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| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT** | | | | | | | | | | | | 1. CONTRACT ID CODE | | | PAGES OF PAGES | | | |
| 1 | | 96 | |
| 2. AMENDMENT/MODIFICATION NO.  **Mass Mod 0004** | | | 3. EFFECTIVE DATE | | | | | | 4. REQUISITION/PURCHASE REQ. NO. | | | | 5. PROJECT NO. *(If applicable)* | | | | | |
| 6. ISSUED BY: CODE: | | | | |  | | | | 7. ADMINISTERED BY *(If other than Item 6)* CODE: | | | | | | |  | | |
| Department of Veterans Affairs  National Acquisition Center  P.O. Box 76, Bldg. 37  Hines, IL 60141 | | | | | | | |  | | | | | | | | | |
| 8. NAME AND ADDRESS OF CONTRACTOR *(No., street, county, State and ZIP Code)* | | | | | | | | | | (X) | 9A. AMENDMENT OF SOLICITATION NO. | | | | | | | |
|
| 9B. DATED *(SEE ITEM 11)* | | | | | | | |
|
| X | 10A. MODIFICATION OF CONTRACT/ORDER NO. | | | | | | | |
| 10B. DATED *(SEE ITEM 13)* | | | | | | | |
| CODE | | FACILITY CODE | | | | | | | |
| 11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS | | | | | | | | | | | | | | | | | | |
| The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers  is extended  is not extended  Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:  (a) By completing Items 8 and 15, and returning     copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted;  or (c) By separate letter or telegram which includes a reference to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified. | | | | | | | | | | | | | | | | | | |
| 12. ACCOUNTING AND APPROPRIATION DATA *(If required)* | | | | | | | | | | | | | | | | | | |
| 13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS, IT MODIFIES THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14. | | | | | | | | | | | | | | | | | | |
| (x) | A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: *(Specify authority)* THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A. | | | | | | | | | | | | | | | | | |
|  | B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES *(such as changes in paying office,* *appropriation date, etc.)* SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b). | | | | | | | | | | | | | | | | | |
| X | C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF:  52.212-4(c) Contract Terms and Conditions - Commercial Items (Changes) | | | | | | | | | | | | | | | | | |
|  | D. OTHER *(Specify type of modification and authority)* | | | | | | | | | | | | | | | | | |
| E. **IMPORTANT**: Contractor  is not,  is required to sign this document and return  1 copies to the issuing office. | | | | | | | | | | | | | | | | | | |
| 14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible.)  This modification is issued to incorporate the attached regulations and special language changes into the above-referenced contract pursuant to an amendment issued under 65 I B solicitation M5-Q50A-03-R7.  The full text of regulations and special language changes are found on continuation pages 2 – 96. | | | | | | | | | | | | | | | | | | |
| Except as provided herein, all terms and conditions of the document referenced in item 9A or 10A, as heretofore changed, remains unchanged and in full force and effect. | | | | | | | | | | | | | | | | | | |
| 15A. NAME AND TITLE OF SIGNER *(Type or print)* | | | | | | 16A. NAME AND TITLE OF CONTRACTING OFFICER *(Type or print)* | | | | | | | | | | | | |
| 15B. CONTRACTOR/OFFEROR  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  *(Signature of person authorized to sign)* | | | | 15C. DATE SIGNED | | | 16B. UNITED STATES OF AMERICA  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  *(Signature of Contracting Officer)* | | | | | | | 16C. DATE SIGNED | | | | |
| EXCEPTION TO SF 30 30-105 STANDARD FORM 30 (REV. 10-83)  APPROVED BY OIRM 11-84 Prescribed by GSA FAR (48 CFR) 53.243 | | | | | | | | | | | | | | | | | | |

**CP-FSS-2 SIGNIFICANT CHANGES (OCT 1988)**

The attention of the offeror is invited to the following changes made since the issuance of the last solicitation for supplies/services covered herein:

1. **Regulations / Special Language Changes – Additions, deletions and updates/revisions since the previous solicitation (M5-Q50A-03-R7) issued February 19, 2014, and its amendments.**

***Added***

52.204-16 Commercial and Government Entity Code Reporting (Jul 2015)

52.204-18 Commercial and Government Entity Code Maintenance (Jul 2015)

### 52.209-11 Representation by Corporations Regarding Delinquent Tax Liability Or A Felony Conviction Under Any Federal Law (Feb 2016)

52.222-56 Certification Regarding Trafficking in Persons Compliance Plan (Mar 2015)

52.233-1 Disputes (May 2014) (Alternate I, Dec 1991)

552.223-73 Preservation, Packaging, Packing, Marking and Labeling of Hazardous Materials (HAZMAT) for Shipments (Jun 2015)

552.238-81 Modification (Federal Supply Schedule) (Apr 2014)(Alternate I - Apr 2014) (Tailored)

Trade Agreement Act Non-Availability Determination Request Letter

***Deleted***

52.204-11 American Recovery and Reinvestment Act-Reporting Requirements (Jul 2010)

52.233-1 Disputes (July 2002)

552.243-72 Modifications (Multiple Award Schedule) (Jul 2000) (Alternate I—Sep 1999) (Tailored)

***Updated***

52.203-13 Contractor Code of Business Ethics and Conduct (Oct 2015)

52.203-17 Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (Apr 2014)

52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards (Oct 2015)

52.209-6 Protecting the Government’s Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Oct 2015)

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

52.212-1 Instructions to Offerors-Commercial Items (Oct 2015)

52.212-3 Offeror Representations and Certifications — Commercial Items (Mar 2016)

52.212-4 Contract Terms and Conditions—Commercial Items (May 2015) (Tailored)

52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders – Commercial Items (Mar 2016) AND (Alternate II -Oct 2015)

52.219-8 Utilization of Small Business Concerns (Oct 2014)

52.219-9 Small Business Subcontracting Plan (Oct 2015) (Alternate II – Oct 2001)

52.219-29 Notice of Set-Aside For, Or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (Dec 2015)

52.219-30 Notice of Set-Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible under the Women-Owned Small Business Program (Dec 2015)

52.222-19 Child Labor-Cooperation with Authorities and Remedies (Feb 2016)

52.222-21 Prohibition of Segregated Facilities (Apr 2015)

52.222-26 Equal Opportunity (Apr 2015)

52.222-35 Equal Opportunity for Veterans (Oct 2015)

52.222-36 Equal Opportunity for Workers with Disabilities (Jul 2014)

52.222-37 Employment Reports on Veterans (Feb 2016)

52.222-50 Combating Trafficking in Persons (Mar 2015)

52.225-5 Trade Agreements (Feb 2016)

52.232-36 Payment by Third Party (May 2014) (Deviation - May 2003)

552.212-71 Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items (Oct 2014)

552.212-72 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Items (Jun 2015)

552.238-74 Industrial Funding Fee and Sales Reporting (Jan 2016) (Tailored)

AS5000 Pharmaceutical Prime Vendor Participation (Mar 2016)

Compliance Confirmation (Nov 2015)

CSP-1 (Tailored, Nov 2015)

Document 01 – Read Me First: TAA Section (Note added, Feb 2016) & Business Size Determination

Document 08- Small Business Subcontracting Plan Template (Mar 2016)

I-FSS-644 Dealers and Suppliers (Oct 1988)

NAICS Code Designation

SF1449 (Feb 2012)

**MATRIX OF UPDATED REGULATIONS AND SPECIAL LANGUAGE**

| **Old Version** | **New Version** |
| --- | --- |
| 52.203-13 Contractor Code of Business Ethics and Conduct (Apr 2010) | 52.203-13 Contractor Code of Business Ethics and Conduct (Oct 2015) |
| 52.203-17 Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (Sep 2013) | 52.203-17 Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights (Apr 2014) |
| 52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards (July 2013) | 52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards (Oct 2015) |
| 52.204-11 American Recovery and Reinvestment Act-Reporting Requirements (Jul 2010) | *REMOVED* |
| *ADDED* | 52.204-16 Commercial and Government Entity Code Reporting (Jul 2015) |
| *ADDED* | 52.204-18 Commercial and Government Entity Code Maintenance (Jul 2015) |
| 52.209-6 Protecting the Government’s Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Aug 2013) | 52.209-6 Protecting the Government’s Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (Oct 2015) |
| 52.209-10 Prohibition on Contracting with Inverted Domestic Corporations (May 2012) | 52.209-10 Prohibition on Contracting with Inverted Domestic Corporations (Nov 2015) |
| *Added* | 52.209-11 Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under Any Federal Law (Feb 2016) |
| 52.212-1 Instructions to Offerors - Commercial Items (Jul 2013) | 52.212-1 Instructions to Offerors-Commercial Items (Oct 2015) |
| 52.212-3 Offeror Representations and Certifications --Commercial Items (Dec 2014) | 52.212-3 Offeror Representations and Certifications-Commercial Items (Mar 2016) |
| 52.212-4 Contract Terms and Conditions – Commercial Items (Sep 2013) (Tailored) | 52.212-4 Contract Terms and Conditions – Commercial Items (May 2015) (Tailored) |
| 52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders – Commercial Items (Dec 2014) AND (Alternate II - Dec 2014) | 52.212-5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders – Commercial Items (Mar 2016) AND (Alternate II -Oct 2015) |
| 52.219-8 -- Utilization of Small Business Concerns (July 2013) | 52.219-8 -- Utilization of Small Business Concerns (Oct 2014) |
| 52.219-9 -- Small Business Subcontracting Plan (July 2013) (Alternate II – Oct 2001) | 52.219-9 -- Small Business Subcontracting Plan (Oct 2015) (Alternate II – Oct 2001) |
| 52.219-29 Notice of Set-Aside for Economically Disadvantaged Women-Owned Small Business Concerns (July 2013) | 52.219-29 Notice of Set-Aside for, Or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (Dec 2015) |
| 52.219-30 Notice of Set-Aside for Women-Owned Small Business Concerns Eligible under the Women-Owned Small Business Program (July 2013) | 52.219-30 Notice of Set-Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible under the Women-Owned Small Business Program (Dec 2015) |
| 52.222-19 --Child Labor-Cooperation with Authorities and Remedies (Jan 2014) | 52.222-19 --Child Labor-Cooperation with Authorities and Remedies (Feb 2016) |
| 52.222-21 Prohibition of Segregated Facilities (Feb 1999) | 52.222-21 Prohibition of Segregated Facilities (Apr 2015) |
| 52.222-26 Equal Opportunity (Mar 2007) | 52.222-26 Equal Opportunity (Apr 2015) |
| 52.222-35 Equal Opportunity for Veterans (Sep 2010) | 52.222-35 Equal Opportunity for Veterans (Oct 2015) |
| 52.222-36 Affirmative Action for Workers with Disabilities (Oct 2010) | 52.222-36 Equal Opportunity for Workers with Disabilities (Jul 2014) |
| 52.222-37 Employment Reports on Veterans (Sep 2010) | 52.222-37 Employment Reports on Veterans (Feb 2016) |
| 52.222-50 Combating Trafficking in Persons (Feb 2009) | 52.222-50 Combating Trafficking in Persons (Mar 2015) |
| *ADDED* | 52.222-56 Certification Regarding Trafficking in Persons Compliance Plan (Mar 2015) |
| 52.225-5 Trade Agreements (Nov 2013) | 52.225-5 Trade Agreements (Feb 2016) |
| 52.232-36 Payment by Third Party (July 2013) (Deviation – May 2003) | 52.232-36 Payment by Third Party (May 2014) (Deviation - May 2003) |
| 52.233-1 Disputes (Jul 2002) | 52.233-1 Disputes (May 2014) (Alternate I, Dec 1991) |
| 552.212-71 Contract Terms And Conditions Applicable To GSA Acquisition Of Commercial Items (Jul 2003) | 552.212-71 Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items (Oct 2014) |
| 552.212-72 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Items (Sep 2003) | 552.212-72 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Items (Jun 2015) |
| *ADDED* | 552.223-73 Preservation, Packaging, Packing, Marking and Labeling of Hazardous Materials (HAZMAT) for Shipments (Jun 2015) |
| 552.238-74 Industrial Funding Fee and Sales Reporting (Jul 2003) (Tailored) | 552.238-74 Industrial Funding Fee and Sales Reporting (Jan 2016, Tailored) |
| 552.243-72 Modifications (MAS) (Jul 2000) (Alternate I-Sep 1999) (Tailored) | 552.238-81 Modification (Federal Supply Schedule) (Apr 2014)(Alternate I - Apr 2014) (Tailored) |
| AS5000 Pharmaceutical Prime Vendor Participation (Sep 2011) | AS5000 Pharmaceutical Prime Vendor Participation (Mar 2016) |
| Compliance Confirmation | Compliance Confirmation (Nov 2015) |
| CSP-1 (Tailored) | CSP-1 (Tailored, Nov 2015) |
| Document 01 – Read Me First | Document 01 – Read Me First (TAA and Business Size Determination Sections Revised) |
| Document 08 - Small Business Subcontracting Plan Template (Oct 2013) | Document 08 - Small Business Subcontracting Plan Template (Mar 2016) |
| I-FSS-644 Dealers and Suppliers (Oct 1988) | I-FSS-644 Dealers and Suppliers (Oct 1988, Revised Notes – Jan 2016) |
| NAICS Code Designation | NAICS Code Designation (Revised Size Standards) |
| SF1449 (Feb 2012) | SF1449 (Feb 2012) |
| *ADDED* | Trade Agreements Act Non-Availability Determination Request Letter |

1. **Trade Agreements Act – Non-Availability Determination**

Special Item Number (SIN) 42-2A product items that are not substantially transformed in the U.S. or a designated country under 52.225-5 Trade Agreements must be included in the offeror’s proposal to obtain a Federal Supply Schedule 65IB contract and listed as other end products as required by 52.212-3(g)(5)(ii). In accordance with Federal Acquisition Regulation 25.403(c) & 25.103(b)(2), the decision has been made that the Contracting Officer may make an individual non-availability determination pursuant to 1) information provided by the offeror that neither the offered 42-2A product items nor similar or like items are mined, produced, or manufactured in the United States or a designated country in sufficient quantity to fulfill the requirements, and 2) in light of the requirement set forth in 38 U.S.C. Section 8126(a)(1) that manufacturers shall make available for procurement on the Federal Supply Schedule of the General Services Administration each covered drug of the manufacturer.

1. **508 Compliance**

Section 508 of the Rehabilitation Act of 1973, as amended in 1998, requires Federal agencies to make their electronic and information technology (EIT) accessible to people with disabilities. With the requirement to submit all VA FSS offers electronically, effective January 1, 2015, you must ensure that all of the documents (e.g. Microsoft word documents, pdf documents, Excel files, etc.) you submit as part of your proposal are 508 compliant. A guide to 508 compliance for electronic documents is found on the Section508.gov website at <https://www.section508.gov/content/build/create-accessible-documents>. This guide provides information on formatting and testing and includes helpful checklists. You can find further information on Section 508 standards at <https://www.section508.gov/content/learn/standards>. This standards web page also includes a [Quick Reference Guide](https://www.section508.gov/content/learn/standards/quick-reference-guide) to Section 508.

1. **FSC Mandatory Electronic Invoice Submission Program**

The Department of Veterans Affairs published a final rule in the Federal Register on November 27, 2012 ([https://federalregister.gov/a/2012-28612](https://federalregister.gov/a/2012-28612))), to require contractors to submit payment requests in electronic form in order to enhance customer service, departmental productivity, and adoption of innovative information technology, including the appropriate use of commercial best practices. The rule was effective December 27, 2012, and ***will apply only to orders placed by VA ordering activities***.

**Benefits of e-Invoicing**

Electronic invoicing offers simple and secure solutions, complying with HIPAA, to eliminate the cost and time of processing paper invoices. The benefits of e-Invoicing include:

* Delivery of invoices directly into the FSC payment system and routed nationally for approval
* Elimination of mail processing time, postage, and invoice receipt inquires
* Elimination of data error and lost or misplaced invoices
* Verification of invoice receipt or rejection through automated notification reports
* No installation of hardware or software required

**VA’s Electronic Invoice Presentment and Payment System**

The FSC uses a third-party contractor, Tungsten, to transition vendors from paper to electronic invoice submission. Vendors can go to [http://www.tungsten-network.com/US/en/veterans-affairs/](http://www.tungsten-network.com/US/en/veterans-affairs/t) to begin submitting electronic invoices, free of charge.  The Tungsten system conforms to the X12 electronic data interchange (EDI) formats established by the Accredited Standards Center (ASC) chartered by the American National Standards Institute (ANSI). The X12 EDI Web site is found at (<http://www.x12.org>).

**Vendor e-Invoice Set-Up Information**

While most VA Vendors already use Tungsten, new vendors can contact Tungsten at the phone number or email address listed below to begin submitting their electronic invoices to the VA Financial Services Center for payment processing, free of charge. If they have question about the e-invoicing program or Tungsten, please contact the FSC at the phone number or email address listed below:

* Tungsten e-Invoice Setup Information: 1-877-489-6135
* Tungsten e-Invoice email: [VA.Registration@Tungsten-Network.com](mailto:VA.Registration@Tungsten-Network.com)
* FSC e-Invoice Contact Information: 1-877-353-9791
* FSC e-invoice email: [vafsccshd@va.gov](mailto:vafsccshd@va.gov)

Additional Information:

<http://www.tungsten-network.com/VeteransAffairs/>

<http://www.fsc.va.gov/FSC/FSC/Tungsten_Support_Videos_Ref_2014.pdf>

1. **Prime Vendor Sales:** Sales to a Government prime vendor that are ultimately shipped to a Federal Government activity qualify as FSS sales; therefore, these sales must be reported as FSS sales and the IFF collected and remitted. Sales where the ultimate end user is the Government do not qualify as commercial sales and will not be considered for the purposes of determining significant commercial sales.

**FULL TEXT OF ADDED REGULATIONS AND SPECIAL LANGUAGE**

### 52.204-16 COMMERCIAL AND GOVERNMENT ENTITY CODE REPORTING (JUL 2015)

(a) Definition. As used in this provision –

“Commercial and Government Entity (CAGE) code” means –

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

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

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

(c) CAGE codes may be obtained via–

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

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

(3) The appropriate country codification bureau. Entities located outside the United States and its outlying areas may obtain an NCAGE code by contacting the Codification Bureau in the foreign entity’s country if that country is a member of NATO or a sponsored nation. NCAGE codes may be obtained from the NSPA if the foreign entity’s country is not a member of NATO or a sponsored nation. Points of contact for codification bureaus and NSPA, as well as additional information on obtaining NCAGE codes, are available at <http://www.dlis.dla.mil/nato/ObtainCAGE.asp>.

(d) Additional guidance for establishing and maintaining CAGE codes is available at <http://www.dlis.dla.mil/cage_welcome.asp>.

(e) When a CAGE Code is required for the immediate owner and/or the highest-level owner by [52.204-17](https://www.acquisition.gov/sites/default/files/current/far/html/52_200_206.html#wp1152369) or [52.212-3](https://www.acquisition.gov/sites/default/files/current/far/html/52_212_213.html#wp1179194)(p), the Offeror shall obtain the respective CAGE Code from that entity to supply the CAGE Code to the Government.

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

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### 52.204-18 COMMERCIAL AND GOVERNMENT ENTITY CODE MAINTENANCE (JUL 2015)

(a) Definition. As used in this clause–

“Commercial and Government Entity (CAGE) code” means–

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

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

(b) Contractors shall ensure that the CAGE code is maintained throughout the life of the contract. For contractors registered in the System for Award Management (SAM), the DLA Contractor and Government Entity (CAGE) Branch shall only modify data received from SAM in the CAGE master file if the contractor initiates those changes via update of its SAM registration. Contractors undergoing a novation or change-of-name agreement shall notify the contracting officer in accordance with [subpart 42.12](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%2042_12.html#wp1084217). The contractor shall communicate any change to the CAGE code to the contracting officer within 30 days after the change, so that a modification can be issued to update the CAGE code on the contract.

(c) Contractors located in the United States or its outlying areas that are not registered in SAM shall submit written change requests to the DLA Contractor and Government Entity (CAGE) Branch. Requests for changes shall be provided on a DD Form 2051, Request for Assignment of a Commercial and Government Entity (CAGE) Code, to the address shown on the back of the DD Form 2051. Change requests to the CAGE master file are accepted from the entity identified by the code.

(d) Contractors located outside the United States and its outlying areas that are not registered in SAM shall contact the appropriate National Codification Bureau or NSPA to request CAGE changes. Points of contact for National Codification Bureaus and NSPA, as well as additional information on obtaining NCAGE codes, are available at <http://www.dlis.dla.mil/nato/ObtainCAGE.asp>.

(e) Additional guidance for maintaining CAGE codes is available at <http://www.dlis.dla.mil/cage_welcome.asp>.

### 52.209-11 REPRESENTATION BY CORPORATIONS REGARDING DELINQUENT TAX LIABILITY OR A FELONY CONVICTION UNDER ANY FEDERAL LAW (FEB 2016)

(a) As required by sections 744 and 745 of Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235), and similar provisions, if contained in subsequent appropriations acts, the Government will not enter into a contract with any corporation that—

(1) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless an agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government; or

(2) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless an agency has considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interests of the Government.

(b) The Offeror represents that—

(1) It is □ is not □ a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

(2) It is □ is not □ a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.

**52.222-56 Certification Regarding Trafficking in Persons Compliance Plan** **(Mar 2015)**

**Note: This clause applies only to contracts with overseas delivery.**

1. The term “commercially available off-the-shelf (COTS) item,” is defined in the clause of this solicitation entitled “Combating Trafficking in Persons” (FAR clause [52.222-50](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1151848)).
2. The apparent successful Offeror shall submit, prior to award, a certification, as specified in paragraph (c) of this provision, for the portion (if any) of the contract that-
3. Is for supplies, other than commercially available off-the-shelf items, to be acquired outside the United States, or services to be performed outside the United States; and
4. Has an estimated value that exceeds $500,000.
5. The certification shall state that-
6. It has implemented a compliance plan to prevent any prohibited activities identified in paragraph (b) of the clause at [52.222-50](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1151848), Combating Trafficking in Persons, and to monitor, detect, and terminate the contract with a subcontractor engaging in prohibited activities identified at paragraph (b) of the clause at [52.222-50](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1151848), Combating Trafficking in Persons; and
7. After having conducted due diligence, either-
8. To the best of the Offeror’s knowledge and belief, neither it nor any of its proposed agents, subcontractors, or their agents is engaged in any such activities; or
9. If abuses relating to any of the prohibited activities identified in [52.222-50](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1151848)(b) have been found, the Offeror or proposed subcontractor has taken the appropriate remedial and referral actions.

**52.233-1 Disputes** **(May 2014) (Alternate I, Dec 1991)**

1. This contract is subject to [41 U.S.C chapter 71](http://uscode.house.gov/), Contract Disputes.
2. Except as provided in [41 U.S.C chapter 71](http://uscode.house.gov/), all disputes arising under or relating to this contract shall be resolved under this clause.
3. “Claim,” as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding $100,000 is not a claim under [41 U.S.C chapter 71](http://uscode.house.gov/) until certified. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under [41 U.S.C chapter 71](http://uscode.house.gov/). The submission may be converted to a claim under [41 U.S.C chapter 71](http://uscode.house.gov/), by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.
4. (1) A claim by the Contractor shall be made in writing and, unless otherwise stated in this contract,

submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

1. (i) The Contractor shall provide the certification specified in paragraph (d)(2)(iii) of this clause when submitting any claim exceeding $100,000.
2. The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.
3. The certification shall state as follows: “I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am authorized to certify the claim on behalf of the Contractor.”
4. The certification may be executed by any person authorized to bind the Contractor with respect to the claim.
5. For Contractor claims of $100,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over $100,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.
6. The Contracting Officer’s decision shall be final unless the Contractor appeals or files a suit as provided in [41 U.S.C chapter 71](http://uscode.house.gov/).
7. If the claim by the Contractor is submitted to the Contracting Officer or a claim by the Government is presented to the Contractor, the parties, by mutual consent, may agree to use alternative dispute resolution (ADR). If the Contractor refuses an offer for ADR, the Contractor shall inform the Contracting Officer, in writing, of the Contractor’s specific reasons for rejecting the offer.
8. The Government shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR [33.201](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%2033_2.html#wp1079863), interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.
9. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the contract, and comply with any decision of the Contracting Officer.

**552.223-73 Preservation, Packaging, Packing, Marking, and Labeling of Hazardous Materials (HAZMAT) For Shipments (Jun 2015)**

1. Definition. “United States,” as used in this clause, means the 48 adjoining U.S. States, Alaska, Hawaii, and U.S. territories and possessions, such as Puerto Rico.
2. Preservation, packaging, packing, marking, and labeling of hazardous materials for export shipment outside the United States in all transport modes shall comply with the following, as applicable:
3. International Maritime Dangerous Goods (IMDG) Code as established by the International Maritime Organization (IMO).
4. U.S. Department of Transportation (DOT) Hazardous Material Regulation (HMR) 49 CFR parts 171 through 180. (Note: Classifications permitted by the HMR, but not permitted by the IMDG code, such as Consumer Commodities classed as ORM-D, shall be packaged in accordance with the IMDG Code and dual-marked with both Consumer Commodity and IMDG marking and labeling.)
5. Occupational Safety and Health Administration (OSHA) Regulation 29 CFR part 1910.1200.
6. International Air Transport Association (IATA), Dangerous Goods Regulation and/or International Civil Aviation Organization (ICAO), Technical Instructions.
7. AFMAN 24-204, Air Force Inter-Service Manual, Preparing Hazardous Materials For Military Air Shipments.
8. Any preservation, packaging, packing, marking, and labeling requirements contained elsewhere in this solicitation and contract.
9. Preservation, packaging, packing, marking, and labeling of hazardous materials for domestic shipments within the United States in all transport modes shall comply with the following; as applicable:
10. U.S. Department of Transportation (DOT) Hazardous Material Regulation (HMR) 49 CFR parts 171 through 180.
11. Occupational Safety and Health Administration (OSHA) Regulation 29 CFR part 1910.1200.
12. Any preservation, packaging, packing, marking, and labeling requirements contained elsewhere in this solicitation and contract.
13. Hazardous Material Packages designated for outside the United States destinations through Forwarding Points, Distribution Centers, or Container Consolidation Points (CCPs) shall comply with the IMDG, IATA, ICAO or AFMAN 24-204 codes, as applicable.
14. The test certification data showing compliance with performance-oriented packaging or UN-approved packaging requirements shall be made available to GSA contract administration/management representatives or regulatory inspectors upon request.

**552.238-81 Modification (Federal Supply Schedule) (Apr 2014) (Alternate I - Apr 2014) (TAILORED)**

***NOTE: All requests for additions, deletions, and price changes of SIN 42-2a items are subject to the requirements of Public Law 102-585 and the contractor’s MA and PPA.***

1. General. The Contractor may request a contract modification by submitting a request to the Contracting Officer for approval, except as noted in paragraph (d) of this clause. At a minimum, every request shall describe the proposed change(s) and provide the rationale for the requested change(s).
2. Types of Modifications.
3. Additional items/additional SINs. When requesting additions, the following information must be submitted:
4. Information requested in paragraphs (1) and (2) of the Commercial Sales Practice Format to add SINs.
5. Discount information for the new items(s) or new SIN(s). Specifically, submit the information requested in paragraphs 3 through 5 of the Commercial Sales Practice Format. If this information is the same as the initial award, a statement to that effect may be submitted instead.
6. Information about the new item(s) or the item(s) under the new SIN(s) must be submitted in accordance with the request for proposal.
7. Delivery time(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted in accordance with the request for proposal.
8. Production point(s) for the new item(s) or the item(s) under the new SIN(s) must be submitted if required by FAR 52.215-6, Place of Performance.
9. Hazardous Material information (if applicable) must be submitted as required by FAR 52.223-3 (Alternate I), Hazardous Material Identification and Material Safety Data.
10. Any information requested by FAR 52.212-3(f), Offeror Representations and Certifications-Commercial Items, that may be necessary to assure compliance with FAR 52.225-5, Trade Agreements.
11. Deletions. The Contractors shall provide an explanation for the deletion. The Government reserves the right to reject any subsequent offer of the same item or a substantially equal item at a higher price during the same contract period, if the contracting officer finds the higher price to be unreasonable when compared with the deleted item. ***NOTE: Drugs subject to Public Law 102-585 may only be deleted from the contract when all product has been exhausted from the contractor’s inventory and the Government supply chain (i.e. the Prime Vendor).***
12. Price Reduction. The Contractor shall indicate whether the price reduction falls under the item (i), (ii), or (iii) of paragraph (c)(1) of the Price Reductions clause at [552.238-75](https://www.acquisition.gov/sites/default/files/current/gsam/html/Part552_Sub2B.html#wp1884901). If the Price reduction falls under item (i), the Contractor shall submit a copy of the dated commercial price list. If the price reduction falls under item (ii) or (iii), the Contractor shall submit a copy of the applicable price list(s), bulletins or letters or customer agreements which outline the effective date, duration, terms and conditions of the price reduction. ***NOTE: This also applies to temporary price reductions.***
13. Effective dates. The effective date of any modification is the date specified in the modification, except as otherwise provided in the Price Reductions clause at [552.238-75](https://www.acquisition.gov/sites/default/files/current/gsam/html/Part552_Sub2B.html#wp1884901).
14. Electronic File Updates. The Contractor shall update electronic file submissions to reflect all modifications. For additional items or SINs, the Contractor shall obtain the Contracting Officer's approval before transmitting changes. Contract modifications will not be made effective until the Government receives the electronic file updates. The Contractor may transmit price reductions, item deletions, and corrections without prior approval. However, the Contractor shall notify the Contracting Officer as set forth in the Price Reductions clause at [552.238-75](https://www.acquisition.gov/sites/default/files/current/gsam/html/Part552_Sub2B.html#wp1884901).
15. Amendments to Paper Federal Supply Schedule Price Lists.
16. The Contractor must provide supplements to its paper price lists, reflecting the most current changes. The Contractor may either:
17. Distribute a supplemental paper Federal Supply Schedule Price List within 15 workdays after the effective date of each modification.
18. Distribute quarterly cumulative supplements. The period covered by a cumulative supplement is at the discretion of the Contractor, but may not exceed three calendar months from the effective date of the earliest modification. For example, if the first modification occurs in February, the quarterly supplement must cover February-April, and every three month period after. The Contractor must distribute each quarterly cumulative supplement within 15 workdays from the last day of the calendar quarter.
19. At a minimum, the Contractor shall distribute each supplement to those ordering activities that previously received the basic document. In addition, the Contractor shall submit two copies of each supplement to the Contracting Officer and one copy to the FSS Schedule Information Center.
20. Electronic submission of modification requests is mandatory.

***NOTE: The effective dates for approved modifications will be determined on the following basis:***

1. ***If the Contracting Officer approves the modification request between the 11th and the 25th of the month, the effective date will be the 1st of the following month.***
2. ***If the Contracting Officer approves the modification request between the 26th of the current month and the 10th of the following month, the effective date will be the 15th of the following month.***
3. ***Modifications for NDC Changes and Product Additions for SIN 42-2a and 42-2b may be made effective earlier than the timeframes stated above.***

## TRADE AGREEMENTS ACT NON-AVAILABILITY DETERMINATION REQUEST

## *Note: This letter is only to be completed by those proposing items that are not U.S.-made or Trade Agreements Act designated country end products.*

Dear VA FSS Contractor,

The purpose of this letter is to confirm that the United States Department of Veterans Affairs (VA) is requesting that [Company Name] make available for purchase the following Special Item Number (SIN) 42-2A end product items under FSS Contract # V797P/D-xxxxx:

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| --- | --- | --- | --- | --- | --- |
| NDC  1 | NDC  2 | NDC  3 | Generic Name / Strength | Trade Name / Strength | Country of Origin |
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**Please review the following and indicate your agreement by returning this letter with your proposal**.

The above covered drugs are not compliant with the Trade Agreements Act (TAA) as they are not substantially transformed in the U.S or a designated country under 52.225-5 Trade Agreements. [Company Name] verifies that the above, currently marketed NDCs have no TAA compliant versions, including authorized generics. I understand that the VA’s contracting officer may make a non-availability determination at the base FSS contract level for these 42-2A product items based upon statements in this letter as well as my representations in SAM.gov.

I have revised our SAM.gov representations under 52.212-3(g)(5) and 52.225-6 to reflect that the items being offered are not U.S.-made or designated country end products as set forth at 52.225-5 Trade Agreements, and I agree to notify our VA FSS Contracting Officer should the facts as set forth in this letter or our SAM.gov representations change. I recognize that these items will be subject to Public Law 102-585, Section 603 (38 U.S.C. § 8126) pricing methodology.

Printed name and title of **authorized** representative

Signature of **authorized** representative Date

**FULL TEXT OF UPDATED REGULATIONS AND SPECIAL LANGUAGE**

**52.203-13 Contractor Code of Business Ethics and Conduct (Oct 2015)**

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

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

“Full cooperation”-

1. Means disclosure to the Government of the information sufficient for law enforcement to identify the nature and extent of the offense and the individuals responsible for the conduct. It includes providing timely and complete response to Government auditors’ and investigators' request for documents and access to employees with information;
2. Does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not require-
3. A Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine; or
4. Any officer, director, owner, or employee of the Contractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; and
5. Does not restrict a Contractor from-
6. Conducting an internal investigation; or
7. Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

“Principal” means an officer, director, owner, partner, or a person having primary management or supervisory responsibilities within a business entity (*e.g.*, general manager; plant manager; head of a division or business segment; and similar positions).

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

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

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

1. *Code of business ethics and conduct.*
2. Within 30 days after contract award, unless the Contracting Officer establishes a longer time period, the Contractor shall-
3. Have a written code of business ethics and conduct; and
4. Make a copy of the code available to each employee engaged in performance of the contract.
5. *The Contractor shall*-
6. *Exercise due diligence to prevent and detect criminal conduct; and*
7. *Otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.*
8. (i) The Contractor shall timely disclose, in writing, to the agency Office of the Inspector General (OIG),

with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of this contract or any subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed-

1. A violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title 18 of the United States Code; or
2. A violation of the civil False Claims Act ([31 U.S.C. 3729-3733](http://uscode.house.gov/)).
3. The Government, to the extent permitted by law and regulation, will safeguard and treat information obtained pursuant to the Contractor’s disclosure as confidential where the information has been marked “confidential” or “proprietary” by the company. To the extent permitted by law and regulation, such information will not be released by the Government to the public pursuant to a Freedom of Information Act request, [5 U.S.C. Section 552](http://uscode.house.gov/), without prior notification to the Contractor. The Government may transfer documents provided by the Contractor to any department or agency within the Executive Branch if the information relates to matters within the organization’s jurisdiction.
4. If the violation relates to an order against a Governmentwide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the Contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract.
5. Business ethics awareness and compliance program and internal control system. This paragraph (c) does not apply if the Contractor has represented itself as a small business concern pursuant to the award of this contract or if this contract is for the acquisition of a commercial item as defined at FAR [2.101](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%202_1.html#wp1145508). The Contractor shall establish the following within 90 days after contract award, unless the Contracting Officer establishes a longer time period:
6. An ongoing business ethics awareness and compliance program.
7. This program shall include reasonable steps to communicate periodically and in a practical manner the Contractor’s standards and procedures and other aspects of the Contractor’s business ethics awareness and compliance program and internal control system, by conducting effective training programs and otherwise disseminating information appropriate to an individual’s respective roles and responsibilities.
8. The training conducted under this program shall be provided to the Contractor’s principals and employees, and as appropriate, the Contractor’s agents and subcontractors.
9. An internal control system.
10. The Contractor’s internal control system shall-
11. Establish standards and procedures to facilitate timely discovery of improper conduct in connection with Government contracts; and
12. Ensure corrective measures are promptly instituted and carried out.
13. At a minimum, the Contractor’s internal control system shall provide for the following:
14. Assignment of responsibility at a sufficiently high level and adequate resources to ensure effectiveness of the business ethics awareness and compliance program and internal control system.
15. Reasonable efforts not to include an individual as a principal, whom due diligence would have exposed as having engaged in conduct that is in conflict with the Contractor’s code of business ethics and conduct.
16. Periodic reviews of company business practices, procedures, policies, and internal controls for compliance with the Contractor’s code of business ethics and conduct and the special requirements of Government contracting, including-
17. Monitoring and auditing to detect criminal conduct;
18. Periodic evaluation of the effectiveness of the business ethics awareness and compliance program and internal control system, especially if criminal conduct has been detected; and
19. Periodic assessment of the risk of criminal conduct, with appropriate steps to design, implement, or modify the business ethics awareness and compliance program and the internal control system as necessary to reduce the risk of criminal conduct identified through this process.
20. An internal reporting mechanism, such as a hotline, which allows for anonymity or confidentiality, by which employees may report suspected instances of improper conduct, and instructions that encourage employees to make such reports.
21. Disciplinary action for improper conduct or for failing to take reasonable steps to prevent or detect improper conduct.
22. Timely disclosure, in writing, to the agency OIG, with a copy to the Contracting Officer, whenever, in connection with the award, performance, or closeout of any Government contract performed by the Contractor or a subcontract thereunder, the Contractor has credible evidence that a principal, employee, agent, or subcontractor of the Contractor has committed a violation of Federal criminal law involving fraud, conflict of interest, bribery, or gratuity violations found in Title [18 U.S.C](http://uscode.house.gov/). or a violation of the civil False Claims Act ([31 U.S.C. 3729-3733](http://uscode.house.gov/)).
23. If a violation relates to more than one Government contract, the Contractor may make the disclosure to the agency OIG and Contracting Officer responsible for the largest dollar value contract impacted by the violation.
24. If the violation relates to an order against a Governmentwide acquisition contract, a multi-agency contract, a multiple-award schedule contract such as the Federal Supply Schedule, or any other procurement instrument intended for use by multiple agencies, the contractor shall notify the OIG of the ordering agency and the IG of the agency responsible for the basic contract, and the respective agencies’ contracting officers.
25. The disclosure requirement for an individual contract continues until at least 3 years after final payment on the contract.
26. The Government will safeguard such disclosures in accordance with paragraph (b)(3)(ii) of this clause.
27. Full cooperation with any Government agencies responsible for audits, investigations, or corrective actions.
28. *Subcontracts*.
29. The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts that have a value in excess of $5.5 million and a performance period of more than 120 days.
30. 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.

**52.203-17 CONTRACTOR EMPLOYEE WHISTLEBLOWER RIGHTS AND REQUIREMENT TO INFORM EMPLOYEES OF WHISTLEBLOWER RIGHTS (APR 2014)**

(a) This contract and employees working on this contract will be subject to the whistleblower rights and remedies in the pilot program on Contractor employee whistleblower protections established at [41 U.S.C. 4712](http://uscode.house.gov/) by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239) and FAR [3.908](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%203_9.html#wp1081284)

(b) The Contractor shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under [41 U.S.C. 4712](http://uscode.house.gov/), as described in section [3.908](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%203_9.html#wp1081284) of the Federal Acquisition Regulation.

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in all subcontracts over the simplified acquisition threshold.

**52.204-10** **Reporting Executive Compensation and First-Tier Subcontract Awards (Oct 2015)**

1. *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.
7. 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.
8. Nothing in this clause requires the disclosure of classified information
9. (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](https://www.acquisition.gov/sites/default/files/current/far/html/52_200_206.html#wp1137850)), 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 -

1. In the Contractor’s preceding fiscal year, the Contractor received-
2. 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
3. $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
4. 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)](http://uscode.house.gov/lawrevisioncounsel.shtml)) 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>.)
5. 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 $30,000 or more, the Contractor shall report the following information at [http://www.fsrs.gov](http://www.fsrs.gov/) for that first-tier subcontract. (The Contractor shall follow the instructions at [http://www.fsrs.gov](http://www.fsrs.gov/) to report the data.)
6. Unique identifier (DUNS Number) for the subcontractor receiving the award and for the subcontractor's parent company, if the subcontractor has a parent company.
7. Name of the subcontractor.
8. Amount of the subcontract award.
9. Date of the subcontract award.
10. 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.
11. Subcontract number (the subcontract number assigned by the Contractor).
12. Subcontractor’s physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district.
13. Subcontractor’s primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district.
14. The prime contract number, and order number if applicable.
15. Awarding agency name and code.
16. Funding agency name and code.
17. Government contracting office code.
18. Treasury account symbol (TAS) as reported in FPDS.
19. The applicable North American Industry Classification System code (NAICS).
20. 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 $30,000 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](http://www.fsrs.gov/) , if-
21. In the subcontractor’s preceding fiscal year, the subcontractor received-
22. 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
23. $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
24. 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>.)
25. The Contractor shall not split or break down first-tier subcontract awards to a value less than $30,000 to avoid the reporting requirements in paragraph (d) of this clause.
26. 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.
27. (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.
28. 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.
29. The FSRS database at [http://www.fsrs.gov](http://www.fsrs.gov/) will be prepopulated 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.

**52.209-6 Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment** **(Oct 2015)**

1. *Definition*. “Commercially available off-the-shelf (COTS)” item, as used in this clause-
2. Means any item of supply (including construction material) that is-
3. A commercial item (as defined in paragraph (1) of the definition in FAR [2.101](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%202_1.html#wp1145508));
4. Sold in substantial quantities in the commercial marketplace; and
5. Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
6. Does not include bulk cargo, as defined in [46 U.S.C. 40102(4)](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t45t48+930+0++%28%29%20%20AND%20%28%2846%29%20ADJ%20USC%29%3ACITE%20AND%20%28USC%20w%2F10%20%2840102%29%29%3ACITE%20%20%20%20%20%20%20%20%20), such as agricultural products and petroleum products.
7. The Government suspends or debars Contractors to protect the Government’s interests. Other than a subcontract for a commercially available off-the-shelf item, the Contractor shall not enter into any subcontract, in excess of $35,000 with a Contractor that is debarred, suspended, or proposed for debarment by any executive agency unless there is a compelling reason to do so.
8. The Contractor shall require each proposed subcontractor whose subcontract will exceed $35,000, other than a subcontractor providing a commercially available off-the-shelf item, to disclose to the Contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.
9. A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party (other than a subcontractor providing a commercially available off-the-shelf item) that is debarred, suspended, or proposed for debarment (see FAR [9.404](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%209_4.html#wp1086615) for information on the System for Award Management (SAM) Exclusions). The notice must include the following:
10. The name of the subcontractor.
11. The Contractor’s knowledge of the reasons for the subcontractor being listed with an exclusion in SAM.
12. The compelling reason(s) for doing business with the subcontractor notwithstanding its being listed with an exclusion in SAM.
13. The systems and procedures the Contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party’s debarment, suspension, or proposed debarment.
14. *Subcontracts*. Unless this is a contract for the acquisition of commercial items, the Contractor shall include the requirements of this clause, including this paragraph (e) (appropriately modified for the identification of the parties), in each subcontract that-
15. Exceeds $35,000 in value; and
16. Is not a subcontract for commercially available off-the-shelf items.

**52.209-10 Prohibition on Contracting with Inverted Domestic Corporations (Nov 2015)**

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

“Inverted domestic corporation” means a foreign incorporated entity that meets the definition of an inverted domestic corporation under [6 U.S.C. 395(b)](http://uscode.house.gov/), applied in accordance with the rules and definitions of [6 U.S.C. 395(c)](http://uscode.house.gov/).

“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.
3. If the contractor reorganizes as an inverted domestic corporation or becomes a subsidiary of an inverted domestic corporation at any time during the period of performance of this contract, the Government may be prohibited from paying for Contractor activities performed after the date when it becomes an inverted domestic corporation or subsidiary. The Government may seek any available remedies in the event the Contractor fails to perform in accordance with the terms and conditions of the contract as a result of Government action under this clause.
4. Exceptions to this prohibition are located at [9.108-2](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%209_1.html#wp1085903).
5. In the event the Contractor becomes either an inverted domestic corporation, or a subsidiary of an inverted domestic corporation during contract performance, the Contractor shall give written notice to the Contracting Officer within five business days from the date of the inversion event.

**52.212-1 INSTRUCTIONS TO OFFERORS – COMMERCIAL ITEMS (Oct 2015)**

(a) North American Industry Classification System (NAICS) code and small business size standard. The NAICS code and small business size standard for this acquisition appear in Block 10 of the solicitation cover sheet ([SF 1449](https://www.acquisition.gov/sites/default/files/current/far/html/FormsStandard67.html#wp1189284)). However, the small business size standard for a concern which submits an offer in its own name, but which proposes to furnish an item which it did not itself manufacture, is 500 employees.

(b) Submission of offers. Submit signed and dated offers to the office specified in this solicitation at or before the exact time specified in this solicitation. Offers may be submitted on the [SF 1449](https://www.acquisition.gov/sites/default/files/current/far/html/FormsStandard67.html#wp1189284), letterhead stationery, or as otherwise specified in the solicitation. As a minimum, offers must show-

(1) The solicitation number;

(2) The time specified in the solicitation for receipt of offers;

(3) The name, address, and telephone number of the offeror;

(4) A technical description of the items being offered in sufficient detail to evaluate compliance with the requirements in the solicitation. This may include product literature, or other documents, if necessary;

(5) Terms of any express warranty;

(6) Price and any discount terms;

(7) “Remit to” address, if different than mailing address;

(8) A completed copy of the representations and certifications at FAR [52.212-3](https://www.acquisition.gov/sites/default/files/current/far/html/52_212_213.html#wp1179194) (see FAR [52.212-3](https://www.acquisition.gov/sites/default/files/current/far/html/52_212_213.html#wp1179194)(b) for those representations and certifications that the offeror shall complete electronically);

(9) Acknowledgment of Solicitation Amendments;

(10) Past performance information, when included as an evaluation factor, to include recent and relevant contracts for the same or similar items and other references (including contract numbers, points of contact with telephone numbers and other relevant information); and

(11) If the offer is not submitted on the [SF 1449](https://www.acquisition.gov/sites/default/files/current/far/html/FormsStandard67.html#wp1189284), include a statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation. Offers that fail to furnish required representations or information, or reject the terms and conditions of the solicitation may be excluded from consideration.

(c) Period for acceptance of offers. The offeror agrees to hold the prices in its offer firm for 30 calendar days from the date specified for receipt of offers, unless another time period is specified in an addendum to the solicitation. ***(NOTE: See A-FSS-12-C in solicitation Document 02.)***

(d) Product samples. When required by the solicitation, product samples shall be submitted at or prior to the time specified for receipt of offers. Unless otherwise specified in this solicitation, these samples shall be submitted at no expense to the Government, and returned at the sender’s request and expense, unless they are destroyed during preaward testing.

(e) Multiple offers. Offerors are encouraged to submit multiple offers presenting alternative terms and conditions or commercial items for satisfying the requirements of this solicitation. Each offer submitted will be evaluated separately.

(f) Late submissions, modifications, revisions, and withdrawals of offers.

(1) Offerors are responsible for submitting offers, and any modifications, revisions, or withdrawals, so as to reach the Government office designated in the solicitation by the time specified in the solicitation. If no time is specified in the solicitation, the time for receipt is 4:30 p.m., local time, for the designated Government office on the date that offers or revisions are due.

(2)(i) Any offer, modification, revision, or withdrawal of an offer received at the Government office designated in the solicitation after the exact time specified for receipt of offers is “late” and will not be considered unless it is received before award is made, the Contracting Officer determines that accepting the late offer would not unduly delay the acquisition; and-

(A) If it was transmitted through an electronic commerce method authorized by the solicitation, it was received at the initial point of entry to the Government infrastructure not later than 5:00 p.m. one working day prior to the date specified for receipt of offers; or

(B) There is acceptable evidence to establish that it was received at the Government installation designated for receipt of offers and was under the Government’s control prior to the time set for receipt of offers; or

(C) If this solicitation is a request for proposals, it was the only proposal received.

(ii) However, a late modification of an otherwise successful offer, that makes its terms more favorable to the Government, will be considered at any time it is received and may be accepted.

(3) Acceptable evidence to establish the time of receipt at the Government installation includes the time/date stamp of that installation on the offer wrapper, other documentary evidence of receipt maintained by the installation, or oral testimony or statements of Government personnel.

(4) If an emergency or unanticipated event interrupts normal Government processes so that offers cannot be received at the Government office designated for receipt of offers by the exact time specified in the solicitation, and urgent Government requirements preclude amendment of the solicitation or other notice of an extension of the closing date, the time specified for receipt of offers will be deemed to be extended to the same time of day specified in the solicitation on the first work day on which normal Government processes resume.

(5) Offers may be withdrawn by written notice received at any time before the exact time set for receipt of offers. Oral offers in response to oral solicitations may be withdrawn orally. If the solicitation authorizes facsimile offers, offers may be withdrawn via facsimile received at any time before the exact time set for receipt of offers, subject to the conditions specified in the solicitation concerning facsimile offers. An offer may be withdrawn in person by an offeror or its authorized representative if, before the exact time set for receipt of offers, the identity of the person requesting withdrawal is established and the person signs a receipt for the offer.

(g) Contract award (not applicable to Invitation for Bids). The Government intends to evaluate offers and award a contract without discussions with offerors. Therefore, the offeror’s initial offer should contain the offeror’s best terms from a price and technical standpoint. However, the Government reserves the right to conduct discussions if later determined by the Contracting Officer to be necessary. The Government may reject any or all offers if such action is in the public interest; accept other than the lowest offer; and waive informalities and minor irregularities in offers received.

(h) Multiple awards. The Government may accept any item or group of items of an offer, unless the offeror qualifies the offer by specific limitations. Unless otherwise provided in the Schedule, offers may not be submitted for quantities less than those specified. The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit prices offered, unless the offeror specifies otherwise in the offer.

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

(1) (i) The GSA Index of Federal Specifications, Standards and Commercial Item Descriptions, FPMR Part 101-29, and copies of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained for a fee by submitting a request to-

GSA Federal Supply Service Specifications Section   
Suite 8100   
470 East L’Enfant Plaza, SW   
Washington, DC 20407

Telephone (202) 619-8925   
Facsimile (202) 619-8978.

(ii) If the General Services Administration, Department of Agriculture, or Department of Veterans Affairs issued this solicitation, a single copy of specifications, standards, and commercial item descriptions cited in this solicitation may be obtained free of charge by submitting a request to the addressee in paragraph (i)(1)(i) of this provision. Additional copies will be issued for a fee.

(2) Most unclassified Defense specifications and standards may be downloaded from the following ASSIST websites:

(i) ASSIST (<https://assist.dla.mil/online/start/>).

(ii) Quick Search (<http://quicksearch.dla.mil/>).

(iii) ASSISTdocs.com ([http://assistdocs.com](http://assistdocs.com/)).

(3) Documents not available from ASSIST may be ordered from the Department of Defense Single Stock Point (DoDSSP) by-

(i) Using the ASSIST Shopping Wizard (<https://assist.dla.mil/wizard/index.cfm>);

(ii) Phoning the DoDSSP Customer Service Desk (215) 697-2179, Mon-Fri, 0730 to 1600 EST; or

(iii) Ordering from DoDSSP, Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111-5094, Telephone (215) 697-2667/2179, Facsimile (215) 697-1462.

(4) Nongovernment (voluntary) standards must be obtained from the organization responsible for their preparation, publication, or maintenance.

(j) Data Universal Numbering System (DUNS) Number. (Applies to all offers exceeding $3,500, and offers of $3,500 or less if the solicitation requires the Contractor to be registered in the System for Award Management (SAM) database.) The offeror shall enter, in the block with its name and address on the cover page of its offer, the annotation “DUNS” or “DUNS+4” followed by the DUNS or DUNS+4 number that identifies the offeror’s name and address. The DUNS+4 is the DUNS number plus a 4-character suffix that may be assigned at the discretion of the offeror to establish additional SAM records for identifying alternative Electronic Funds Transfer (EFT) accounts (see FAR [Subpart 32.11](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%2032_11.html#wp1043964)) for the same concern. If the offeror does not have a DUNS number, it should contact Dun and Bradstreet directly to obtain one. An offeror within the United States may contact Dun and Bradstreet by calling 1-866-705-5711 or via the internet at <http://fedgov.dnb.com/webform>. An offeror located outside the United States must contact the local Dun and Bradstreet office for a DUNS number. The offeror should indicate that it is an offeror for a Government contract when contacting the local Dun and Bradstreet office.

(k) System for Award Management. Unless exempted by an addendum to this solicitation, by submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the SAM database prior to award, during performance and through final payment of any contract resulting from this solicitation. If the Offeror does not become registered in the SAM database in the time prescribed by the Contracting Officer, the Contracting Officer will proceed to award to the next otherwise successful registered Offeror. Offerors may obtain information on registration and annual confirmation requirements via the SAM database accessed through [https://www.acquisition.gov](https://www.acquisition.gov/).

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

(1) The agency’s evaluation of the significant weak or deficient factors in the debriefed offeror’s offer.

(2) The overall evaluated cost or price and technical rating of the successful and 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.

**52.212-3 OFFEROR REPRESENTATIONS AND CERTIFICATIONS — COMMERCIAL ITEMS (MAr 2016)**

The Offeror shall complete only paragraph (b) of this provision if the Offeror has completed the annual representations and certification electronically via the System for Award Management (SAM) website accessed through [http://www.acquisition.gov](http://www.acquisition.gov/). If the Offeror has not completed the annual representations and certifications electronically, the Offeror shall complete only paragraphs (c) through (q) 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.

“Highest-level owner” means the entity that owns or controls an immediate owner of the offeror, or that owns or controls one or more entities that control an immediate owner of the offeror. No entity owns or exercises control of the highest level owner.

“Immediate owner” means an entity, other than the offeror, that has direct control of the offeror. Indicators of control include, but are not limited to, one or more of the following: ownership or interlocking management, identity of interests among family members, shared facilities and equipment, and the common use of employees.

“Inverted domestic corporation”, means a foreign incorporated entity that meets the definition of an inverted domestic corporation under [6 U.S.C. 395(b)](http://uscode.house.gov/), applied in accordance with the rules and definitions of [6 U.S.C. 395(c)](http://uscode.house.gov/).

“Manufactured end product” means any end product in product and service codes (PSCs) 1000-9999, except—

(1) PSC 5510, Lumber and Related Basic Wood Materials;

(2) Product or Service Group (PSG) 87, Agricultural Supplies;

(3) PSG 88, Live Animals;

(4) PSG 89, Subsistence;

(5) PSC 9410, Crude Grades of Plant Materials;

(6) PSC 9430, Miscellaneous Crude Animal Products, Inedible;

(7) PSC 9440, Miscellaneous Crude Agricultural and Forestry Products;

(8) PSC 9610, Ores;

(9) PSC 9620, Minerals, Natural and Synthetic; and

(10) PSC 9630, Additive Metal Materials.

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

“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)](http://uscode.house.gov/)).

“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)](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t37t40+200+2++%2838%29%20%20AND%20%28%2838%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20), with a disability that is service-connected, as defined in [38 U.S.C. 101(16)](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t37t40+200+2++%2838%29%20%20AND%20%28%2838%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20).

“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)](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t37t40+200+2++%2838%29%20%20AND%20%28%2838%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20)) 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](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](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%204_12.html#wp1073667)), except for paragraphs \_\_\_\_\_\_\_\_\_\_\_\_\_\_.

*[Offeror to identify the applicable paragraphs at (c) through (q) 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 o is, o 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](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1192900), Buy American—Supplies, is included in this solicitation.)

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

(2) Foreign End Products:

|  |  |
| --- | --- |
| Line Item No. | Country of Origin |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| \_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

[List as necessary]

(3) The Government will evaluate offers in accordance with the policies and procedures of FAR [Part 25](https://www.acquisition.gov/sites/default/files/current/far/html/FARTOCP25.html#wp225048).

(g) (1) Buy American—Free Trade Agreements—Israeli Trade Act Certificate. (Applies only if the clause at FAR [52.225-3](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1169038), 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](https://www.acquisition.gov/sites/default/files/current/far/html/FARTOCP25.html#wp225048).

(2) Buy American—Free Trade Agreements—Israeli Trade Act Certificate, Alternate I. If Alternate I to the clause at FAR [52.225-3](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1169038) 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](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1169038) 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](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1169038) 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](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1169151), 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](https://www.acquisition.gov/sites/default/files/current/far/html/FARTOCP25.html#wp225048). 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. ***NOTE: Special Item Number (SIN) 42-2A product items that are not substantially transformed in the U.S. or a designated country under 52.225-5 Trade Agreements must be included in the offeror’s proposal to obtain a Federal Supply Schedule 65IB contract and listed as other end products as required by 52.212-3(g)(5)(ii). In accordance with Federal Acquisition Regulation 25.403(c) & 25.103(b)(2), the decision has been made that the Contracting Officer may make an individual non-availability determination pursuant to 1) information provided by the offeror that neither the offered 42-2A product items nor similar or like items are mined, produced, or manufactured in the United States or a designated country in sufficient quantity to fulfill the requirements, and 2) in light of the requirement set forth in 38 U.S.C. Section 8126(a)(1) that manufacturers shall make available for procurement on the Federal Supply Schedule of the General Services Administration each covered drug of the manufacturer.***

(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 $3,500 for which the liability remains unsatisfied.

(i) Taxes are considered delinquent if both of the following criteria apply:

(A) The tax liability is finally determined. The liability is finally determined if it has been assessed. A liability is not finally determined if there is a pending administrative or judicial challenge. In the case of a judicial challenge to the liability, the liability is not finally determined until all judicial appeal rights have been exhausted.

(B) The taxpayer is delinquent in making payment. A taxpayer is delinquent if the taxpayer has failed to pay the tax liability when full payment was due and required. A taxpayer is not delinquent in cases where enforced collection action is precluded.

(ii) Examples.

(A) The taxpayer has received a statutory notice of deficiency, under I.R.C. §6212, which entitles the taxpayer to seek Tax Court review of a proposed tax deficiency. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek Tax Court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(B) The IRS has filed a notice of Federal tax lien with respect to an assessed tax liability, and the taxpayer has been issued a notice under I.R.C. §6320 entitling the taxpayer to request a hearing with the IRS Office of Appeals contesting the lien filing, and to further appeal to the Tax Court if the IRS determines to sustain the lien filing. In the course of the hearing, the taxpayer is entitled to contest the underlying tax liability because the taxpayer has had no prior opportunity to contest the liability. This is not a delinquent tax because it is not a final tax liability. Should the taxpayer seek tax court review, this will not be a final tax liability until the taxpayer has exercised all judicial appeal rights.

(C) The taxpayer has entered into an installment agreement pursuant to I.R.C. §6159. The taxpayer is making timely payments and is in full compliance with the agreement terms. The taxpayer is not delinquent because the taxpayer is not currently required to make full payment.

(D) The taxpayer has filed for bankruptcy protection. The taxpayer is not delinquent because enforced collection action is stayed under 11 U.S.C. §362 (the Bankruptcy Code).

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

(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](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%2022_10.html#wp1105165)(c)(1). The offeror □ does □ does not certify that—

(i) The items of equipment to be serviced under this contract are used regularly for other than Governmental purposes and are sold or traded by the offeror (or subcontractor in the case of an exempt subcontract) in substantial quantities to the general public in the course of normal business operations;

(ii) The services will be furnished at prices which are, or are based on, established catalog or market prices (see FAR [22.1003-4](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%2022_10.html#wp1105165)(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](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%2022_10.html#wp1105165)(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](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%2022_10.html#wp1105165)(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)](http://uscode.house.gov/). (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)](http://uscode.house.gov/), reporting requirements of [26 U.S.C. 6041, 6041A, and 6050M](http://uscode.house.gov/), 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)](http://uscode.house.gov/)). If the resulting contract is subject to the payment reporting requirements described in FAR [4.904](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%204_9.html#wp1091081), the TIN provided hereunder may be matched with IRS records to verify the accuracy of the offeror’s TIN.

(3) Taxpayer Identification Number (TIN).

□ TIN: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

□ TIN has been applied for.

□ TIN is not required because:

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

□ Offeror is an agency or instrumentality of a foreign government;

□ Offeror is an agency or instrumentality of the Federal Government.

(4) Type of organization.

□ Sole proprietorship;

□ Partnership;

□ Corporate entity (not tax-exempt);

□ Corporate entity (tax-exempt);

□ Government entity (Federal, State, or local);

□ Foreign government;

□ International organization per 26 CFR 1.6049-4;

□ Other \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

(5) Common parent.

□ Offeror is not owned or controlled by a common parent;

□ Name and TIN of common parent:

Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

TIN \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

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

(n) Prohibition on Contracting with Inverted Domestic Corporations.

(1) Government agencies are not permitted to use appropriated (or otherwise made available) funds for contracts with either an inverted domestic corporation, or a subsidiary of an inverted domestic corporation, unless the exception at [9.108-2](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%209_1.html#wp1085903)(b) applies or the requirement is waived in accordance with the procedures at [9.108-4](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%209_1.html#wp1085953).

(2) Representation. The Offeror represents that—

(i) It □ is, □ is not an inverted domestic corporation; and

(ii) It □ is, □ is not a subsidiary of an inverted domestic corporation.

(o) Prohibition on contracting with entities engaging in certain activities or transactions relating to Iran.

(1) The offeror shall e-mail questions concerning sensitive technology to the Department of State at [CISADA106@state.gov](https://www.acquisition.gov/sites/default/files/current/far/html/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 $3,500 with Iran’s Revolutionary Guard Corps or any of its officials, agents, or affiliates, the property and interests in property of which are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 et seq.) (see OFAC’s Specially Designated Nationals and Blocked Persons List at <http://www.treasury.gov/ofac/downloads/t11sdn.pdf>).

(3) The representation and certification requirements of paragraph (o)(2) of this provision do not apply if—

(i) This solicitation includes a trade agreements certification (e.g., [52.212-3](https://www.acquisition.gov/sites/default/files/current/far/html/52_212_213.html#wp1179194)(g) or a comparable agency provision); and

(ii) The offeror has certified that all the offered products to be supplied are designated country end products.

(p) Ownership or Control of Offeror. (Applies in all solicitations when there is a requirement to be registered in SAM or a requirement to have a DUNS Number in the solicitation.

(1) The Offeror represents that it □ has or □ does not have an immediate owner. If the Offeror has more than one immediate owner (such as a joint venture), then the Offeror shall respond to paragraph (2) and if applicable, paragraph (3) of this provision for each participant in the joint venture.

(2) If the Offeror indicates “has” in paragraph (p)(1) of this provision, enter the following information:

Immediate owner CAGE code: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Immediate owner legal name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

(Do not use a “doing business as” name)

Is the immediate owner owned or controlled by another entity: □ Yes or □ No.

(3) If the Offeror indicates “yes” in paragraph (p)(2) of this provision, indicating that the immediate owner is owned or controlled by another entity, then enter the following information:

Highest-level owner CAGE code: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

Highest-level owner legal name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

(Do not use a “doing business as” name)

(q) Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law.

(1) As required by sections 744 and 745 of Division E of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235), and similar provisions, if contained in subsequent appropriations acts, The Government will not enter into a contract with any corporation that—

(i) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless an agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government; or

(ii) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless an agency has considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interests of the Government.

(2) The Offeror represents that—

(i) It is □ is not □ a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and

(ii) It is □ is not □ a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.

**52.212-4 CONTRACT TERMS AND CONDITIONS – COMMERCIAL ITEMS (MAY 2015) (TAILORED)**

1. *Inspection/Acceptance.* The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Ordering Activity reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Ordering Activity 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 Ordering Activity may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Ordering Activity must exercise its post-acceptance rights-
2. Within a reasonable time after the defect was discovered or should have been discovered; and
3. Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.
4. *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](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t29t32+1665+30++%2831%29%20%20AND%20%28%2831%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20)). 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. ***NOTE: Please see 552.232-23 Assignment of Claims located in Document 03 – Regulations Incorporated by Reference.***
5. *Changes.* Changes in the terms and conditions of this contract may be made only by written agreement of the parties.
6. *Disputes.* This contract is subject to [41 U.S.C. chapter 71](http://uscode.house.gov/), 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](https://www.acquisition.gov/sites/default/files/current/far/html/52_233_240.html#wp1113304), Disputes, which is incorporated herein by reference ***(Note: This clause is included in full text in this solicitation using Alternate I, Dec 1991)***. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.
7. *Definitions.* The clause at FAR [52.202-1](https://www.acquisition.gov/sites/default/files/current/far/html/52_200_206.html#wp1137572), Definitions, is incorporated herein by reference.
8. *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.
9. Invoice.
10. 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-
11. Name and address of the Contractor;
12. Invoice date and number;
13. Contract number, contract line item number and, if applicable, the order number;
14. Description, quantity, unit of measure, unit price and extended price of the items delivered;
15. Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;
16. Terms of any discount for prompt payment offered;
17. Name and address of official to whom payment is to be sent;
18. Name, title, and phone number of person to notify in event of defective invoice; and
19. Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.
20. Electronic funds transfer (EFT) banking information.
21. The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.
22. 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](https://www.acquisition.gov/sites/default/files/current/far/html/52_232.html#wp1153351), Payment by Electronic Funds Transfer-System for Award Management, or [52.232-34](https://www.acquisition.gov/sites/default/files/current/far/html/52_232.html#wp1153375), Payment by Electronic Funds Transfer-Other Than System for Award Management), or applicable agency procedures.
23. EFT banking information is not required if the Government waived the requirement to pay by EFT.
24. Invoices will be handled in accordance with the Prompt Payment Act ([31 U.S.C. 3903](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t29t32+1665+30++%2831%29%20%20AND%20%28%2831%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20)) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR Part 1315.
25. *Patent indemnity.* The Contractor shall indemnify the Ordering Activity 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.
26. Payment.
27. *Items accepted.* Payment shall be made for items accepted by the Ordering Activity that have been delivered to the delivery destinations set forth in this contract.
28. *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act ([31 U.S.C. 3903](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t29t32+1665+30++%2831%29%20%20AND%20%28%2831%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20)) and prompt payment regulations at 5 CFR Part 1315.
29. *Electronic Funds Transfer (EFT).* If the Government makes payment by EFT, see [52.212-5](https://www.acquisition.gov/sites/default/files/current/far/html/52_212_213.html#wp1203358)(b) for the appropriate EFT clause.
30. *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.
31. *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Ordering Activity has otherwise overpaid on a contract financing or invoice payment, the Contractor shall-
32. Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the-
33. Circumstances of the overpayment (e.g., duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);
34. Affected contract number and delivery order number, if applicable;
35. Affected contract line item or subline item, if applicable; and
36. Contractor point of contact.
37. Provide a copy of the remittance and supporting documentation to the Contracting Officer.
38. *Interest.*
39. 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](http://uscode.house.gov/) , 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.
40. The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.
41. *Final decisions.* The Contracting Officer will issue a final decision as required by [33.211](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%2033_2.html#wp1079912) if-
42. The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;
43. 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
44. The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see [32.607-2](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%2032_6.html#wp1031290)).
45. 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.
46. Amounts shall be due at the earliest of the following dates:
47. The date fixed under this contract.
48. The date of the first written demand for payment, including any demand for payment resulting from a default termination.
49. The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on-
50. The date on which the designated office receives payment from the Contractor;
51. 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
52. The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.
53. The interest charge made under this clause may be reduced under the procedures prescribed in [32.608-2](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%2032_6.html#wp1031326) of the Federal Acquisition Regulation in effect on the date of this contract.
54. *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 Ordering Activity upon:
55. Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or
56. Delivery of the supplies to the Ordering Activity at the destination specified in the contract, if transportation is f.o.b. destination.
57. *Taxes.* The contract price includes all applicable Federal, State, and local taxes and duties.
58. *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.
59. *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.
60. *Title.* Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Ordering Activity upon acceptance, regardless of when or where the Ordering Activity takes physical possession.
61. *Warranty.* Tailored – See Addendum to 52.212-4.
62. *Limitation of liability.* Tailored – See Addendum to 52.212-4.
63. *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.
64. *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with [31 U.S.C. 1352](http://uscode.house.gov/) relating to limitations on the use of appropriated funds to influence certain Federal contracts; [18 U.S.C. 431](http://uscode.house.gov/) relating to officials not to benefit; [40 U.S.C. chapter 37](http://uscode.house.gov/), Contract Work Hours and Safety Standards; [41 U.S.C. chapter 87](http://uscode.house.gov/), Kickbacks; [41 U.S.C. 4712](http://uscode.house.gov/) and [10 U.S.C. 2409](http://uscode.house.gov/) relating to whistleblower protections; [49 U.S.C. 40118](http://uscode.house.gov/), Fly American; and [41 U.S.C. chapter 21](http://uscode.house.gov/) relating to procurement integrity.
65. *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:
66. The schedule of supplies/services;
67. The Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Contracts, and Unauthorized Obligations paragraphs of this clause;
68. The clause at [52.212-5](https://acquisition.gov/far/current/html/52_212_213.html#wp1203358);
69. Addenda to this solicitation or contract, including any license agreements for computer software;
70. Solicitation provisions if this is a solicitation;
71. Other paragraphs of this clause;
72. The [Standard Form 1449](https://acquisition.gov/far/current/html/FormsStandard68.html#wp1189284);
73. Other documents, exhibits, and attachments; and
74. The specification.
75. System for Award Management (SAM).
76. 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 Ordering Activity’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.
77. (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](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%2042_12.html#wp1084217), 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](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%2042_12.html#wp1084217); 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.

1. 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.
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 [Subpart 32.8](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%2032_8.html#wp1029202), 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.
3. Offerors and Contractors may obtain information on registration and annual confirmation requirements via SAM accessed through [https://www.acquisition.gov](https://www.acquisition.gov/).
4. Unauthorized Obligations
5. 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:
6. Any such clause is unenforceable against the Government.
7. 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.
8. Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.
9. 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.
10. Incorporation by reference. The Contractor’s representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.

**CLAUSES FOR ADDENDA 52.212-4**

**52.212****-4 (o) (TAILORED)**

**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. In the event that the terms of the contractor’s standard commercial warranty conflict with the warranty terms contained in this clause, the terms of this clause will govern this contract, unless some other resolution is specified in the award document.

**52.****212-4 (p) (TAILORED)**

**Limitation of liability**: Except as otherwise provided by an express warranty, the contractor will not be liable to the Government in a breach of warranty action for consequential damages resulting from any defect or deficiencies in accepted items. In the event that the terms of the contractor’s standard commercial warranty/limitation of liability clause(s) place greater limits on the contractor’s liability than do the terms contained in this clause, the terms of this clause will govern the contract.

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

***Note: See Alternate II at end of this clause regarding orders using American Recovery and Reinvestment Act (ARRA) funds.***

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

(1) [52.209-10](https://www.acquisition.gov/sites/default/files/current/far/html/52_207_211.html#wp1146366), Prohibition on Contracting with Inverted Domestic Corporations (Nov 2015)

(2) [52.233-3](https://www.acquisition.gov/sites/default/files/current/far/html/52_233_240.html#wp1113329), Protest After Award (Aug 1996) ([31 U.S.C. 3553](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t29t32+1665+30++%2831%29%20%20AND%20%28%2831%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20)).

(3) [52.233-4](https://www.acquisition.gov/sites/default/files/current/far/html/52_233_240.html#wp1113344), Applicable Law for Breach of Contract Claim (Oct 2004)(Public Laws 108-77 and 108-78 ([19 U.S.C. 3805 note](http://uscode.house.gov/))).

(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.]

X (1) [52.203-6](https://www.acquisition.gov/sites/default/files/current/far/html/52_200_206.html#wp1137622), Restrictions on Subcontractor Sales to the Government (Sept 2006), with Alternate I (Oct 1995) ([41 U.S.C. 4704](http://uscode.house.gov/) and [10 U.S.C. 2402](http://uscode.house.gov/)).

X (2) [52.203-13](https://www.acquisition.gov/sites/default/files/current/far/html/52_200_206.html#wp1141983), Contractor Code of Business Ethics and Conduct (Oct 2015) ([41 U.S.C. 3509](http://uscode.house.gov/))).

X (3) [52.203-15](https://www.acquisition.gov/sites/default/files/current/far/html/52_200_206.html#wp1144881), Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (June 2010) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)

X (4) [52.204-10](https://www.acquisition.gov/sites/default/files/current/far/html/52_200_206.html#wp1141649), Reporting Executive Compensation and First-Tier Subcontract Awards (Oct 2015) (Pub. L. 109-282) ([31 U.S.C. 6101 note](http://uscode.house.gov/)).

\_\_ (5) [Reserved].

\_\_ (6) [52.204-14](https://www.acquisition.gov/sites/default/files/current/far/html/52_200_206.html#wp1151163), Service Contract Reporting Requirements (Jan 2014) (Pub. L. 111-117, section 743 of Div. C).

\_\_ (7) [52.204-15](https://www.acquisition.gov/sites/default/files/current/far/html/52_200_206.html#wp1151299), Service Contract Reporting Requirements for Indefinite-Delivery Contracts (Jan 2014) (Pub. L. 111-117, section 743 of Div. C).

X (8) [52.209-6](https://www.acquisition.gov/sites/default/files/current/far/html/52_207_211.html#wp1140926), Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (Oct 2015) (31 U.S.C. 6101 note).

X (9) [52.209-9](https://www.acquisition.gov/sites/default/files/current/far/html/52_207_211.html#wp1145644), Updates of Publicly Available Information Regarding Responsibility Matters (Jul 2013) (41 U.S.C. 2313).

\_\_ (10) [Reserved].

X (11)(i) [52.219-3](https://www.acquisition.gov/sites/default/files/current/far/html/52_217_221.html#wp1135955), Notice of HUBZone Set-Aside or Sole-Source Award (Nov 2011) ([15 U.S.C. 657a](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t13t16+492+90++%2815%29%20%20AND%20%28%2815%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20)). ***Note: Please refer within this solicitation to clause 52.219-13 Notice of Set-Aside of Orders and its accompanying note***.

\_\_ (ii) Alternate I (Nov 2011) of [52.219-3](https://www.acquisition.gov/sites/default/files/current/far/html/52_217_221.html#wp1135955).

\_\_ (12)(i) [52.219-4](https://www.acquisition.gov/sites/default/files/current/far/html/52_217_221.html#wp1135970), 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](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t13t16+492+90++%2815%29%20%20AND%20%28%2815%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20)).

\_\_ (ii) Alternate I (Jan 2011) of [52.219-4](https://www.acquisition.gov/sites/default/files/current/far/html/52_217_221.html#wp1135970).

\_\_ (13) [Reserved]

X (14)(i) [52.219-6](https://www.acquisition.gov/sites/default/files/current/far/html/52_217_221.html#wp1136004), Notice of Total Small Business Set-Aside (Nov 2011) ([15 U.S.C. 644](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t13t16+492+90++%2815%29%20%20AND%20%28%2815%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20)). ***Note: Please refer within this solicitation to clause 52.219-13 Notice of Set-Aside of Orders and its accompanying note***.

\_\_ (ii) Alternate I (Nov 2011).

\_\_ (iii) Alternate II (Nov 2011).

\_\_ (15)(i) [52.219-7](https://www.acquisition.gov/sites/default/files/current/far/html/52_217_221.html#wp1136017), Notice of Partial Small Business Set-Aside (June 2003) ([15 U.S.C. 644](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t13t16+492+90++%2815%29%20%20AND%20%28%2815%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20)).

\_\_ (ii) Alternate I (Oct 1995) of [52.219-7](https://www.acquisition.gov/sites/default/files/current/far/html/52_217_221.html#wp1136017).

\_\_ (iii) Alternate II (Mar 2004) of [52.219-7](https://www.acquisition.gov/sites/default/files/current/far/html/52_217_221.html#wp1136017).

X (16) [52.219-8](https://www.acquisition.gov/sites/default/files/current/far/html/52_217_221.html#wp1136032), Utilization of Small Business Concerns (Oct 2014) ([15 U.S.C. 637(d)(2)](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t13t16+492+90++%2815%29%20%20AND%20%28%2815%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20) and (3)).

\_\_ (17)(i) [52.219-9](https://www.acquisition.gov/sites/default/files/current/far/html/52_217_221.html#wp1136058), Small Business Subcontracting Plan (Oct 2015) ([15 U.S.C. 637(d)(4)](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t13t16+492+90++%2815%29%20%20AND%20%28%2815%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20)).

\_\_ (ii) Alternate I (Oct 2001) of [52.219-9](https://www.acquisition.gov/sites/default/files/current/far/html/52_217_221.html#wp1136058).

X (iii) Alternate II (Oct 2001) of [52.219-9](https://www.acquisition.gov/sites/default/files/current/far/html/52_217_221.html#wp1136058).

\_\_ (iv) Alternate III (Oct 2015) of [52.219-9](https://www.acquisition.gov/sites/default/files/current/far/html/52_217_221.html#wp1136058).

\_\_ (18) [52.219-13](https://www.acquisition.gov/sites/default/files/current/far/html/52_217_221.html#wp1136174), Notice of Set-Aside of Orders (Nov 2011) ([15 U.S.C. 644(r)](http://uscode.house.gov/)). ***Note: This clause is included in full text within this solicitation.***

X (19) [52.219-14](https://www.acquisition.gov/sites/default/files/current/far/html/52_217_221.html#wp1136175), Limitations on Subcontracting (Nov 2011) ([15 U.S.C. 637(a)(14)](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t13t16+492+90++%2815%29%20%20AND%20%28%2815%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20)). ***Note: Please refer within this solicitation to clause 52.219-13 Notice of Set-Aside of Orders and its accompanying note***.

X (20) [52.219-16](https://www.acquisition.gov/sites/default/files/current/far/html/52_217_221.html#wp1136186), Liquidated Damages—Subcontracting Plan (Jan 1999) ([15 U.S.C. 637(d)(4)(F)(i)](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t13t16+492+90++%2815%29%20%20AND%20%28%2815%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20)).

X (21) [52.219-27](https://www.acquisition.gov/sites/default/files/current/far/html/52_217_221.html#wp1136387), Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (Nov 2011) ([15 U.S.C. 657 f](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t13t16+492+90++%2815%29%20%20AND%20%28%2815%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20)). ***Note: Please refer within this solicitation to clause 52.219-13 Notice of Set-Aside of Orders and its accompanying note***.

X (22) [52.219-28](https://www.acquisition.gov/sites/default/files/current/far/html/52_217_221.html#wp1139913), Post Award Small Business Program Rerepresentation (Jul 2013) ([15 U.S.C. 632(a)(2)](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t13t16+492+90++%2815%29%20%20AND%20%28%2815%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20)).

X (23) [52.219-29](https://www.acquisition.gov/sites/default/files/current/far/html/52_217_221.html#wp1144950), Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (Dec 2015) ([15 U.S.C. 637(m)](http://uscode.house.gov/)). ***Note: Please refer within this solicitation to clause 52.219-13 Notice of Set-Aside of Orders and its accompanying note***.

X (24) [52.219-30](https://www.acquisition.gov/sites/default/files/current/far/html/52_217_221.html#wp1144420), Notice of Set-Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (Dec 2015) ([15 U.S.C. 637(m)](http://uscode.house.gov/)). ***Note: Please refer within this solicitation to clause 52.219-13 Notice of Set-Aside of Orders and its accompanying note***.

X (25) [52.222-3](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1147479), Convict Labor (June 2003) (E.O. 11755).

X (26) [52.222-19](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1147630), Child Labor—Cooperation with Authorities and Remedies (Feb 2016) (E.O. 13126).

X (27) [52.222-21](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1147656), Prohibition of Segregated Facilities (Apr 2015).

X (28) [52.222-26](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1147711), Equal Opportunity (Apr 2015) (E.O. 11246).

X (29) [52.222-35](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1158632), Equal Opportunity for Veterans (Oct 2015)([38 U.S.C. 4212](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t37t40+200+2++%2838%29%20%20AND%20%28%2838%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20)).

X (30) [52.222-36](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1162802), Equal Opportunity for Workers with Disabilities (Jul 2014) ([29 U.S.C. 793](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t29t32+2+78++%2829%29%20%20AND%20%28%2829%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20)).

X (31) [52.222-37](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1148123), Employment Reports on Veterans (Feb 2016) (38 U.S.C. 4212).

X (32) [52.222-40](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1160019), Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496).

X (33)(i) [52.222-50](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1151848), Combating Trafficking in Persons (Mar 2015) ([22 U.S.C. chapter 78](http://uscode.house.gov/) and E.O. 13627).

\_\_ (ii) Alternate I (Mar 2015) of [52.222-50](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1151848) ([22 U.S.C. chapter 78](http://uscode.house.gov/) and E.O. 13627).

\_\_ (34) [52.222-54](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1156645), Employment Eligibility Verification (Oct 2015). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in [22.1803](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%2022_18.html#wp1089948).)

\_\_ (35)(i) [52.223-9](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1168892), Estimate of Percentage of Recovered Material Content for EPA–Designated Items (May 2008) ([42 U.S.C. 6962(c)(3)(A)(ii)](http://uscode.house.gov/)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

\_\_ (ii) Alternate I (May 2008) of [52.223-9](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1168892) ([42 U.S.C. 6962(i)(2)(C)](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t41t42+250+1286++%2842%29%20%20AND%20%28%2842%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

\_\_ (36)(i) [52.223-13](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1168933), Acquisition of EPEAT®-Registered Imaging Equipment (Jun 2014) (E.O.s 13423 and 13514).

\_\_ (ii) Alternate I (Oct 2015) of [52.223-13](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1168933).

\_\_ (37)(i) [52.223-14](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1194330), Acquisition of EPEAT®-Registered Televisions (Jun 2014) (E.O.s 13423 and 13514).

\_\_ (ii) Alternate I (Jun 2014) of [52.223-14](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1194330).

\_\_ (38) [52.223-15](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1194323), Energy Efficiency in Energy-Consuming Products (Dec 2007) ([42 U.S.C. 8259b](http://uscode.house.gov/)).

\_\_ (39)(i) [52.223-16](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1179078), Acquisition of EPEAT®-Registered Personal Computer Products (Oct 2015) (E.O.s 13423 and 13514).

\_\_ (ii) Alternate I (Jun 2014) of [52.223-16](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1179078).

X (40) [52.223-18](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1188603), Encouraging Contractor Policies to Ban Text Messaging While Driving (Aug 2011) (E.O. 13513).

\_\_ (41) [52.225-1](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1192900), Buy American—Supplies (May 2014) ([41 U.S.C. chapter 83](http://uscode.house.gov/)).

\_\_ (42)(i) [52.225-3](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1169038), Buy American—Free Trade Agreements—Israeli Trade Act (May 2014) ([41 U.S.C. chapter 83](http://uscode.house.gov/), [19 U.S.C. 3301](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t17t20+1727+50++%2819%29%20%20AND%20%28%2819%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20) note, [19 U.S.C. 2112](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t17t20+1727+50++%2819%29%20%20AND%20%28%2819%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20) note, [19 U.S.C. 3805](http://uscode.house.gov/) note, [19 U.S.C. 4001](http://uscode.house.gov/) 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](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1169038).

\_\_ (iii) Alternate II (May 2014) of [52.225-3](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1169038).

\_\_ (iv) Alternate III (May 2014) of [52.225-3](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1169038).

X (43) [52.225-5](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1169151), Trade Agreements (Feb 2016) ([19 U.S.C. 2501](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t17t20+1727+50++%2819%29%20%20AND%20%28%2819%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20), et seq., [19 U.S.C. 3301](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t17t20+1727+50++%2819%29%20%20AND%20%28%2819%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20) note).

***Note: Special Item Number (SIN) 42-2A product items that are not substantially transformed in the U.S. or a designated country under 52.225-5 Trade Agreements must be included in the offeror’s proposal to obtain a Federal Supply Schedule 65IB contract and listed as other end products as required by 52.212-3(g)(5)(ii).* *In accordance with Federal Acquisition Regulation 25.403(c) & 25.103(b)(2), the decision has been made that the Contracting Officer may make an individual non-availability determination pursuant to 1) information provided by the offeror that neither the offered 42-2A product items nor similar or like items are mined, produced, or manufactured in the United States or a designated country in sufficient quantity to fulfill the requirements, and 2) in light of the requirement set forth in 38 U.S.C. Section 8126(a)(1) that manufacturers shall make available for procurement on the Federal Supply Schedule of the General Services Administration each covered drug of the manufacturer.***

X (44) [52.225-13](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1169608), 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).

\_\_ (45) [52.225-26](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1192524), 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)](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t09t12+1445+65++%2810%20U.S.C.%202302%20Note%29%20%20%20%20%20%20%20%20%20%20).

\_\_ (46) [52.226-4](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1173773), Notice of Disaster or Emergency Area Set-Aside (Nov 2007) ([42 U.S.C. 5150](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t41t42+250+1286++%2842%29%20%20AND%20%28%2842%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20)).

\_\_ (47) [52.226-5](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1173393), Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) ([42 U.S.C. 5150](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t41t42+250+1286++%2842%29%20%20AND%20%28%2842%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20)).

\_\_ (48) [52.232-29](https://www.acquisition.gov/sites/default/files/current/far/html/52_232.html#wp1153230), Terms for Financing of Purchases of Commercial Items (Feb 2002) ([41 U.S.C. 4505](http://uscode.house.gov/), [10 U.S.C. 2307(f)](http://uscode.house.gov/)).

\_\_ (49) [52.232-30](https://www.acquisition.gov/sites/default/files/current/far/html/52_232.html#wp1153252), Installment Payments for Commercial Items (Oct 1995) ([41 U.S.C. 4505](http://uscode.house.gov/), [10 U.S.C. 2307(f)](http://uscode.house.gov/)).

X (50) [52.232-33](https://www.acquisition.gov/sites/default/files/current/far/html/52_232.html#wp1153351), Payment by Electronic Funds Transfer—System for Award Management (Jul 2013) ([31 U.S.C. 3332](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t29t32+1665+30++%2831%29%20%20AND%20%28%2831%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20)).

X 51) [52.232-34](https://www.acquisition.gov/sites/default/files/current/far/html/52_232.html#wp1153375), Payment by Electronic Funds Transfer—Other than System for Award Management (Jul 2013) ([31 U.S.C. 3332](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t29t32+1665+30++%2831%29%20%20AND%20%28%2831%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20)).

X 52) [52.232-36](https://www.acquisition.gov/sites/default/files/current/far/html/52_232.html#wp1153445), Payment by Third Party (May 2014) ([31 U.S.C. 3332](http://uscode.house.gov/)). **(*Deviation May 2003***)

\_\_ (53) [52.239-1](https://www.acquisition.gov/sites/default/files/current/far/html/52_233_240.html#wp1113650), Privacy or Security Safeguards (Aug 1996) ([5 U.S.C. 552a](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t05t08+2+3++%285%29%20%20AND)).

\_\_ (54)(i) [52.247-64](https://www.acquisition.gov/sites/default/files/current/far/html/52_247.html#wp1156217), Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) ([46 U.S.C. Appx. 1241(b)](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t45t48+351+1++%2846%29%20%20AND%20%28%2846%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20) and [10 U.S.C. 2631](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t09t12+37+408++%2810%29%20%252)).

\_\_ (ii) Alternate I (Apr 2003) of [52.247-64](https://www.acquisition.gov/sites/default/files/current/far/html/52_247.html#wp1156217).

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

[Contracting Officer check as appropriate.]

\_\_ (1) [52.222-17](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1147587), Nondisplacement of Qualified Workers (May 2014)(E.O. 13495).

\_\_ (2) [52.222-41](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1160021), Service Contract Labor Standards (May 2014) ([41 U.S.C. chapter 67](http://uscode.house.gov/)).

\_\_ (3) [52.222-42](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1153423), Statement of Equivalent Rates for Federal Hires (May 2014) ([29 U.S.C. 206](http://uscode.house.gov/) and [41 U.S.C. chapter 67](http://uscode.house.gov/)).

\_\_ (4) [52.222-43](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1148260), Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (Multiple Year and Option Contracts) (May 2014) ([29 U.S.C. 206](http://uscode.house.gov/) and [41 U.S.C. chapter 67](http://uscode.house.gov/)).

\_\_ (5) [52.222-44](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1148274), Fair Labor Standards Act and Service Contract Labor Standards—Price Adjustment (May 2014) ([29 U.S.C. 206](http://uscode.house.gov/) and [41 U.S.C. chapter 67](http://uscode.house.gov/)).

\_\_ (6) [52.222-51](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1155380), 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](http://uscode.house.gov/)).

\_\_ (7) [52.222-53](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1162590), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Requirements (May 2014) ([41 U.S.C. chapter 67](http://uscode.house.gov/)).

\_\_ (8) [52.222-55](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1163027), Minimum Wages Under Executive Order 13658 (Mar 2016).

\_\_ (9) [52.226-6](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1183820), Promoting Excess Food Donation to Nonprofit Organizations (May 2014) ([42 U.S.C. 1792](http://uscode.house.gov/)).

\_\_ (10) [52.237-11](https://www.acquisition.gov/sites/default/files/current/far/html/52_233_240.html#wp1120023), Accepting and Dispensing of $1 Coin (Sept 2008) ([31 U.S.C. 5112(p)(1)](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t29t32+1665+30++%2831%29%20%20AND%20%28%2831%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20)).

(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](https://www.acquisition.gov/sites/default/files/current/far/html/52_215.html#wp1144470), 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](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%204_7.html#wp1082800), 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](https://www.acquisition.gov/sites/default/files/current/far/html/52_200_206.html#wp1141983), Contractor Code of Business Ethics and Conduct (Oct 2015) ([41 U.S.C. 3509](http://uscode.house.gov/)).

(ii) [52.219-8](https://www.acquisition.gov/sites/default/files/current/far/html/52_217_221.html#wp1136032), Utilization of Small Business Concerns (Oct 2014) ([15 U.S.C. 637(d)(2)](http://uscode.house.gov/) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $700,000 ($1.5 million for construction of any public facility), the subcontractor must include [52.219-8](https://www.acquisition.gov/sites/default/files/current/far/html/52_217_221.html#wp1136032) in lower tier subcontracts that offer subcontracting opportunities.

(iii) [52.222-17](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1147587), Nondisplacement of Qualified Workers (May 2014) (E.O. 13495). Flow down required in accordance with paragraph (l) of FAR clause [52.222-17](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1147587).

(iv) [52.222-21](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1147656), Prohibition of Segregated Facilities (Apr 2015)

(v) [52.222-26](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1147711), Equal Opportunity (Apr 2015) (E.O. 11246).

(vi) [52.222-35](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1158632), Equal Opportunity for Veterans (Oct 2015) ([38 U.S.C. 4212](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t37t40+200+2++%2838%29%20%20AND%20%28%2838%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20)).

(vii) [52.222-36](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1162802), Equal Opportunity for Workers with Disabilities (Jul 2014) ([29 U.S.C. 793](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t29t32+2+78++%2829%29%20%20AND%20%28%2829%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20)).

(viii) [52.222-37](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1148123), Employment Reports on Veterans (Feb 2016) ([38 U.S.C. 4212](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t29t32+2+78++%2829%29%20%20AND%20%28%2829%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20))

(ix) [52.222-40](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1160019), 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](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1160019).

(x) [52.222-41](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1160021), Service Contract Labor Standards (May 2014) ([41 U.S.C. chapter 67](http://uscode.house.gov/)).

(xi) \_\_(A) [52.222-50](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1151848), Combating Trafficking in Persons (Mar 2015) ([22 U.S.C. chapter 78](http://uscode.house.gov/) and E.O 13627).

\_\_(B) Alternate I (Mar 2015) of [52.222-50](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1151848) ([22 U.S.C. chapter 78 and E.O 13627](http://uscode.house.gov/)).

(xii) [52.222-51](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1155380), 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](http://uscode.house.gov/)).

(xiii) [52.222-53](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1162590), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (May 2014) ([41 U.S.C. chapter 67](http://uscode.house.gov/)).

(xiv) [52.222-54](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1156645), Employment Eligibility Verification (Oct 2015) (E.O. 12989).

(xv) [52.222-55](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1163027), Minimum Wages Under Executive Order 13658 (Mar 2016).

(xvi) [52.225-26](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1192524), 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)](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t09t12+1445+65++%2810%20U.S.C.%202302%20Note%29%20%20%20%20%20%20%20%20%20%20).

(xvii) [52.226-6](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1183820), Promoting Excess Food Donation to Nonprofit Organizations (May 2014) ([42 U.S.C. 1792](http://uscode.house.gov/)). Flow down required in accordance with paragraph (e) of FAR clause [52.226-6](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1183820).

(xviii) [52.247-64](https://www.acquisition.gov/sites/default/files/current/far/html/52_247.html#wp1156217), Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) ([46 U.S.C. Appx. 1241(b)](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t45t48+351+1++%2846%29%20%20AND%20%28%2846%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20) and [10 U.S.C. 2631](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t09t12+37+408++%2810%29%20%252)). Flow down required in accordance with paragraph (d) of FAR clause [52.247-64](https://www.acquisition.gov/sites/default/files/current/far/html/52_247.html#wp1156217).

(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.

**Alternate II (OCT 2015). *This alternate will apply to any orders that use funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009 (ARRA). If this situation applies, 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.](http://uscode.house.gov/lawrevisioncounsel.shtml)), or an authorized representative of either of the foregoing officials shall have access to and right to-

1. Examine any of the Contractor’s or any subcontractors’ records that pertain to, and involve transactions relating to, this contract; and
2. 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-

1. *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
2. *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-

1. [52.203-13](https://www.acquisition.gov/sites/default/files/current/far/html/52_200_206.html" \l "wp1141983), Contractor Code of Business Ethics and Conduct (Oct 2015) ([41 U.S.C. 3509](http://uscode.house.gov/)).

1. [52.203-15](https://www.acquisition.gov/sites/default/files/current/far/html/52_200_206.html" \l "wp1144881), Whistleblower Protections Under the American Recovery and Reinvestment Act of 2009 (Jun 2010) (Section 1553 of Pub. L. 111-5).

1. [52.219-8](https://www.acquisition.gov/sites/default/files/current/far/html/52_217_221.html" \l "wp1136032), Utilization of Small Business Concerns (Oct 2014) ([15 U.S.C. 637(d)(2) and (3)](http://uscode.house.gov/lawrevisioncounsel.shtml)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds $700,000 ($1.5 million for construction of any public facility), the subcontractor must include [52.219-8](https://www.acquisition.gov/sites/default/files/current/far/html/52_217_221.html#wp1136032) in lower tier subcontracts that offer subcontracting opportunities.

1. [52.222-21](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html" \l "wp1147656), Prohibition of Segregated Facilities (Apr 2015).

1. [52.222-26](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html" \l "wp1147711), Equal Opportunity (Apr 2015) (E.O. 11246).

1. [52.222-35](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html" \l "wp1158632), Equal Opportunity for Veterans (Oct 2015) ([38 U.S.C. 4212](http://uscode.house.gov/lawrevisioncounsel.shtml)).

1. [52.222-36](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html" \l "wp1162802), Equal Opportunity for Workers with Disabilities (Jul 2014) ([29 U.S.C. 793](http://uscode.house.gov/lawrevisioncounsel.shtml)).

1. [52.222-40](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html" \l "wp1160019), 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](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1160019).

1. [52.222-41](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html" \l "wp1160021), Service Contract Labor Standards (May 2014) ([41 U.S.C. chapter 67](http://uscode.house.gov/)).
2. (1) \_\_\_ [52.222-50](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1151848), Combating Trafficking in Persons (Mar 2015) ([22 U.S.C. chapter 78](http://uscode.house.gov/) and E.O

13627).

1. \_\_\_ Alternate I (Mar 2015) of [52.222-50](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1151848) ([22 U.S.C. chapter 78 and E.O 13627](http://uscode.house.gov/)).

1. [52.222-51](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html" \l "wp1155380), 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](http://uscode.house.gov/)).

1. [52.222-53](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html" \l "wp1162590), Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (May 2014) ([41 U.S.C. chapter 67](http://uscode.house.gov/)).

1. [52.222-54](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html" \l "wp1156645), Employment Eligibility Verification (Oct 2015) (Executive Order 12989).

1. [52.222-55](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html" \l "wp1163027), Minimum Wages Under Executive Order 13658 (Dec 2015) Executive Order 13658).

1. [52.226-6](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html" \l "wp1183820), Promoting Excess Food Donation to Nonprofit Organizations. (May 2014) ([42 U.S.C. 1792](http://uscode.house.gov/)). Flow down required in accordance with paragraph (e) of FAR clause [52.226-6](https://www.acquisition.gov/sites/default/files/current/far/html/52_223_226.html#wp1183820).

1. [52.247-64](https://www.acquisition.gov/sites/default/files/current/far/html/52_247.html" \l "wp1156217), Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) ([46 U.S.C. Appx. 1241(b)](http://uscode.house.gov/lawrevisioncounsel.shtml) and [10 U.S.C. 2631](http://uscode.house.gov/lawrevisioncounsel.shtml)). Flow down required in accordance with paragraph (d) of FAR clause [52.247-64](https://www.acquisition.gov/sites/default/files/current/far/html/52_247.html#wp1156217).

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

1. *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 —
2. 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;
3. 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.
4. Service-disabled veteran means a veteran, as defined in [38 U.S.C. 101(2)](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t37t40+200+2++%2838%29%20%20AND%20%28%2838%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20), with a disability that is service-connected, as defined in [38 U.S.C. 101(16)](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t37t40+200+2++%2838%29%20%20AND%20%28%2838%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20).

“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-
2. 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
3. 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
4. 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)](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t37t40+200+2++%2838%29%20%20AND%20%28%2838%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20)) 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.
3. 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.
4. 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.

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-
2. HUBZone small business database search application web page at <http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm>; or <http://www.sba.gov/hubzone>;
3. In writing to the Director/HUB, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416; or
4. The SBA HUBZone Help Desk at hubzone@sba.gov.

**52.219-9 Small Business Subcontracting Plan** **(Oct 2015) (ALTERNATE II – OCT 2001)**

1. This clause does not apply to small business concerns.
2. 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](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t43t44+2+43++%2843%29%20%20AND%20%28%2843%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20), et seq.) and which is considered a minority and economically disadvantaged concern under the criteria at [43 U.S.C. 1626(e)(1)](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t43t44+2+43++%2843%29%20%20AND%20%28%2843%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20). 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)](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t43t44+2+43++%2843%29%20%20AND%20%28%2843%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20).

“Commercial item” means a product or service that satisfies the definition of commercial item in section [2.101](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%202_1.html#wp1145508) 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](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](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t43t44+2+43++%2843%29%20%20AND%20%28%2843%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20) 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)](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t21t25+4254+34++%2825%29%20%20AND%20%28%2825%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20). This definition also includes Indian-owned economic enterprises that meet the requirements of [25 U.S.C. 1452(e)](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t21t25+4254+34++%2825%29%20%20AND%20%28%2825%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20).

“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.

1. 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.
2. The offeror’s subcontracting plan shall include the following:
3. 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 sub-contracts 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](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t43t44+2+43++%2843%29%20%20AND%20%28%2843%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20):
4. 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.
5. 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.
6. In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.
7. 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.
8. 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.
9. 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.
10. A statement of-
11. A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to-
12. Small business concerns;
13. Veteran-owned small business concerns;
14. Service-disabled veteran-owned small business concerns;
15. HUBZone small business concerns;
16. Small disadvantaged business concerns; and
17. Women-owned small business concerns.
18. A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.
19. 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.
20. 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-
21. Small business concerns (including ANC and Indian tribes);
22. Veteran-owned small business concerns;
23. Service-disabled veteran-owned small business concerns;
24. HUBZone small business concerns;
25. Small disadvantaged business concerns (including ANC and Indian tribes); and
26. Women-owned small business concerns.
27. 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.
28. 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.
29. 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 $7000,000 ($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.
30. Assurances that the offeror will-
31. Cooperate in any studies or surveys as may be required;
32. Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;
33. 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](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;
34. Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using eSRS;
35. 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
36. 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.
37. 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):
38. 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.
39. 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.
40. Records on each subcontract solicitation resulting in an award of more than $150,000, indicating-
41. Whether small business concerns were solicited and, if not, why not;
42. Whether veteran-owned small business concerns were solicited and, if not, why not;
43. Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;
44. Whether HUBZone small business concerns were solicited and, if not, why not;
45. Whether small disadvantaged business concerns were solicited and, if not, why not;
46. Whether women-owned small business concerns were solicited and, if not, why not; and
47. If applicable, the reason award was not made to a small business concern.
48. Records of any outreach efforts to contact-
49. Trade associations;
50. Business development organizations;
51. Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and
52. Veterans service organizations.
53. Records of internal guidance and encouragement provided to buyers through-
54. Workshops, seminars, training, etc.; and
55. Monitoring performance to evaluate compliance with the program’s requirements.
56. 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.
57. In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:
58. 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.
59. 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.
60. 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.
61. 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.
62. 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.
63. 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.
64. 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-
65. The master plan has been approved;
66. 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
67. 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.
68. 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.
69. 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.
70. A contract may have no more than one plan. When a modification meets the criteria in [19.702](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%2019_7.html#wp1088749) 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.
71. Subcontracting plans are not required from subcontractors when the prime contract contains the clause at [52.212-5](https://www.acquisition.gov/sites/default/files/current/far/html/52_212_213.html#wp1203358), 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](https://www.acquisition.gov/sites/default/files/current/far/html/52_241_244.html#wp1129139), Subcontracts for Commercial Items, under a prime contract.
72. The failure of the Contractor or subcontractor to comply in good faith with-
73. The clause of this contract entitled “Utilization Of Small Business Concerns;” or
74. An approved plan required by this clause, shall be a material breach of the contract.
75. The Contractor shall submit ISRs and SSRs using the web-based eSRS at [http://www.esrs.gov](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.
76. ISR. This report is not required for commercial plans. The report is required for each contract containing an individual subcontract plan.
77. 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.
78. When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR [19.704](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%2019_7.html#wp1088766)(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.
79. The authority to acknowledge receipt or reject the ISR resides-
80. In the case of the prime Contractor, with the Contracting Officer; and
81. In the case of a subcontract with a subcontracting plan, with the entity that awarded the subcontract.
82. SSR.
83. Reports submitted under individual contract plans-
84. This report encompasses all subcontracting under prime contracts and subcontracts with the awarding agency, regardless of the dollar value of the subcontracts.
85. 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.
86. 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 $700,000 (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.
87. 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.
88. Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.
89. 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.
90. Reports submitted under a commercial plan-
91. The report shall include all subcontract awards under the commercial plan in effect during the Government’s fiscal year.
92. The report shall be submitted annually, within thirty days after the end of the Government’s fiscal year.
93. 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.
94. The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

**52.219-29 NOTICE OF SET-ASIDE FOR, OR SOLE SOURCE AWARD TO, ECONOMICALLY DISADVANTAGED WOMEN-OWNED SMALL BUSINESS CONCERNS (DEC 2015)**

***Note: Please consult the applicability note in the Solicitation Document at 52.219-13 Notice of Set-Aside of Orders.***

(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, or awarded on a sole source basis to, 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](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%208_4.html#wp1096389) and [16.505](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%2016_5.html#wp1095799)(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](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%2019_1.html#wp1101837)(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.

**52.219-30 NOTICE OF SET-ASIDE FOR, OR SOLE SOURCE AWARD TO, WOMEN-OWNED SMALL BUSINESS CONCERNS ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM (DEC 2015)**

***Note: Please consult the applicability note in the Solicitation Document at 52.219-13 Notice of Set-Aside of Orders.***

(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, or awarded on a sole source basis to, 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](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%208_4.html#wp1096389) and [16.505](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%2016_5.html#wp1095799)(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](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%2019_1.html#wp1101837)(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.

**52.222-19 CHILD LABOR—COOPERATION WITH AUTHORITIES AND REMEDIES (feb 2016)**

(a) Applicability. This clause does not apply to the extent that the Contractor is supplying end products mined, produced, or manufactured in—

(1) Canada, and the anticipated value of the acquisition is $25,000 or more;

(2) Israel, and the anticipated value of the acquisition is $50,000 or more;

(3) Mexico, and the anticipated value of the acquisition is $77,533 or more; or

(4) Armenia, Aruba, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Italy, Japan, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, or the United Kingdom and the anticipated value of the acquisition is $191,000 or more.

(b) Cooperation with Authorities. To enforce the laws prohibiting the manufacture or importation of products mined, produced, or manufactured by forced or indentured child labor, authorized officials may need to conduct investigations to determine whether forced or indentured child labor was used to mine, produce, or manufacture any product furnished under this contract. If the solicitation includes the provision [52.222-18](https://www.acquisition.gov/sites/default/files/current/far/html/52_222.html#wp1160855), Certification Regarding Knowledge of Child Labor for Listed End Products, or the equivalent at [52.212-3](https://www.acquisition.gov/sites/default/files/current/far/html/52_212_213.html#wp1179194)(i), the Contractor agrees to cooperate fully with authorized officials of the contracting agency, the Department of the Treasury, or the Department of Justice by providing reasonable access to records, documents, persons, or premises upon reasonable request by the authorized officials.

(c) Violations. The Government may impose remedies set forth in paragraph (d) for the following violations:

(1) The Contractor has submitted a false certification regarding knowledge of the use of forced or indentured child labor for listed end products.

(2) The Contractor has failed to cooperate, if required, in accordance with paragraph (b) of this clause, with an investigation of the use of forced or indentured child labor by an Inspector General, Attorney General, or the Secretary of the Treasury.

(3) The Contractor uses forced or indentured child labor in its mining, production, or manufacturing processes.

(4) The Contractor has furnished under the contract end products or components that have been mined, produced, or manufactured wholly or in part by forced or indentured child labor. (The Government will not pursue remedies at paragraph (d)(2) or paragraph (d)(3) of this clause unless sufficient evidence indicates that the Contractor knew of the violation.)

(d) Remedies.

(1) The Contracting Officer may terminate the contract.

(2) The suspending official may suspend the Contractor in accordance with procedures in FAR [Subpart 9.4](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%209_4.html#wp1083280).

(3) The debarring official may debar the Contractor for a period not to exceed 3 years in accordance with the procedures in FAR [Subpart 9.4](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%209_4.html#wp1083280).

**52.222-21 Prohibition of Segregated Facilities** **(Apr 2015)**

1. Definitions. As used in this clause

“Gender identity” has the meaning given by the Department of Labor’s Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\_FAQs.html](https://www.acquisition.gov/sites/default/files/current/far/html/www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).

“Segregated facilities,” means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, that are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

“Sexual orientation” has the meaning given by the Department of Labor’s Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\_FAQs.html](https://www.acquisition.gov/sites/default/files/current/far/html/www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).

1. The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Opportunity clause in this contract.
2. The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Opportunity clause of this contract.

**52.222-26 Equal Opportunity** **(Apr 2015)**

1. Definition. As used in this clause.

“Gender identity” has the meaning given by the Department of Labor’s Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\_FAQs.html](https://www.acquisition.gov/sites/default/files/current/far/html/www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).

“Sexual orientation” has the meaning given by the Department of Labor’s Office of Federal Contract Compliance Programs, and is found at [www.dol.gov/ofccp/LGBT/LGBT\_FAQs.html](https://www.acquisition.gov/sites/default/files/current/far/html/www.dol.gov/ofccp/LGBT/LGBT_FAQs.html).

“United States,” means the 50 States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and Wake Island.

1. (1) If, during any 12-month period (including the 12 months preceding the award of this contract), the

Contractor has been or is awarded nonexempt Federal contracts and/or subcontracts that have an aggregate value in excess of $10,000, the Contractor shall comply with this clause, except for work performed outside the United States by employees who were not recruited within the United States. Upon request, the Contractor shall provide information necessary to determine the applicability of this clause.

1. If the Contractor is a religious corporation, association, educational institution, or society, the requirements of this clause do not apply with respect to the employment of individuals of a particular religion to perform work connected with the carrying on of the Contractor’s activities (41 CFR 60-1.5).
2. (1) The Contractor shall not discriminate against any employee or applicant for employment because of

race, color, religion, sex, sexual orientation, gender identity, or national origin. However, it shall not be a violation of this clause for the Contractor to extend a publicly announced preference in employment to Indians living on or near an Indian reservation, in connection with employment opportunities on or near an Indian reservation, as permitted by 41 CFR 60-1.5.

1. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. This shall include, but not be limited to-
2. Employment;
3. Upgrading;
4. Demotion;
5. Transfer;
6. Recruitment or recruitment advertising;
7. Layoff or termination;
8. Rates of pay or other forms of compensation; and
9. Selection for training, including apprenticeship.
10. The Contractor shall post in conspicuous places available to employees and applicants for employment the notices to be provided by the Contracting Officer that explain this clause.
11. The Contractor shall, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
12. The Contractor shall send, to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, the notice to be provided by the Contracting Officer advising the labor union or workers’ representative of the Contractor’s commitments under this clause, and post copies of the notice in conspicuous places available to employees and applicants for employment.
13. The Contractor shall comply with Executive Order 11246, as amended, and the rules, regulations, and orders of the Secretary of Labor.
14. The Contractor shall furnish to the contracting agency all information required by Executive Order 11246, as amended, and by the rules, regulations, and orders of the Secretary of Labor. The Contractor shall also file Standard Form 100 (EEO-1), or any successor form, as prescribed in 41 CFR Part 60-1. Unless the Contractor has filed within the 12 months preceding the date of contract award, the Contractor shall, within 30 days after contract award, apply to either the regional Office of Federal Contract Compliance Programs (OFCCP) or the local office of the Equal Employment Opportunity Commission for the necessary forms.
15. The Contractor shall permit access to its premises, during normal business hours, by the contracting agency or the OFCCP for the purpose of conducting on-site compliance evaluations and complaint investigations. The Contractor shall permit the Government to inspect and copy any books, accounts, records (including computerized records), and other material that may be relevant to the matter under investigation and pertinent to compliance with Executive Order 11246, as amended, and rules and regulations that implement the Executive Order.
16. If the OFCCP determines that the Contractor is not in compliance with this clause or any rule, regulation, or order of the Secretary of Labor, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts, under the procedures authorized in Executive Order 11246, as amended. In addition, sanctions may be imposed and remedies invoked against the Contractor as provided in Executive Order 11246, as amended; in the rules, regulations, and orders of the Secretary of Labor; or as otherwise provided by law.
17. The Contractor shall include the terms and conditions of this clause in every subcontract or purchase order that is not exempted by the rules, regulations, or orders of the Secretary of Labor issued under Executive Order 11246, as amended, so that these terms and conditions will be binding upon each subcontractor or vendor.
18. The Contractor shall take such action with respect to any subcontract or purchase order as the Contracting Officer may direct as a means of enforcing these terms and conditions, including sanctions for noncompliance, provided, that if the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of any direction, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.
19. Notwithstanding any other clause in this contract, disputes relative to this clause will be governed by the procedures in 41 CFR 60-1.1.

**52.222-35 Equal Opportunity for Veterans** **(OCT 2015)**

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

“Active duty wartime or campaign badge veteran,” “Armed Forces service medal veteran,” “disabled veteran,” “protected veteran,” “qualified disabled veteran,” and “recently separated veteran” have the meanings given at FAR [22.1301](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%2022_13.html#wp1085590).

1. Equal opportunity clause. The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-300.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified protected veterans, and requires affirmative action by the Contractor to employ and advance in employment qualified protected veterans.
2. Subcontracts. The Contractor shall insert the terms of this clause in subcontracts of $150,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

**52.222-36 Equal Opportunity for Workers with Disabilities (Jul 2014)**

1. Equal opportunity clause. The Contractor shall abide by the requirements of the equal opportunity clause at 41 CFR 60-741.5(a), as of March 24, 2014. This clause prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by the Contractor to employ and advance in employment qualified individuals with disabilities.
2. Subcontracts. The Contractor shall include the terms of this clause in every subcontract or purchase order in excess of $15,000 unless exempted by rules, regulations, or orders of the Secretary, so that such provisions will be binding upon each subcontractor or vendor. The Contractor shall act as specified by the Director, Office of Federal Contract Compliance Programs of the U.S. Department of Labor, to enforce the terms, including action for noncompliance. Such necessary changes in language may be made as shall be appropriate to identify properly the parties and their undertakings.

**52.222-37 Employment Reports on Veterans** **(fEB 2016)**

(a) Definitions. As used in this clause, “active duty wartime or campaign badge veteran,” “Armed Forces service medal veteran,” “disabled veteran,” “protected veteran,” and “recently separated veteran,” have the meanings given in FAR [22.1301](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%2022_13.html#wp1085590).

(b) Unless the Contractor is a State or local government agency, the Contractor shall report at least annually, as required by the Secretary of Labor, on—

(1) The total number of employees in the contractor’s workforce, by job category and hiring location, who are protected veterans (i.e., active duty wartime or campaign badge veterans, Armed Forces service medal veterans, disabled veterans, and recently separated veterans);

(2) The total number of new employees hired during the period covered by the report, and of the total, the number of protected veterans (i.e., active duty wartime or campaign badge veterans, Armed Forces service medal veterans, disabled veterans, and recently separated veterans); and

(3) The maximum number and minimum number of employees of the Contractor or subcontractor at each hiring location during the period covered by the report.

(c) The Contractor shall report the above items by filing the VETS-4212 “Federal Contractor Veterans’ Employment Report” (see “VETS-4212 Federal Contractor Reporting” and “Filing Your VETS-4212 Report” at <http://www.dol.gov/vets/vets4212.htm>).

(d) The Contractor shall submit VETS-4212 Reports no later than September 30 of each year.

(e) The employment activity report required by paragraphs (b)(2) and (b)(3) of this clause shall reflect total new hires, and maximum and minimum number of employees, during the most recent 12–month period preceding the ending date selected for the report. Contractors may select an ending date—

(1) As of the end of any pay period between July 1 and August 31 of the year the report is due; or

(2) As of December 31, if the Contractor has prior written approval from the Equal Employment Opportunity Commission to do so for purposes of submitting the Employer Information Report EEO-1 (Standard Form 100).

(f) The number of veterans reported must be based on data known to the contractor when completing the VETS-4212.The contractor’s knowledge of veterans status may be obtained in a variety of ways, including an invitation to applicants to self-identify (in accordance with 41 CFR 60-300.42), voluntary self-disclosure by employees, or actual knowledge of veteran status by the contractor. This paragraph does not relieve an employer of liability for discrimination under [38 U.S.C. 4212](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t37t40+200+2++%2838%29%20%20AND%20%28%2838%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20).

(g) The Contractor shall insert the terms of this clause in subcontracts of $150,000 or more unless exempted by rules, regulations, or orders of the Secretary of Labor.

**52.222-50 Combating Trafficking in Persons** **(Mar 2015)**

1. Definitions. As used in this clause-

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

“Coercion” means-

1. Threats of serious harm to or physical restraint against any person;
2. Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
3. The abuse or threatened abuse of the legal process.

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

1. Any item of supply (including construction material) that is-
2. A commercial item (as defined in paragraph (1) of the definition at FAR [2.101](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%202_1.html#wp1145508));
3. Sold in substantial quantities in the commercial marketplace; and
4. Offered to the Government, under a contract or subcontract at any tier, without modification, in the same form in which it is sold in the commercial marketplace; and
5. Does not include bulk cargo, as defined in 46 U.S.C. 40102(4), such as agricultural products and petroleum products.

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

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

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

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

1. By threats of serious harm to, or physical restraint against, that person or another person;
2. By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or
3. By means of the abuse or threatened abuse of law or the legal process.

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

1. Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or
2. The abuse or threatened abuse of the legal process.

“Severe forms of trafficking in persons” means-

1. Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
2. The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

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

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

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

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

1. Policy. The United States Government has adopted a policy prohibiting trafficking in persons including the trafficking-related activities of this clause. Contractors, contractor employees, and their agents shall not-
2. Engage in severe forms of trafficking in persons during the period of performance of the contract;
3. Procure commercial sex acts during the period of performance of the contract;
4. Use forced labor in the performance of the contract;
5. Destroy, conceal, confiscate, or otherwise deny access by an employee to the employee’s identity or immigration documents, such as passports or drivers' licenses, regardless of issuing authority;
6. (i) Use misleading or fraudulent practices during the recruitment of employees or offering of

employment, such as failing to disclose, in a format and language accessible to the worker, basic information or making material misrepresentations during the recruitment of employees regarding the key terms and conditions of employment, including wages and fringe benefits, the location of work, the living conditions, housing and associated costs (if employer or agent provided or arranged), any significant cost to be charged to the employee, and, if applicable, the hazardous nature of the work;

1. Use recruiters that do not comply with local labor laws of the country in which the recruiting takes place;
2. Charge employees recruitment fees;
3. (i) Fail provide return transportation or pay for the cost of return transportation upon the end of employment-
4. For an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. Government contract or subcontract (for portions of contracts performed outside the United States); or
5. For an employee who is not a United States national and who was brought into the United States for the purpose of working on a U.S. Government contract or subcontract, if the payment of such costs is required under existing temporary worker programs or pursuant to a written agreement with the employee (for portions of contracts performed inside the United States); except that-
6. The requirements of paragraphs (b)(7)(i) of this clause shall not apply to an employee who is-
7. Legally permitted to remain in the country of employment and who chooses to do so; or
8. Exempted by an authorized official of the contracting agency from the requirement to provide return transportation or pay for the cost of return transportation;
9. The requirements of paragraph (b)(7)(i) of this clause are modified for a victim of trafficking in persons who is seeking victim services or legal redress in the country of employment, or for a witness in an enforcement action related to trafficking in persons. The contractor shall provide the return transportation or pay the cost of return transportation in a way that does not obstruct the victim services, legal redress, or witness activity. For example, the contractor shall not only offer return transportation to a witness at a time when the witness is still needed to testify. This paragraph does not apply when the exemptions at paragraph (b)(7)(ii) of this clause apply.
10. Provide or arrange housing that fails to meet the host country housing and safety standards; or
11. If required by law or contract, fail to provide an employment contract, recruitment agreement, or other required work document in writing. Such written work document shall be in a language the employee understands. If the employee must relocate to perform the work, the work document shall be provided to the employee at least five days prior to the employee relocating. The employee’s work document shall include, but is not limited to, details about work description, wages, prohibition on charging recruitment fees, work location(s), living accommodations and associated costs, time off, roundtrip transportation arrangements, grievance process, and the content of applicable laws and regulations that prohibit trafficking in persons.
12. Contractor requirements. The Contractor shall-
13. Notify its employees and agents of-
14. The United States Government's policy prohibiting trafficking in persons, described in paragraph (b) of this clause; and
15. The actions that will be taken against employees or agents for violations of this policy. Such actions for employees may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and
16. Take appropriate action, up to and including termination, against employees, agents, or subcontractors that violate the policy in paragraph (b) of this clause.
17. Notification.
18. The Contractor shall inform the Contracting Officer and the agency Inspector General immediately of-
19. Any credible information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, subcontractor employee, or their agent has engaged in conduct that violates the policy in paragraph (b) of this clause (see also [18 U.S.C. 1351](http://uscode.house.gov/), Fraud in Foreign Labor Contracting, and [52.203-13](https://www.acquisition.gov/sites/default/files/current/far/html/52_200_206.html#wp1141983)(b)(3)(i)(A), if that clause is included in the solicitation or contract, which requires disclosure to the agency Office of the Inspector General when the Contractor has credible evidence of fraud); and
20. Any actions taken against a Contractor employee, subcontractor, subcontractor employee, or their agent pursuant to this clause.
21. If the allegation may be associated with more than one contract, the Contractor shall inform the contracting officer for the contract with the highest dollar value.
22. Remedies. In addition to other remedies available to the Government, the Contractor’s failure to comply with the requirements of paragraphs (c), (d), (g), (h), or (i) of this clause may result in-
23. Requiring the Contractor to remove a Contractor employee or employees from the performance of the contract;
24. Requiring the Contractor to terminate a subcontract;
25. Suspension of contract payments until the Contractor has taken appropriate remedial action;
26. Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined Contractor non-compliance;
27. Declining to exercise available options under the contract;
28. Termination of the contract for default or cause, in accordance with the termination clause of this contract; or
29. Suspension or debarment.
30. Mitigating and aggravating factors. When determining remedies, the Contracting Officer may consider the following:
31. Mitigating factors. The Contractor had a Trafficking in Persons compliance plan or an awareness program at the time of the violation, was in compliance with the plan, and has taken appropriate remedial actions for the violation, that may include reparation to victims for such violations.
32. Aggravating factors. The Contractor failed to abate an alleged violation or enforce the requirements of a compliance plan, when directed by the Contracting Officer to do so.
33. Full cooperation.
34. The Contractor shall, at a minimum-
35. Disclose to the agency Inspector General information sufficient to identify the nature and extent of an offense and the individuals responsible for the conduct;
36. Provide timely and complete responses to Government auditors' and investigators' requests for documents;
37. Cooperate fully in providing reasonable access to its facilities and staff (both inside and outside the U.S.) to allow contracting agencies and other responsible Federal agencies to conduct audits, investigations, or other actions to ascertain compliance with the Trafficking Victims Protection Act of 2000 ([22 U.S.C. chapter 78](http://uscode.house.gov/)), E.O. 13627, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor; and
38. Protect all employees suspected of being victims of or witnesses to prohibited activities, prior to returning to the country from which the employee was recruited, and shall not prevent or hinder the ability of these employees from cooperating fully with Government authorities.
39. The requirement for full cooperation does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not-
40. Require the Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine;
41. Require any officer, director, owner, employee, or agent of the Contractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; or
42. Restrict the Contractor from-
43. Conducting an internal investigation; or
44. Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.
45. Compliance plan.
46. This paragraph (h) applies to any portion of the contract that-
47. Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and
48. Has an estimated value that exceeds $500,000.
49. The Contractor shall maintain a compliance plan during the performance of the contract that is appropriate-
50. To the size and complexity of the contract; and
51. To the nature and scope of the activities to be performed for the Government, including the number of non-United States citizens expected to be employed and the risk that the contract or subcontract will involve services or supplies susceptible to trafficking in persons.
52. Minimum requirements. The compliance plan must include, at a minimum, the following:
53. An awareness program to inform contractor employees about the Government’s policy prohibiting trafficking-related activities described in paragraph (b) of this clause, the activities prohibited, and the actions that will be taken against the employee for violations. Additional information about Trafficking in Persons and examples of awareness programs can be found at the website for the Department of State’s Office to Monitor and Combat Trafficking in Persons at <http://www.state.gov/j/tip/>.
54. A process for employees to report, without fear of retaliation, activity inconsistent with the policy prohibiting trafficking in persons, including a means to make available to all employees the hotline phone number of the Global Human Trafficking Hotline at 1-844-888-FREE and its email address at [help@befree.org](mailto:help@befree.org).
55. A recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees to the employee, and ensures that wages meet applicable host-country legal requirements or explains any variance.
56. A housing plan, if the Contractor or subcontractor intends to provide or arrange housing, that ensures that the housing meets host-country housing and safety standards.
57. Procedures to prevent agents and subcontractors at any tier and at any dollar value from engaging in trafficking in persons (including activities in paragraph (b) of this clause) and to monitor, detect, and terminate any agents, subcontracts, or subcontractor employees that have engaged in such activities.
58. Posting.
59. The Contractor shall post the relevant contents of the compliance plan, no later than the initiation of contract performance, at the workplace (unless the work is to be performed in the field or not in a fixed location) and on the Contractor's Web site (if one is maintained). If posting at the workplace or on the Web site is impracticable, the Contractor shall provide the relevant contents of the compliance plan to each worker in writing.
60. The Contractor shall provide the compliance plan to the Contracting Officer upon request.
61. Certification. Annually after receiving an award, the Contractor shall submit a certification to the Contracting Officer that-
62. It has implemented a compliance plan to prevent any prohibited activities identified at paragraph (b) of this clause and to monitor, detect, and terminate any agent, subcontract or subcontractor employee engaging in prohibited activities; and
63. After having conducted due diligence, either-
64. To the best of the Contractor's knowledge and belief, neither it nor any of its agents, subcontractors, or their agents is engaged in any such activities; or
65. If abuses relating to any of the prohibited activities identified in paragraph (b) of this clause have been found, the Contractor or subcontractor has taken the appropriate remedial and referral actions.
66. Subcontracts.
67. The Contractor shall include the substance of this clause, including this paragraph (i), in all subcontracts and in all contracts with agents. The requirements in paragraph (h) of this clause apply only to any portion of the subcontract that-
68. Is for supplies, other than commercially available off-the-shelf items, acquired outside the United States, or services to be performed outside the United States; and
69. Has an estimated value that exceeds $500,000.
70. If any subcontractor is required by this clause to submit a certification, the Contractor shall require submission prior to the award of the subcontract and annually thereafter. The certification shall cover the items in paragraph (h)(5) of this clause.

#### 52.225-5 TRADE AGREEMENTS (FEB 2016)

***Note: Special Item Number (SIN) 42-2A product items that are not substantially transformed in the U.S. or a designated country under 52.225-5 Trade Agreements must be included in the offeror’s proposal to obtain a Federal Supply Schedule 65IB contract and listed as other end products as required by 52.212-3(g)(5)(ii).* *In accordance with Federal Acquisition Regulation 25.403(c) & 25.103(b)(2), the decision has been made that the Contracting Officer may make an individual non-availability determination pursuant to 1) information provided by the offeror that neither the offered 42-2A product items nor similar or like items are mined, produced, or manufactured in the United States or a designated country in sufficient quantity to fulfill the requirements, and 2) in light of the requirement set forth in 38 U.S.C. Section 8126(a)(1) that manufacturers shall make available for procurement on the Federal Supply Schedule of the General Services Administration each covered drug of the manufacturer.***

(a) Definitions. As used in this clause—

“Caribbean Basin country end product”—

(1) Means an article that—

(i)(A) Is wholly the growth, product, or manufacture of a Caribbean Basin country; or

(B) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a Caribbean Basin country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed; and

(ii) Is not excluded from duty-free treatment for Caribbean countries under [19 U.S.C. 2703(b)](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t17t20+1727+50++%2819%29%20%20AND%20%28%2819%29%20ADJ%20USC%29%3ACITE%20%20%20%20%20%20%20%20%20).

(A) For this reason, the following articles are not Caribbean Basin country end products:

(1) Tuna, prepared or preserved in any manner in airtight containers;

(2) Petroleum, or any product derived from petroleum;

(3) Watches and watch parts (including cases, bracelets, and straps) of whatever type including, but not limited to, mechanical, quartz digital, or quartz analog, if such watches or watch parts contain any material that is the product of any country to which the Harmonized Tariff Schedule of the United States (HTSUS) column 2 rates of duty apply (i.e., Afghanistan, Cuba, Laos, North Korea, and Vietnam); and

(4) Certain of the following: textiles and apparel articles; footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel; or handloomed, handmade, and folklore articles;

(B) Access to the HTSUS to determine duty-free status of articles of these types is available at <http://www.usitc.gov/tata/hts/>. In particular, see the following:

(1) General Note 3(c), Products Eligible for Special Tariff treatment.

(2) General Note 17, Products of Countries Designated as Beneficiary Countries under the United States-Caribbean Basin Trade Partnership Act of 2000.

(3) Section XXII, Chapter 98, Subchapter II, Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note 7(b).

(4) Section XXII, Chapter 98, Subchapter XX, Goods Eligible for Special Tariff Benefits under the United States-Caribbean Basin Trade Partnership Act; and

(2) Refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the acquisition, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

“Designated country” means any of the following countries:

(1) A World Trade Organization Government Procurement Agreement (WTO GPA) country (Armenia, Aruba, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as “the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei)”), or United Kingdom);

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

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

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

“Designated country end product” means a WTO GPA country end product, an FTA country end product, a least developed country end product, or a Caribbean Basin country end product.

“End product” means those articles, materials, and supplies to be acquired under the contract for public use.

“Free Trade Agreement country end product” means an article that—

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

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an FTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

“Least developed country end product” means an article that—

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

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a least developed country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product, includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.“United States” means the 50 States, the District of Columbia, and outlying areas.

“U.S.-made end product” means an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

“WTO GPA country end product” means an article that—

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

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services, (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

(b) Delivery of end products. The Contracting Officer has determined that the WTO GPA and FTAs apply to this acquisition. Unless otherwise specified, these trade agreements apply to all items in the Schedule. The Contractor shall deliver under this contract only U.S.-made or designated country end products except to the extent that, in its offer, it specified delivery of other end products in the provision entitled “Trade Agreements Certificate.”

**52.232-36 PAYMENT BY THIRD PARTY  (MAY 2014) (DEVIATION - MAY 2003**)

(a) *General*.

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

(2) The credit card is not authorized as a method of payment during any period of the System for Award Management (SAM) indicates that the Contractor has delinquent debt that is subject to collection under the Treasury Offset Program (TOP).  Information on TOP is available at [*http://fms.treas.gov/debt/index.html*](http://fms.treas.gov/debt/index.html). If the SAM subsequently indicates that the Contractor no longer has delinquent debt, the Contractor may request the Contracting Officer to authorize payment by credit card.

(b) *Contractor payment request*.

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

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

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

(d)  *Documentation*. Documentation of each charge against the ordering activity’s account shall be provided to the Contracting Officer upon request.

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

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

**552.212-71** **Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items (Oct 2014)**

1. The Contractor agrees to comply with any clause that is incorporated herein by reference to implement agency policy applicable to acquisition of commercial items or components. The clause in effect based on the applicable regulation cited on the date the solicitation is issued applies unless otherwise stated herein. The clauses in paragraph (b) of this section are incorporated by reference:
2. Clauses.

\_\_X\_\_ 552.203-71 Restriction on Advertising (Sep 1999)

\_\_X\_\_ 552.211-73 Marking (Feb 1996)

\_\_X\_\_ 552.215-72 Price Adjustment-Failure to Provide Accurate Information (Aug 1997)

\_\_X\_\_ 552.232-23 Assignment of Claims (Sep 1999)

\_\_X\_\_ 552.238-71 Submission and Distribution of Authorized FSS Schedule Price List (Sep 1999) (Tailored)

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**552.212-72 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Items (Jun 2015)**

The Contractor agrees to comply with any provision or clause that is incorporated herein by reference to implement provisions of law or Executive Orders applicable to acquisition of commercial items or components. The provision or clause in effect based on the applicable regulation cited on the date the solicitation is issued applies unless otherwise stated herein. The following provisions and clauses are incorporated by reference:

1. Provisions.
2. Clauses.

\_\_X\_\_ 552.223-70 Hazardous Substances (May 1989)

\_\_X\_\_ 552.223-71 Nonconforming Hazardous Material (Sep 1999)

\_\_X\_\_ 552.238-72 Identification of Products that Have Environmental Attributes

**552.238-74 INDUSTRIAL FUNDING FEE AND SALES REPORTING (JAN 2016) (TAILORED)**

(a) Reporting of Federal Supply Schedule Sales. The Contractor shall report all contract sales under this contract as follows:

(1) The Contractor shall accurately report the dollar value, in U.S. dollars and rounded to the nearest whole dollar, of all sales under this contract by calendar quarter (January 1–March 31, April 1–June 30, July 1–September 30, and October 1–December 31). The dollar value of a sale is the price paid by the Schedule user for products and services on a Schedule task or delivery order. The reported contract sales value shall include the Industrial Funding Fee (IFF). The Contractor shall maintain a consistent accounting method of sales reporting, based on the Contractor’s established commercial accounting practice. The acceptable points at which sales may be reported include—

(i) Receipt of order;

(ii) Shipment or delivery, as applicable;

(iii) Issuance of an invoice; or

(iv) Payment.

(2) Contract sales shall be reported to FSS within 60 calendar days following the completion of each reporting quarter. The Contractor shall continue to furnish quarterly reports, including “zero” sales, through physical completion of the last outstanding task order or delivery order of the contract.

(3) Reportable sales under the contract are those resulting from sales of contract items to authorized users unless the purchase was conducted pursuant to a separate contracting authority such as a Governmentwide Acquisition Contract (GWAC); a separately awarded FAR Part 12, FAR Part 13, FAR Part 14, or FAR Part 15 procurement; or a non-FAR contract. Sales made to state and local governments under Cooperative Purchasing authority shall be counted as reportable sales for IFF purposes.

(4) The Contractor shall electronically report the quarterly dollar value of sales, including “zero” sales, by utilizing the automated reporting system at an Internet website designated by the Veterans Affairs (VA) Federal Supply Service (FSS). Prior to using this automated system, the Contractor shall complete contract registration with the VA Sales Reporting System. The website address, as well as registration instructions and reporting procedures, will be provided at the time of award. The Contractor shall report sales separately for each National Stock Number (NSN), Special Item Number (SIN), or sub-item.

(5) The Contractor shall convert the total value of sales made in foreign currency to U.S. dollars using the “Treasury Reporting Rates of Exchange” issued by the U.S. Department of Treasury, Financial Management Service. The Contractor shall use the issue of the Treasury report in effect on the last day of the calendar quarter. The report is available from Financial Management Service, International Funds Branch, Telephone: (202) 874–7994,   
Internet: <http://www.fms.treas.gov/intn.html>.

(b) The Contractor shall remit the IFF at the rate set by VA’s FSS.

(1) The Contractor shall remit the IFF to FSS in U.S. dollars within 30 calendar days after the end of the reporting quarter; final payment shall be remitted within 30 days after physical completion of the last outstanding task order or delivery order of the contract.

(2) The IFF represents a percentage of the total quarterly sales reported. This percentage is set at the discretion of VA’s FSS. VA’s FSS has the unilateral right to change the percentage at any time, but not more than once per year. FSS will provide reasonable notice prior to the effective date of the change. The IFF reimburses FSS for the costs of operating the Federal Supply Schedules Program. FSS recoups its operating costs from ordering activities as set forth in 40 U.S.C. 321: Acquisition Services Fund. Net operating revenues generated by the IFF are also applied to fund initiatives benefitting other authorized FSS programs, in accordance with 40 U.S.C. 321. Offerors must include the IFF in their prices. The fee is included in the award price(s) and reflected in the total amount charged to ordering activities. FSS will post notice of the current IFF at <https://72a.gsa.gov/> or successor website as appropriate.

(c) Within 60 days of award, an FSS representative will provide the Contractor with specific written procedural instructions on remitting the IFF. FSS reserves the unilateral right to change such instructions from time to time, following notification to the Contractor

(d) Failure to remit the full amount of the IFF within 60 calendar days after the end of the applicable reporting period constitutes a contract debt to the United States Government under the terms of FAR Subpart 32.6. The Government may exercise all rights under the Debt Collection Improvement Act of 1996, including withholding or setting off payments and interest on the debt (see FAR clause 52.212-4(i)(6). Should the Contractor fail to submit the required sales reports, falsify them, or fail to timely pay the IFF, this is sufficient cause for the Government to terminate the contract for cause.

***NOTE:*** *The IFF fee for this schedule equals* ***0.5% (one half of one percent)*** *of the total quarterly sales reported. Remittance should be calculated using the following method: The awarded Schedule sales price times the IFF percentage.*

***Example:*** *Total sales for the quarter is $1,000,000 and the IFF is 0.5%*

*($1,000,000 \* 0.005) = $5,000 (IFF due)*

*In partnership with the General Services Administration (GSA), the VA’s FSS is collecting quarterly sales report figures and IFF quarterly payments through a new GSA/VA Sales Online Portal:* [*https://vasalesportal.gsa.gov*](https://vasalesportal.gsa.gov)*. Contractors are required to input their sales using this online sales reporting system. IFF payments can be remitted through this portal as well via Pay.gov.*

***NOTE: PRIME VENDOR SALES -*** *Sales to a Government prime vendor that are ultimately shipped to a Federal Government activity qualify as FSS sales; therefore, these sales must be reported as FSS sales and the IFF collected and remitted. Sales where the ultimate end user is the Government do not qualify as commercial sales and will not be considered for the purposes of determining significant commercial sales.*

### AS5000 PHARMACEUTICAL PRIME VENDOR PARTICIPATION (Mar 2016)

The Department of Veterans Affairs (VA) and Department of Defense (DOD) have established contracts with Pharmaceutical Prime Vendors (PPV) to distribute products and supplies under Government contracts, including FSS contracts. Other Government agencies such as Indian Health Services and Federal Bureau of Prisons may also participate under VA and DOD’s’s Prime Vendor contracts. Under these programs, the Prime Vendor (PV) contractors place orders with FSS contractors, maintain inventories of products, and deliver orders directly to Government ordering facilities. All prices and discount terms (except prompt payment discounts) agreed to and contained in any award document from this offer (including all future modifications) are applicable to all FSS contract products sold to the Government through the Government Prime Vendors. The Prime Vendor contractors directly pay FSS contractors for product ordered and delivered. All terms and conditions regarding ordering, time, quantity, place, method of delivery, payment terms, and chargeback agreements shall be determined between the FSS contractor and the Prime Vendor contractors.

In 2014 roughly 95% of all pharmaceutical purchases referencing FSS contracts were completed using the PPV program. Thus, the Pharmaceutical Prime Vendor contractor is the primary avenue for the Federal Government to obtain pharmaceutical products. In fact, this model of distribution has become an industry standard, both commercially and within the Government, for procuring pharmaceuticals, and FSS expects a large majority of pharmaceutical manufacturers and distributors have existing commercial agreements for wholesale distribution of their products. VA, therefore, expects offerors to participate in VA and DOD’s PPV distribution, unless offerors have no existing agreements in place. Offerors who do not have chargeback agreements in place with commercial wholesalers and/or have special delivery/handling requirements for their products may request an exemption from participation in the PPV program. Offerors shall provide the assigned contract specialist an explanation with their request along with any/all supporting documentation, as required. An exemption will only be granted if the request can be verified and determined reasonable. Please note: a granted exemption ceases to exist if the basis is no longer valid. Offerors are required to provide notification immediately of such an occurrence.

When participating in the Federal Government Pharmaceutical Prime Vendor program, the FSS contractor shall honor the FSS contract prices to all Pharmaceutical Prime Vendor participants. Sales of FSS contract items through the Pharmaceutical Prime Vendors to eligible Government agencies are FSS contract sales, not commercial sales, and therefore must be reported as FSS sales during the course of the FSS contract and included in the quarterly FSS Sales Reports. The applicable Industrial Funding Fee (IFF) must be remitted to VA for all FSS sales reported**.** (See 552.238-74 INDUSTRIAL FUNDING FEE AND SALES REPORTING.)

**NOTE**: Product rationing at quarter-end is unacceptable. Contractors are to ensure availability of product year-round, when participating in the PPV Program.

**COMPLIANCE CONFIRMATION (Nov 2015)**

This section is mandatory for all offerors. Please confirm that your firm is in compliance with the following requirements of the solicitation as requested below.

**System for Acquisition Management (SAM) record is complete and active until (enter expiration date):**

Per 52.212-4 Contract Terms and Conditions – Commercial Items, paragraph (t), all offerors must be registered in the SAM database (now replacing both the CCR and ORCA databases) at <https://www.sam.gov>. prior to receiving a contract award with FSS. Submissions must be updated on an annual basis to ensure that all information is current, accurate, and complete. This system includes the Online Representations and Certifications Application (see clause 52.212-3 Offeror Representations and Certifications – Commercial Items in 02 – Solicitation Document).

The offeror verifies by submission of this offer that the representations and certifications 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      . ***When completing 52.212-3(g)(5)(iii) in the SAM database, the offeror must adhere to the instructions set forth in the notes included under clause 52.225-5 Trade Agreements.***

**VETS-4212 compliance report is included with offer** (required of those with existing FSS contracts)

**VETS-4212 compliance report is not included with offer** (not required of new offerors until first reporting period after contract award): In accordance with 52.222-37 Employment Reports on Veterans (incorporated by reference in 52.212-5), all FSS **contract holders** must comply with the annual reporting of VETS-4212 at <http://www.dol.gov/vets/programs/fcp/main.htm>. For questions or concerns regarding VETS-4212 reports, please contact VETS-4212 customer support at 1-866-237-0275 or via email at [VETS4212-customersupport@dol.gov](mailto:VETS4212-customersupport@dol.gov).

#### CSP-1 COMMERCIAL SALES PRACTICES FORMAT (TAILORED, NOV 2015)

Name of Offeror

SIN(s)

Note: Please refer to clause 552.212-70, PREPARATION OF OFFER (MULTIPLE AWARD SCHEDULE), for additional information concerning your offer. Provide the following information for each SIN (or group of SINs or SubSIN for which information is the same).

***NOTE: Sales to a Government prime vendor that are ultimately shipped to a Federal Government activity qualify as FSS sales, not commercial sales; therefore, these sales will not be considered for the purposes of determining significant commercial sales.***

***For the purposes of this document, the terms “commercial” and “general public” are synonymous and refer to any non-federal government entity.***

1. Provide the dollar value of sales **to the general public** at or based on an established catalog or market price during the previous 12‑month period or the offerors last fiscal year:

$      .

State beginning and ending of the 12 month period. Beginning       Ending      .

In the event that a dollar value is not an appropriate measure of the sales, provide and describe your own measure of the sales of the item(s).

1. Show your total projected annual sales **to the Government** under this contract for the contract term, excluding options, for each SIN offered. If you currently hold a Federal Supply Schedule contract for the SIN the total projected annual sales should be based on your most recent 12 months of sales under that contract.

SIN:       Projected/Actual Annual Sales: $

SIN:       Projected/Actual Annual Sales: $

SIN:       Projected/Actual Annual Sales: $

SIN:       Projected/Actual Annual Sales: $

SIN:       Projected/Actual Annual Sales: $

SIN:       Projected/Actual Annual Sales: $

SIN:       Projected/Actual Annual Sales: $

***Note:*** How was this estimate calculated? Based on your firm’s sales to the Federal marketplace (on contract or open market)? Based on a percentage of your commercial sales? Please provide specific rationale in your response (e.g. “Based on 2% of commercial sales of $5 million”, or “Based on actual, open market Federal Government sales”).

1. Based on your written discounting policies (standard commercial sales practices in the event you do not have written discounting policies), are the discounts and any concessions which you offer the Government equal to or better than your best price (discount and concessions in any combination) offered to any customer acquiring the same items regardless of quantity or terms and conditions? YES  NO . (See definition of “concession” and “discount” in 552.212-70.)

***NOTE: If you answer******NO to this question, on an attachment provide an explanation of why the net prices, terms and conditions offered to the Government are not equal to or better than those offered to any commercial customer acquiring the same items. Please provide copies of your current commercial agreements or extract of your salient terms and conditions if not offering MFC pricing to the Government.***

1. (a) Based on your written discounting policies (standard commercial sales practices in the

event you do not have written discounting policies), provide information as requested for each SIN (or group of SINs for which the information is the same) in accordance with the instructions at Figure 515.4-2, which is provided in this solicitation for your convenience. The information should be provided in the chart below or in an equivalent format developed by the offeror. Rows should be added to accommodate as many customers as required.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Column 1— Customer** | **Column 2— Discount** | **Column 3—  Quantity/Volume** | **Column 4— FOB Term** | **Column 5— Concessions** |
|  |  |  |  |  |

***NOTE: The above chart (Figure 515.4-2) may be completed in Exhibit 06 – Proposal Price List Preparation in an Excel spreadsheet format.***

(b) Do any deviations from your written policies or standard commercial sales practices disclosed in the above chart ever result in better discounts (lower prices) or concessions than indicated? YES  NO . If YES, explain deviations in accordance with the instructions at Figure 515.4-2, which is provided in this solicitation for your convenience

***NOTE: If you answer YES to this question, on an attachment provide an explanation of the circumstances under which you deviate from your written policies or standard commercial sales practices disclosed in the chart on the Commercial Sales Practices Format and explain how often they occur. Your explanation should include a discussion of situations that lead to deviations from standard practice, an explanation of how often they occur, and the controls you employ to assure the integrity of your pricing. Examples of typical deviations may include, but are not limited to, one time goodwill discounts to charity organizations or to compensate an otherwise disgruntled customer; a limited sale of obsolete or damaged goods; the sale of sample goods to a new customer; or the sales of prototype goods for testing purposes.***

***NOTE: If deviations from your written policies or standard commercial sales practices disclosed in the chart on the Commercial Sales Practices Format are so significant and/or frequent that the Contracting Officer cannot establish whether the price(s) offered is fair and reasonable, then you may be asked to provide additional information. The Contracting Officer may ask for information to demonstrate that you have made substantial sales of the item(s) in the commercial market consistent with the information reflected on the chart on the Commercial Sales Practice Format, a description of the conditions surrounding those sales deviations, or other information that may be necessary in order for the Contracting Officer to determine whether your offered price(s) is fair and reasonable. In cases where additional information is requested, the Contracting Officer will target the request in order to limit the submission of data to that needed to establish the reasonableness of the offered price.***

(5) If you are a dealer/reseller without significant sales to the general public, you should provide manufacturers’ information required by paragraphs (1) through (4) above for each item/SIN offered, if the manufacturer’s sales under any resulting contract are expected to exceed $500,000. You must also obtain written authorization from the manufacturer(s) for Government access, at any time before award or before agreeing to a modification, to the manufacturer’s sales records for the purpose of verifying the information submitted by the manufacturer. The information is required in order to enable the Government to make a determination that the offered price is fair and reasonable. To expedite the review and processing of offers, you should advise the manufacturer(s) of this requirement. The contracting officer may require the information be submitted on electronic media with commercially available spreadsheet(s). The information may be provided by the manufacturer directly to the Government. If the manufacturer's item(s) is being offered by multiple dealers/resellers, only one copy of the requested information should be submitted to the Government. In addition, you must submit the following information along with a listing of contact information regarding each of the manufacturers whose products and/or services are included in the offer (include the manufacturer's name, address, the manufacturer's contact point, telephone number, and FAX number) for each model offered by SIN:

(a) Manufacturer's Name

(b) Manufacturer's Part Number

(c) Dealer's/Reseller's Part Number

(d) Product Description

(e) Manufacturer's List Price

(f) Dealer's/Reseller's percentage discount from List Price or net prices

**Figure 515.4-2—Instructions for Commercial Sales Practices Format**

If you responded “YES” to question (3), on the COMMERCIAL SALES PRACTICES FORMAT, complete the chart in question (4)(a) for the customer(s) who receive your best discount. If you responded “NO” complete the chartin question (4)(a) showing your written policies or standard sales practices for all customers or customer categories to whom you sell at a price (discounts and concessions in combination) that is equal to or better than the price(s) offered to the Government under this solicitation or with which the Offeror has a current agreement to sell at a discount which equals or exceeds the discount(s) offered under this solicitation. Such agreement shall be in effect on the date the offer is submitted or contain an effective date during the proposed multiple award schedule contract period. If your offer is lower than your price to other customers or customer categories, you will be aligned with the customer or category of customer that receives your best price for purposes of the Price Reduction clause at 552.238-75. The Government expects you to provide information required by the format in accordance with these instructions that is, to the best of your knowledge and belief, current, accurate, and complete as of 60 calendar days prior to its submission. You mustalso disclose any changes in your price list(s), discounts and/or discounting policies which occur after the offer is submitted, but before the close of negotiations. If your discount practices vary by model or product line, the discount information should be by model or product line as appropriate. You may limit the number of models or product lines reported to those which exceed 75% of actual historical Government sales (commercial sales may be substituted if Government sales are unavailable) value of the special item number (SIN).

**Column 1**—**Identify the applicable customer or category of customer**. A "customer" is any entity, except the Federal Government, which acquires supplies or services from the Offeror. The term customer includes, but is not limited to original equipment manufacturers, value added resellers, state and local governments, distributors, educational institutions (an elementary, junior high, or degree granting school which maintains a regular faculty and established curriculum and an organized body of students), dealers, national accounts, and end users. In any instance where the Offeror is asked to disclose information for a customer, the Offeror may disclose information by category of customer if the offeror's discount policies or practices are the same for all customers in the category. (Use a separate line for each customer or category of customer.)

**Column 2—Identify the discount.** The term “discount” is as defined in solicitation clause 552.212-70, Preparation of Offer (Multiple Award Schedule). Indicate the best discount (based on your written discounting policies or standard commercial discounting practices if you do not have written discounting policies) at which you sell to the customer or category of customer identified in column 1, without regard to quantity; terms and conditions of the agreements under which the discounts are given; and whether the agreements are written or oral. Net prices or discounts off of other price lists should be expressed as percentage discounts from the price list which is the basis of your offer. If the discount disclosed is a combination of various discounts (prompt payment, quantity, etc.), the percentage should be broken out for each type of discount. If the price lists which are the basis of the discounts given to the customers identified in the chart are different than the price list submitted upon which your offer is based, identify the type or title and date of each price list. The contracting officer may require submission of these price lists. To expedite evaluation, offerors may provide these price lists at the time of submission.

**Column 3—Identify the quantity or volume of sales.** Insert the minimum quantity or sales volume which the identified customer or category of customer must either purchase/order, per order or within a specified period, to earn the discount. When purchases/orders must be placed within a specified period to earn a discount indicate the time period.

**Column 4—Indicate the FOB delivery term for each identified customer.** See FAR 47.3 for an explanation of FOB delivery terms.

**Column 5—Indicate concessions regardless of quantity granted to the identified customer or category of customer.** Concessions are defined in solicitation clause 552.212-70, Preparation of Offers (Multiple Award Schedule). If the space provided is inadequate, the disclosure should be made on a separate sheet by reference.

If you respond “YES” to question 4 (b) in the Commercial Sales Practices Format, provide an explanation of the circumstances under which you deviate from your written policies or standard commercial sales practices disclosed in the chart on the Commercial Sales Practices Format and explain how often they occur. Your explanation should include a discussion of situations that lead to deviations from standard practice, an explanation of how often they occur, and the controls you employ to assure the integrity of your pricing. Examples of typical deviations may include, but are not limited to, one time goodwill discounts to charity organizations or to compensate an otherwise disgruntled customer; a limited sale of obsolete or damaged goods; the sale of sample goods to a new customer; or the sales of prototype goods for testing purposes.

If deviations from your written policies or standard commercial sales practices disclosed in the chart on the Commercial Sales Practices Format are so significant and/or frequent that the Contracting Officer cannot establish whether the price(s) offered is fair and reasonable, then you may be asked to provide additional information. The Contracting Officer may ask for information to demonstrate that you have made substantial sales of the item(s) in the commercial market consistent with the information reflected on the chart on the Commercial Sales Practice Format, a description of the conditions surrounding those sales deviations, or other information that may be necessary in order for the Contracting Officer to determine whether your offered price(s) is fair and reasonable. In cases where additional information is requested, the Contracting Officer will target the request in order to limit the submission of data to that needed to establish the reasonableness of the offered price.

**DOCUMENT 01 – READ ME FIRST**

**Trade Agreements Act:**

The [Trade Agreements Act](https://www.acquisition.gov/far/html/Subpart%2025_4.html) is applicable to all Schedules. Under the terms of this act **ONLY** US-made or designated country end products shall be awarded to responsible VA FSS contractors.

It is your responsibility to verify that all of your offered products are from the US or a [designated country](https://www.acquisition.gov/far/current/html/52_223_226.html#wp1169151). When an item consists of components from various countries and the components are assembled in an additional country, the test to determine country of origin is “substantial transformation” (see [FAR 25.001(c)(2)](https://www.acquisition.gov/far/html/Subpart%2025_1.html)). Offerors requiring a determination on substantial transformation can go to the US Customs and Border Protection [Office of Regulations and Rulings](http://www.cbp.gov/xp/cgov/trade/legal/rulings/).

***NOTE: Special Item Number (SIN) 42-2A product items (single source drug, innovator multiple source drug, and any biological product identified under Section 600.3 of Title 21, CFR) that are not substantially transformed in the U.S. or a designated country under 52.225-5 Trade Agreements must be included in the offeror’s proposal to obtain a Federal Supply Schedule 65IB contract and listed as other end products as required by 52.212-3(g)(5)(ii).***

**Business Size Determination**

The [Small Business Administration](http://www.sba.gov/category/navigation-structure/contracting/contracting-officials/eligibility-size-standards) (SBA) has established numerical definitions, or “size standards,” for all for-profit industries based upon [NAICS codes](http://www.sba.gov/content/table-small-business-size-standards). Size standards represent the largest size that a business (including its subsidiaries and affiliates) may be in order to be classified as a small business concern.

The following is the NAICS code and size standard (average number of employees) for this solicitation:

325412 Pharmaceutical Preparation Manufacturing / 1,250 employees

325611 Soap and Other Detergent Manufacturing / 1,000 employees

If you are a nonmanufacturer (e.g. wholesalers, dealers, and distributors), then the applicable size standard is 500 employees, per FAR 19.102(f).

The submission and maintenance of an acceptable Small Business Subcontracting Plan will be required of any company that is classified as an “other than a small business”.

**DOCUMENT 08 - SMALL BUSINESS SUBCONTRACTING PLAN**

**(Model Outline\*) – Template Revised 03/2016**

**SUBCONTRACTING PLAN PERIOD:**

Individual plans should cover the entire period of performance, and commercial plans should coincide with the company’s fiscal year. In the event your company's fiscal year is for a period that will end before the contract periods of any federal contracts you hold which include the requirement to have a small business subcontracting plan, **you will be required to submit a new subcontracting plan for approval thirty (30) days prior to expiration of the existing subcontracting plan**. In the event an acceptable plan cannot be negotiated prior to expiration of the existing subcontracting plan, your contract(s) may be terminated.

**DATE SUBMITTED:**

**NAME OF PLANHOLDER:**

**SUBSIDIARIES INCLUDED:**

**ADDRESS:**

**ITEM/SERVICE**:

1. **TYPE OF PLAN**

List the total estimated dollar value of all planned subcontracting (to all types of business concerns, both **large and small**). Select only one of the following:

1. **Individual Plan** (This Contract Only) Contract #/Solicitation #

Total value of projected subcontracts (both **large and small** businesses**)**

Base Period $       5-Year Option $

Total Contract Value (including options) $

\*Separate goals **must** be included for each option period (see #2 and chart on last page)

1. **Commercial Division-wide Plan**

Total projected sales $ 0

Total value of projected subcontracts (both **large and small** businesses**)** $ 0

(Subcontracts Represent 0% of Total Annual Sales)

1. **Commercial Company-wide Plan**

Total projected sales $ 0

Total value of projected subcontracts (both **large and small** businesses**)** $ 0

(Subcontracts Represent 0% of Total Annual Sales)

**\*** *Federal Acquisition Regulation (FAR), paragraph 19.708(b)(1), prescribes the use of the clause at FAR 52.219-9 entitled "Small Business Subcontracting Plan." The following is a* ***suggested*** *model for use when formulating such subcontracting plan. While this model plan has been designed to be consistent with FAR 52.219-9, other formats of a subcontracting plan may be acceptable. However, failure to include the essential information as exemplified in this model may be cause for either a delay in acceptance or the rejection of an offer where the clause is applicable. Further, the use of this model is not intended to waive other requirements that may be applicable under FAR 52.219-9 or that may appear in the Government’s solicitation. "SUBCONTRACT," as used in this clause, 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.*

**2. GOALS**

State separate dollar and percentage goals, expressed in terms of **percentages of the total available subcontracting dollars** listed in the previous section. ***Commercial plans must complete the first section in (a) – (f) with 1-year goals, and individual plans must propose two, separate 5-year goals in the second section of (a) – (f) for both the base period and the 5-year option period.***

1. Total estimated dollar value and percent of planned subcontracting with **small businesses (SB)** (including ANCs and Indian tribes), veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged (including ANCs and Indian tribes), and women-owned small business concerns:

Commercial Plans: 1-Year Goal: $      and      %

Individual Plans: Base (5-years): $      &      % & 5-Year Option: $      &      %

1. Total estimated dollar value and percent of planned subcontracting with **veteran-owned small businesses (VO)**:

Commercial Plans: 1-Year Goal: $      and      %

Individual Plans: Base (5-years): $      &      % & 5-Year Option: $      &      %

1. Total estimated dollar value and percent of planned subcontracting with **service-disabled veteran-owned small businesses (SDVO)** (Note: This is a subset of veteran-owned):

Commercial Plans: 1-Year Goal: $      and      %

Individual Plans: Base (5-years): $      &      % & 5-Year Option: $      &      %

1. Total estimated dollar value and percent of planned subcontracting with **small disadvantaged businesses (SDB)** (including ANCs and Indian tribes):

Commercial Plans: 1-Year Goal: $      and      %

Individual Plans: Base (5-years): $      &      % & 5-Year Option: $      &      %

1. Total estimated dollar value and percent of planned subcontracting with **women-owned small businesses (WO)**:

Commercial Plans: 1-Year Goal: $      and      %

Individual Plans: Base (5-years): $      &      % & 5-Year Option: $      &      %

1. Total estimated dollar value and percent of planned subcontracting **with HUBZone small businesses (HUB)**:

Commercial Plans: 1-Year Goal: $      and      %

Individual Plans: Base (5-years): $      &      % & 5-Year Option: $      &      %

**3. PRODUCTS AND/OR SERVICES**

The types of products and/or services to be subcontracted are:

**LB:**

**SB:**

**VO:**

**SDVO:**

**SDB:**

**WO:**

**HUB:**

**4. GOAL DEVELOPMENT**

The following method was used in developing the subcontracting goals:

**5. IDENTIFYING POTENTIAL SOURCES**

The following methods were used to identify potential sources for solicitation purposes (See FAR 52.219-9(d)(5) for examples of methods that may be used.):

**6. INDIRECT COSTS**

Indirect costs  have  have not been included in the dollar and percentage subcontracting goals stated above. (Check one.)

If "have been" is checked (and you are proposing an individual plan), explain the method used in determining the proportionate share of indirect costs to be incurred with small business (including Alaska Native Corporations and Indian tribes), veteran-owned small business, service-disabled veteran-owned small business, small disadvantaged business (including ANCs and Indian tribes), women-owned small business, and HUBZone small business concerns. *Note: Commercial planholders who choose to include indirect costs will not need to provide the aforementioned explanation because the costs will be applied at 100%.* **Method Used***:*

**7. PROGRAM ADMINISTRATOR**

The following individual will administer the subcontracting program:

|  |  |
| --- | --- |
| NAME: | TITLE: |
| ADDRESS: | |
| TELEPHONE: | E-MAIL: |

This individual's specific duties, as they relate to the firm's subcontracting program, are as follows:

**8. EQUITABLE OPPORTUNITY**

The following good faith efforts (internal and external) will be taken to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, small disadvantaged business, women-owned small business, and HUBZone small business concerns will have an equitable opportunity to compete for subcontracts:

**9. FLOW-DOWN CLAUSE**

The offeror agrees that the FAR clause of this contract entitled “Utilization of Small Business Concerns” (52.219-8) will be included in all subcontracts which offer further subcontracting opportunities, and all subcontractors (except small business concerns) that receive subcontracts in excess of $650,000 ++(**Effective 1 Oct 2015 new threshold is $700,000**) with further subcontracting possibilities will be required to adopt a subcontracting plan that complies with the requirements of this clause. ***NOTE: See exceptions listed in FAR 52.219-9(j).***

**10. REPORTING & COOPERATION**

The offeror agrees to

(i) Cooperate in any studies or surveys as may be required;

(ii) Submit periodic reports so thatthe Government can determine the extent of compliance by the offeror with the subcontracting plan;

(iii) Submit the Individual Subcontracting Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with the 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 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. RECORDKEEPING**

The following is 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.

**Signed:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ **Date Signed:** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

|  |  |
| --- | --- |
| **Typed Name:** | **Title:** |

|  |  |
| --- | --- |
| **Plan Approval Signature (Government Official)** |  |
| **Typed Name of Government Approver** |  |
| **Date Approved** |  |

**COMMERCIAL PLANS: SUMMARY OF GOALS**

This page is for ***commercial plans ONLY.*** Individual plans must complete the chart on the following page. Entries below should match your responses in #1 and #2 at the beginning of the template.

**Prior Year Goals Prior Year Current Goals**

**Achievements\***

**1. Total Subcontracting Dollars** $       $       $

(both large & small businesses)

**2a. Small Business** Dollars $       $       $

**SB** Percent of Line 1      %      %      %

**2b. Small Veteran-owned** Dollars $       $       $

**VO** Percent of Line 1     %      %      %

**2c. Service-Disabled Veteran-**

**Owned** Dollars$       $       $

**SDVO** Percent of Line 1     %      %      %

**2d. Small Disadvantaged** Dollars $       $       $

**SD** Percent of Line 1      %      %      %

**2e. Small Women-owned** Dollars $       $       $

**WO** Percent of Line 1      %      %      %

**2f. HUBZone** Small Business Dollars $       $       $

**HUB** Percent of Line 1      %      %      %

**Round percentages to two decimal places and dollar figures to the nearest whole dollar**.

*\* If total prior year contract achievements are not available, use actual figures and estimate/prorate balance. Achievements based on Government’s Fiscal Year while Goals are based on Company’s Fiscal Year.*

*Contractors shall submit new commercial plans to the contracting officer 30 working days prior to the end of the contractor’s fiscal year, IAW FAR 19.704(d).*

**INDIVIDUAL PLANS: SUMMARY OF GOALS**

This page is for ***individual plans ONLY.*** Individual plans must propose separate goals for each option period. Entries below should match your responses in #1 and #2 at the beginning of the template.

**Total Periods**

**Base Period** **5-Year Option** \_**(10 years)**\_

**1. Total Subcontracting Dollars** $       $       $

(both large & small businesses)

**2a. Small Business** Dollars $       $       $

**SB** Percent of Line 1      %      %      %

**2b. Small Veteran-owned** Dollars $       $       $

**VO** Percent of Line 1     %      %      %

**2c. Service-Disabled Veteran-**

**Owned** Dollars$       $       $

**SDVO** Percent of Line 1     %      %      %

**2d. Small Disadvantaged** Dollars $       $       $

**SD** Percent of Line 1      %      %      %

**2e. Small Women-owned** Dollars $       $       $

**WO** Percent of Line 1      %      %      %

**2f. HUBZone** Small Business Dollars $       $       $

**HUB** Percent of Line 1      %      %      %

**Round percentages to two decimal places and dollar figures to the nearest whole dollar**.

#### I-FSS-644 DEALERS AND SUPPLIERS (OCT 1988)

When requested by the Contracting Officer, if other than the manufacturer, the offeror must submit prior to award of a contract, either (1) a letter of commitment from the manufacturer which will assure the offeror of a source of supply sufficient to satisfy the Government's requirements for the contract period, OR (2) evidence that the offeror will have an uninterrupted source of supply from which to satisfy the Government's requirements for the contract period.

***NOTE: The following are the required components of an acceptable letter of supply/commitment:***

1. *Must be on manufacturer’s letterhead and addressed to the offeror.*
2. *Must be dated within 90 days of the date the SF1449 was signed by the company (for offers) or the date of the modification request (for product additions under existing FSS contracts).*
3. *Must not have an expiration date.*
4. *Must be signed by an* ***officer*** *of the company.*
5. *Must reference the solicitation number (new offers) or contract number (for existing contracts).*
6. *Must contain the phrase that the manufacturer is willing to provide “a source of supply sufficient to satisfy the Government’s requirements for the contract period”.*
7. *Must contain the statement that end products are Trade Agreements Act (TAA) compliant.*
8. *Must specifically list each category of product and/or brand name(s) to which the letter applies.*

#### *NOTE: The following is a sample letter of supply/commitment*:

[Date}

[Offeror Name]

[Offeror Point of Contact (POC)]

[Address]

[City, State, Zip code]

Re: Letter of Supply

Dear [Offeror POC]:

This Letter of Supply is in reference to the offer that [Offeror Name] submitted in response to Federal Supply Schedule [enter Solicitation Number if a new offer or contract number of an existing contract

In the event that [Offeror Name] is awarded a Multiple Award Schedule (MAS) contract under the aforementioned solicitation number, [Manufacturer Name] can assure an uninterrupted source of supply, with sufficient quantities of product, for the duration of the base contract period (or option period). **Attached is a list of each product category and/or brand name(s) to which this letter applies.**

[Manufacturer Name] understands that all products and services that are offered on MAS contracts must be compliant with the Trade Agreements Act (TAA) (19 U.S.C. 2501, *et seq*.) As such, all products supplied by [[Manufacturer Name] to [Offeror Name] will be TAA compliant. You will be notified immediately upon discovery of any changes in the Country of Origin of supplied products.

The person whose signature appears below is authorized to make the commitments noted above.

Sincerely,

[Name and title of Authorized Signatory] Must be an Officer of the company

Telephone Number of Authorized Signatory

**NAICS** **CODE DESIGNATION**

VA recognizes that offerors may certify their business size under more than one NAICS code at the SAM website (<https://www.sam.gov>). A business may qualify as a small business under some NAICS codes and as an “other than small” business under other NAICS codes. Due to regulatory restrictions, wholesaler NAICS codes are not used for Government procurement purposes. For the procurement of supplies, only manufacturer NAICS codes are used. This does not preclude a dealer or distributor from submitting a proposal under the solicitation.

The NAICS codes that have been identified as being applicable to this solicitation are listed below. For the purposes of this solicitation proposal, please indicate below the NAICS code which you are using to represent your business size. If you are a nonmanufacturer (e.g. wholesalers, dealers, and distributors), then the applicable size standard is 500 employees, per FAR 19.201(f). Please see Document 01 – Read Me First for more information about the SBA’s policy on determining business size. If your company is offering products under more than one of the listed NAICS codes, then please select the **primary** NAICS code for your offered products.

325412 Pharmaceutical Preparation Manufacturing / 1,200 employees

325611 Soap and Other Detergent Manufacturing / 1,000 employees

Please also select the **primary** Federal Supply Code (FSC) for your offered products:

6505 Drugs and Biologicals

6508 Medicated Cosmetics and Toiletries

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| **SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS *OFFEROR TO COMPLETE BLOCKS 17 & 30*** | | | | | | | | | 1. REQUISITION NUMBER  **N/A** | | | PAGE 1 of | | |
| 2. CONTRACT NO. | | 3. AWARD/EFFECTIVE DATE | | 4. ORDER NO./MODIFICATION NO.  **N/A** | | | | | 5. SOLICITATION NO.  **M5-Q50A-03-R7** | | | 6. SOLICITATION ISSUE DATE: **02/19/2014** | | |
| 7. FOR SOLICITATION NFORMATION CALL: | | a. NAME:  **FEDERAL SUPPLY SCHEDULE HELPDESK** | | | | | | | b. TELEPHONE NO.(No Collect Calls) **(708) 786-7737** | | | 8. OFFER DUE DATE  /LOCAL TIME: **N/A** | | |
| 9. ISSUED BY CODE | | | |  | | 10. THIS ACQUISTION IS | | | | | | | | |
| **VA NATIONAL ACQUISITION CENTER**  **FEDERAL SUPPLY SCHEDULE SERVICE 003A4B**  **PO BOX 76, BLDG 37**  **HINES, IL 60141**  **OVERNIGHT DELIVERY SHOULD BE MAILED OR HAND DELIVERED TO THE ADDRESS LOCATED IN BLOCK 16** | | | | | | UNRESTRICTED OR  SET ASIDE \_\_% FOR:    SMALL BUSINES  WOMEN-OWNED SMALL BUSINESS (WOSB)  HUBZONE SMALL ELIGIBLE UNDER THE WOMEN-OWNED  BUSINESS SMALL BUSINESS PROGRAM  SERVICE DISABLED  EDWOSB  8(A)  VETERAN OWNED ***Size Standards****: See page 4 of the Read Me First Document*  SMALL BUSINESS *for NAICS codes and size standards under this solicitation.* | | | | | | | | |
| 11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED  SEE SCHEDULE | | 12. DISCOUNT TERMS  **See Summary of Award** | | | | 13a. THIS CONTRACT IS A  RATED ORDER UNDER  DPAS (15 CFR 700) | | | | | 13b. RATING | | | |
|  | |  | | | |  | | | | | 14. METHOD OF SOLICITATION  RFQ IFB RFP | | | |
| 15. DELIVER TO CODE CODE | | | |  | | 16. ADMINISTERED BY CODE CODE | | | | | | | |  |
| **TO BE SHOWN ON EACH ORDER ISSUED UNDER ANY CONTRACT RESULTING FROM THIS SOLICIATION** | | | | | | **VA NATIONAL ACQUISITION CENTER, FEDERAL SUPPLY SCHEDULE SERVICE 003A4B**  **1ST AVENUE, 1 BLOCK NORTH OF 22ND STREET, BLDG 37 HINES, IL 60141** | | | | | | | | |
| 17a. CONTRACTOR/ OFFEROR CODE | | |  | | FACILITY  CODE | |  | 18a. PAYMENT WILL BE MADE BY CODE | | | | | |  |
|  | | | | | | | | **SEE BLOCK 15** | | | | | | |
| **DUNS**  **TELEPHONE NO.** | | | | | | | |  | | | | | | |
| **17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER** | | | | | | 18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK  BELOW IS CHECKED  SEE ADDENDUM | | | | | | | | |
| 19. ITEM NO. | 20. SCHEDULE OF SUPPLIES/SERVICES | | | | | | | 21. QUANTITY | | 22. UNIT | 23. UNIT PRICE | 24. AMOUNT | | |
| **FSC CLASS:**  **6505**  **&**  **6508** | **FSC Group 65, Part I, Section B**  **Drugs, Pharmaceuticals & Hematology Related Products**  **SEE CONTINUATION OF SF-1449 FOR SCHEDULE OF ITEMS**  *(ATTACH REVERSE AND/OR ATTACH ADDITIONAL SHEETS AS NECESSARY)* | | | | | | |  | |  |  |  | | |
| 25. ACCOUNTING AND APPROPRIATION DATA  **7974537B0161441V36122002580** | | | | | | | | 26. TOTAL AWARD AMOUNT *(For Govt. Use Only)*  **ESTIMATED VALUE $** | | | | | | |
| 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4. FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA  ARE  ARE NOT ATTACHED.  27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4. FAR 52.212-5 IS ATTACHED. ADDENDA  ARE  ARE NOT ATTACHED. | | | | | | | | | | | | | | |
| 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN 1 COPY TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED. | | | | | | 29. AWARD OF CONTRACT: REFERENCE FPR OFFER DATED  **\_\_\_\_\_\_\_\_\_**.  YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN, IS ACCEPTED AS TO ITEMS:  **See Summary of Award.** | | | | | | | | |
| **30a. SIGNATURE OF OFFEROR/CONTRACTOR** | | | | | | 31a. UNITED STATES OF AMERICA *(SIGNATURE OF CONTRACTING OFFICER)* | | | | | | | | |
| **30b. NAME AND TITLE OF SIGNER *(TYPE OR PRINT)*** | | | | | **30c. DATE SIGNED** | | | 31b. NAME OF CONTRACTING OFFICER *(Type or print)* | | | | | 31c. DATE SIGNED | |
| AUTHORIZED FOR LOCAL REPRODUCTION PREVIOUS EDITION IS NOT USABLE | | | | | | **STANDARD FORM 1449** (REV. 2/2012) Prescribed by GSA - FAR (48 CFR) 53.212 | | | | | | | | |

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| 19.  ITEM NO. | | | 20.  SCHEDULE OF SUPPLIES/SERVICES | | | | | | 21.  QUANTITY | 22.  UNIT | 23.  UNIT PRICE | | | 24.  AMOUNT |
|  | | |  | | | | | |  |  |  | | |  |
| 32a. QUANTITY IN COLUMN 21 HAS BEEN  RECEIVED INSPECTED  ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED: | | | | | | | | | | |  | | | |
|  | | | | | | | | | | |  | | | |
| 32b. SIGNATURE OF AUTHORIZED GOVERNMENT  REPRESENTATIVE | | | | | | 32c. DATE | | 32d. PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT  REPRESENTATIVE | | | | | | |
|  | | | | | |  | |  | | | | | | |
| 32e. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE | | | | | | | | 32f. TELEPHONE NUMBER OF AUTHORIZED GOVERNMENT REPRESENTATIVE | | | | | | |
|  | | | | | | | | 32g. E-MAIL OF AUTHORIZED GOVERNMENT REPRESENTATIVE | | | | | | |
| 33. SHIP NUMBER | | | | 34. VOUVHER NUMBER | 35. AMOUNT VERIFIED  CORRECT FOR | | | 36. PAYMENT  COMPLETE  PARTIAL  FINAL | | | | | 37. NUMBER | |
|  | PARTIAL |  | FINAL |
| 38. S/R ACCOUNT NO. | | | | 39. S/R VOUCHER NUMBER | 40. PAID BY | | | | | | | | | |
| 41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT | | | | | | | 42a. RECEIVED BY *(Print)* | | | | | | | |
| 41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER | | | | | | 41c. DATE |  | | | | | | | |
|  | | | | | | 42b. RECEIVED AT *(Location)* | | | | | | | |
|  | | | | | | | |
| 42c. DATE REC’D *(YY/MM/DD)* | | | | | 42d. TOTAL CONTAINERS | | |

**STANDARD FORM 1449** (REV. 2/2012) **BACK**