|  |  |  |
| --- | --- | --- |
| **AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT** | 1. CONTRACT ID CODE      | PAGES OF PAGES |
| 1 | 66 |
| 2. AMENDMENT/MODIFICATION NO. **Mass Modification 0009** | 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 NUMBER      |
|
| 9B. DATED *(SEE ITEM 11)*      |
|
| X | 10A. MODIFICATION OF CONTRACT/ORDER NUMBER      |
| 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 electronic communication 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 letter or electronic communication, provided each letter or electronic communication 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, [x]  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.)***621 II Schedule Updates**This modification is issued to incorporate FAR, GSAR, and VAAR clause changes into the above-referenced contract pursuant to Amendment 0004 issued under 621 II solicitation number RFP-797-FSS-04-0001-R3. Please refer to the continuation pages for a chart summarizing these changes followed by the full text of all added and revised regulations. |
| 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 STANDARD FORM 30 (REV. 11/2016)APPROVED BY OIRM 11-84 Prescribed by GSA FAR (48 CFR) 53.243 |

| **NEW REGULATION** | **OLD REGULATION** |
| --- | --- |
| **52.204-10** Reporting Executive Compensation and First-Tier Subcontract Awards (Oct 2018) | **52.204-10** Reporting Executive Compensation and First-Tier Subcontract Awards (Oct 2016) |
| **52.204-13** System for Award Management Maintenance (Oct 2018) | **52.204-13** System for Award Management Maintenance (Oct 2016) |
| **52.204-25** Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (Aug 2019) | ***ADDED*** |
| **52.209-9** Updates of Publicly Available Information Regarding Responsibility Matters (Oct 2018) | **52.209-9** Updates of Publicly Available Information Regarding Responsibility Matters (Jul 2013) |
| **52.212-4** Contract Terms and Conditions - Commercial Items (Oct 2018, Tailored, Notes) | **52.212-4** Contract Terms and Conditions - Commercial Items (Jan 2017, Tailored, Notes-Jun 2018) |
| **52.212-5** Contract Terms & Conditions Required to Implement Statutes or Exec. Orders - Commercial Items (Jan 2020, Notes) | **52.212-5** Contract Terms & Conditions Required to Implement Statutes or Exec. Orders - Commercial Items (Jan 2018, Notes - Aug 2018) |
| **52.216-32** Task-Order and Delivery-Order Ombudsman (Sep 2019, Alt I - Sep 2019) | ***ADDED*** |
| **52.217-8** Option to Extend Services (Nov 1999) | **52.217-8** Option to Extend Services (Nov 1999) - note |
| **52.217-9** Option to Extend the Term of the Contract (Mar 2000, Tailored – Feb 2020) | **52.217-9** Option to Extend the Term of the Contract (Mar 2000, Tailored) |
| **52.219-8** Utilization of Small Business Concerns (Oct 2018) | **52.219-8** Utilization of Small Business Concerns (Nov 2016) |
| **52.219-27** Notice of Service-Disabled Vet-Owned Small Business Set-Aside (Oct 2019, note) | **52.219-27** Notice of Service-Disabled Vet-Owned Small Business Set-Aside (Nov 2011, note) |
| **52.222-41** Service Contract Labor Standards (Aug 2018) | **52.222-41** Service Contract Labor Standards (May 2014) |
| **52.222-43** Fair Labor Standards Act and Service Contract Labor Standards - Price Adjustment (Multiple Year Option Contracts) (Aug 2018) | **52.222-43** Fair Labor Standards Act and Service Contract Labor Standards - Price Adjustment (Multiple Year Option Contracts) (May 2014) |
| **52.222-50** Combating Trafficking in Persons (Jan 2019) | **52.222-50** Combating Trafficking in Persons (Mar 2015) |
| **52.223-3** Hazardous Material Identification and Material Safety Data (Jan 1997) (Alternate I—Jul 1995) | ***ADDED*** |
| **52.223-11** Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (Jun 2016) | ***ADDED*** |
| **52.223-20** Aerosols (Jun 2016) | ***ADDED*** |
| **52.223-21** Foams (Jun 2016) | ***ADDED*** |
| **52.225-5** Trade Agreements (Oct 2019) | **52.225-5** Trade Agreements (Oct 2016) |
| **52.229-3** Federal, State, and Local Taxes (Feb 2013) | ***ADDED*** |
| **52.232-23** Assignment of Claims (May 2014, Note) | ***ADDED*** |
| **52.232-33** Payment by Electronic Funds Transfer - System for Award Management (Oct 2018) | **52.232-33** Payment by Electronic Funds Transfer - System for Award Management (Jul 2013) |
| **52.247-34** F.O.B. Destination (Nov 1991, Dev May 2003) | ***ADDED*** |
| **52.247-38** F.O.B. Inland Carrier, Point of Exportation (Feb 2006, Deviation Feb 2007) | ***ADDED*** |
| **552.211-73** Marking (Feb 1996) | ***ADDED*** |
| **552.211-75** Preservation, Packaging and Packing (Feb 1996, Alt I May 2003) | ***ADDED*** |
| **552.211-77** Packing List (Feb 1996, Alt I May 2003) | ***ADDED*** |
| **552.212-71** Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items (May 2019) | **552.212-71** Contract Terms and Conditions Applicable to GSA Acquisition of Commercial Items (June 2016)  |
| **552.212-72** Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Items (May 2019) | ***ADDED*** |
| **552.223-70** Hazardous Substances (May 1989) | ***ADDED*** |
| **552.223-71** Nonconforming Hazardous Materials (Sep 1999) | ***ADDED*** |
| **552.223-73** Preservation, Packaging, Packing, Marking and Labeling of Hazardous Materials (HazMat) for Shipments (Jun 2015) | ***ADDED*** |
| ***REMOVED*** | **552.232-79** Payment by Credit Card (May 2003, Note) |
| **552.238-77** Submission and Distribution of Authorized Federal Supply Schedule (FSS) Price Lists (May 2019, Tailored) | **552.238-71** Submission and Distribution of Authorized FSS Schedule Pricelists (Jul 2016, Tailored) |
| **552.238-79** Cancellation (May 2019)  | **552.238-73** Cancellation (Sep 1999)  |
| **552.238-80** Industrial Funding Fee and Sales Reporting (May 2019, Tailored, Notes) | **552.238-74** Industrial Funding Fee and Sales Reporting (Jan 2016, Tailored, Notes)  |
| **552.238-81** Price Reductions (May 2019) | **552.238-75** Price Reductions (July 2016)  |
| **552.238-82** Modifications (Federal Supply Schedule) (May 2019, Alternate I – May 2019, Tailored, Notes) | **552.238-81** Modification (Federal Supply Schedule) (April 2015, Alternate I – Jun 2016, Tailored, Notes) |
| **552.238-84** Discounts for Prompt Payment (May 2019)  | ***ADDED*** |
| **552.238-85** Contractor's Billing Responsibilities (May 2019)  |  **552.232-83** Contractor's Billing Responsibilities (May 2003) |
| **552.238-86** Delivery Schedule (May 2019, Tailored, Notes)  |  **552.211-78** Commercial Delivery Schedule (Multiple Award Schedule) (Feb 1996, Tailored, Notes) |
| **552.238-87** Delivery Prices (May 2019, Tailored, Note) | ***ADDED*** |
| **552.238-88** GSA Advantage! (May 2019) | **I-FSS-597** GSA Advantage! (Sep 2000, Tailored) |
| **552.238-90** Characteristics of Electric Current (May 2019, Note) | **C-FSS-412** Characteristics of Electric Current (May 2000) |
| **552.238-91** Marking and Documentation Requirements for Shipping (May 2019, Note)  | **D-FSS-471** Marking and Documentation Requirements per Shipment (Apr 1984) |
| **552.238-92** Vendor Managed Inventory (VMI) Program (MAS) (May 2019) | **G-FSS-906** Vendor Managed Inventory (VMI) Program (MAS) (Jan 1999) |
| **552.238-94** Accelerated Delivery Requirements (May 2019) | **I-FSS-140-B** Urgent Requirements (Jan 1994) |
| **552.238-98** Clauses for Overseas Coverage (May 2019, Tailored, Note)  | **I-FSS-108** Clauses for Overseas Coverage (May 2000) |
| **552.238-100** Transshipments (May 2019, Note) | **D-FSS-477** Transshipments (Apr 1984) |
| **552.238-101** Foreign Taxes and Duties (May 2019, Notes)  | **I-FSS-314** Foreign Taxes and Duties (Dec 1990, note) |
| **552.238-103** Electronic Commerce (May 2019)  | **I-FSS-599** Electronic Commerce - FACNET (Sep 2006, Tailored) |
| **552.238-104** Dissemination of Information by Contractor (May 2019)  | **I-FSS-680** Dissemination of Information by Contractor (Apr 1984) |
| **552.238-105** Deliveries Beyond the Contractual Period - Placing of Orders (May 2019)  | **G-FSS-910** Deliveries Beyond the Contractual Period - Placing of Orders (Oct 1988) |
| **552.238-106** Interpretation of Contract Requirements (May 2019) | **I-FSS-965** Interpretation of Contract Requirements (Apr 1984) |
| **552.238-112** Definition (Federal Supply Schedules) - Non-Federal Entity (May 2019) | ***ADDED*** |
| **552.238-113** Scope of Contract (Eligible Ordering Activities) (May 2019, Tailored, Note) | **552.238-78** Scope of Contract (Eligible Ordering Activities) (Jul 2016, Tailored, Note) |
| **552.238-114** Use of Federal Supply Schedule Contracts by Non-Federal Entities (May 2019, Note)  | **552.238-79** Use of Federal Supply Schedule Contracts by Non-Federal Entities (Jul 2016, Note) |
| **852.203-70** Commercial Advertising (May 2018) | **852.203-70** Commercial Advertising (Jan 2008) |
| ***REMOVED*** | **852.203-71** Display of Dept. of Veterans Affairs Hotline Poster (Dec 1992, Note) |
| **852.232-72** Electronic Submission of Payment Requests (Nov 2018, Note) | **852.232-72** Electronic Submission of Payment Requests (Nov 2012, Note) |
| **852.237-70** Indemnification and Medical Liability Insurance (Oct 2019) | **852.237-7** Indemnification & Medical Liability Insurance (Oct 1996) |
| ***REMOVED*** | **852.237-70** Contractor Responsibilities (Apr 1984) |
| **D-FSS-440** Preservation, Packaging, Packing, and Marking and Labeling of Hazardous Materials (Hazmat) for Surface Shipment (May 1997) | ***ADDED*** |
| **D-FSS-456** Packaging and Packing (Apr 1984) | ***ADDED*** |
| ***REMOVED*** | **I-FSS-918** Imprest Funds (Petty Cash) (May 2000) |

**ADDED REGULATIONS**

**52.204-25 PROHIBITION ON CONTRACTING FOR CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT (AUG 2019)**

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

*Covered foreign country* means The People’s Republic of China.

*Covered telecommunications equipment or services* means-

(1) Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

(2) For the purpose of public safety, security of Government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(3) Telecommunications or video surveillance services provided by such entities or using such equipment; or

(4) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

*Critical technology* means-

(1) Defense articles or defense services included on the United States Munitions List set forth in the International Traffic in Arms Regulations under subchapter M of chapter I of title 22, Code of Federal Regulations;

(2) Items included on the Commerce Control List set forth in Supplement No. 1 to part 774 of the Export Administration Regulations under subchapter C of chapter VII of title 15, Code of Federal Regulations, and controlled—

(i) Pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear nonproliferation, or missile technology; or

(ii) For reasons relating to regional stability or surreptitious listening;

(3) Specially designed and prepared nuclear equipment, parts and components, materials, software, and technology covered by part 810 of title 10, Code of Federal Regulations (relating to assistance to foreign atomic energy activities);

(4) Nuclear facilities, equipment, and material covered by part 110 of title 10, Code of Federal Regulations (relating to export and import of nuclear equipment and material);

(5) Select agents and toxins covered by part 331 of title 7, Code of Federal Regulations, part 121 of title 9 of such Code, or part 73 of title 42 of such Code; or

(6) Emerging and foundational technologies controlled pursuant to section 1758 of the Export Control Reform Act of 2018 (50 U.S.C. 4817).

*Substantial or essential component* means any component necessary for the proper function or performance of a piece of equipment, system, or service.

(b) *Prohibition.* Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115-232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in Federal Acquisition Regulation 4.2104.

(c*) Exceptions.* This clause does not prohibit contractors from providing—

(1) A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(2) Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(d) *Reporting requirement.*

(1) In the event the Contractor identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the Contractor is notified of such by a subcontractor at any tier or by any other source, the Contractor shall report the information in paragraph (d)(2) of this clause to the Contracting Officer, unless elsewhere in this contract are established procedures for reporting the information; in the case of the Department of Defense, the Contractor shall report to the website at <https://dibnet.dod.mil>. For indefinite delivery contracts, the Contractor shall report to the Contracting Officer for the indefinite delivery contract and the Contracting Officer(s) for any affected order or, in the case of the Department of Defense, identify both the indefinite delivery contract and any affected orders in the report provided at <https://dibnet.dod.mil>.

(2) The Contractor shall report the following information pursuant to paragraph (d)(1)of this clause:

(i) Within one business day from the date of such identification or notification: the contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

(ii) Within 10 business days of submitting the information in paragraph (d)(2)(i)of this clause: any further available information about mitigation actions undertaken or recommended. In addition, the Contractor shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) *Subcontracts.* The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments, including subcontracts for the acquisition of commercial items.

**52.216-32 TASK-ORDER AND DELIVERY-ORDER OMBUDSMAN (SEP 2019, ALTERNATE I – SEP 2019)**

(a) In accordance with [41 U.S.C. 4106](https://www.govinfo.gov/content/pkg/USCODE-2017-title41/html/USCODE-2017-title41-subtitleI-divsnC-chap41-sec4106.htm)(g), the Agency has designated the following task-order and delivery-order Ombudsman for this contract. The Ombudsman must review complaints from the Contractor concerning all task-order and delivery-order actions for this contract and ensure the Contractor is afforded a fair opportunity for consideration in the award of orders, consistent with the procedures in the contract.

D. Edward Keller, Jr.
810 Vermont Ave NW/003A2
Washington DC 20420

variskmanagement@va.gov

<https://www.va.gov/oal/business/ombudsman.asp>

 (b) Consulting an ombudsman does not alter or postpone the timeline for any other process (e.g., protests).

(c) Before consulting with the Ombudsman, the Contractor is encouraged to first address complaints with the Contracting Officer for resolution. When requested by the Contractor, the Ombudsman may keep the identity of the concerned party or entity confidential, unless prohibited by law or agency procedure.

(d) Contracts used by multiple agencies.

(1) This is a contract that is used by multiple agencies. Complaints from Contractors concerning orders placed under contracts used by multiple agencies are primarily reviewed by the task-order and delivery-order Ombudsman for the ordering activity.

(2) The ordering activity has designated the following task-order and delivery-order Ombudsman for this order:

[*The ordering activity's contracting officer to insert the name, address, telephone number, and email address for the ordering activity's Ombudsman or provide the URL address where this information may be found.*]

(3) Before consulting with the task-order and delivery-order Ombudsman for the ordering activity, the Contractor is encouraged to first address complaints with the ordering activity's Contracting Officer for resolution. When requested by the Contractor, the task-order and delivery-order Ombudsman for the ordering activity may keep the identity of the concerned party or entity confidential, unless prohibited by law or agency procedure.

**52.223-3 HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (JAN 1997) (ALTERNATE I—JUL 1995)**

***NOTE: For the purposes of this solicitation, this clause refers to the delivery of supplies, consumables and shipping items necessary for the performance of tests.***

(a) Hazardous material, as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

(b) The offeror must list any hazardous material, as defined in paragraph (a) of this clause, to be delivered under this contract. The hazardous material shall be properly identified and include any applicable identification number, such as National Stock Number or Special Item Number. This information shall also be included on the Material Safety Data Sheet submitted under this contract.

***Note: Indicate “None” in the section below if the items offered under this solicitation do not contain hazardous materials.***

|  |  |
| --- | --- |
| **Material(If none, insert None)** | **Identification No.** |
|       |       |
|       |       |
|       |       |

(c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.

(d) The apparently successful offeror agrees to submit, for each item as required prior to award, a Material Safety Data Sheet, meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous material identified in paragraph (b) of this clause. Data shall be submitted in accordance with Federal Standard No. 313, whether or not the apparently successful offeror is the actual manufacturer of these items. Failure to submit the Material Safety Data Sheet prior to award may result in the apparently successful offeror being considered nonresponsible and ineligible for award.

(e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.

(f) Neither the requirements of this clause nor any act or failure to act by the Government shall relieve the Contractor of any responsibility or liability for the safety of Government, Contractor, or subcontractor personnel or property.

(g) Nothing contained in this clause shall relieve the Contractor from complying with applicable Federal, State, and local laws, codes, ordinances, and regulations (including the obtaining of licenses and permits) in connection with hazardous material.

(h) The Government's rights in data furnished under this contract with respect to hazardous material are as follows:

 (1) To use, duplicate and disclose any data to which this clause is applicable. The purposes of this right are to—

 (i) Apprise personnel of the hazards to which they may be exposed in using, handling, packaging, transporting, or disposing of hazardous materials;

 (ii) Obtain medical treatment for those affected by the material; and

 (iii) Have others use, duplicate, and disclose the data for the Government for these purposes.

 (2) To use, duplicate, and disclose data furnished under this clause, in accordance with subparagraph (h)(1) of this clause, in precedence over any other clause of this contract providing for rights in data.

 (3) The Government is not precluded from using similar or identical data acquired from other sources.

(i) Except as provided in paragraph (i)(2) the Contractor shall prepare and submit a sufficient number of Material Safety Data Sheets (MSDS's), meeting the requirements of 29 CFR 1910.1200(g) and the latest version of Federal Standard No. 313, for all hazardous materials identified in paragraph (b) of this clause.

 (1) For items shipped to consignees, the Contractor shall include a copy of the MSDS with the packing list or other suitable shipping document which accompanies each shipment. Alternatively, the Contractor is permitted to transmit MSDS's to consignees in advance of receipt of shipments by consignees, if authorized in writing by the Contracting Officer.

 (2) For items shipped to consignees identified by mailing address as agency depots, distribution centers or customer supply centers, the Contractor shall provide one copy of the MSDS's in or on each shipping container. If affixed to the outside of each container, the MSDS must be placed in a weather resistant envelope.

**52.223-11 OZONE-****DEPLETING SUBSTANCES AND HIGH GLOBAL WARMING POTENTIAL HYDROFLUOROCARBONS (JUN 2016)**

***NOTE: For the purposes of this solicitation, this clause refers to the delivery of supplies, consumables and shipping items necessary for the performance of tests.***

(a) Definition. As used in this clause–

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

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

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

“Ozone-depleting substance,” means any substance the Environmental Protection Agency designates in 40 CFR Part 82 as—

(1) Class I, including, but not limited to, chlorofluorocarbons, halons, carbon tetrachloride, and methyl chloroform; or

(2) Class II, including, but not limited to, hydrochlorofluorocarbons.

(b) The Contractor shall label products that contain or are manufactured with ozone-depleting substances in the manner and to the extent required by [42 U.S.C. 7671j](http://uscode.house.gov/) (b), (c), (d), and (e) and 40 CFR part 82, subpart E, as follows:

Warning

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

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

(c) Reporting. For equipment and appliances that normally each contain 50 or more pounds of hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons, the Contractor shall–

(1) Track on an annual basis, between October 1 and September 30, the amount in pounds of hydrofluorocarbons or refrigerant blends containing hydrofluorocarbons contained in the equipment and appliances delivered to the Government under this contract by–

(i) Type of hydrofluorocarbon (e.g., HFC-134a, HFC-125, R-410A, R-404A, etc.);

(ii) Contract number; and

(iii) Equipment/appliance;

(2) Report that information to the Contracting Officer for FY16 and to [www.sam.gov](https://www.acquisition.gov/sites/default/files/current/far/html/www.sam.gov), for FY17 and after–

(i) Annually by November 30 of each year during contract performance; and

(ii) At the end of contract performance.

(d) The Contractor shall refer to EPA's SNAP program (available at [http://www.epa.gov/snap](https://www.epa.gov/snap)) to identify alternatives. The SNAP list of alternatives is found at 40 CFR part 82 subpart G with supplemental tables available at [http://www.epa.gov/snap](https://www.epa.gov/snap).

**52.223-20** **AEROSOLS (JUN 2016)**

***NOTE: For the purposes of this solicitation, this clause refers to the delivery of supplies, consumables and shipping items necessary for the performance of tests.***

(a) Definitions. As used in this clause–

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

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

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

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

(1) In-use emission rates, energy efficiency;

(2) Safety, such as flammability or toxicity;

(3) Ability to meet technical performance requirements; and

(4) Commercial availability at a reasonable cost.

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

**52.223-****21 FOAMS (JUN 2016)**

***NOTE: For the purposes of this solicitation, this clause refers to the delivery of supplies, consumables and shipping items necessary for the performance of tests.***

 (a) Definitions. As used in this clause–

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

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

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

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

(1) In-use emission rates, energy efficiency, and safety;

(2) Ability to meet performance requirements; and

(3) Commercial availability at a reasonable cost.

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

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

(a) As used in this clause-

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

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

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

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

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

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

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

(i) Included in the contract price; nor

(ii) Reimbursed.

(c) The contract price shall be increased by the amount of any after-imposed Federal tax, provided the Contractor warrants in writing that no amount for such newly imposed Federal excise tax or duty or rate increase was included in the contract price, as a contingency reserve or otherwise.

(d) The contract price shall be decreased by the amount of any after-relieved Federal tax.

(e) The contract price shall be decreased by the amount of any Federal excise tax or duty, except social security or other employment taxes, that the Contractor is required to pay or bear, or does not obtain a refund of, through the Contractor’s fault, negligence, or failure to follow instructions of the Contracting Officer.

(f) No adjustment shall be made in the contract price under this clause unless the amount of the adjustment exceeds $250.

(g) The Contractor shall promptly notify the Contracting Officer of all matters relating to any Federal excise tax or duty that reasonably may be expected to result in either an increase or decrease in the contract price and shall take appropriate action as the Contracting Officer directs.

(h) The Government shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Contractor requests such evidence and a reasonable basis exists to sustain the exemption.

**52.232-23 ASSI****GNMENT OF CLAIMS (MAY 2014)**

***Note: Please note that paragraph (a) of this clause is replaced by language set forth in clause 552.232-23 Assignment of Claims located in the Regulations Incorporated by Reference section of this Document (incorporated under 552.212-71).***

 (a) The Contractor, under the Assignment of Claims Act, as amended, [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), [41 U.S.C. 6305](http://uscode.house.gov/) (hereafter referred to as “the Act”), may assign its rights to be paid amounts due or to become due as a result of the performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.

(b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this contract, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this contract.

(c) The Contractor shall not furnish or disclose to any assignee under this contract any classified document (including this contract) or information related to work under this contract until the Contracting Officer authorizes such action in writing.

**52.247-34 F.O.B. DESTINATION (NOV 1991) (DEVIATION – MAY 2003)**

***NOTE: For the purposes of this solicitation, this clause refers to the delivery of supplies, consumables and shipping items necessary for the performance of tests.***

 (a) The term "f.o.b. destination," as used in this clause, means—

 (1) Free of expense to the ordering activity, on board the carrier's conveyance, at a specified delivery point where the consignee's facility (plant, warehouse, store, lot, or other location to which shipment can be made) is located; and

 (2) Supplies shall be delivered to the destination consignee's wharf (if destination is a port city and supplies are for export), warehouse unloading platform, or receiving dock, at the expense of the Contractor. The ordering activity shall not be liable for any delivery, storage, demurrage, accessorial, or other charges involved before the actual delivery (or "constructive placement" as defined in carrier tariffs) of the supplies to the destination, unless such charges are caused by an act or order of the ordering activity acting in its contractual capacity. If rail carrier is used, supplies shall be delivered to the specified unloading platform of the consignee. If motor carrier (including "piggyback") is used, supplies shall be delivered to truck tailgate at the unloading platform of the consignee, except when the supplies delivered meet the requirements of Item 568 of the National Motor Freight Classification for "heavy or bulky freight." When supplies meeting the requirements of the referenced Item 568 are delivered, unloading (including movement to the tailgate) shall be performed by the consignee, with assistance from the truck driver, if requested. If the Contractor uses rail carrier or freight forwarder for less than carload shipments, the Contractor shall ensure that the carrier will furnish tailgate delivery, when required, if transfer to truck is required to complete delivery to consignee.

(b) The Contractor shall—

 (1) (i) Pack and mark the shipment to comply with contract specifications; or

 (ii) In the absence of specifications, prepare the shipment in conformance with carrier requirements;

 (2) Prepare and distribute commercial bills of lading;

 (3) Deliver the shipment in good order and condition to the point of delivery specified in the contract;

 (4) Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the consignee at the delivery point specified in the contract;

 (5) Furnish a delivery schedule and designate the mode of delivering carrier; and

 (6) Pay and bear all charges to the specified point of delivery.

**52.247-38 F.o.b. Inland Carrier, Point of Exportation (FEB 2006) (DEVIATION – FEB 2007)**

***NOTE: For the purposes of this solicitation, this clause refers to the delivery of supplies, consumables and shipping items necessary for the performance of tests.***

 (a) The term “f.o.b. inland carrier, point of exportation,” as used in this clause, means free of expense to the ordering activity, on board the conveyance of the inland carrier, delivered to the specified point of exportation.

(b) The Contractor shall—

 (1) (i) Pack and mark the shipment to comply with contract specifications; or

(ii) In the absence of specifications, prepare the shipment for ocean transportation in conformance with carrier requirements to protect the goods and to ensure assessment of the lowest applicable transportation charge;

 (2) Prepare and distribute commercial bills of lading or other transportation receipt;

 (3) (i) Deliver the shipment in good order and condition in or on the conveyance of the carrier on the date or within the period specified; and

(ii) Pay and bear all applicable charges, including transportation costs, to the point of delivery specified in the contract;

 (4) Be responsible for any loss of and/or damage to the goods occurring before delivery of the shipment to the point of delivery in the contract; and

 (5) At the ordering activity’s request and expense, assist in obtaining the documents required for—

(i) Exportation; or

(ii) Importation at destination.

**552.211-73 MARKING (FEB 1996)**

***NOTE: For the purposes of this solicitation, this clause refers to the delivery of supplies, consumables and shipping items necessary for the performance of tests.***

 (a) *General requirements*. Interior packages, if any, and exterior shipping containers shall be marked as specified elsewhere in the contract. Additional marking requirements may be specified on delivery orders issued under the contract. If not otherwise specified, interior packages and exterior shipping containers shall be marked in accordance with the following standards.

 (1) *Deliveries to civilian activities.* Supplies shall be marked in accordance with Federal Standard 123, edition in effect on the date of issuance of the solicitation.

 (2) *Deliveries to military activities*. Supplies shall be marked in accordance with Military Standard 129, edition in effect on the date of issuance of the solicitation.

(b) *Improperly marked material*. When Government inspection and acceptance are at destination, and delivered supplies are not marked in accordance with contract requirements, the Government has the right, without prior notice to the Contractor to perform the required marking, by contract or otherwise, and charge the Contractor, therefore at the rate specified elsewhere in this contract. This right is not exclusive, and is in addition to other rights or remedies provided for in this contract.

**552.211-75 PRESERVATION, PACKAGING, AND PACKING (FEB 1996)** **(ALTERNATE I - MAY 2003)**

***NOTE: For the purposes of this solicitation, this clause refers to the delivery of supplies, consumables and shipping items necessary for the performance of tests.***

Unless otherwise specified, all items shall be preserved, packaged, and packed in accordance with normal commercial practices, as defined in the applicable commodity specification. Packaging and packing shall comply with the requirements of the Uniform Freight Classification and the National Motor Freight Classification (issue in effect at time of shipment) and each shipping container of each item in a shipment shall be of uniform size and content, except for residual quantities. Where special or unusual packing is specified in an order, but not specifically provided for by the contract, such packing details must be the subject of an agreement independently arrived at between the ordering activity and the Contractor.

**552.211-77 PACKING LIST (FEB 1996)** **(ALTERNATE I — MAY 2003)**

***NOTE: For the purposes of this solicitation, this clause refers to the delivery of supplies, consumables and shipping items necessary for the performance of tests.***

 (a) A packing list or other suitable shipping document shall accompany each shipment and shall indicate: (1) Name and address of consignor; (2) Name and complete address of consignee; (3) Ordering activity order or requisition number; (4) Government bill of lading number covering the shipment (if any); and (5) Description of the material shipped, including item number, quantity, number of containers, and package number (if any).

(b) When payment will be made by Ordering activity commercial credit card, in addition to the information in (a) above, the packing list or shipping document shall include: (1) Cardholder name and telephone number; and (2) the term "Credit Card."

**552.212-72 CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO GSA ACQUISITION OF COMMERCIAL ITEMS (MAY 2019)**

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:

(a) *Provisions.*

(b) *Clauses.* ***NOTE: For the purposes of this solicitation, these clauses apply to the delivery of supplies, consumables and shipping items necessary for the performance of tests.***

552.223-70 Hazardous Substances

552.223-71 Nonconforming Hazardous Material

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

**552.223-70 HAZARDOUS SUBSTANCES (MAY 1989)**

***NOTE: For the purposes of this solicitation, this clause refers to the delivery of supplies, consumables and shipping items necessary for the performance of tests.***

 (a) If the packaged items to be delivered under this contract are of a hazardous substance and ordinarily are intended or considered to be for use as a household item, this contract is subject to the Federal Hazardous Substances Act, as amended (15 U.S.C. 1261-1276), implementing regulations thereof (16 CFR Chapter II(c)), and Federal Standard No. 123, Marking for Shipment (Civil Agencies), issue in effect on the date of this solicitation.

(b) The packaged items to be delivered under this contract are subject to the preparation of shipping documents, the preparation of items for transportation, shipping container construction, package making, package labeling, when required, shipper's certification of compliance, and transport vehicle placarding in accordance with Parts 171 through 178 of 49 CFR and the Hazardous Materials Transportation Act.

(c) The minimum packaging acceptable for packaging Department of Transportation regulated hazardous materials shall be those in 49 CFR 173.

**552.223-71 NONCONFORMING** **HAZARDOUS MATERIALS (SEP 1999)**

***NOTE: For the purposes of this solicitation, this clause refers to the delivery of supplies, consumables and shipping items necessary for the performance of tests.***

 (a) Nonconforming supplies that contain hazardous material or that may expose persons who handle or transport the supplies to hazardous material and which require replacement under the inspection and/or warranty clauses of this contract shall be reshipped to the Contractor at the Contractor's expense. The Contractor agrees to accept return of these nonconforming supplies and to pay all costs occasioned by their return.

(b) "Hazardous materials," as used in this clause, includes any material defined as hazardous under the latest version of Federal Standard No. 313 (including revisions adopted during the term of the contract).

(c) If the Contractor fails to provide acceptable disposition instructions for the nonconforming supplies within 10 days from the date of the Government's request (or such longer period as may be agreed to between the Contracting Officer and the Contractor), or fails to accept return of the reshipped nonconforming supplies, such failure: (1) may be interpreted as a willful failure to perform, (2) may result in termination of the contract for default and (3) shall be considered by the Contracting Officer in determining the responsibility of the Contractor for any future award (see FAR 9.104‑3(b) and 9.406‑2).

(d) Pending final resolution of any dispute, the Contractor shall promptly comply with the decision of the Contracting Officer.

**552.223-73 PRESERVATION****, PACKAGING, PACKING, MARKING AND LABELING OF HAZARDOUS MATERIALS (HAZMAT) FOR SHIPMENTS (JUN 2015)**

***NOTE: For the purposes of this solicitation, this clause refers to the delivery of supplies, consumables and shipping items necessary for the performance of tests.***

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.

**552.238-84 DISCOUNTS FOR PROMPT PAYMENT (MAY 2019)**

 (a)  Discounts for early payment (hereinafter referred to as “discounts” or “the discount”) will be considered in evaluating the relationship of the Offeror's concessions to the Government vis-a-vis the Offeror's concessions to its commercial and Federal non-schedule customers, but only to the extent indicated in this clause.

 (b)  Discounts will not be considered to determine the low Offeror in the situation described in the “Offers on Identical Products” provision of this solicitation.

 (c)  Uneconomical discounts will not be considered as meeting the criteria for award established by the Government. In this connection, a discount will be considered uneconomical if the annualized rate of return for earning the discount is lower than the “value of funds” rate established by the Department of the Treasury and published quarterly in the Federal Register. The “value of funds” rate applied will be the rate in effect on the date specified for the receipt of offers.

 (d)  Discounts for early payment may be offered either in the original offer or on individual invoices submitted under the resulting contract. Discounts offered will be taken by the ordering activity if payment is made within the discount period specified.

 (e)  Discounts that are included in offers become a part of the resulting contracts and are binding on the Contractor for all orders placed under the contract. Discounts offered only on individual invoices will be binding on the Contractor only for the particular invoice on which the discount is offered.

 (f)  In connection with any discount offered for prompt 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 date on which an electronic funds transfer was made.

**552.238-87 DELIVERY PRICES (MAY 2019) (TAILORED)**

***NOTE: For the purposes of this solicitation, this clause refers to the delivery of supplies, consumables and shipping items necessary for the performance of tests.***

 (a)  Prices offered must cover delivery as provided below to destinations located within the 48 contiguous States and the District of Columbia.

(1)  Delivery to the door of the specified Government activity by freight or express common carriers on articles for which store-door delivery is provided, free or subject to a charge, pursuant to regularly published tariffs duly filed with the Federal and/or State regulatory bodies governing such carrier; or, at the option of the Contractor, by parcel post on mailable articles, or by the Contractor's vehicle. Where store-door delivery is subject to a charge, the Contractor shall place the notation “Delivery Service Requested” on bills of lading covering such shipments, and pay such charge and add the actual cost thereof as a separate item to his invoice.

(2)  Delivery to siding at destinations when specified by the ordering office, if delivery is not covered under paragraph (a)(1) of this section.

(3)  Delivery to the freight station nearest destination when delivery is not covered under paragraph (a)(1) or (2) of this section.

(b)  The Offeror is requested to indicate below whether or not prices submitted cover delivery f.o.b. destination in Alaska, Hawaii, and the Commonwealth of Puerto Rico.

|  |  |  |
| --- | --- | --- |
|  | **Commercial Terms****(Yes) (No)** | **Proposed Government Terms****(Yes) (No)** |
| Alaska | ***[ ]  [ ]***  | ***[ ]  [ ]***  |
| Hawaii | ***[ ]  [ ]***  | ***[ ]  [ ]***  |
| Puerto Rico | ***[ ]  [ ]***  | ***[ ]  [ ]***  |

(c)  When deliveries are made to destinations outside the contiguous 48 States; i.e., Alaska, Hawaii, and the Commonwealth of Puerto Rico, and are not covered by paragraph (b), above, the following conditions will apply:

(1) Delivery will be f.o.b. inland carrier, point of exportation (FAR 52.247-38), with the transportation charges to be paid by the Government from point of exportation to destination in Alaska, Hawaii, or the Commonwealth of Puerto Rico, as designated by the ordering office. The Contractor shall add the actual cost of transportation to destination from the point of exportation in the 48 contiguous States nearest to the designated destination. Such costs will, in all cases, be based upon the lowest regularly established rates on file with the Interstate Commerce Commission, the U.S. Maritime Commission (if shipped by water), or any State regulatory body, or those published by the U.S. Postal Service; and must be supported by paid freight or express receipt or by a statement of parcel post charges including weight of shipment.

(2)  The right is reserved to ordering agencies to furnish Government bills of lading.

**552.238-112 DEFINITION (FEDERAL SUPPLY SCHEDULES) - NON-FEDERAL ENTITY (MAY 2019)**

Ordering activity (also called “ordering agency” and “ordering office”) means an eligible ordering activity (see [552.238-113](https://www.acquisition.gov/content/part-552-solicitation-provisions-and-contract-clauses#id195K8300P4V)), authorized to place orders under Federal Supply Schedule contracts.

**D-FSS-440 PRESERVATION, PACKAGING, PACKING, AND MARKING AND LABELING OF HAZARDOUS MATERIALS (HAZMAT) FOR SURFACE SHIPMENT (MAY 1997)**

***NOTE: For the purposes of this solicitation, this clause refers to the delivery of supplies, consumables and shipping items necessary for the performance of tests.***

(a) Preservation, packaging, packing, and marking and labeling of domestic and overseas HAZMAT SURFACE SHIPMENTS shall comply with all requirements of the following:

(1) International Maritime Dangerous Goods (IMDG) Code established by the International Maritime Organization;

 (2) 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 “Combustible” and “ORM,” shall not be used);

 (3) Occupational Safety and Health Administration (OSHA) Regulation 29 CFR Part 1910.1200; and

 (4) Any preservation, packaging, packing, and marking and labeling requirements contained elsewhere in this solicitation.

(b) The test reports showing compliance with packaging requirements shall be made available to GSA contract administration/management representatives upon request.

**D-FSS-456 PACKAGING AND PACKING (APR 1984)**

***NOTE: For the purposes of this solicitation, this clause refers to the delivery of supplies, consumables and shipping items necessary for the performance of tests.***

(a) Packaging. Shall be in accordance with accepted commercial practice.

(b) Packing. Shall be packed to ensure carrier acceptance and safe delivery to the destination in containers complying with rules and regulations applicable to the mode of transportation.

**REVISED REGULATIONS**

**52.204-10** **REPORTING EXECUTIVE COMPENSATION AND FIRST-TIER SUBCONTRACT AWARDS (OCT 2018)**

(a) Definitions. As used in this clause:

“Executive” means officers, managing partners, or any other employees in management positions.

“First-tier subcontract” means a subcontract awarded directly by the Contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the Contractor’s supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts and/or the costs of which are normally applied to a Contractor’s general and administrative expenses or indirect costs.

“Month of award” means the month in which a contract is signed by the Contracting Officer or the month in which a first-tier subcontract is signed by the Contractor.

“Total compensation” means the cash and noncash dollar value earned by the executive during the Contractor’s preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

(1) Salary and bonus.

(2) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Financial Accounting Standards Board’s Accounting Standards Codification (FASB ASC) 718, Compensation-Stock Compensation.

(3) Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

(4) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

(5) Above-market earnings on deferred compensation which is not tax-qualified.

(6) Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds $10,000.

(b) Section 2(d)(2) of the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), as amended by section 6202 of the Government Funding Transparency Act of 2008 (Pub. L. 110-252), requires the Contractor to report information on subcontract awards. The law requires all reported information be made public, therefore, the Contractor is responsible for notifying its subcontractors that the required information will be made public.

(c) Nothing in this clause requires the disclosure of classified information

(d) (1) Executive compensation of the prime contractor. As a part of its annual registration requirement in the System for Award Management (SAM) (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—

(i) In the Contractor’s preceding fiscal year, the Contractor received—

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

(B) $25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 ([15 U.S.C. 78m(a), 78o(d)](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>.)

(2) First-tier subcontract information. Unless otherwise directed by the contracting officer, or as provided in paragraph (g) 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.)

(i) Unique entity identifier for the subcontractor receiving the award and for the subcontractor’s parent company, if the subcontractor has a parent company.

(ii) Name of the subcontractor.

(iii) Amount of the subcontract award.

(iv) Date of the subcontract award.

(v) A description of the products or services (including construction) being provided under the subcontract, including the overall purpose and expected outcomes or results of the subcontract.

(vi) Subcontract number (the subcontract number assigned by the Contractor).

(vii) Subcontractor’s physical address including street address, city, state, and country. Also include the nine-digit zip code and congressional district.

(viii) Subcontractor’s primary performance location including street address, city, state, and country. Also include the nine-digit zip code and congressional district.

(ix) The prime contract number, and order number if applicable.

(x) Awarding agency name and code.

(xi) Funding agency name and code.

(xii) Government contracting office code.

(xiii) Treasury account symbol (TAS) as reported in FPDS.

(xiv) The applicable North American Industry Classification System code (NAICS).

(3) Executive compensation of the first-tier subcontractor. Unless otherwise directed by the Contracting Officer, by the end of the month following the month of award of a first-tier subcontract with a value of $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—

(i) In the subcontractor’s preceding fiscal year, the subcontractor received—

(A) 80 percent or more of its annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

(B) $25,000,000 or more in annual gross revenues from Federal contracts (and subcontracts), loans, grants (and subgrants), cooperative agreements, and other forms of Federal financial assistance; and

(ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

(e) The Contractor shall not split or break down first-tier subcontract awards to a value less than $30,000 to avoid the reporting requirements in paragraph (d) of this clause.

(f) The Contractor is required to report information on a first-tier subcontract covered by paragraph (d) when the subcontract is awarded. Continued reporting on the same subcontract is not required unless one of the reported data elements changes during the performance of the subcontract. The Contractor is not required to make further reports after the first-tier subcontract expires.

(g) (1) If the Contractor in the previous tax year had gross income, from all sources, under $300,000, the Contractor is exempt from the requirement to report subcontractor awards.

(2) If a subcontractor in the previous tax year had gross income from all sources under $300,000, the Contractor does not need to report awards for that subcontractor.

(h) The FSRS database at [http://www.fsrs.gov](http://www.fsrs.gov/) will be prepopulated with some information from SAM and the FPDS database. If FPDS information is incorrect, the contractor should notify the contracting officer. If the SAM information is incorrect, the contractor is responsible for correcting this information.

**52.204-13** **SYSTEM FOR** **AWARD MANAGEMENT MAINTENANCE (OCT 2018)**

(a) Definitions. As used in this clause.

“Electronic Funds Transfer (EFT) indicator” means a four-character suffix to the unique entity identifier. The suffix is assigned at the discretion of the commercial, nonprofit, or Government entity to establish additional System for Award Management (SAM) records for identifying alternative EFT accounts (see subpart [32.11](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%2032_11.html#wp1043964)) for the same entity.

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

(1) The Contractor has entered all mandatory information, including the unique entity identifier and the EFT indicator (if applicable), the Commercial and Government Entity (CAGE) code, as well as data required by the Federal Funding Accountability and Transparency Act of 2006 (see [subpart 4.14](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%204_14.html#wp1075239)), into SAM;

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

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

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

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

(1) Data collected from prospective Federal awardees required for the conduct of business with the Government;

(2) Prospective contractor-submitted annual representations and certifications in accordance with FAR [subpart 4.12](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%204_12.html#wp1073662); and

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

“Unique entity identifier” means a number or other identifier used to identify a specific commercial, nonprofit, or Government entity. See [www.sam.gov](https://www.acquisition.gov/sites/default/files/current/far/html/www.sam.gov) for the designated entity for establishing unique entity identifiers.

(b) If the solicitation for this contract contained the provision 52.204-7 with its Alternate I, and the Contractor was unable to register prior to award, the Contractor shall be registered in SAM within 30 days after award or before three days prior to submission of the first invoice, whichever occurs first.

(c) The Contractor shall maintain registration in SAM during contract performance and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement. The Contractor is responsible for the currency, accuracy and completeness of the data within SAM, and for any liability resulting from the Government’s reliance on inaccurate or incomplete data. To remain registered in SAM 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 SAM to ensure it is current, accurate and complete. Updating information in SAM does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(d) (1) (i) If a Contractor has legally changed its business name or “doing business as” name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in subpart [42.12](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 SAM;

(B) Comply with the requirements of subpart [42.12](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%2042_12.html#wp1084217) of the FAR; and

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

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

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

(3) The Contractor shall ensure that the unique entity identifier is maintained with the entity designated at [www.sam.gov](https://www.acquisition.gov/sites/default/files/current/far/html/www.sam.gov). for establishment of the unique entity identifier throughout the life of the contract. The Contractor shall communicate any change to the unique entity identifier to the Contracting Officer within 30 days after the change, so an appropriate modification can be issued to update the data on the contract. A change in the unique entity identifier does not necessarily require a novation be accomplished.

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

**52.209-9** **UPDATES OF PUBLICLY AVAILABLE INFORMATION REGARDING RESPONSIBILITY MATTERS (OCT 2018)**

(a) The Contractor shall update the information in the Federal Awardee Performance and Integrity Information System (FAPIIS) on a semi-annual basis, throughout the life of the contract, by posting the required information in the System for Award Management via <https://www.sam.gov>.

(b) As required by section 3010 of the Supplemental Appropriations Act, 2010 (Pub. L. 111-212), all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available. FAPIIS consists of two segments—

(1) The non-public segment, into which Government officials and the Contractor post information, which can only be viewed by—

(i) Government personnel and authorized users performing business on behalf of the Government; or

(ii) The Contractor, when viewing data on itself; and

(2) The publicly-available segment, to which all data in the non-public segment of FAPIIS is automatically transferred after a waiting period of 14 calendar days, except for—

(i) Past performance reviews required by subpart [42.15](http://www.acquisition.gov/far/current/html/Subpart%2042_15.html#wp1075411);

(ii) Information that was entered prior to April 15, 2011; or

(iii) Information that is withdrawn during the 14-calendar-day waiting period by the Government official who posted it in accordance with paragraph (c)(1) of this clause.

(c) The Contractor will receive notification when the Government posts new information to the Contractor’s record.

(1) If the Contractor asserts in writing within 7 calendar days, to the Government official who posted the information, that some of the information posted to the non-public segment of FAPIIS is covered by a disclosure exemption under the Freedom of Information Act, the Government official who posted the information must within 7 calendar days remove the posting from FAPIIS and resolve the issue in accordance with agency Freedom of Information procedures, prior to reposting the releasable information. The contractor must cite [52.209-9](http://www.acquisition.gov/far/current/html/52_207_211.html#wp1145644) and request removal within 7 calendar days of the posting to FAPIIS.

(2) The Contractor will also have an opportunity to post comments regarding information that has been posted by the Government. The comments will be retained as long as the associated information is retained, *i.e.*, for a total period of 6 years. Contractor comments will remain a part of the record unless the Contractor revises them.

(3) As required by section 3010 of Pub. L. 111-212, all information posted in FAPIIS on or after April 15, 2011, except past performance reviews, will be publicly available.

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

**52.212-4 CONTRACT TERMS** **AND CONDITIONS—COMMERCIAL ITEMS (OCT 2018, TAILORED)**

(a) *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—

(1) Within a reasonable time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) *Assignment*. The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act ([31 U.S.C. 3727](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 refer to 52.232-23 Assignment of Claims located within the solicitation document under Part II – Contract Terms and Conditions as well as 552.232-23 Assignment of Claims located in the Regulations Incorporated by Reference section of the solicitation.***

(c) *Changes*. Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) *Disputes*. This contract is subject to [41 U.S.C. chapter 71](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.

(e) *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.

(f) *Excusable delays*. The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) Invoice.

(1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include—

(i) Name and address of the Contractor;

(ii) Invoice date and number;

(iii) Contract number, line item number and, if applicable, the order number;

(iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;

(v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;

(vi) Terms of any discount for prompt payment offered;

(vii) Name and address of official to whom payment is to be sent;

(viii) Name, title, and phone number of person to notify in event of defective invoice; and

(ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.

(x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (*e.g.,*[52.232-33](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.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act ([31 U.S.C. 3903](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.

(h) *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.

(i) Payment.—

(1) *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.

(2) *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.

(3) *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.

(4) *Discount*. In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) *Overpayments*. If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Ordering Activity has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(A) Circumstances of the overpayment (*e.g.*, duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected line item or subline item, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6) *Interest*.

(i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in [41 U.S.C. 7109](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.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) *Final decisions*. The Contracting Officer will issue a final decision as required by [33.211](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%2033_2.html#wp1079912) if—

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see [32.607-2](https://www.acquisition.gov/sites/default/files/current/far/html/Subpart%2032_6.html#wp1031290)).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

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

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in [32.608-2](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.

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

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

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

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

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

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

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

(o) *Warranty*. Tailored – See Addendum to 52.212-4.

(p) *Limitation of liability*. Tailored - See Addendum to 52.212-4

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

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with [31 U.S.C. 1352](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.

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

(1) The schedule of supplies/services.

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

(3) The clause at [52.212-5](https://www.acquisition.gov/sites/default/files/current/far/html/52_212_213.html#wp1203358).

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

(5) Solicitation provisions if this is a solicitation.

(6) Other paragraphs of this clause.

(7) The [Standard Form 1449](https://www.acquisition.gov/sites/default/files/current/far/html/FormsStandard67.html#wp1189284).

(8) Other documents, exhibits, and attachments.

(9) The specification.

(t) *Reserved*

(u) Unauthorized Obligations

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

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

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

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

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

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

**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 (JAN 2020)**

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

(1) [52.203-19](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i52_203-19), Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(2) [52.204-23](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#id189A70O0P1N), Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (*Jul* 2018) (Section 1634 of Pub. L. 115-91).

(3) [52.204-25](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#unique_1843370613), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (*Aug* 2019) (Section 889(a)(1)(A) of Pub. L. 115-232).

(4) [52.209-10](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1062680), Prohibition on Contracting with Inverted Domestic Corporations (*Nov* 2015).

(5) [52.233-3](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1048661), Protest After Award (*Aug* 1996) ([31 U.S.C. 3553](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

(6) [52.233-4](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1048698), 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/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3))).

(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/content/part-52-solicitation-provisions-and-contract-clauses#i1063319), Restrictions on Subcontractor Sales to the Government (*Sept* 2006), with Alternate I (*Oct* 1995) ([41 U.S.C. 4704](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3) and [10 U.S.C. 2402](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

**X**  (2) [52.203-13](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1063504), Contractor Code of Business Ethics and Conduct (*Oct* 2015) ([41 U.S.C. 3509](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3))).

\_\_ (3) [52.203-15](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1063607), 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/content/part-52-solicitation-provisions-and-contract-clauses#i1064087), Reporting Executive Compensation and First-Tier Subcontract Awards (*Oct* 2018) (Pub. L. 109-282) ([31 U.S.C. 6101 note](http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title31-section6101&num=0&edition=prelim)).

\_\_ (5) [Reserved].

\_\_ (6) [52.204-14](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1064214), Service Contract Reporting Requirements (*Oct* 2016) (Pub. L. 111-117, section 743 of Div. C).

**X**  (7) [52.204-15](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1064243), Service Contract Reporting Requirements for Indefinite-Delivery Contracts (*Oct* 2016) (Pub. L. 111-117, section 743 of Div. C).

**X**  (8) [52.209-6](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1062590), Protecting the Government’s Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (*Oct* 2015) ([31 U.S.C. 6101 note](http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title31-section6101&num=0&edition=prelim)).

**X**  (9) [52.209-9](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1062651), Updates of Publicly Available Information Regarding Responsibility Matters (*Oct* 2018) ([41 U.S.C. 2313](http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title41-section2313&num=0&edition=prelim)).

\_\_ (10) [Reserved].

**X**  (11) (i) [52.219-3](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1057314), Notice of HUBZone Set-Aside or Sole-Source Award (*Nov* 2011) ([15 U.S.C.657a](http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title15-section637a&num=0&edition=prelim)). ***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/content/part-52-solicitation-provisions-and-contract-clauses#i1057314).

\_\_ (12) (i) [52.219-4](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1057352), 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/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

\_\_ (ii) Alternate I (*Jan* 2011) of [52.219-4](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1057352).

\_\_ (13) [Reserved]

**X**  (14) (i) [52.219-6](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1057393), Notice of Total Small Business Set-Aside (*Nov* 2011) ([15 U.S.C.644](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)). ***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/content/part-52-solicitation-provisions-and-contract-clauses#i1057419), Notice of Partial Small Business Set-Aside (*June* 2003) ([15 U.S.C. 644](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

\_\_ (ii) Alternate I (*Oct* 1995) of [52.219-7](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1057419).

\_\_ (iii) Alternate II (*Mar* 2004) of [52.219-7](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1057419).

**X**  (16) [52.219-8](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i52_219-8), Utilization of Small Business Concerns (*Oct* 2018) ([15 U.S.C. 637(d)(2)](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3) and (3)).

\_\_ (17) (i) [52.219-9](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i52_219-9), Small Business Subcontracting Plan (*Aug* 2018) ([15 U.S.C. 637(d)(4)](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3))

\_\_ (ii) Alternate I (*Nov* 2016) of [52.219-9](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i52_219-9).

**X**  (iii) Alternate II (*Nov* 2016) of [52.219-9](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i52_219-9).

\_\_ (iv) Alternate III (*Nov* 2016) of [52.219-9](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i52_219-9).

\_\_ (v) Alternate IV (Aug 2018) of [52.219-9](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i52_219-9)

\_\_ (18) [52.219-13](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1057715), Notice of Set-Aside of Orders (*Nov* 2011) ([15 U.S.C. 644(r)](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)). ***Note: This clause is included in full text within this solicitation.***

**X**  (19) [52.219-14](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1057730), Limitations on Subcontracting (*Jan* 2017) ([15 U.S.C.637(a)(14)](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)). ***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/content/part-52-solicitation-provisions-and-contract-clauses#i1057758), Liquidated Damages-Subcontracting Plan (*Jan* 1999) ([15 U.S.C. 637(d)(4)(F)(i)](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

**X**  (21) [52.219-27](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1057823), Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (*Oct* 2019) ([15 U.S.C. 657f](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)). ***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/content/part-52-solicitation-provisions-and-contract-clauses#i1057874), Post Award Small Business Program Rerepresentation (*Jul* 2013) ([15 U.S.C. 632(a)(2)](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

­ **X**  (23) [52.219-29](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1057902), 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/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)). ***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/content/part-52-solicitation-provisions-and-contract-clauses#i1057947), 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/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)). ***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/content/part-52-solicitation-provisions-and-contract-clauses#i1055332), Convict Labor (*June* 2003) (E.O.11755).

**\_**  (26) [52.222-19](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1055664), Child Labor-Cooperation with Authorities and Remedies (Jan 2020) (E.O.13126).

**X**  (27) [52.222-21](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1055713), Prohibition of Segregated Facilities (*Apr* 2015).

**X**  (28) (i) [52.222-26](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1055793), Equal Opportunity (*Sept* 2016) (E.O.11246).

\_\_ (ii) Alternate I (*Feb* 1999) of [52.222-26](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1055793).

**X**  (29) (i) [52.222-35](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1056230), Equal Opportunity for Veterans (*Oct* 2015) ([38 U.S.C. 4212](http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title38-section4212&num=0&edition=prelim)).

\_\_ (ii) Alternate I (*July* 2014) of [52.222-35](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1056230).

**X**  (30) (i) [52.222-36](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1056250), Equal Opportunity for Workers with Disabilities (*Jul* 2014) ([29 U.S.C.793](http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title29-section793&num=0&edition=prelim)).

\_\_ (ii) Alternate I (July 2014) of [52.222-36](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1056250).

**X**  (31) [52.222-37](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1056265), Employment Reports on Veterans (*Feb 2016*) ([38 U.S.C. 4212](http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title38-section4212&num=0&edition=prelim)).

**X**  (32) [52.222-40](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1056304), 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/content/part-52-solicitation-provisions-and-contract-clauses#i1056535), Combating Trafficking in Persons (*Jan* 2019) ([22 U.S.C. chapter 78](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3) and E.O. 13627).

\_\_ (ii) Alternate I (*Mar* 2015) of [52.222-50](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1056535) ([22 U.S.C. chapter 78](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3) and E.O. 13627).

**X**  (34) [52.222-54](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1056753), 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/content/part-22-application-labor-laws-government-acquisitions#i1095479).)

\_\_ (35) (i) [52.223-9](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1053138), 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/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)). (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/content/part-52-solicitation-provisions-and-contract-clauses#i1053138) ([42 U.S.C. 6962(i)(2)(C)](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)). (Not applicable to the acquisition of commercially available off-the-shelf items.)

**X**  (36) [52.223-11](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1053180), Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (*Jun* 2016) (E.O. 13693).

\_\_ (37) [52.223-12](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1053196), Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (*Jun*2016) (E.O. 13693).

\_\_ (38) (i) [52.223-13](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1053207), 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/content/part-52-solicitation-provisions-and-contract-clauses#i1053207).

\_\_ (39) (i) [52.223-14](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1053232), 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/content/part-52-solicitation-provisions-and-contract-clauses#i1053232).

\_\_ (40) [52.223-15](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1053246), Energy Efficiency in Energy-Consuming Products (*Dec 2007*) ([42 U.S.C. 8259b](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

\_\_ (41) (i) [52.223-16](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1053274), 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/content/part-52-solicitation-provisions-and-contract-clauses#i1053274).

**X**  (42) [52.223-18](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1053316), Encouraging Contractor Policies to Ban Text Messaging While Driving (*Aug 2011*) (E.O. 13513).

**X**  (43) [52.223-20](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i52_223_20), Aerosols (*Jun* 2016) (E.O. 13693).

**X**  (44) [52.223-21](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#id1668D08086F), Foams (*Jun* 2016) (E.O. 13693).

**X**  45) (i) [52.224-3](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i52_224_3) Privacy Training (*Jan* 2017) (5 U.S.C. 552 a).

\_\_ (ii) Alternate I (*Jan* 2017) of [52.224-3](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i52_224_3).

\_\_ (46) [52.225-1](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1053372), Buy American-Supplies (*May* 2014) ([41 U.S.C. chapter 83](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

\_\_ (47) (i) [52.225-3](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1053446), Buy American-Free Trade Agreements-Israeli Trade Act (*May* 2014) ([41 U.S.C. chapter 83](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3), [19 U.S.C. 3301](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3) note, [19 U.S.C. 2112](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3) note, [19 U.S.C. 3805](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3) note, [19 U.S.C. 4001](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3) 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/content/part-52-solicitation-provisions-and-contract-clauses#i1053446).

\_\_ (iii) Alternate II (*May* 2014) of [52.225-3](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1053446).

\_\_ (iv) Alternate III (*May* 2014) of [52.225-3](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1053446).

**X**  (48) [52.225-5](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1053648), Trade Agreements (*Oct 2019*) ([19 U.S.C. 2501](http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title19-section2501&num=0&edition=prelim), *et seq*., [19 U.S.C. 3301](http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title19-section3301&num=0&edition=prelim) note).

 **X**  (49) [52.225-13](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1054249), 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).

\_\_ (50) [52.225-26](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1054921), Contractors Performing Private Security Functions Outside the United States (*Oct* 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; [10 U.S.C. 2302 Note)](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3).

\_\_ (51) [52.226-4](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1055038), Notice of Disaster or Emergency Area Set-Aside (*Nov* 2007) ([42 U.S.C. 5150](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

\_\_ (52) [52.226-5](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1055048), Restrictions on Subcontracting Outside Disaster or Emergency Area (*Nov* 2007) ([42 U.S.C. 5150](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

\_\_ (53) [52.232-29](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1050508), Terms for Financing of Purchases of Commercial Items (*Feb* 2002) ([41 U.S.C.4505](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3), [10 U.S.C.2307(f)](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

\_\_ (54) [52.232-30](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1050540), Installment Payments for Commercial Items (*Jan* 2017) ([41 U.S.C.4505](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3), [10 U.S.C.2307(f)](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

**X**  (55) [52.232-33](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1050674), Payment by Electronic Funds Transfer-System for Award Management (*Oct*2018) ([31 U.S.C. 3332](http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title31-section3332&num=0&edition=prelim)).

**X**  (56) [52.232-34](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1050705), Payment by Electronic Funds Transfer-Other than System for Award Management (*Jul* 2013) ([31 U.S.C.3332](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

**X**  (57) [52.232-36](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1050789), Payment by Third Party (*May* 2014) ([31 U.S.C.3332](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)). ***(Deviation May 2003)***

\_\_ (58) [52.239-1](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1049272), Privacy or Security Safeguards (*Aug* 1996) ([5 U.S.C. 552a](http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title5-section552a&num=0&edition=prelim)).

**X**  (59) [52.242-5](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i52_242-5), Payments to Small Business Subcontractors (*Jan* 2017) ([15 U.S.C. 637(d)(13)](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

\_\_ (60) (i) [52.247-64](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1046560), Preference for Privately Owned U.S.-Flag Commercial Vessels (*Feb* 2006) ([46 U.S.C. Appx. 1241(b)](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3) and [10 U.S.C. 2631](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

\_\_ (ii) Alternate I (*Apr* 2003) of [52.247-64](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1046560).

\_\_ (iii) Alternate II (*Feb* 2006) of [52.247-64](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1046560).

(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.*]

**X**  (1) [52.222-17](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1055581), Nondisplacement of Qualified Workers (*May* 2014)(E.O. 13495).

***Note: This clause may apply to task orders issued at the Ordering Activity level and does not apply to the base FSS contract.***

**X**  (2) [52.222-41](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i52_222_41), Service Contract Labor Standards (*Aug* 2018) ([41 U.S.C. chapter 67](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

**X**  (3) [52.222-42](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1056410), Statement of Equivalent Rates for Federal Hires (*May* 2014) ([29 U.S.C. 206](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3) and [41 U.S.C. chapter 67](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

**X**  (4) [52.222-43](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1056443), Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (Multiple Year and Option Contracts) (*Aug* 2018) ([29 U.S.C. 206](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3) and [41 U.S.C. chapter 67](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)). ***Note: Information on this clause should be provided within the RFQ for task orders issued under this solicitation.***

\_\_ (5) [52.222-44](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1056463), Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (*May* 2014) ([29 U.S.C. 206](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3) and [41 U.S.C. chapter 67](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

**\_**  (6) [52.222-51](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1056685), 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/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

\_\_ (7) [52.222-53](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1056732), 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/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

**X**  (8) [52.222-55](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1056818), Minimum Wages Under Executive Order 13658 (*Dec* 2015).

**X**  (9) [52.222-62](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i52_222_62), Paid Sick Leave Under Executive Order 13706 (*Jan* 2017) (E.O. 13706).

\_\_ (10) [52.226-6](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1055065), Promoting Excess Food Donation to Nonprofit Organizations (*May* 2014) ([42 U.S.C. 1792](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

 (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/content/part-52-solicitation-provisions-and-contract-clauses#i1059150), 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/content/part-4-administrative-and-information-matters#i1122629), 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/content/part-52-solicitation-provisions-and-contract-clauses#i1063504), Contractor Code of Business Ethics and Conduct (*Oct* 2015) ([41 U.S.C. 3509](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

(ii) [52.203-19](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i52_203-19), Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements (Jan 2017) (section 743 of Division E, Title VII, of the Consolidated and Further Continuing Appropriations Act, 2015 (Pub. L. 113-235) and its successor provisions in subsequent appropriations acts (and as extended in continuing resolutions)).

(iii) [52.204-23](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#id189A70O0P1N), Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities (Jul 2018) (Section 1634 of Pub. L. 115-91).

(iv) [52.204-25](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#unique_1843370613), Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. (Aug 2019) (Section 889(a)(1)(A) of Pub. L. 115-232).

(v) [52.219-8](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i52_219-8), Utilization of Small Business Concerns (*Oct* 2018) ([15 U.S.C.637(d)(2)](http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title15-section637&num=0&edition=prelim) 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/content/part-52-solicitation-provisions-and-contract-clauses#i52_219-8) in lower tier subcontracts that offer subcontracting opportunities.

(vi) [52.222-17](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1055581), 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/content/part-52-solicitation-provisions-and-contract-clauses#i1055581).

(vii) [52.222-21](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1055713), Prohibition of Segregated Facilities (*Apr* 2015).

(viii) [52.222-26](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1055793), Equal Opportunity (*Sept* 2015) (E.O.11246).

(ix) [52.222-35](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1056230), Equal Opportunity for Veterans (*Oct* 2015) ([38 U.S.C.4212](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

(x) [52.222-36](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1056250), Equal Opportunity for Workers with Disabilities (*Jul* 2014) ([29 U.S.C.793](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

(xi) [52.222-37](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1056265), Employment Reports on Veterans (*Feb* 2016) ([38 U.S.C.4212](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3))

 (xii) [52.222-40](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1056304), 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/content/part-52-solicitation-provisions-and-contract-clauses#i1056304).

(xiii) [52.222-41](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i52_222_41), Service Contract Labor Standards (*Aug* 2018) ([41 U.S.C. chapter 67](http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title41-chapter67-front&num=0&edition=prelim)).

(xiv) (A) [52.222-50](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1056535), Combating Trafficking in Persons (*Jan* 2019) ([22 U.S.C. chapter 78](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3) and E.O 13627).

(B) Alternate I (*Mar* 2015) of [52.222-50](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1056535)([22 U.S.C. chapter 78 and E.O 13627](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

(xv) [52.222-51](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1056685), 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/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

(xvi) [52.222-53](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1056732), 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/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

(xvii) [52.222-54](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1056753), Employment Eligibility Verification (*Oct 2015*) (E.O. 12989).

(xviii) [52.222-55](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1056818), Minimum Wages Under Executive Order 13658 (*Dec* 2015).

(xix) [52.222-62](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i52_222_62), Paid Sick Leave Under Executive Order 13706 (*Jan* 2017) (E.O. 13706).

(xx) (A) [52.224-3](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i52_224_3), Privacy Training (*Jan* 2017) ([5 U.S.C. 552a](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)).

(B) Alternate I (*Jan* 2017) of [52.224-3](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i52_224_3).

(xxi) [52.225-26](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1054921), Contractors Performing Private Security Functions Outside the United States (*Oct* 2016) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; [10 U.S.C. 2302 Note)](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3).

(xxii) [52.226-6](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1055065), Promoting Excess Food Donation to Nonprofit Organizations (*May* 2014) ([42 U.S.C. 1792](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)). Flow down required in accordance with paragraph (e) of FAR clause [52.226-6](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1055065).

(xxiii) [52.247-64](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1046560), Preference for Privately Owned U.S.-Flag Commercial Vessels (*Feb* 2006) ([46 U.S.C. Appx.1241(b)](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3) and [10 U.S.C.2631](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)). Flow down required in accordance with paragraph (d) of FAR clause [52.247-64](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1046560).

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

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

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within 10 days.

**52.217-9 OPTION TO** **EXTEND THE TERM OF THE CONTRACT (MAR 2000) (TAILORED – Feb 2020)**

(a) The Government may extend the term of this contract by written notice to the Contractor to add 1 or more option periods not to exceed 5 additional years, provided that the Government gives the Contractor a preliminary written notice of its intent to extend at least 60 days before the contract expires. The preliminary notice does not commit the Government to an extension.

(b) If the Government exercises this option, the extended contract shall be considered to include this option clause.

(c) The total duration of this contract, including the exercise of any options under this clause, shall not exceed 10 years.

**52.219-8** **UTILIZATION OF SMALL BUSINESS CONCERNS (OCT 2018)**

 (a) Definitions. As used in this contract—

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

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

(1) Means a small business concern—

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

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

(2) Service-disabled veteran means a veteran, as defined in [38 U.S.C. 101(2)](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—

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

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

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

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

(1) Not less than 51 percent of which is owned by one or more veterans (as defined at [38 U.S.C. 101(2)](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.

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

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

(d) (1) The Contractor may accept a subcontractor’s written representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business if the subcontractor represents that the size and socioeconomic status representations with its offer are current, accurate, and complete as of the date of the offer for the subcontract.

(2) The Contractor may accept a subcontractor’s representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business in the System for Award Management (SAM) if–

(i) The subcontractor is registered in SAM; and

(ii) The subcontractor represents that the size and socioeconomic status representations made in SAM are current, accurate and complete as of the date of the offer for the subcontract.

(3) The Contractor may not require the use of SAM for the purposes of representing size or socioeconomic status in connection with a subcontract.

(4) In accordance with 13 CFR 121.411, 124.1015, 125.29, 126.900, and 127.700, a contractor acting in good faith is not liable for misrepresentations made by its subcontractors regarding the subcontractor’s size or socioeconomic status.

(5) 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 or by contacting the SBA. Options for contacting the SBA include—

(i) HUBZone small business database search application web page at <http://dsbs.sba.gov/dsbs/search/dsp_searchhubzone.cfm>; or <http://www.sba.gov/hubzone>;

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

(iii) The SBA HUBZone Help Desk at hubzone@sba.gov.

**52.219-27****NOTICE OF SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS SET-ASIDE (OCT 2019)**

***Note: Please consult the applicability note within the solicitation document at 52.219-13 Notice of Set-Aside of Orders.***

(a) *Definition*. “Service-disabled veteran-owned small business concern”-

(1) Means a small business concern-

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

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

(2) “Service-disabled veteran” means a veteran, as defined in [38 U.S.C.101(2)](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3), with a disability that is service-connected, as defined in [38 U.S.C.101(16)](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3).

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

(1) Contracts that have been set aside or reserved for service-disabled veteran-owned small business concerns;

(2) Part or parts of a multiple-award contract that have been set aside for service-disabled veteran-owned small business concerns; and

(3) Orders set aside for service-disabled veteran-owned small business concerns under multiple-award contracts as described in [8.405-5](https://www.acquisition.gov/content/part-8-required-sources-supplies-and-services#i1117805) and [16.505](https://www.acquisition.gov/content/part-16-types-contracts#i1104008)(b)(2)(i)(F).

(c) General.

(1) Offers are solicited only from service-disabled veteran-owned small business concerns. Offers received from concerns that are not service-disabled veteran-owned small business concerns shall not be considered.

(2) Any award resulting from this solicitation will be made to a service-disabled veteran-owned small business concern.

(d) *Agreement*. A service-disabled veteran-owned small business concern agrees that in the performance of the contract, in the case of a contract for-

(1) Services (except construction), at least 50 percent of the cost of personnel for contract performance will be spent for employees of the concern or employees of other service-disabled veteran-owned small business concerns;

(2) Supplies (other than acquisition from a nonmanufacturer of the supplies), at least 50 percent of the cost of manufacturing, excluding the cost of materials, will be performed by the concern or other service-disabled veteran-owned small business concerns;

(3) General construction, at least 15 percent of the cost of the contract performance incurred for personnel will be spent on the concern’s employees or the employees of other service-disabled veteran-owned small business concerns; or

(4) Construction by special trade contractors, at least 25 percent of the cost of the contract performance incurred for personnel will be spent on the concern’s employees or the employees of other service-disabled veteran-owned small business concerns.

(e) A joint venture may be considered a service-disabled veteran owned small business concern if-

(1) At least one member of the joint venture is a service-disabled veteran-owned small business concern, and makes the following representations: That it is a service-disabled veteran-owned small business concern, and that it is a small business concern under the North American Industry Classification Systems (NAICS) code assigned to the procurement;

(2) Each other concern is small under the size standard corresponding to the NAICS code assigned to the procurement; and

(3) The joint venture meets the requirements of 13 CFR 121.103(h)

(4) The joint venture meets the requirements of 13 CFR125.15(b)

(f) Any service-disabled veteran-owned small business concern (nonmanufacturer) must meet the requirements in [19.102](https://www.acquisition.gov/content/part-19-small-business-programs#i1101844)(f) of the Federal Acquisition Regulation to receive a benefit under this program.

**52.222-41 SERVICE** **CONTRACT LABOR STANDARDS (AUG 2018)**

 (a) Definitions. As used in this clause—

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

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

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

(c) Compensation.

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

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

(ii) This conforming procedure shall be initiated by the Contractor prior to the performance of contract work by the unlisted class of employee. The Contractor shall submit [Standard Form (SF) 1444](https://www.acquisition.gov/sites/default/files/current/far/html/FormsStandard63.html#wp1177073), Request For Authorization of Additional Classification and Rate, to the Contracting Officer no later than 30 days after the unlisted class of employee performs any contract work. The Contracting Officer shall review the proposed classification and rate and promptly submit the completed [SF 1444](https://www.acquisition.gov/sites/default/files/current/far/html/FormsStandard63.html#wp1177073) (which must include information regarding the agreement or disagreement of the employees’ authorized representatives or the employees themselves together with the agency recommendation), and all pertinent information to the Wage and Hour Division, U.S. Department of Labor. The Wage and Hour Division will approve, modify, or disapprove the action or render a final determination in the event of disagreement within 30 days of receipt or will notify the Contracting Officer within 30 days of receipt that additional time is necessary.

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

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

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

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

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

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

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

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

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

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

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

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

(i) Records.

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

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

(A) Name and address and social security number;

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

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

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

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

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

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

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

(4) The Contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(j) Pay periods. The Contractor shall unconditionally pay to each employee subject to the Service Contract Labor Standards statute all wages due free and clear and without subsequent deduction (except as otherwise provided by law or regulations, 29 CFR Part 4), rebate, or kickback on any account. These payments shall be made no later than one pay period following the end of the regular pay period in which the wages were earned or accrued. A pay period under this statute may not be of any duration longer than semi-monthly.

(k) Withholding of payments and termination of contract. The Contracting Officer shall withhold or cause to be withheld from the Government Prime Contractor under this or any other Government contract with the Prime Contractor such sums as an appropriate official of the Department of Labor requests or such sums as the Contracting Officer decides may be necessary to pay underpaid employees employed by the Contractor or subcontractor. In the event of failure to pay any employees subject to the Service Contract Labor Standards statute all or part of the wages or fringe benefits due under the Service Contract Labor Standards statute, the Contracting Officer may, after authorization or by direction of the Department of Labor and written notification to the Contractor, take action to cause suspension of any further payment or advance of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the Contractor in default with any additional cost.

(l) Subcontracts. The Contractor agrees to insert this clause in all subcontracts subject to the Service Contract Labor Standards statute.

(m) Collective bargaining agreements applicable to service employees. If wages to be paid or fringe benefits to be furnished any service employees employed by the Government Prime Contractor or any subcontractor under the contract are provided for in a collective bargaining agreement which is or will be effective during any period in which the contract is being performed, the Government Prime Contractor shall report such fact to the Contracting Officer, together with full information as to the application and accrual of such wages and fringe benefits, including any prospective increases, to service employees engaged in work on the contract, and a copy of the collective bargaining agreement. Such report shall be made upon commencing performance of the contract, in the case of collective bargaining agreements effective at such time, and in the case of such agreements or provisions or amendments thereof effective at a later time during the period of contract performance such agreements shall be reported promptly after negotiation thereof.

(n) Seniority list. Not less than 10 days prior to completion of any contract being performed at a Federal facility where service employees may be retained in the performance of the succeeding contract and subject to a wage determination which contains vacation or other benefit provisions based upon length of service with a Contractor (predecessor) or successor (29 CFR 4.173), the incumbent Prime Contractor shall furnish the Contracting Officer a certified list of the names of all service employees on the Contractor’s or subcontractor’s payroll during the last month of contract performance. Such list shall also contain anniversary dates of employment on the contract either with the current or predecessor Contractors of each such service employee. The Contracting Officer shall turn over such list to the successor Contractor at the commencement of the succeeding contract.

(o) Rulings and interpretations. Rulings and interpretations of the Service Contract Labor Standards statute are contained in Regulations, 29 CFR Part 4.

(p) Contractor’s certification.

(1) By entering into this contract, the Contractor (and officials thereof) certifies that neither it nor any person or firm who has a substantial interest in the Contractor’s firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed under [41 U.S.C. 6706](http://uscode.house.gov/).

(2) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract under [41 U.S.C. 6706](http://uscode.house.gov/).

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, [18 U.S.C. 1001](http://uscode.house.gov/uscode-cgi/fastweb.exe?getdoc+uscview+t17t20+160+141++%2818%29%20%25).

(q) Variations, tolerances, and exemptions involving employment. Notwithstanding any of the provisions in paragraphs (b) through (o) of this clause, the following employees may be employed in accordance with the following variations, tolerances, and exemptions, which the Secretary of Labor, pursuant to [41 U.S.C. 6707](http://uscode.house.gov/) prior to its amendment by Pub. L. 92-473, found to be necessary and proper in the public interest or to avoid serious impairment of the conduct of Government business:

(1) Apprentices, student-learners, and workers whose earning capacity is impaired by age, physical or mental deficiency, or injury may be employed at wages lower than the minimum wages otherwise required by [41 U.S.C. 6703(1)](http://uscode.house.gov/) without diminishing any fringe benefits or cash payments in lieu thereof required under [41 U.S.C. 6703(2)](http://uscode.house.gov/), in accordance with the conditions and procedures prescribed for the employment of apprentices, student-learners, persons with disabilities, and disabled clients of work centers under section 14 of the Fair Labor Standards Act of 1938, in the regulations issued by the Administrator (29 CFR parts 520, 521, 524, and 525).

(2) The Administrator will issue certificates under the statute for the employment of apprentices, student-learners, persons with disabilities, or disabled clients of work centers not subject to the Fair Labor Standards Act of 1938, or subject to different minimum rates of pay under the two statutes, authorizing appropriate rates of minimum wages (but without changing requirements concerning fringe benefits or supplementary cash payments in lieu thereof), applying procedures prescribed by the applicable regulations issued under the Fair Labor Standards Act of 1938 (29 CFR parts 520, 521, 524, and 525).

(3) The Administrator will also withdraw, annul, or cancel such certificates in accordance with the regulations in 29 CFR parts 525 and 528.

(r) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed and individually registered in a bona fide apprenticeship program registered with a State Apprenticeship Agency which is recognized by the U.S. Department of Labor, or if no such recognized agency exists in a State, under a program registered with the Office of Apprenticeship Training, Employer, and Labor Services (OATELS), U.S. Department of Labor. Any employee who is not registered as an apprentice in an approved program shall be paid the wage rate and fringe benefits contained in the applicable wage determination for the journeyman classification of work actually performed. The wage rates paid apprentices shall not be less than the wage rate for their level of progress set forth in the registered program, expressed as the appropriate percentage of the journeyman’s rate contained in the applicable wage determination. The allowable ratio of apprentices to journeymen employed on the contract work in any craft classification shall not be greater than the ratio permitted to the Contractor as to his entire work force under the registered program.

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

(1) The employer must inform tipped employees about this tip credit allowance before the credit is utilized;

(2) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received);

(3) The employer must be able to show by records that the employee receives at least the applicable Service Contract Labor Standards minimum wage through the combination of direct wages and tip credit; and

(4) The use of such tip credit must have been permitted under any predecessor collective bargaining agreement applicable by virtue of [41 U.S.C. 6707(c)](http://uscode.house.gov/).

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

**52.222-43 FAIR LABOR** **STANDARDS ACT AND SERVICE CONTRACT LABOR STANDARDS—PRICE ADJUSTMENT (MULTIPLE YEAR AND OPTION CONTRACTS) (AUG 2018)**

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

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

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

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

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

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

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

(e) Any adjustment will be limited to increases or decreases in wages and fringe benefits as described in paragraph (d) of this clause, and the accompanying increases or decreases in social security and unemployment taxes and workers’ compensation insurance, but shall not otherwise include any amount for general and administrative costs, overhead, or profit.

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

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

**52.222-50 COMBATING TRAFFICKING IN PERSONS (JAN 2019)**

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

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

“Coercion” means-

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

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

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

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

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

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

(i) A commercial item (as defined in paragraph (1) of the definition at FAR [2.101](https://www.acquisition.gov/content/part-2-definitions-words-and-terms#i1125359));

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

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

 (2) Does not include bulk cargo, as defined in [46 U.S.C. 40102(4)](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3), such as agricultural products and petroleum products.

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

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

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

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

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

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

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

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

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

“Recruitment fees” means fees of any type, including charges, costs, assessments, or other financial obligations, that are associated with the recruiting process, regardless of the time, manner, or location of imposition or collection of the fee.

(1) Recruitment fees include, but are not limited to, the following fees (when they are associated with the recruiting process) for-

(i) Soliciting, identifying, considering, interviewing, referring, retaining, transferring, selecting, training, providing orientation to, skills testing, recommending, or placing employees or potential employees;

(ii) Advertising

(iii) Obtaining permanent or temporary labor certification, including any associated fees;

(iv) Processing applications and petitions;

(v) Acquiring visas, including any associated fees;

(vi) Acquiring photographs and identity or immigration documents, such as passports, including any associated fees;

(vii) Accessing the job opportunity, including required medical examinations and immunizations; background, reference, and security clearance checks and examinations; and additional certifications;

(viii) An employer's recruiters, agents or attorneys, or other notary or legal fees;

(ix) Language interpretation or translation, arranging for or accompanying on travel, or providing other advice to employees or potential employees;

(x) Government-mandated fees, such as border crossing fees, levies, or worker welfare funds;

(xi) Transportation and subsistence costs-

(A) While in transit, including, but not limited to, airfare or costs of other modes of transportation, terminal fees, and travel taxes associated with travel from the country of origin to the country of performance and the return journey upon the end of employment; and

(B) From the airport or disembarkation point to the worksite;

(xii) Security deposits, bonds, and insurance; and

(xiii) Equipment charges.

 (2) A recruitment fee, as described in the introductory text of this definition, is a recruitment fee, regardless of whether the payment is-

(i) Paid in property or money;

(ii) Deducted from wages;

(iii) Paid back in wage or benefit concessions;

(iv) Paid back as a kickback, bribe, in-kind payment, free labor, tip, or tribute; or

(v) Collected by an employer or a third party, whether licensed or unlicensed, including, but not limited to-

(A) Agents;

(B) Labor brokers;

(C) Recruiters;

(D) Staffing firms (including private employment and placement firms);

(E) Subsidiaries/affiliates of the employer;

(F) Any agent or employee of such entities; and

(G) Subcontractors at all tiers.

“Severe forms of trafficking in persons” means-

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

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

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

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

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

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

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

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

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

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

(4) Destroy, conceal, confiscate, or otherwise deny access by an employee to the employee’s identity or immigration documents, such as passports or drivers' licenses, regardless of issuing authority;

(5) (i) Use misleading or fraudulent practices during the recruitment of employees or offering of employment, such as failing to disclose, in a format and language understood by the employee or potential employee, 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 costs to be charged to the employee or potential employee, and, if applicable, the hazardous nature of the work;

(ii) Use recruiters that do not comply with local labor laws of the country in which the recruiting takes place;

(6) Charge employees or potential employees recruitment fees;

(7) (i) Fail to provide return transportation or pay for the cost of return transportation upon the end of employment-

(A) For an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a U.S. Government contract or subcontract (for portions of contracts performed outside the United States); or

(B) For an employee who is not a United States national and who was brought into the United States for the purpose of working on a U.S. Government contract or subcontract, if the payment of such costs is required under existing temporary worker programs or pursuant to a written agreement with the employee (for portions of contracts performed inside the United States); except that-

(ii) The requirements of paragraphs (b)(7)(i) of this clause shall not apply to an employee who is-

(A) Legally permitted to remain in the country of employment and who chooses to do so; or

(B) Exempted by an authorized official of the contracting agency from the requirement to provide return transportation or pay for the cost of return transportation;

(iii) The requirements of paragraph (b)(7)(i) of this clause are modified for a victim of trafficking in persons who is seeking victim services or legal redress in the country of employment, or for a witness in an enforcement action related to trafficking in persons. The contractor shall provide the return transportation or pay the cost of return transportation in a way that does not obstruct the victim services, legal redress, or witness activity. For example, the contractor shall not only offer return transportation to a witness at a time when the witness is still needed to testify. This paragraph does not apply when the exemptions at paragraph (b)(7)(ii) of this clause apply.

(8) Provide or arrange housing that fails to meet the host country housing and safety standards; or

(9) If required by law or contract, fail to provide an employment contract, recruitment agreement, or other required work document in writing. Such written work document shall be in a language the employee understands. If the employee must relocate to perform the work, the work document shall be provided to the employee at least five days prior to the employee relocating. The employee’s work document shall include, but is not limited to, details about work description, wages, prohibition on charging recruitment fees, work location(s), living accommodations and associated costs, time off, roundtrip transportation arrangements, grievance process, and the content of applicable laws and regulations that prohibit trafficking in persons.

(c) *Contractor requirements*. The Contractor shall-

(1) Notify its employees and agents of-

(i) The United States Government's policy prohibiting trafficking in persons, described in paragraph (b) of this clause; and

(ii) The actions that will be taken against employees or agents for violations of this policy. Such actions for employees may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and

(2) Take appropriate action, up to and including termination, against employees, agents, or subcontractors that violate the policy in paragraph (b) of this clause.

(d) *Notification.*

(1) The Contractor shall inform the Contracting Officer and the agency Inspector General immediately of-

(i) Any credible information it receives from any source (including host country law enforcement) that alleges a Contractor employee, subcontractor, subcontractor employee, or their agent has engaged in conduct that violates the policy in paragraph (b) of this clause (see also [18 U.S.C. 1351](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3), Fraud in Foreign Labor Contracting, and [52.203-13](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1063504)(b)(3)(i)(A), if that clause is included in the solicitation or contract, which requires disclosure to the agency Office of the Inspector General when the Contractor has credible evidence of fraud); and

(ii) Any actions taken against a Contractor employee, subcontractor, subcontractor employee, or their agent pursuant to this clause.

(2) If the allegation may be associated with more than one contract, the Contractor shall inform the contracting officer for the contract with the highest dollar value.

(e) *Remedies.* In addition to other remedies available to the Government, the Contractor’s failure to comply with the requirements of paragraphs (c), (d), (g), (h), or (i) of this clause may result in-

(1) Requiring the Contractor to remove a Contractor employee or employees from the performance of the contract;

(2) Requiring the Contractor to terminate a subcontract;

(3) Suspension of contract payments until the Contractor has taken appropriate remedial action;

(4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined Contractor non-compliance;

(5) Declining to exercise available options under the contract;

(6) Termination of the contract for default or cause, in accordance with the termination clause of this contract; or

(7) Suspension or debarment.

(f) *Mitigating and aggravating factors.* When determining remedies, the Contracting Officer may consider the following:

(1) *Mitigating factors*. The Contractor had a Trafficking in Persons compliance plan or an awareness program at the time of the violation, was in compliance with the plan, and has taken appropriate remedial actions for the violation, that may include reparation to victims for such violations.

(2) *Aggravating factors*. The Contractor failed to abate an alleged violation or enforce the requirements of a compliance plan, when directed by the Contracting Officer to do so.

(g) *Full cooperation*.

(1) The Contractor shall, at a minimum-

(i) Disclose to the agency Inspector General information sufficient to identify the nature and extent of an offense and the individuals responsible for the conduct;

(ii) Provide timely and complete responses to Government auditors' and investigators' requests for documents;

 (iii) Cooperate fully in providing reasonable access to its facilities and staff (both inside and outside the U.S.) to allow contracting agencies and other responsible Federal agencies to conduct audits, investigations, or other actions to ascertain compliance with the Trafficking Victims Protection Act of 2000 ([22 U.S.C. chapter 78](http://uscode.house.gov/browse.xhtml;jsessionid=114A3287C7B3359E597506A31FC855B3)), E.O. 13627, or any other applicable law or regulation establishing restrictions on trafficking in persons, the procurement of commercial sex acts, or the use of forced labor; and

(iv) Protect all employees suspected of being victims of or witnesses to prohibited activities, prior to returning to the country from which the employee was recruited, and shall not prevent or hinder the ability of these employees from cooperating fully with Government authorities.

(2) The requirement for full cooperation does not foreclose any Contractor rights arising in law, the FAR, or the terms of the contract. It does not-

(i) Require the Contractor to waive its attorney-client privilege or the protections afforded by the attorney work product doctrine;

(ii) Require any officer, director, owner, employee, or agent of the Contractor, including a sole proprietor, to waive his or her attorney client privilege or Fifth Amendment rights; or

(iii) Restrict the Contractor from-

(A) Conducting an internal investigation; or

(B) Defending a proceeding or dispute arising under the contract or related to a potential or disclosed violation.

(h) *Compliance plan*.

(1) This paragraph (h) applies to any portion of the contract that-

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

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

(2) The Contractor shall maintain a compliance plan during the performance of the contract that is appropriate-

(i) To the size and complexity of the contract; and

(ii) To the nature and scope of the activities to be performed for the Government, including the number of non-United States citizens expected to be employed and the risk that the contract or subcontract will involve services or supplies susceptible to trafficking in persons.

(3) *Minimum requirements*. The compliance plan must include, at a minimum, the following:

(i) An awareness program to inform contractor employees about the Government’s policy prohibiting trafficking-related activities described in paragraph (b) of this clause, the activities prohibited, and the actions that will be taken against the employee for violations. Additional information about Trafficking in Persons and examples of awareness programs can be found at the website for the Department of State’s Office to Monitor and Combat Trafficking in Persons at <http://www.state.gov/j/tip/>.

(ii) A process for employees to report, without fear of retaliation, activity inconsistent with the policy prohibiting trafficking in persons, including a means to make available to all employees the hotline phone number of the Global Human Trafficking Hotline at 1-844-888-FREE and its email address at help@befree.org.

(iii) A recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees to the employees or potential employees and ensures that wages meet applicable host-country legal requirements or explains any variance.

(iv) A housing plan, if the Contractor or subcontractor intends to provide or arrange housing, that ensures that the housing meets host-country housing and safety standards.

(v) Procedures to prevent agents and subcontractors at any tier and at any dollar value from engaging in trafficking in persons (including activities in paragraph (b) of this clause) and to monitor, detect, and terminate any agents, subcontracts, or subcontractor employees that have engaged in such activities.

(4) *Posting*.

(i) The Contractor shall post the relevant contents of the compliance plan, no later than the initiation of contract performance, at the workplace (unless the work is to be performed in the field or not in a fixed location) and on the Contractor's Web site (if one is maintained). If posting at the workplace or on the Web site is impracticable, the Contractor shall provide the relevant contents of the compliance plan to each worker in writing.

(ii) The Contractor shall provide the compliance plan to the Contracting Officer upon request.

(5) *Certification*. Annually after receiving an award, the Contractor shall submit a certification to the Contracting Officer that-

(i) It has implemented a compliance plan to prevent any prohibited activities identified at paragraph (b) of this clause and to monitor, detect, and terminate any agent, subcontract or subcontractor employee engaging in prohibited activities; and

(ii) After having conducted due diligence, either-

(A) To the best of the Contractor's knowledge and belief, neither it nor any of its agents, subcontractors, or their agents is engaged in any such activities; or

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

(i) *Subcontracts*.

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

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

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

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

**52.225-5 TRADE AGREEMENTS (OCT 2019)**

(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/view.xhtml?req=granuleid:USC-prelim-title19-section2703(b)&num=0&edition=prelim).

(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) column2 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 <https://usitc.gov/tata/hts/index.htm>. In particular, see the following:

(1) General Note3(c), Products Eligible for Special Tariff treatment.

(2) General Note17, Products of Countries Designated as Beneficiary Countries under the United States-Caribbean Basin Trade Partnership Act of 2000.

(3) Section XXII, Chapter98, Subchapter II, Articles Exported and Returned, Advanced or Improved Abroad, U.S. Note7(b).

(4) Section XXII, Chapter98, 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, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan (known in the World Trade Organization as “the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu (Chinese Taipei)”), Ukraine, or United Kingdom);

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

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

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

“Designated country 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.”

**52.232-33 PAYMENT BY ELECTRONIC FUNDS TRANSFER—SYSTEM FOR AWARD MANAGEMENT (OCT 2018)**

(a) Method of payment.

(1) All payments by the Government under this contract shall be made by electronic funds transfer (EFT), except as provided in paragraph (a)(2) of this clause. As used in this clause, the term "EFT" refers to the funds transfer and may also include the payment information transfer.

(2) In the event the Government is unable to release one or more payments by EFT, the Contractor agrees to either—

(i) Accept payment by check or some other mutually agreeable method of payment; or

(ii) Request the Government to extend the payment due date until such time as the Government can make payment by EFT (but see paragraph (d) of this clause).

(b) *Contractor's EFT information*. The Government shall make payment to the Contractor using the EFT information contained in the System for Award Management (SAM). In the event that the EFT information changes, the Contractor shall be responsible for providing the updated information to SAM.

(c) *Mechanisms for EFT payment.* The Government may make payment by EFT through either the Automated Clearing House (ACH) network, subject to the rules of the National Automated Clearing House Association, or the Fedwire Transfer System. The rules governing Federal payments through the ACH are contained in 31 CFR part 210.

(d) *Suspension of payment.* If the Contractor's EFT information in SAM is incorrect, then the Government need not make payment to the Contractor under this contract until correct EFT information is entered into SAM; and any invoice or contract financing request shall be deemed not to be a proper invoice for the purpose of prompt payment under this contract. The prompt payment terms of the contract regarding notice of an improper invoice and delays in accrual of interest penalties apply.

(e) Liability for uncompleted or erroneous transfers.

(1) If an uncompleted or erroneous transfer occurs because the Government used the Contractor's EFT information incorrectly, the Government remains responsible for—

(i) Making a correct payment;

(ii) Paying any prompt payment penalty due; and

(iii) Recovering any erroneously directed funds.

(2) If an uncompleted or erroneous transfer occurs because the Contractor's EFT information was incorrect, or was revised within 30 days of Government release of the EFT payment transaction instruction to the Federal Reserve System, and—

(i) If the funds are no longer under the control of the payment office, the Government is deemed to have made payment and the Contractor is responsible for recovery of any erroneously directed funds; or

(ii) If the funds remain under the control of the payment office, the Government shall not make payment, and the provisions of paragraph (d) of this clause shall apply.

(f) EFT and prompt payment. A payment shall be deemed to have been made in a timely manner in accordance with the prompt payment terms of this contract if, in the EFT payment transaction instruction released to the Federal Reserve System, the date specified for settlement of the payment is on or before the prompt payment due date, provided the specified payment date is a valid date under the rules of the Federal Reserve System.

(g) EFT and assignment of claims. If the Contractor assigns the proceeds of this contract as provided for in the assignment of claims terms of this contract, the Contractor shall require as a condition of any such assignment, that the assignee shall register separately in SAM and shall be paid by EFT in accordance with the terms of this clause. Notwithstanding any other requirement of this contract, payment to an ultimate recipient other than the Contractor, or a financial institution properly recognized under an assignment of claims pursuant to subpart 32.8, is not permitted. In all respects, the requirements of this clause shall apply to the assignee as if it were the Contractor. EFT information that shows the ultimate recipient of the transfer to be other than the Contractor, in the absence of a proper assignment of claims acceptable to the Government, is incorrect EFT information within the meaning of paragraph (d) of this clause.

(h) Liability for change of EFT information by financial agent. The Government is not liable for errors resulting from changes to EFT information made by the Contractor's financial agent.

(i) Payment information. The payment or disbursing office shall forward to the Contractor available payment information that is suitable for transmission as of the date of release of the EFT instruction to the Federal Reserve System. The Government may request the Contractor to designate a desired format and method(s) for delivery of payment information from a list of formats and methods the payment office is capable of executing. However, the Government does not guarantee that any particular format or method of delivery is available at any particular payment office and retains the latitude to use the format and delivery method most convenient to the Government. If the Government makes payment by check in accordance with paragraph (a) of this clause, the Government shall mail the payment information to the remittance address contained in SAM.

**552.212-71 CONTRACT TERMS AND CONDITIONS APPLICABLE TO GSA ACQUISITION OF COMMERCIAL ITEMS (MAY 2019)**

(a)  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:

(b)   *Clauses*.

552.203-71 Restriction on Advertising (Sep 1999)

552.211-73 Marking (Feb 1996)

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

552.232-23 Assignment of Claims (Sep 1999)

**552.238-77 SUBMISSION AND DISTRIBUTION OF AUTHORIZED FEDERAL SUPPLY SCHEDULE (FSS) PRICE LISTS (MAY 2019) (TAILORED)**

(a)  The Contracting Officer will return one copy of the Authorized FSS Schedule Pricelist to the Contractor with the notification of contract award.

(b)  The Contractor shall provide to the VA Contracting Officer the Authorized FSS Schedule Pricelist on a common-use electronic medium. The Contracting Officer will provide detailed instructions for the electronic submission with the award notification. Some structured data entry in a prescribed format may be required.

(c)  During the period of the contract, the Contractor shall provide one copy of its Authorized FSS Schedule Pricelist to any authorized schedule user, upon request.

**552.238-79 CANCELLATION (MAY 2019)**

Either party may cancel this contract in whole or in part by providing written notice. The cancellation will take effect 30 calendar days after the other party receives the notice of cancellation. If the Contractor elects to cancel this contract, the Government will not reimburse the minimum guarantee.

**552.238-80 INDUSTRIAL FUNDING FEE AND SALES REPORTING (MAY 2019) (TAILORED)**

(a)  Reporting of Federal Supply Schedule (FSS) 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.fiscal.treasury.gov/fsreports/rpt/treasRptRateExch/treasRptRateExch_home.htm>.

(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 60 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* ***1.0% (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 $10,101 and the IFF is 1.0%*

*($10,101 \* 0.01) = $101.01 (IFF due)*

***NOTICE REGARDING SCHEDULE SALES (FEB 2019)***

*The following shall be reported as FSS sales and the IFF collected and remitted:*

1. *Task or delivery orders referencing an FSS contract number.*
2. *Orders placed under a Department of Defense Distribution and Pricing Agreement (DAPA).*
3. *Sales under Blanket Purchase Agreements (BPAs) awarded against FSS contracts.*

 **552.238-81 PRICE REDUCTIONS (MAY 2019)**

(a) Before award of a contract, the Contracting Officer and the Offeror will agree upon (1) the customer (or category of customers) which will be the basis of award, and (2) the Government’s price or discount relationship to the identified customer (or category of customers). This relationship shall be maintained throughout the contract period. Any change in the Contractor’s commercial pricing or discount arrangement applicable to the identified customer (or category of customers) which disturbs this relationship shall constitute a price reduction.

(b) During the contract period, the Contractor shall report to the Contracting Officer all price reductions to the customer (or category of customers) that was the basis of award. The Contractor’s report shall include an explanation of the conditions under which the reductions were made.

(c) (1) A price reduction shall apply to purchases under this contract if, after the date negotiations conclude, the Contractor—

(i) Revises the commercial catalog, pricelist, schedule or other document upon which contract award was predicated to reduce prices;

(ii) Grants more favorable discounts or terms and conditions than those contained in the commercial catalog, pricelist, schedule or other documents upon which contract award was predicated; or

(iii) Grants special discounts to the customer (or category of customers) that formed the basis of award, and the change disturbs the price/discount relationship of the Government to the customer (or category of customers) that was the basis of award.

(2) The Contractor shall offer the price reduction to the eligible ordering activity with the same effective date, and for the same time period, as extended to the commercial customer (or category of customers).

(d) There shall be no price reduction for sales—

(1) To commercial customers under firm, fixed-price definite quantity contracts with specified delivery in excess of the maximum order threshold specified in this contract;

(2) To Federal agencies;

(3) Made to Eligible Ordering Activities identified in GSAR Clause [552.238-113](https://www.acquisition.gov/content/part-552-solicitation-provisions-and-contract-clauses#id195K8300P4V) when the order is placed under this contract (and the Eligible Ordering Activities identified in GSAR Clause [552.238-113](https://www.acquisition.gov/content/part-552-solicitation-provisions-and-contract-clauses#id195K8300P4V) is the agreed upon customer or category of customer that is the basis of award); or

(4) Caused by an error in quotation or billing, provided adequate documentation is furnished by the Contractor to the Contracting Officer.

(e) The Contractor may offer the Contracting Officer a voluntary Governmentwide price reduction at any time during the contract period.

(f) The Contractor shall notify the Contracting Officer of any price reduction subject to this clause as soon as possible, but not later than 15 calendar days after its effective date.

(g) The contract will be modified to reflect any price reduction which becomes applicable in accordance with this clause.

**552.238-82 ModificationS (Federal Supply Schedule) (May 2019, Alternate I – MAY 2019, TAILORED)**

(a)  *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).

(b) *Types of modifications*—

(1)  Additional items/additional SINs. When requesting additions, the following information must be submitted:

(i)  *Information requested in paragraphs* (1) and (2) of the Commercial Sales Practice Format to add SINs.

(ii)  Discount information for the new item(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.

(iii)  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.

(iv)  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.

 (v) 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.

(vi) Hazardous Material information (if applicable) must be submitted as required by FAR 52.223-3 (Alternate I), Hazardous Material Identification and Material Safety Data.

(vii) 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.

 (2)  *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.

(3)  *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 [552.238-81](https://www.acquisition.gov/content/part-552-solicitation-provisions-and-contract-clauses#i1874127). 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.***

(c)  *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 [552.238-81](https://www.acquisition.gov/content/part-552-solicitation-provisions-and-contract-clauses#i1874127).

(d) 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 [552.238-81](https://www.acquisition.gov/content/part-552-solicitation-provisions-and-contract-clauses#i1874127).

(e)  *Amendments to paper Federal Supply Schedule Price Lists*.

(1)  The Contractor must provide supplements to its paper price lists, reflecting the most current changes. The Contractor may either:

(i)  Distribute a supplemental paper Federal Supply Schedule Price List within 15 workdays after the effective date of each modification.

(ii)  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.

(2)  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.

 (f) Electronic submission of modification requests is mandatory.

***NOTE: The effective dates for most 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.***

**552.238-85 CONTRACTOR’S BILLING RESPONSIBILITIES (MAY 2019)**

(a)  The Contractor is required to perform all billings made pursuant to this contract. However, if the Contractor has dealers that participate on the contract and the billing/payment process by the Contractor for sales made by the dealer is a significant administrative burden, the following alternative procedures may be used. Where dealers are allowed by the Contractor to bill ordering activities and accept payment in the Contractor's name, the Contractor agrees to obtain from all dealers participating in the performance of the contract a written agreement, which will require dealers to

           (1)  Comply with the same terms and conditions as the Contractor for sales made under the contract;

           (2)  Maintain a system of reporting sales under the contract to the manufacturer, which includes

(i)  The date of sale;

(ii)  The ordering activity to which the sale was made;

(iii)  The service or supply/model sold;

(iv)  The quantity of each service or supply/model sold;

 (v)  The price at which it was sold, including discounts; and

 (vi)  All other significant sales data.

           (3)  Be subject to audit by the Government, with respect to sales made under the contract; and

           (4)  Place orders and accept payments in the name of the Contractor in care of the dealer.

(b)  An agreement between a Contractor and its dealers pursuant to this procedure will not establish privity of contract between dealers and the Government.

**552.238-86 DELIVERY SCHEDULE (MAY 2019) (TAILORED)**

***NOTE: For the purposes of this solicitation, this clause refers to the delivery of supplies, consumables and shipping items necessary for the performance of tests. Delivery times for test results are to be identified in the next section, Turn Around Time Proposal (TAT).***

 (a)  *Time of delivery.* The Contractor shall deliver to destination within the number of calendar days after receipt of order (ARO) in the case of F.O.B. Destination prices; or to place of export in the case of F.O.B. Inland Carrier, Point of Exportation prices, as set forth below. Offerors shall insert in the “Time of Delivery (days ARO)” column in the schedule of Items a definite number of calendar days within which delivery will be made. In no case shall the offered delivery time exceed the Contractor's normal commercial practice. The Government requires the Contractor's normal commercial delivery time, as long as it is less than the “stated” delivery time(s) shown below. If the Offeror does not insert a delivery time in the schedule of items, the Offeror will be deemed to offer delivery in accordance with the Government's stated delivery time, as stated below:

|  |  |  |  |
| --- | --- | --- | --- |
| **ITEM OR GROUP OF ITEMS(SPECIAL Item Numbers or Nomenclature)** | **Government’s Stated DeliveryTime (Days ARO)** | **Offeror’s Normal Commercial Delivery Time** | **Proposed Delivery Time to the Government** |
| ALL SINs – Routine Tests | 2 days |       |       |
| ALL SINs – Complex Tests | 3 – 6 days |       |       |

(b)  *Expedited delivery times.* For those items that can be delivered quicker than the delivery times in paragraph (a) of this clause, the Offeror is requested to insert below, a time (hours/days ARO) that delivery can be made when expedited delivery is requested. . ***Note: Indicate “None Offered” in the section below if expedited delivery is not being offered.***

|  |  |  |
| --- | --- | --- |
| **ITEM OR GROUP OF ITEMS(SPECIAL Item No. of nomenclature)** | **Offeror’s Commercial Expedited Delivery Time(Hours/Days ARO)** | **Proposed Government Expedited Delivery Time (Hours/Days ARO)** |
|       |       |       |
|       |       |       |

***Note: If offering expedited delivery to your commercial customers or to the Government, indicate the terms (e.g. “no charge”, “All charges”, “Responsible for difference between normal and expedited delivery”, “Flat additional fee of $15”, etc.):***

***Commercial Terms:***

***Proposed Government Terms:***

 (c)  *Overnight and 2-Day delivery times*. Ordering activities may require overnight or 2-day delivery. The Offeror is requested to annotate its price list or by separate attachment identify the items that can be delivered overnight or within 2 days. Contractors offering such delivery services will be required to state in the cover sheet to its FSS price list details concerning this service.

***Note: If offering overnight or 2-day delivery to your commercial customers and/or to the Government, indicate overnight and/or 2-day delivery as well as the terms (e.g. “No charge for overnight delivery”, “Responsible for all overnight delivery charges”, “Responsible for difference between normal and overnight delivery”, “Flat additional fee of $15 for overnight delivery”, etc.). If not offered, please indicate “not offered” below.***

***Commercial Terms:***

***Proposed Government Terms:***

**552.238-88 GSA ADVANTAGE!® (MAY 2019)**

(a) The Contractor shall participate in the GSA Advantage!® online shopping service. Information and instructions regarding Contractor participation are contained in clause [552.238-103](https://www.acquisition.gov/content/part-552-solicitation-provisions-and-contract-clauses#id195GEJ040NT), Electronic Commerce.

(b) The Contractor shall refer to contract clauses [552.238-77](https://www.acquisition.gov/content/part-552-solicitation-provisions-and-contract-clauses#i1874019), Submission and Distribution of Authorized FSS Price Lists (which provides for submission of price lists on a common-use electronic medium), and [552.238-82](https://www.acquisition.gov/content/part-552-solicitation-provisions-and-contract-clauses#id552.238-82), Modifications (which addresses electronic file updates).

**552.238-90 CHARACTERISTICS OF ELECTRIC CURRENT (MAY 2019) *Note: This clause applies to overseas delivery only.***

Contractors supplying equipment which uses electrical current are required to supply equipment suitable for the electrical system at the location at which the equipment is to be used as specified on the order.

**552.238-91 MARKING AND DOCUMENTATION REQUIREMENTS FOR SHIPPING (MAY 2019) *Note: This clause applies to overseas delivery only.***

(a)  Responsibility. It shall be the responsibility of the ordering activity to determine the full marking and documentation requirements necessary under the various methods of shipment authorized by the contract.

(b)  Documentation. In the event the ordering activity fails to provide the essential information and documentation, the Contractor shall, within three days after receipt of order, contact the ordering activity and advise them accordingly. The Contractor shall not proceed with any shipment requiring transshipment via U.S. Government facilities without the prerequisites stated in paragraph (c) of this section.

(c)  Direct shipments. The Contractor shall mark all items ordered against this contract with indelible ink, paint or fluid, as follows:

(1)  Traffic Management or Transportation Officer at FINAL destination.

(2)  Ordering Supply Account Number.

(3)  Account number.

(4)  Delivery Order or Purchase Order Number.

(5)  National Stock Number, if applicable; or Contractor's item number.

(6)  Box \_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_ Boxes.

(7)  Nomenclature (brief description of items).

**552.238-92 VENDOR MANAGED INVENTORY (VMI) PROGRAM (MAY 2019)**

(a)  The term “Vendor Managed Inventory” describes a system in which the Contractor monitors and maintains specified inventory levels for selected items at designated stocking points. VMI enables the Contractor to plan production and shipping more efficiently. Stocking points benefit from reduced inventory but steady stock levels.

(b)  Contractors that commercially provide a VMI-type system may enter into similar partnerships with ordering agencies under a Blanket Purchase Agreement.

**552.238-94 ACCELERATED DELIVERY REQUIREMENTS (MAY 2019)**

When the Federal Supply Schedule contract delivery period does not meet the bona fide urgent delivery requirements of an ordering activity, the ordering activity is encouraged, if time permits, to contact the Contractor for the purpose of obtaining accelerated delivery. The Contractor shall reply to the inquiry within three (3) business days after receipt. (Telephonic replies shall be confirmed by the Contractor in writing.) If the Contractor offers an accelerated delivery time acceptable to the ordering activity, any order(s) placed pursuant to the agreed upon accelerated delivery time frame shall be delivered within this shorter delivery time and in accordance with all other terms and conditions of the contract.

**552.238-98 CLAUSES FOR OVERSEAS COVERAGE (MAY 2019, TAILORED)**

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

(a) 52.214-34 Submission of Offers in the English Language

(b) 52.214-35 Submission of Offers in U.S. Currency

(c) [552.238-90](https://www.acquisition.gov/content/part-552-solicitation-provisions-and-contract-clauses#id195DCE006D1) Characteristics of Electric Current

(d) [552.238-91](https://www.acquisition.gov/content/part-552-solicitation-provisions-and-contract-clauses#id195DD0005FR) Marking and Documentation Requirements Per Shipment

 (f) [552.238-100](https://www.acquisition.gov/content/part-552-solicitation-provisions-and-contract-clauses#id195GBD0N096) Transshipments

(g) [552.238-101](https://www.acquisition.gov/content/part-552-solicitation-provisions-and-contract-clauses#id195GDH0031W) Foreign Taxes and Duties

(h) 52.247-34 FOB Destination

(i) 52.247-38 FOB Inland Carrier, Point of Exportation

(j) 52.247-39 FOB Inland Point, Country of Importation

**552.238-100 TRANSSHIPMENTS (MAY 2019)**

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

(a)  The Contractor shall complete two (2) DD Forms 1387, Military Shipment Labels and, if applicable, four copies of DD Form 1387-2, Special Handling/Data Certification-used when shipping chemicals, dangerous cargo, etc.

(1)  Two copies of the DD Form 1387 will be attached to each shipping container delivered to the port Transportation Officer for subsequent transshipment by the Government as otherwise provided for under the terms of this contract.

(2)  These forms will be attached to one end and one side, not on the top or bottom, of the container.

(3) The Contractor will complete the bottom line of these forms, which pertains to the number of pieces, weight and cube of each piece, using U.S. weight and cubic measures. Weights will be rounded off to the nearest pound. (One kg = 2.2 U.S. pounds; one cubic meter = 35.3156 cubic feet.)

(b)  In addition, if the cargo consists of chemicals, or is dangerous, one copy of the DD Form 1387-2 will be attached to the container, and three copies will be furnished to the Transportation Officer with the Bill of Lading.

(c)  Dangerous cargo will not be intermingled with non-dangerous cargo in the same container.

(d)  Copies of the above forms and preparation instructions will be obtained from the ordering activity issuing the Delivery Order. Reproduced copies of the forms are acceptable.

(e)  Failure to include DD Form 1387, and DD Form 1387-2, if applicable, on each shipping container will result in rejection of shipment by the port Transportation Officer.

**552.238-101 FOREIGN TAXES AND DUTIES (MAY 2019)**

***Note: This clause applies to overseas delivery only. Prices offered must be all inclusive, as specified in the Commercial Sales Practice Format section of Vendor Response Document 02.***

Prices offered must be net, delivered, f.o.b. to the destinations accepted by the Government.

(a)  The Contractor warrants that such prices do not include any tax, duty, customs fees, or other foreign Governmental costs, assessments, or similar charges from which the U.S. Government is exempt.

(b)  Standard commercial export packaging, including containerization, if necessary, packaging, preservation, and/or marking are included in the pricing offered and accepted by the Government.

**552.238-103 ELECTRONIC COMMERCE (MAY 2019)**

(a)  *General background.* The Federal Acquisition Streamlining Act (FASA) of 1994 requires the Government to evolve its acquisition process from one driven by paper to an expedited process based on electronic commerce/electronic data interchange (EC/EDI). EC/EDI encompasses more than merely automating manual processes and eliminating paper transactions. EC/EDI improves business processes (e.g. procurement, finance, logistics) into a fully electronic environment and fundamentally changes the way organizations operate.

(b)  *Trading partners and Value-Added Networks (VAN's)*.

(1)  Within the electronic commerce architecture, electronic documents (*e.g.*, orders, invoices, etc.) are carried between the Federal Government's procuring office and Contractors (now known as “trading partners”). These transactions are carried by commercial telecommunications companies called Value-Added Networks (VAN's).

(2)  EDI can be performed using commercially available hardware, software, and telecommunications. The selection of a VAN is a business decision Contractors must make. There are many different VAN's which provide a variety of electronic services and different pricing strategies. If the VAN only provides communications services, you may also need a software translation package.

(c)  *Registration instructions.* To perform EDI with the Government, Contractors shall register as a trading partner. Contractors will provide regular business information, banking information, and EDI capabilities to all agencies in this single registration. A central repository of all trading partners is the Systems for Award Management (SAM) [http://www.sam.gov](http://www.sam.gov/). Contractors shall follow the instructions on the SAM website regarding how to register for EDI.

(d)  *Implementation conventions.* All EDI transactions must comply with the Federal Implementation Conventions (ICs). The ICs are available on a registry maintained by the National Institute of Standards and Technology (NIST). It is accessible via the INTERNET at <http://www.nist.gov/itl>. ICs are available for common business documents such as Purchase Order, Price Sales Catalog, Invoice, Request for Quotes, etc.

(e)  *Additional information.* GSA has additional information available for Contractors who are interested in using EC/EDI on its website, [http://www.gsa.gov](http://www.gsa.gov/).

(f)  *GSA Advantage!®.*

(1)  GSA Advantage!® uses electronic commerce to receive catalogs, invoices and text messages; and to send purchase orders, application advice, and functional acknowledgments. GSA Advantage!® enables customers to:

(i)  Perform database searches across all contracts by manufacturer; manufacturer's model/part number; Contractor; and generic supply categories.

(ii)  Generate EDI delivery orders to Contractors, generate EDI delivery orders from the Federal Supply Service to Contractors, or download files to create their own delivery orders.

(iii)  Use the credit card.

(2)  GSA Advantage!® may be accessed via the GSA Home Page. The Internet address is: [http://www.gsa.gov](http://www.gsa.gov/).

**552.238-104 DISSEMINATION OF INFORMATION BY CONTRACTOR (MAY 2019)**

The Government will provide the Contractor with a single copy of the resulting Federal Supply Schedule contract award documents. However, it is the responsibility of the Contractor to furnish all sales outlets authorized to participate in the performance of the contract with the terms, conditions, pricing schedule, and other appropriate information.

**552.238-105 DELIVERIES BEYOND THE CONTRACTUAL PERIOD-PLACING OF ORDERS (MAY 2019)**

In accordance with Clause [552.238-113](https://www.acquisition.gov/content/part-552-solicitation-provisions-and-contract-clauses#id195K8300P4V), Scope of Contract (Eligible Ordering Activities), this contract covers all requirements that may be ordered, as distinguished from delivered during the contract term. This is for the purpose of providing continuity of supply or operations by permitting ordering activities to place orders as requirements arise in the normal course of operations. Accordingly, any order mailed (or received, if forwarded by other means than through the mail) to the Contractor on or before the expiration date of the contract, and providing for delivery within the number of days specified in the contract, shall constitute a valid order.

**552.238-106 INTERPRETATION OF CONTRACT REQUIREMENTS (MAY 2019)**

No interpretation of any provision of this contract, including applicable specifications, shall be binding on the Government unless furnished or agreed to in writing by the Contracting Officer or his designated representative.

**552.238-113 SCOPE OF CONTRACT (ELIGIBLE ORDERING ACTIVITIES) (MAY 2019, TAILORED)**

***Note: State Vet Homes with sharing agreements are also included as eligible ordering activities.***

 (a) This solicitation is issued to establish contracts which may be used on a nonmandatory basis by the agencies and activities named below, as a source of supply for the supplies or services described herein, for domestic and/or overseas delivery.

(1) Executive agencies (as defined in FAR Subpart 2.1) including nonappropriated fund activities as prescribed in 41 CFR 101-26.000;

(2) Government contractors authorized in writing by a Federal agency pursuant to FAR 51.1;

(3) Mixed ownership Government corporations (as defined in the Government Corporation Control Act);

(4) Federal Agencies, including establishments in the legislative or judicial branch of government (except the Senate, the House of Representatives and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol).

(5) The District of Columbia;

(6) Tribal governments when authorized under 25 USC 450j(k);

(7) Tribes or tribally designated housing entities pursuant to *25 U.S.C. 4111(j)*;

(8) Qualified Nonprofit Agencies as authorized under 40 USC 502(b); and

(9) Organizations, other than those identified in paragraph (d) of this clause, authorized by GSA pursuant to statute or regulation to use GSA as a source of supply.

(b) *Definitions*.

“Domestic delivery” is delivery within the 48 contiguous states, Alaska, Hawaii, Puerto Rico, Washington, DC, and U.S. territories. Domestic delivery also includes a port or consolidation point, within the aforementioned areas, for orders received from overseas activities.

“Overseas delivery” is delivery to points outside of the 48 contiguous states, Washington, DC, Alaska, Hawaii, Puerto Rico, and U.S. territories.

(c) Offerors are requested to check one of the following boxes:

[ ]  Contractor will provide domestic and overseas delivery.
[ ]  Contractor will provide overseas delivery only.
[ ]  Contractor will provide domestic delivery only.

(d) The following activities may place orders against Schedule contracts:

(1) State and local government may place orders against Schedule 70 contracts, and Consolidated Schedule contracts containing information technology Special Item Numbers, and Schedule 84 contracts, on an optional basis; PROVIDED, the Contractor accepts order(s) from such activities;

(2) The American National Red Cross may place orders against Federal Supply Schedules for products and services in furtherance of the purposes set forth in its Federal charter (*36 U.S.C. § 300102*); PROVIDED, the Contractor accepts order(s) from the American National Red Cross; and

(3) Other qualified organizations, as defined in section 309 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (*42 U.S.C. § 5152*), may place orders against Federal Supply Schedules for products and services determined to be appropriate to facilitate emergency preparedness and disaster relief and set forth in guidance by the Administrator of General Services, in consultation with the Administrator of the Federal Emergency Management Agency; PROVIDED, the Contractor accepts order(s) from such activities.

(4) State and local governments may place orders against Federal Supply Schedules for good or services determined by the Secretary of Homeland Security to facilitate recovery from a major disaster declared by the President under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (*42 U.S.C. 5121*, et seq.) to facilitate disaster preparedness or response, or to facilitate recovery from terrorism or nuclear, biological, chemical, or radiological attack; PROVIDED, the Contractor accepts order(s) from such activities.

(e) Articles or services may be ordered from time to time in such quantities as may be needed to fill any requirement, subject to the Order Limitations thresholds which will be specified in resultant contracts. Overseas activities may place orders directly with schedule contractors for delivery to CONUS port or consolidation point.

(f) (1) The Contractor is obligated to accept orders received from activities within the Executive branch of the Federal Government.

(2) The Contractor is not obligated to accept orders received from activities outside the Executive branch; however, the Contractor is encouraged to accept such orders. If the Contractor elects to accept such orders, all provisions of the contract shall apply, including clause 52.232-36, Payment by Third Party. If the Contractor is unwilling to accept such orders, and the proposed method of payment is not through the Credit Card, the Contractor shall return the order by mail or other means of delivery within 5 workdays from receipt. If the Contractor is unwilling to accept such orders, and the proposed method of payment is through the Credit Card, the Contractor must so advise the ordering activity within 24 hours of receipt of order. (Reference clause 52.232-36, Payment by Third Party.) Failure to return an order or advise the ordering activity within the time frames of this paragraph shall constitute acceptance whereupon all provisions of the contract shall apply.

(g) The Government is obligated to purchase under each resultant contract a guaranteed minimum of $2,500 (two thousand, five hundred dollars) during the contract term.

(h) All users of GSA’s and VA’s Federal Supply Schedules, including non-Federal users, shall use the schedules in accordance with the ordering guidance provided by the Administrator of General Services. GSA encourages non-Federal users to follow the Schedule Ordering Procedures set forth in the Federal Acquisition Regulation (FAR) 8.4, but they may use different established competitive ordering procedures if such procedures are needed to satisfy their state and local acquisition regulations and/or organizational policies.

**552.238-114 USE OF FEDERAL SUPPLY SCHEDULE CONTRACTS BY NON-FEDERAL ENTITIES (MAY 2019)**

(a) If an entity identified in paragraph (d) of the clause at [552.238-113](https://www.acquisition.gov/content/part-552-solicitation-provisions-and-contract-clauses#id195K8300P4V), Scope of Contract (Eligible Ordering Activities) ***[see 552.238-113 located within the Solicitation Document 01]***, elects to place an order under this contract, the entity agrees that the order shall be subject to the following conditions:

(1) When the Contractor accepts an order from such an entity, a separate contract is formed which incorporates by reference all the terms and conditions of the Schedule contract except the Disputes clause, the patent indemnity clause, and the portion of the Commercial Item Contract Terms and Conditions that specifies “Compliance with laws unique to Government contracts” (which applies only to contracts with entities of the Executive branch of the U.S. Government). The parties to this new contract which incorporates the terms and conditions of the Schedule contract are the individual ordering activity and the Contractor. The U.S. Government shall not be liable for the performance or nonperformance of the new contract. Disputes which cannot be resolved by the parties to the new contract may be litigated in any State or Federal court with jurisdiction over the parties, applying Federal procurement law, including statutes, regulations and case law, and, if pertinent, the Uniform Commercial Code. To the extent authorized by law, parties to this new contract are encouraged to resolve disputes through Alternative Dispute Resolution. Likewise, a Blanket Purchase Agreement (BPA), although not a contract, is an agreement that may be entered into by the Contractor with such an entity and the Federal Government is not a party.

(2) Where contract clauses refer to action by a Contracting Officer or a Contracting Officer of GSA, that shall mean the individual responsible for placing the order for the ordering activity (*e.g.,*FAR 52.212-4 at paragraph (f) and FSS clause I-FSS-249 B.)

(3) As a condition of using this contract, eligible ordering activities agree to abide by all terms and conditions of the Schedule contract, except for those deleted clauses or portions of clauses mentioned in paragraph [(a)(1)](https://www.acquisition.gov/sites/default/files/current/gsam/html/Part552_Sub2B.html#wp1884978) of this clause. Ordering activities may include terms and conditions required by statute, ordinance, regulation, order, or as otherwise allowed by State and local government entities as a part of a statement of work (SOW) or statement of objective (SOO) to the extent that these terms and conditions do not conflict with the terms and conditions of the Schedule contract. The ordering activity and the Contractor expressly acknowledge that, in entering into an agreement for the ordering activity to purchase goods or services from the Contractor, neither the ordering activity nor the Contractor will look to, primarily or in any secondary capacity, or file any claim against the United States or any of its agencies with respect to any failure of performance by the other party.

(4) The ordering activity is responsible for all payments due the Contractor under the contract formed by acceptance of the ordering activity’s order, without recourse to the agency of the U.S. Government, which awarded the Schedule contract.

(5) The Contractor is encouraged, but not obligated, to accept orders from such entities. The Contractor may, within 5 days of receipt of the order, decline to accept any order, for any reason. The Contractor shall fulfill orders placed by such entities, which are not declined within the 5-day period.

(6) The supplies or services purchased will be used for governmental purposes only and will not be resold for personal use. Disposal of property acquired will be in accordance with the established procedures of the ordering activity for the disposal of personal property.

(b) If the Schedule Contractor accepts an order from an entity identified in paragraph (d) of the clause at [552.238-113](https://www.acquisition.gov/content/part-552-solicitation-provisions-and-contract-clauses#id195K8300P4V), Scope of Contract (Eligible Ordering Activities), the Contractor agrees to the following conditions:

(1) The ordering activity is responsible for all payments due the Contractor for the contract formed by acceptance of the order, without recourse to the agency of the U.S. Government, which awarded the Schedule contract.

(2) The Contractor is encouraged, but not obligated, to accept orders from such entities. The Contractor may, within 5 days of receipt of the order, decline to accept any order, for any reason. The Contractor shall decline the order using the same means as those used to place the order. The Contractor shall fulfill orders placed by such entities, which are not declined within the 5-day period.

(c) In accordance with clause [552.238-80](https://www.acquisition.gov/content/part-552-solicitation-provisions-and-contract-clauses#i1874125), Industrial Funding Fee and Sales Reporting, the Contractor must report the quarterly dollar value of all sales under this contract. When submitting sales reports, the Contractor must report two dollar values for each Special Item Number:

(1) The dollar value for sales to entities identified in paragraph (a) of the clause at [552.238-113](https://www.acquisition.gov/content/part-552-solicitation-provisions-and-contract-clauses#id195K8300P4V), Scope of Contract (Eligible Ordering Activities), and

(2) The dollar value for sales to entities identified in paragraph (d) of clause [552.238-113](https://www.acquisition.gov/content/part-552-solicitation-provisions-and-contract-clauses#id195K8300P4V).

**852.203-70 COMMERCIAL ADVERTISING (MAY 2018)**

The Contractor shall not make reference in its commercial advertising to Department of Veterans Affairs contracts in a manner that states or implies the Department of Veterans Affairs approves or endorses the Contractor’s products or services or considers the Contractor’s products or services superior to other products or services.

**852.232-72** **ELECTRONIC SUBMISSION OF PAYMENT REQUESTS (NOV 2018)**

***NOTE: This clause only applies to orders placed directly with a contractor by a VA ordering activity.***

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

(1)  *Contract financing payment* has the meaning given in [FAR 32.001](https://www.acquisition.gov/vaar/vaar-832-acquisitiongov).

(2)  *Designated agency office* means the office designated by the purchase order, agreement, or contract to first receive and review invoices.  This office can be contractually designated as the receiving entity.  This office may be different from the office issuing the payment;

(3)  *Electronic form* means an automated system transmitting information electronically according to the accepted electronic data transmission methods and formats identified in paragraph [(c)](https://www.acquisition.gov/vaar/vaar-852-acquisitiongov#85223272c) of this clause.  Facsimile, e-mail, and scanned documents are not acceptable electronic forms for submission of payment requests;

(4)  *Invoice payment* has the meaning given in [FAR 32.001](https://www.acquisition.gov/vaar/vaar-832-acquisitiongov); and

(5)  *Payment request* means any request for contract financing payment or invoice payment submitted by the Contractor under this contract.

(b)  *Electronic payment requests.*  Except as provided in paragraph [(e)](https://www.acquisition.gov/vaar/vaar-852-acquisitiongov#85223272e) of this clause, the Contractor shall submit payment requests in electronic form.  Purchases paid with a Government-wide commercial purchase card are considered to be an electronic transaction for purposes of this rule, and therefore no additional electronic invoice submission is required.

(c)  *Data transmission.*  A Contractor must ensure that the data transmission method and format are through one of the following:

(1)  VA’s Electronic Invoice Presentment and Payment System at the current website address provided in the contract.

(2)  Any system that conforms to the X12 electronic data interchange (EDI) formats established by the Accredited Standards Center (ASC) and chartered by the American National Standards Institute (ANSI)

(d)  Invoice requirements.  Invoices shall comply with [FAR 32.905](https://www.acquisition.gov/content/32905-payment-documentation-and-process).

(e)  *Exceptions.*  If, based on one of the circumstances below, the Contracting Officer directs that payment requests be made by mail, the Contractor shall submit payment requests by mail through the United States Postal Service to the designated agency office.  Submission of payment requests by mail may be required for—

(1)  Awards made to foreign vendors for work performed outside the United States;

(2)  Classified contracts or purchases when electronic submission and processing of payment requests could compromise the safeguarding of classified or privacy information;

(3)  Contracts awarded by contracting officers in the conduct of emergency operations, such as responses to national emergencies;

(4)  Solicitations or contracts in which the designated agency office is a VA entity other than the VA Financial Services Center in Austin, Texas; or

(5)  Solicitations or contracts in which the VA designated agency office does not have electronic invoicing capability as described above.

**852.237-70** **INDEMNIFICATION AND MEDICAL LIABILITY INSURANCE (OCT 2019)**

(a) It is expressly agreed and understood that this is a non-personal services contract, as defined in [Federal Acquisition Regulation (FAR) 37.101](https://www.acquisition.gov/vaar/vaar-837-acquisitiongov), under which the professional services rendered by the Contractor or its health-care providers are rendered in its capacity as an independent contractor.  The Government may evaluate the quality of professional and administrative services provided but retains no control over professional aspects of the services rendered, including by example, the Contractor’s or its health-care providers’ professional medical judgment, diagnosis, or specific medical treatments.  The Contractor and its health-care providers shall be liable for their liability-producing acts or omissions.  The Contractor shall maintain or require all health-care providers performing under this contract to maintain, during the term of this contract, professional liability insurance issued by a responsible insurance carrier of not less than the following amount(s) per specialty per occurrence:[Contracting Officer’s Note: Insert the dollar amount value(s) of standard coverage(s) prevailing within the local community as to the specific medical specialty, or specialties, concerned, or such higher amount as the Contracting Officer deems necessary to protect the Government's interests.]  However, if the Contractor is an entity or a subdivision of a State that either provides for self-insurance or limits the liability or the amount of insurance purchased by State entities, then the insurance requirement of this contract shall be fulfilled by incorporating the provisions of the applicable State law.

(b) An apparently successful offeror, upon request of the Contracting Officer, shall, prior to contract award, furnish evidence of the insurability of the offeror and/or of all health-care providers who will perform under this contract.  The submission shall provide evidence of insurability concerning the medical liability insurance required by paragraph [(a)](https://www.acquisition.gov/vaar/vaar-852-acquisitiongov#8522377a) of this clause or the provisions of State law as to self-insurance, or limitations on liability or insurance.

(c) The Contractor shall, prior to commencement of services under the contract, provide to the Contracting Officer Certificates of Insurance or insurance policies evidencing the required insurance coverage and an endorsement stating that any cancellation or material change adversely affecting the Government’s interest shall not be effective until 30 days after the insurer or the Contractor gives written notice to the Contracting Officer.  Certificates or policies shall be provided for the Contractor and/or each health-care provider who will perform under this contract.

(d) The Contractor shall notify the Contracting Officer within 5 days of becoming aware of a change in insurance providers during the performance period of this contract for all health-care providers performing under this contract.  The notification shall provide evidence that the Contractor and/or health-care providers will meet all the requirements of this clause, including those concerning liability insurance and endorsements.  These requirements may be met either under the new policy, or a combination of old and new policies, if applicable.

(e) The Contractor shall insert the substance of this clause, including this paragraph (e), in all subcontracts for health-care services under this contract.  The Contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the provisions set forth in paragraph [(a)](https://www.acquisition.gov/vaar/vaar-852-acquisitiongov#8522377a) of this clause. At least 5 days before the commencement of work by any subcontractor, the Contractor shall furnish to the Contracting Officer evidence of such insurance.