate III	32.502-4(d)	C	Yes	I																			
52.232-17 Interest.	32.611(a) and (b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.232-18 Availability of Funds.	32.706-1(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.232-19 Availability of Funds for the Next Fiscal Year.	32.706-1(b)	C	No	I																			
52.232-20 Limitation of Cost.	32.706-2(a)	C	Yes	I																			
52.232-22 Limitation of Funds.	32.706-2(b)	C	Yes	I																			
52.232-23 Assignment of Claims.	32.806(a)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate I	32.806(a)(2)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.232-24 Prohibition of Assignment of Claims.	32.806(b)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
52.232-25 Prompt Payment.	32.908(c)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	
Alternate I	32.908(c)(3)	C	Yes	I																			
52.232-26 Prompt Payment for Fixed-Price Architect-Engineer Contracts.	32.908(a)	C	Yes	I																			
52.232-27 Prompt Payment for Construction Contracts.	32.908(b)	C	Yes	I																			
52.232-28 Invitation to Propose Performance-Based Payments.	32.1005(b)(1)	P	No	L	A																		
Alternate I	32.1005(b)(2)	P	No	L	A																		
52.232-29 Terms for Financing of Purchases of Commercial Items.	32.206(b)(2)	C	No	I	A																		
52.232-30 Installment Payments for Commercial Items.	32.206(g)	C	Yes	I	A																		



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<u>52.232-31</u> Invitation to Propose Financing Terms.	<u>32.205(b)</u> <u>32.206</u>	P	No	L	A				A														
<u>52.232-32</u> Performance-Based Payments.	<u>32.1005</u>	C	No	I	A				A														
<u>52.232-33</u> Payment by Electronic Funds Transfer—System for Award Management.	<u>32.1110(a)(1)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<u>52.232-34</u> Payment by Electronic Funds Transfer—Other than System for Award Management.	<u>32.1110(a)(2)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<u>52.232-35</u> Designation of Office for Government Receipt of Electronic Funds Transfer Information.	<u>32.1110(c)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<u>52.232-36</u> Payment by Third Party.	<u>32.1110(d)</u> and <u>(e)(3)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<u>52.232-37</u> Multiple Payment Arrangements.	<u>32.1110(e)</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<u>52.232-38</u> Submission of Electronic Funds Transfer Information with Offer.	<u>32.1110(g)</u>	P	Yes	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<u>52.232-39</u> Unenforceability of Unauthorized Obligations.	<u>32.706-3</u>	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
<u>52.232-40</u> Providing Accelerated Payments to Small Business Subcontractors	<u>32.009-2</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<u>52.233-1</u> Disputes.	<u>33.215</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	<u>33.215</u>	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<u>52.233-2</u> Service of Protest.	<u>33.106(a)</u>	P	No	L	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
<u>52.233-3</u> Protest after Award.	<u>33.106(b)</u>	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
Alternate I	<u>33.106(b)</u>	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
<u>52.233-4</u> Applicable Law for Breach of Contract Claim.	<u>33.215(b)</u>	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
<u>52.234-1</u> Industrial Resources Developed Under Defense Production Act Title III.	<u>34.104</u>	C	N	I	A	A	A	A															
<u>52.234-2</u> Notice of Earned Value Management System - Pre-Award IBR.	<u>34.203(a)</u>	P	N	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<u>52.234-3</u> Notice of Earned Value Management System - Post Award IBR.	<u>34.203(b)</u>	P	N	K	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<u>52.234-4</u> Earned Value Management System.	<u>34.203(c)</u>	C	Y	H	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
<u>52.236-1</u> Performance of Work by the Contractor.	<u>36.501(b)</u>	C	Yes						A														

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
<u>52.236-2</u> Differing Site Conditions.	<u>36.502</u>	C	Yes						A								A					O	
<u>52.236-3</u> Site Investigation and Conditions Affecting the Work.	<u>36.503</u>	C	Yes						A								A					O	
<u>52.236-4</u> Physical Data.	<u>36.504</u>	C	No						A													A	
<u>52.236-5</u> Material and Workmanship.	<u>36.505</u>	C	Yes						R		R											A	
<u>52.236-6</u> Superintendence by the Contractor.	<u>36.506</u>	C	Yes						A								A					O	
<u>52.236-7</u> Permits and Responsibilities.	<u>36.507</u>	C	Yes						R		R						A					A	
<u>52.236-8</u> Other Contracts.	<u>36.508</u>	C	Yes						A								A					O	
<u>52.236-9</u> Protection of Existing Vegetation, Structures, Equipment, Utilities, and Improvements.	<u>36.509</u>	C	Yes						A								A					O	
<u>52.236-10</u> Operations and Storage Areas.	<u>36.510</u>	C	Yes						A								A					O	
<u>52.236-11</u> Use and Possession Prior to Completion.	<u>36.511</u>	C	Yes						A													O	
<u>52.236-12</u> Cleaning Up.	<u>36.512</u>	C	Yes						A								A					O	
<u>52.236-13</u> Accident Prevention.	<u>36.513</u>	C	Yes						A								A					O	
Alternate I	<u>36.513</u>	C	Yes						A								A					O	
<u>52.236-14</u> Availability and Use of Utility Services.	<u>36.514</u>	C	Yes						A								A					A	
<u>52.236-15</u> Schedules for Construction Contracts.	<u>36.515</u>	C	Yes						O														
<u>52.236-16</u> Quantity Surveys.	<u>36.516</u>	C	Yes						O													O	
Alternate I	<u>36.516</u>	C	Yes						O														
<u>52.236-17</u> Layout of Work.	<u>36.517</u>	C	Yes						A													A	
<u>52.236-18</u> Work Oversight in Cost-Reimbursement Construction Contracts.	<u>36.518</u>	C	Yes									R											
<u>52.236-19</u> Organization and Direction of the Work.	<u>36.519</u>	C	Yes									R											
<u>52.236-21</u> Specifications and Drawings for Construction.	<u>36.521</u>	C	Yes						A								A					O	
Alternate I	<u>36.521</u>	C	Yes						A								A					O	
Alternate II	<u>36.521</u>	C	Yes						A								A					O	
<u>52.236-22</u> Design Within Funding Limitations.	<u>36.609-1(c)</u>	C	Yes																			O	
<u>52.236-23</u> Responsibility of the Architect-Engineer Contractor.	<u>36.609-2(b)</u>	C	Yes																				
<u>52.236-24</u> Work Oversight in Architect-Engineer Contracts.	<u>36.609-3</u>	C	Yes																				

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
<u>52.236-25</u> Requirements for Registration of Designers.	<u>36.609-4</u>	C	Yes														A						
<u>52.236-26</u> Preconstruction Conference.	<u>36.522</u>	C	Yes	I					A							A							
<u>52.236-27</u> Site Visit (Construction).	<u>36.523</u>	P	Yes	L					A							A							
Alternate I	<u>36.523</u>	P	Yes	L					A							A							
<u>52.236-28</u> Preparation of Proposals—Construction.	<u>36.520</u>	P	Yes	K					R														
<u>52.237-1</u> Site Visit.	<u>37.110(a)</u>	P	Yes	L			A	A	A	A			A	A	A	A	A	A	A	A	A	A	A
<u>52.237-2</u> Protection of Government Buildings, Equipment, and Vegetation.	<u>37.110(b)</u>	C	Yes	I			A	A	A	A			A	A	A	A	A	A	A	A	A	A	A
<u>52.237-3</u> Continuity of Services.	<u>37.110(c)</u>	C	Yes	I					O	O													O
<u>52.237-4</u> Payment by Government to Contractor.	<u>37.304(a)</u>	C	Yes	I												A							A
Alternate I	<u>37.304(a)</u>	C	Yes	I												A							A
<u>52.237-5</u> Payment by Contractor to Government.	<u>37.304(b)</u>	C	Yes	I												A							A
<u>52.237-6</u> Incremental Payment by Contractor to Government.	<u>37.304(c)</u>	C	Yes	I												A							A
<u>52.237-7</u> Indemnification and Medical Liability Insurance.	<u>37.403</u>	C	Yes	I									A							A			O
<u>52.237-8</u> Restriction on Severance Payments to Foreign Nationals.	<u>37.113-2(a)</u>	P	Yes	K		A	A	A	A	A			A	A	A	A	A	A	A	A	A	A	A
<u>52.237-9</u> Waiver of Limitation on Severance Payments to Foreign Nationals.	<u>37.113-2(b)</u>	C	Yes	I		A	A	A	A	A			A	A	A	A	A	A	A	A	A	A	A
<u>52.237-10</u> Identification of Uncompensated Overtime.	<u>37.115-3</u>	P	Yes	L						A													
<u>52.237-11</u> Accepting and Dispensing of \$1 Coin.	<u>37.116-2</u>	C	Yes	I	A	A			A	A			A					A	A	A	A	A	A
<u>52.239-1</u> Privacy or Security Safeguards. (See Note 4.)	<u>39.107</u>	C	Yes	I	A	A	A	A	A	A			A										A
<u>52.241-1</u> Electric Service Territory Compliance Representation.	<u>41.501(b)</u>	P	No	K																			A
<u>52.241-2</u> Order of Precedence—Utilities.	<u>41.501(c)(1)</u>	C	Yes	I																			O
<u>52.241-3</u> Scope of Duration of Contract.	<u>41.501(c)(2)</u>	C	No	I																			O
<u>52.241-4</u> Change in Class of Service.	<u>41.501(c)(3)</u>	C	Yes	I																			O
<u>52.241-5</u> Contractor's Facilities.	<u>41.501(c)(4)</u>	C	Yes	I																			O
<u>52.241-6</u> Service Provisions.	<u>41.501(c)(5)</u>	C	No	I																			O
<u>52.241-7</u> Change in Rates or Terms and Conditions of Service for Regulated Services.	<u>41.501(d)(1)</u>	C	No	I																			O

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.241-8 Change in Rates or Terms and Conditions of Service for Unregulated Services.	41.501(d)(2)	C	No	I																			
52.241-9 Connection Charge.	41.501(d)(3)	C	No	I																			
Alternate I	41.501(d)(3)	C	No	I																			
52.241-10 Termination Liability.	41.501(d)(4)	C	No	I																			
52.241-11 Multiple Service Locations.	41.501(d)(5)	C	Yes	I																			
52.241-12 Nonrefundable, Nonrecurring Service Charge.	41.501(d)(6)	C	No	I																			
52.241-13 Capital Credits.	41.501(d)(7)	C	No	I																			
52.242-1 Notice of Intent to Disallow Costs.	42.802	C	Yes	I	A	R	A	R	A	R	A	R	A	A	A	A	A	R	A	A	A		
52.242-2 Production Progress Reports.	42.1107(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.242-3 Penalties for Unallowable Costs.	42.709-6	C	Yes	I																			
52.242-4 Certification of Final Indirect Costs.	42.703-2(f)	C	Yes	I																			
52.242-13 Bankruptcy.	42.903	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A		
52.242-14 Suspension of Work.	42.1305(a)	C	Yes																				
52.242-15 Stop-Work Order.	42.1305(b)(1)	C	Yes	F	O	O	O	O	O	O	A												
Alternate I	42.1305(b)(2)	C	Yes	F	O	O	O	O	O	O													
52.242-17 Government Delay of Work.	42.1305(c)	C	Yes	F	A																		
52.243-1 Changes—Fixed Price.	43.205(a)(1)	C	Yes	I	R																		
Alternate I	43.205(a)(2)	C	Yes	I																			
Alternate II	43.205(a)(3)	C	Yes	I																			
Alternate III	43.205(a)(4)	C	Yes	I																			
Alternate IV	43.205(a)(5)	C	Yes	I																			
Alternate V	43.205(a)(6)	C	Yes	I																			
52.243-2 Changes—Cost Reimbursement.	43.205(b)(1)	C	Yes	I																			
Alternate I	43.205(b)(2)	C	Yes	I																			
Alternate II	43.205(b)(3)	C	Yes	I																			
Alternate III	43.205(b)(4)	C	Yes	I																			
Alternate V	43.205(b)(6)	C	Yes	I																			
52.243-3 Changes—Time-and-Materials or Labor-Hours.	43.205(c)	C	Yes	I																			
52.243-4 Changes.	43.205(d)	C	Yes	I																			
52.243-5 Changes and Changed Conditions.	43.205(e)	C	Yes	I																			
52.243-6 Change Order Accounting.	43.205(f)	C	Yes	I	O	O	O	O															

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.243-7 Notification of Changes.	43.107	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	O
52.244-2 Subcontracts. (See Note 1.)	44.204(a)(1)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I (See Note 1.)	44.204(a)(2)	C	Yes	I																			A
52.244-4 Subcontractors and Outside Associates and Consultants (Architect-Engineer Services).	44.204(b)	C	Yes	I																			
52.244-5 Competition in Subcontracting.	44.204(c)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.244-6 Subcontracts for Commercial Items.	44.403	C	Yes	I	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R	R
52.245-1 Government Property.	45.107(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	45.107(a)(2)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate II	45.107(a)(3)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.245-2 Government Property Installation Operation Services.	45.107(b)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.245-9 Use and Charges.	45.107(c)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.246-1 Contractor Inspection Requirements.	46.301	C	Yes																				A
52.246-2 Inspection of Supplies—Fixed-Price.	46.302	C	Yes	E	A		A							A									O
Alternate I	46.302	C	Yes	E	A		A							A									
Alternate II	46.302	C	Yes	E	A		A							A									
52.246-3 Inspection of Supplies—Cost-Reimbursement.	46.303	C	Yes	E		A		A															
52.246-4 Inspection of Services—Fixed-Price.	46.304	C	Yes	E	A		A							A									O
52.246-5 Inspection of Services—Cost-Reimbursement.	46.305	C	Yes	E		A		A															
52.246-6 Inspection—Time-and-Material and Labor-Hour.	46.306	C	Yes	E									R										
Alternate I	46.306	C	Yes	E										A									O
52.246-7 Inspection of Research and Development—Fixed Price.	46.307(a)	C	Yes	E			A																O
52.246-8 Inspection of Research and Development—Cost Reimbursement.	46.308	C	Yes	E				A															
Alternate I	46.308	C	Yes	E				A															
52.246-9 Inspection of Research and Development (Short Form).	46.309	C	Yes	E				A															O
52.246-11 Higher-Level Contract Quality Requirement.	46.311	C	Yes	E	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.246-12 Inspection of Construction.	46.312	C	Yes								A												O

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.246-13 Inspection—Dismantling, Demolition, or Removal of Improvements.	46.313	C	Yes													R					A		
52.246-14 Inspection of Transportation.	46.314	C	Yes	E																	A		
52.246-15 Certificate of Conformance.	46.315	C	Yes	E	A	A	A	A	A					A					A				
52.246-16 Responsibility for Supplies.	46.316	C	Yes	E	A	A	A	A	A					A					O				
52.246-17 Warranty of Supplies of a Noncomplex Nature.	46.710(a)(1)	C	Yes	I	O									O									
Alternate I	46.710(a)(2)	C	Yes	I	O									O									
Alternate II	46.710(a)(3)	C	Yes	I	O									O									
Alternate III	46.710(a)(4)	C	Yes	I	O									O									
Alternate IV	46.710(a)(5)	C	Yes	I	O									O									
Alternate V	46.710(a)(6)	C	Yes	I	O									O									
52.246-18 Warranty of Supplies of a Complex Nature.	46.710(b)(1)	C	Yes	I	O			O						O									
Alternate II	46.710(b)(2)	C	Yes	I	O			O						O									
Alternate III	46.710(b)(3)	C	Yes	I	O			O						O									
Alternate IV	46.710(b)(4)	C	Yes	I	O			O						O									
52.246-19 Warranty of Systems and Equipment under Performance Specifications or Design Criteria.	46.710(c)(1)	C	Yes	I	O			O						O									
Alternate I	46.710(c)(2)	C	Yes	I	O			O						O									
Alternate II	46.710(c)(3)	C	Yes	I	O			O						O									
Alternate III	46.710(c)(4)	C	Yes	I	O			O						O									
52.246-20 Warranty of Services.	46.710(d)	C	Yes	I											O								
52.246-21 Warranty of Construction.	46.710(e)(1)	C	Yes						O													O	
Alternate I	46.710(e)(2)	C	Yes						O													O	
52.246-23 Limitation of Liability.	46.805	C	Yes	I	A	A	A	A						A									
52.246-24 Limitation of Liability—High-Value Items.	46.805(a)	C	Yes	I	A	A	A	A						A									
Alternate I	46.805(a)	C	Yes	I	A	A	A	A						A									
52.246-25 Limitation of Liability—Services.	46.805(a)(4)	C	Yes	I					A	A				A							A	O	A
52.247-1 Commercial Bill of Lading Notations.	47.104-4	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	O	A
52.247-2 Permits, Authorities, or Franchises.	47.207-1(a)	C	No	I																			
52.247-3 Capability to Perform a Contract for the Relocation of a Federal Office.	47.207-1(b)(1)	C	Yes	I																			
Alternate I	47.207-1(b)(2)	C	Yes	I																			



PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	FP LH	T&M	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI	
																									FP SUP
52.247-25 Government-Furnished Equipment With or Without Operators.	47.207-8(a)(2)(i)	C	Yes	I																	A	A			
52.247-26 Government Direction and Marking.	47.207-8(a)(3)	C	Yes	I																		A	A		
52.247-27 Contract Not Affected by Oral Agreement.	47.207-8(b)	C	Yes	I																		A	A		
52.247-28 Contractor's Invoices.	47.207-9(c)	C	Yes	I																		A	A		
52.247-29 F.o.b. Origin.	47.303-1(c)	C	Yes	F	A										A						A	A			
52.247-30 F.o.b. Origin, Contractor's Facility.	47.303-2(c)	C	Yes	F	A										A						A	A			
52.247-31 F.o.b. Origin, Freight Allowed.	47.303-3(c)	C	Yes	F	A										A						A	A			
52.247-32 F.o.b. Origin, Freight Prepaid.	47.303-4(c)	C	Yes	F	A										A						A	A			
52.247-33 F.o.b. Origin, with Differentials.	47.303-5(c)	C	No	F	A						A				A						A	A			
52.247-34 F.o.b. Destination.	47.303-6(c)	C	Yes	F	A										A						A	A			
52.247-35 F.o.b. Destination, within Consignee's Premises.	47.303-7(c)	C	Yes	F	A										A						A	A			
52.247-36 F.a.s. Vessel, Port of Shipment.	47.303-8(c)	C	Yes	F	A										A						A	A			
52.247-37 F.o.b. Vessel, Port of Shipment.	47.303-9(c)	C	Yes	F	A										A						A	A			
52.247-38 F.o.b. Inland Carrier, Point of Exportation.	47.303-10(c)	C	Yes	F	A										A						A	A			
52.247-39 F.o.b. Inland Point, Country of Importation.	47.303-11(c)	C	Yes	F	A										A						A	A			
52.247-40 Ex Dock, Pier, or Warehouse, Port of Importation.	47.303-12(c)	C	Yes	F	A										A						A	A			
52.247-41 C.&f. Destination.	47.303-13(c)	C	Yes	F	A										A						A	A			
52.247-42 C.i.f. Destination.	47.303-14(c)	C	Yes	F	A										A						A	A			
52.247-43 F.o.b. Designated Air Carrier's Terminal, Point of Exportation.	47.303-15(c)	C	Yes	F	A										A						A	A			
52.247-44 F.o.b. Designated Air Carrier's Terminal, Point of Importation.	47.303-16(c)	C	Yes	F	A										A						A	A			
52.247-45 F.o.b. Origin and/or F.o.b. Destination Evaluation.	47.305-2(b)	P	Yes	L	A										A						A	A			



PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.247-46 Shipping Point(s) Used in Evaluation of F.o.b. Origin Offers.	47.305-3(b)(4)(ii)	P	Yes	L	A									A					A		A		
52.247-47 Evaluation—F.o.b. Origin.	47.305-3(f)(2)	P	Yes	M	A									A					A		A		
52.247-48 F.o.b. Destination—Evidence of Shipment.	47.305-4(c)	C	Yes	F	A									A					A		A		
52.247-49 Destination Unknown.	47.305-5(b)(2)	P	Yes	M	A									A					A		A		
52.247-50 No Evaluation of Transportation Costs.	47.305-5(c)(1)	P	Yes	M	A									A					A		A		
52.247-51 Evaluation of Export Offers.	47.305-6(e)	P	No	M	A									A					A		A		
Alternate I	47.305-6(e)(1)	P	No	M	A									A					A		A		
Alternate II	47.305-6(e)(2)	P	No	M	A									A					A		A		
Alternate III	47.305-6(e)(3)	P	No	M	A									A					A		A		
52.247-52 Clearance and Documentation Requirements—Shipments to DOD Air or Water Terminal Transshipment Points.	47.305-6(f)(2)	C	Yes	F	A				A					A					A		A		
52.247-53 Freight Classification Description.	47.305-9(b)(1)	P	No	K	A									A					A		A		
52.247-55 F.o.b. Point for Delivery of Government-Furnished Property.	47.305-12(a)(2)	C	Yes	F	A									A					A		A		
52.247-56 Transit Arrangements.	47.305-13(a)(3)(ii)	P	No	M	A									A					A				
52.247-57 Transportation Transit Privilege Credits.	47.305-13(b)(4)	C	No	F	A									A					A		A		
52.247-58 Loading, Blocking, and Bracing of Freight Car Shipments.	47.305-15(a)(2)	C	Yes	F	A									A					A		A		
52.247-59 F.o.b. Origin—Carload and Truckload Shipments.	47.305-16(a)	C	Yes	F	A									A					A		A		
52.247-60 Guaranteed Shipping Characteristics.	47.305-16(b)(1)	C	No	F	A									A					A				
52.247-61 F.o.b. Origin—Minimum Size of Shipments.	47.305-16(c)	C	Yes	F	A									A					A		A		
52.247-62 Specific Quantities Unknown.	47.305-16(d)(2)	C	No	F	A									A					A		A		
52.247-63 Preference for U.S.-Flag Air Carriers.	47.405	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.247-64 Preference for Privately Owned U.S.-Flag Commercial Vessels.	47.507(a)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	47.507(a)(2)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate II	47.507(a)(3)	C	No	I																			
52.247-65 F.o.b. Origin, Prepaid Freight—Small Package Shipments.	47.303-17(f)	C	Yes	F	A									A					A		A		
52.247-66 Returnable Cylinders.	47.305-17	C	No	I	A				A										A		A		
52.247-67 Submission of Transportation Documents for Audit.	47.103-2	C	No	I		A			A										A		A		

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.247-68 Report of Shipment (REPSHIP).	47.208-2	C	Yes	I	A	A	A	A	A	A				A	A		A	A			A		
52.248-1 Value Engineering.	48.201	C	Yes	I	A	A	A	A	A	A				A	A		A	A			A		
Alternate I	48.201(c)	C	Yes	I	A	A	A	A	A	A				A	A		A	A			A		
Alternate II	48.201(d)	C	Yes	I	A	A	A	A	A	A				A	A		A	A			A		
Alternate III	48.201(e)(1)	C	Yes	I	A	A	A	A	A	A				A	A		A	A			A		
52.248-2 Value Engineering Program—Architect-Engineer.	48.201(f)	C	Yes														A						
52.248-3 Value Engineering—Construction.	48.202	C	Yes								A	A											
Alternate I	48.202	C	Yes								A	A											
52.249-1 Termination for Convenience of the Government (Fixed-Price) (Short Form).	49.502(a)(1)	C	Yes	I	A	A	A		A					A	A		A			A	A	A	
Alternate I	49.502(a)(2)	C	Yes	I													A						
52.249-2 Termination for Convenience of the Government (Fixed-Price).	49.502(b)(1)(i)	C	Yes	I	A	A	A		A					A	A					A	A	A	
Alternate I	49.502(b)(1)(ii)	C	Yes	I																			
Alternate II	49.502(b)(1)(iii)	C	Yes	I	A	A	A		A					A	A					A	A	A	
Alternate III	49.502(b)(1)(iii)	C	Yes	I																			
52.249-3 Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements).	49.502(b)(2)	C	Yes	I																			
Alternate I	49.502(b)(2)	C	Yes	I																			
52.249-4 Termination for Convenience of the Government (Services) (Short Form).	49.502(c)	C	Yes	I					A												A	A	
52.249-5 Termination for Convenience of the Government (Educational and Other Nonprofit Institutions).	49.502(d)	C	Yes	I				A														A	
52.249-6 Termination (Cost-Reimbursement).	49.503(a)(1)	C	Yes	I				A		A										A	A	A	
Alternate I	49.503(a)(2)	C	Yes									A											
Alternate II	49.503(a)(3)	C	Yes	I				A		A												A	
Alternate III	49.503(a)(3)	C	Yes									A											
Alternate IV	49.503(a)(4)	C	Yes	I									A										
Alternate V	49.503(a)(4)	C	Yes	I										A									
52.249-7 Termination (Fixed-Price Architect-Engineer).	49.503(b)	C	Yes																				
52.249-8 Default (Fixed-Price Supply and Service).	49.504(a)(1)	C	Yes	I	A	A	A		A													A	
Alternate I	49.504(a)(2)	C	Yes	I																		A	O

PROVISION OR CLAUSE	PRESCRIBED IN	P OR C	IBR	UCF	FP SUP	CR SUP	FP R&D	CR R&D	FP SVC	CR SVC	FP CON	CR CON	T&M LH	LMV	COM SVC	DDR	A&E	FAC	IND DEL	TRN	SAP	UTL SVC	CI
52.249-9 Default (Fixed-Price Research and Development).	49.504(b)	C	Yes	I			A														O		
52.249-10 Default (Fixed-Price Construction).	49.504(c)(1)	C	Yes				A														O		
Alternate I	49.504(c)(2)	C	Yes													A					O		
Alternate II	49.504(c)(3)	C	Yes				O														O		
Alternate III	49.504(c)(3)	C	Yes													A					O		
52.249-12 Termination (Personal Services).	49.505(a)	C	Yes	I					A												A		
52.249-14 Excusable Delays.	49.505(b)	C	Yes	I		A		A		A			A					A			A		
52.250-1 Indemnification under Public Law 85-804.	50.104-4	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.250-2 SAFETY Act Coverage Not Applicable.	50.206(a)	P	Yes	L✓	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.250-3 SAFETY Act Block Designation/Certification.	50.206(b)(1)	P	Yes	L✓	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	50.206(b)(2)	P	Yes	L✓	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate II	50.206(b)(3)	P	Yes	L✓	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.250-4 SAFETY Act Pre-qualification Designation Notice.	50.206(c)(1)	P	Yes	L✓	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate I	50.206(c)(2)	P	Yes	L✓	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
Alternate II	50.206(c)(3)	P	Yes	L✓	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.250-5 SAFETY Act-Equitable Adjustment.	50.206(d)	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.251-1 Government Supply Sources.	51.107	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.251-2 Interagency Fleet Management System Vehicles and Related Services.	51.205	C	Yes	I		A		A		A					A								
52.252-1 Solicitation Provisions Incorporated by Reference.	52.107(a)	P	No	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.252-2 Clauses Incorporated by Reference.	52.107(b)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.252-3 Alterations in Solicitation.	52.107(c)	P	No	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.252-4 Alterations in Contract.	52.107(d)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.252-5 Authorized Deviations in Provisions.	52.107(e)	P	No	L	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.252-6 Authorized Deviations in Clauses.	52.107(f)	C	No	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A
52.253-1 Computer Generated Forms.	53.111	C	Yes	I	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A

<p><b>NOTE 1:</b> The following clauses are prescribed for use in letter contracts:</p> <p><a href="#">52.216-23</a>, Execution and Commencement of Work.  <a href="#">52.216-24</a>, Limitation of Government Liability.  <a href="#">52.216-25</a>, Contract Definitization.  <a href="#">52.216-25</a>, Contract Definitization, Alternate I.</p> <p>Further instructions concerning provisions and clauses for letter contracts are set forth in <a href="#">16.603-4(a)</a>.</p>	<p><a href="#">52.216-26</a>, Payments of Allowable Costs Before Definitization.  <a href="#">52.232-16</a>, Progress Payments, Alternate II.  <a href="#">52.244-2</a>, Subcontracts.</p>
<p><b>Note 2:</b> The following clauses are prescribed for use in Small Business Administration 8(a) contracts:</p> <p><a href="#">52.219-11</a>, Special 8(a) Contract Conditions.  <a href="#">52.219-12</a>, Special 8(a) Subcontract Conditions.  <a href="#">52.219-14</a>, Limitations on Subcontracting.  <a href="#">52.219-17</a>, Section 8(a) Award.</p>	<p><a href="#">52.219-18</a>, Notification of Competition Limited to Eligible 8(a) Concerns.  <a href="#">52.219-18</a>, Alternate I  <a href="#">52.219-18</a>, Alternate II</p>
<p><b>NOTE 3:</b> FAR provisions and clauses not identified on the matrix may be used in contracts for commercial items consistent with the procedures and limitations in <a href="#">FAR 12.302</a></p>	
<p><b>NOTE 4:</b> The following clause is prescribed for use in Information Technology Management Reform Act (ITMRA) contracts:  <a href="#">52.239-1</a>, Privacy or Security Safeguards, "A".</p>	

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## FEDERAL ACQUISITION REGULATION

53.301-1442	SF 1442, Solicitation, Offer, and Award (Construction, Alteration, or Repair).	SF 35	Annual Performance Bond
		SF 273	Reinsurance Agreement for a Miller Act Performance Bond
53.301-1443	SF 1443, Contractor's Request for Progress Payment.	SF 274	Reinsurance Agreement for a Miller Act Payment Bond
53.301-1444	SF 1444, Request for Authorization of Additional Classification and Rate.	SF 275	Reinsurance Agreement in Favor of the United States
53.301-1445	SF 1445, Labor Standards Interview.	SF 294	Subcontracting Report for Individual Contracts
53.301-1446	SF 1446, Labor Standards Investigation Summary Sheet.	SF 295	Summary Subcontract Report
53.301-1447	SF 1447, Solicitation/Contract.	SF 308	Request for Wage Determination and Response to Request
53.301-1449	SF 1449, Solicitation/Contract/Order for Commercial Items.	SF 330	Architect-Engineer Qualifications
53.302-17	Optional Form 17, Offer Label.	SF 1403	Preaward Survey of Prospective Contractor (General)
53.302-90	Optional Form 90, Release of Lien on Real Property.	SF 1404	Preaward Survey of Prospective Contractor—Technical
53.302-91	Optional Form 91, Release of Personal Property from Escrow.	SF 1405	Preaward Survey of Prospective Contractor—Production
53.302-307	Optional Form 307, Contract Award.	SF 1406	Preaward Survey of Prospective Contractor—Quality Assurance
53.302-308	Optional Form 308, Solicitation and Offer—Negotiated Acquisition.	SF 1407	Preaward Survey of Prospective Contractor—Financial Capability
53.302-309	Optional Form 309, Amendment of Solicitation.	SF 1408	Preaward Survey of Prospective Contractor—Accounting System
53.302-312	[Reserved]	SF 1409	Abstract of Offers
53.302-336	Optional Form 336, Continuation Sheet.	SF 1410	Abstract of Offers—Continuation.
53.302-347	Optional Form 347, Order for Supplies or Services.	SF 1414	Consent of Surety
53.302-348	Optional Form 348, Order for Supplies or Services Schedule—Continuation.	SF 1415	Consent of Surety and Increase of Penalty
53.302-1419	Optional Form 1419, Abstract of Offers—Construction.	SF 1416	Payment Bond for Other Than Construction Contracts
53.302-1419A	Optional Form 1419A, Abstract of Offers—Construction, Continuation Sheet.	SF 1418	Performance Bond for Other Than Construction Contracts
53.303-DD-254	Department of Defense DD Form 254, Contract Security Classification Specification.	SF 1423	Inventory Verification Survey
		SF 1424	Inventory Disposal Report
		SF 1427	Inventory Schedule A—Continuation Sheet (Metals in Mill Product Form)
53.303-DD-441	Department of Defense DD Form 441, Security Agreement.	SF 1428	Inventory Schedule
53.303-WH-347	Department of Labor Form WH-347, Payroll (For Contractor's Optional Use).	SF 1429	Inventory Schedule—Continuation Sheet
		SF 1435	Settlement Proposal (Inventory Basis)
		SF 1436	Settlement Proposal (Total Cost Basis)
		SF 1437	Settlement Proposal for Cost-Reimbursement Type Contracts
		SF 1438	Settlement Proposal (Short Form)
		SF 1439	Schedule of Accounting Information
		SF 1440	Application for Partial Payment
		SF 1445	Labor Standards Interview
		SF 1446	Labor Standards Investigation Summary Sheet
		SF 1449	Solicitation/Contract/Order for Commercial Items
<b>Forms Authorized for Local Reproduction</b>			
SF 18	Request for Quotation		
SF 24	Bid Bond		
SF 25	Performance Bond		
SF 25A	Payment Bond		
SF 25B	SF 25-B, Continuation Sheet (For SF's 24, 25, and 25-A)		
SF 28	Affidavit of Individual Surety		
SF 33	Solicitation, Offer and Award		
SF 34	Annual Bid Bond		

OF 90	Release of Lien on Real Property	OF 309	Amendment of Solicitation
OF 91	Release of Personal Property from Escrow	OF 312	Small Disadvantaged Business Participation Report
OF 307	Contract Award	OF 347	Order for Supplies or Services
OF 308	Solicitation and Offer—Negotiated Acquisition		

(g) [OF 309](#) (Rev. 9/97), *Amendment of Solicitation*. [OF 309](#) may be used to amend solicitations of negotiated contracts, as specified in [15.210\(b\)](#).

**53.216 Types of contracts.**

**53.216-1 Delivery orders and orders under basic ordering agreements (OF 347).**

[OF 347](#), Order for Supplies or Services. [OF 347](#), prescribed in [53.213\(f\)](#) (or an approved agency form), may be used to place orders under indefinite delivery contracts and basic ordering agreements, as specified in [16.703\(d\)\(2\)\(i\)](#).

**53.217 [Reserved]**

**53.218 [Reserved]**

**53.219 Small business programs.**

The following standard form is prescribed for use in reporting small business (including Alaska Native Corporations and Indian tribes), veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business (including Alaska Native Corporations and Indian tribes) and women-owned small business subcontracting data, as specified in [Part 19](#); [SF 294](#), (Rev. 10/2014) Subcontracting Report for Individual Contracts. [SF 294](#) is authorized for local reproduction.

**53.220 [Reserved]**

**53.221 [Reserved]**

**53.222 Application of labor laws to Government acquisitions (SF’s 308, 1093, 1413, 1444, 1445, 1446, WH-347).**

The following forms are prescribed as stated below, for use in connection with the application of labor laws:

(a) [Reserved]

(b) [Reserved]

(c) [SF 308](#) (DOL) (Rev. 2/2013), *Request for Wage Determination and Response to Request*. (See [22.404-3\(a\)](#) and (b).)

(d) [SF 1093](#) (Rev. 2/2013), *Schedule of Withholdings Under the Construction Wage Rate Requirements Statute (40 U.S.C. Chapter 31, Subchapter IV, section 3144) and/or the Contract Work Hours and Safety Standards Statute (40 U.S.C. Chapter 37, section 3703)*. (See [22.406-9\(c\)\(1\)](#).)

(e) [SF 1413](#) (Rev. 4/2013), *Statement and Acknowledgment*. [SF 1413](#) is prescribed for use in obtaining contractor acknowledgment of inclusion of required clauses in subcontracts, as specified in [22.406-5](#).

(f) Form [SF 1444](#) (Rev. 4/2013), *Request for Authorization of Additional Classification and Rate*. (See [22.406-3\(a\)](#) and [22.1019](#).)

(g) [SF 1445](#) (Rev. 12/96), *Labor Standards Interview*. (See [22.406-7\(b\)](#).)

(h) [SF 1446](#) (Rev. 4/2013.), *Labor Standards Investigation Summary Sheet*. (See [22.406-8\(d\)](#).)

(i) *Form WH-347* (DOL), *Payroll (For Contractor’s Optional Use)*. (See [22.406-6\(a\)](#).)

**53.223 [Reserved]**

**53.224 [Reserved]**

**53.225 [Reserved]**

**53.226 [Reserved]**

**53.227 [Reserved]**

**53.228 Bonds and insurance.**

The following standard forms are prescribed for use for bond and insurance requirements, as specified in [Part 28](#):

(a) [SF 24](#) (Rev. 10/98) *Bid Bond*. (See [28.106-1](#).) [SF 24](#) is authorized for local reproduction.

(b) [SF 25](#) (Rev. 3/2013) *Performance Bond*. (See [28.106-1\(b\)](#).) [SF 25](#) is authorized for local reproduction.

(c) [SF 25A](#) (Rev. 3/2013) *Payment Bond*. (See [28.106-1\(c\)](#).) [SF 25A](#) is authorized for local reproduction.

(d) [SF 25B](#) (Rev. 10/83), *Continuation Sheet* (For Standard Forms [24](#), [25](#), and [25A](#)). (See [28.106-1\(c\)](#).)

(e) [SF 28](#) (Rev. 6/03) *Affidavit of Individual Surety*. (See [28.106-1\(e\)](#) and [28.203\(b\)](#).) [SF 28](#) is authorized for local reproduction.

(f) [SF 34](#) (Rev. 1/90), *Annual Bid Bond*. (See [28.106-1\(f\)](#).) [SF 34](#) is authorized for local reproduction.

(g) [SF 35](#) (Rev. 1/90), *Annual Performance Bond*. (See [28.106-1](#).) [SF 35](#) is authorized for local reproduction.

(h) [SF 273](#) (Rev. 4/2013) *Reinsurance Agreement for a Bond statute Performance Bond*. (See [28.106-1\(h\)](#) and [28.202-1\(a\)\(4\)](#).) [SF 273](#) is authorized for local reproduction.

(i) [SF 274](#) (Rev. 4/2013) *Reinsurance Agreement for a Bond statute Payment Bond*. (See [28.106-1\(i\)](#) and [28.202-1\(a\)\(4\)](#).) [SF 274](#) is authorized for local reproduction.

(j) [SF 275](#) (Rev. 10/98) *Reinsurance Agreement in Favor of the United States*. (See [28.106-1\(j\)](#) and [28.202-1\(a\)\(4\)](#).) [SF 275](#) is authorized for local reproduction.

(k) [SF 1414](#) (Rev. 10/93), *Consent of Surety*. [SF 1414](#) is authorized for local reproduction.

(l) [SF 1415](#) (Rev. 7/93), *Consent of Surety and Increase of Penalty*. (See [28.106-1\(l\)](#).) [SF 1415](#) is authorized for local reproduction.

(m) [SF 1416](#) (Rev. 10/98) *Payment Bond for Other than Construction Contracts*. (See [28.106-1\(m\)](#).) [SF 1416](#) is authorized for local reproduction.

(n) [SF 1418](#) (Rev. 2/99) *Performance Bond For Other Than Construction Contracts*. (See [28.106-1\(n\)](#).) [SF 1418](#) is authorized for local reproduction.

(o) [OF 90](#) (Rev. 1/90), *Release of Lien on Real Property*. (See [28.106-1\(o\)](#) and [28.203-5\(a\)](#).) [OF 90](#) is authorized for local reproduction.

(p) [OF 91](#) (1/90 Ed.), *Release of Personal Property from Escrow*. (See [28.106-1\(p\)](#) and [28.203-5\(a\)](#).) [OF 91](#) is authorized for local reproduction.

### 53.229 Taxes (SF's 1094, 1094-A).

[SF 1094](#) (Rev. 12/96), *U.S. Tax Exemption Form, and SF 1094A* (Rev. 12/96), *Tax Exemption Forms Accountability Record*. SF's [1094](#) and [1094A](#) are prescribed for use in establishing exemption from State or local taxes, as specified in [29.302\(b\)](#).

### 53.230 [Reserved]

### 53.231 [Reserved]

### 53.232 Contract financing (SF 1443).

[SF 1443](#) (7/09), *Contractor's Request for Progress Payment*. [SF 1443](#) is prescribed for use in obtaining contractors' requests for progress payments.

### 53.233 [Reserved]

### 53.234 [Reserved]

### 53.235 Research and development contracting (SF 298).

[SF 298](#) (2/89), *Report Documentation Page*. [SF 298](#) is prescribed for use in submitting scientific and technical reports to contracting officers and to technical information libraries, as specified in [35.010](#).

### 53.236 Construction and architect-engineer contracts.

#### 53.236-1 Construction.

The following forms are prescribed, as stated below, for use in contracting for construction, alteration, or repair, or dismantling, demolition, or removal of improvements.

- (a) [Reserved]
- (b) [Reserved]
- (c) [Reserved]

(d) [SF 1442](#) (4/85 Ed.), *Solicitation, Offer and Award (Construction, Alteration, or Repair)*. [SF 1442](#) is prescribed for use in soliciting offers and awarding contracts expected to exceed the simplified acquisition threshold for—

- (1) Construction, alteration, or repair; or
- (2) Dismantling, demolition, or removal of improvements (and may be used for contracts within the simplified acquisition threshold), as specified in [36.701\(a\)](#).

(e) [OF 347](#) (Rev. 2/2012), *Order for Supplies or Services*. [OF 347](#), prescribed in [53.213\(f\)](#) (or an approved agency form), may be used for contracts under the simplified acquisition threshold for—

- (1) Construction, alteration, or repair; or
- (2) Dismantling, demolition, or removal of improvements, as specified in [36.701\(b\)](#).

(f) [OF 1419](#) (11/88 Ed.), *Abstract of Offers—Construction, and OF 1419A* (11/88 Ed.), *Abstract of Offers—Construction, Continuation Sheet*. OF's [1419](#) and [1419A](#) are prescribed for use in recording bids (and may be used for recording proposal information), as specified in [36.701\(c\)](#).

#### 53.236-2 Architect-engineer services (SF's 252 and 330).

The following forms are prescribed for use in contracting for architect-engineer and related services:

(a) [SF 252](#) (Rev. 10/83), *Architect-Engineer Contract*. [SF 252](#) is prescribed for use in awarding fixed-price contracts for architect-engineer services, as specified in [36.702\(a\)](#). Pending issuance of a new edition of the form, Block 8, Negotiation Authority, is deleted.

(b) [SF 330](#) (Rev. 3/2013), *Architect-Engineer Qualifications*. [SF 330](#) is prescribed for use in obtaining information from architect-engineer firms regarding their professional qualifications, as specified in [36.702\(b\)\(1\)](#) and (b)(2).

### 53.237 [Reserved]

### 53.238 [Reserved]

### 53.239 [Reserved]

### 53.240 [Reserved]

### 53.241 [Reserved]

### 53.242 Contract administration.

#### 53.242-1 Novation and change-of-name agreements (SF 30).

[SF 30](#), *Amendment of Solicitation/Modification of Contract*. [SF 30](#), prescribed in [53.243](#), shall be used in connection



# Standard Form 294

[Go to <http://www.gsa.gov/forms> to access form.]



# Optional Form 312

[Standard Form 98 has been removed.]

# Optional Form 312 (Back)

[Standard Form 98 has been removed.]