|  |  |  |  |  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT** | | | | | | | | | 1. CONTRACT ID CODE | | PAGES OF PAGES | | | |
| 1 | | 58 | |
| 2. AMENDMENT/MODIFICATION NO.  **Mass Modification 0009** | | | 3. EFFECTIVE DATE | | | 4. REQUISITION/PURCHASE REQ. NO. | | | | 5. PROJECT NO. *(If applicable)* | | | | |
| 6. ISSUED BY: CODE: | | | | 003B6B | | 7. ADMINISTERED BY *(If other than Item 6)* CODE: | | | | | | 003B6B | | |
| Department of Veterans Affairs  National Acquisition Center  P.O. Box 76, Bldg. 37  Hines, IL 60141 | | | | | 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 Itesm (Changes) | | | | | | | | | | | | | |
|  | D. OTHER *(Specify type of modification and authority)* | | | | | | | | | | | | | |
| E. **IMPORTANT**: Contractor  is not,  is required to sign this document and return  1 copies to the issuing office. | | | | | | | | | | | | | | |

|  |
| --- |
| 14. DESCRIPTION OF AMENDMENT/MODIFICATION (*Organized by UCF section headings, including solicitation/contract subject matter where feasible.)*  **Updates to FAR/GSAR Clauses and Provisions, Special Language, and Subcontracting Plan Template**  This modification is issued to incorporate the following changes into the above-referenced contract pursuant to Amendment 0003 issued under 65 I B solicitation number M5-Q50A-03-R8.  Item 1) Adds, removes, and revises FAR and GSAR clauses and provisions and solicitation special language. See summary table on continuation pg. 2 and full text of added and revised regulations beginning on continuation pg. 4.  Item 2) Revises Small Business Subcontracting Plan Template(April 2019). See continuation pg. 52. |
| 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 | | | | |

**ITEM 1**

Below is a chart of all added, deleted, and revised regulations and special language, providing the old and new regulation name/number where applicable. Immediately following this chart is the full text of all added and revised regulations and special language.

| **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*** |
| **52.212-4** 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 (Oct 2019, 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*** |
| **52.219-8** 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) |
| **52.222-19** Child Labor - Cooperation with Authorities and Remedies (Oct 2019) | **52.222-19** Child Labor - Cooperation with Authorities and Remedies (Jan 2018) |
| **52.222-50** Combating Trafficking in Persons (Jan 2019) | **52.222-50** Combating Trafficking in Persons (Mar 2015) |
| **52.225-5** Trade Agreements (Oct 2019, Notes - Aug 2018) | **52.225-5** Trade Agreements (Oct 2016, Note - Aug 2018) |
| **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) |
| **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) | **552.212-72** Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Items (June 2015) |
| ***REMOVED*** | **552.232-79** Payment by Credit Card (May 2003, Note) |
| **552.238-74** Introduction of New Supplies/Services (INSS) (May 2019, Tailored) | **L-FSS-400** Introduction of New Services /Products (INSP) (Nov 2000, Tailored) |
| **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) |
| **552.238-78** Identification of Products that Have Environmental Attributes (May 2019) | **552.238-72** Identification of Products that Have Environmental Attributes (Sep 2003) |
| **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 - Jan 2016) | **552.238-74** Industrial Funding Fee and Sales Reporting (Jan 2016, Tailored, Notes – Feb 2019) |
| **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, Note) | **552.232-83** Contractor's Billing Responsibilities (May 2003, Note) |
| **552.238-86** Delivery Schedule (May 2019, Tailored, Notes) | **552.211-78** Commercial Delivery Schedule (Multiple Award Schedule) (Feb 1996, Tailored) |
| **552.238-87** Delivery Prices (May 2019, Tailored, Note) | **F-FSS-202-G** Delivery Prices (Jan 1994, Note) |
| **552.238-88** GSA Advantage! (May 2019, Tailored, Note) | **I-FSS-597** GSA Advantage! (Sep 2000, Tailored, Note) |
| **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, Note) | **I-FSS-140-B** Urgent Requirements (Jan 1994, Note) |
| **552.238-97** Parts and Service (May 2019, Note) | **I-FSS-594** Parts and Service (Oct 1988) |
| **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, Note) |
| **552.238-101** Foreign Taxes and Duties (May 2019, Note) | **I-FSS-314** Foreign Taxes and Duties (Dec 1990) |
| **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) |
| **552.238-113** 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) |
| ***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](mailto: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.

**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.

**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>.

**52.212-4  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 (OCT 2019)**

(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).

\_\_ (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).

**X**  (26) [52.222-19](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1055664), Child Labor-Cooperation with Authorities and Remedies (Oct 2019) (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).

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

**X**  (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.*]

\_\_ (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).

\_\_ (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)).

\_\_ (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)).

\_\_ (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)).

\_\_ (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)).

\_\_ (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).

\_\_ (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.

**52.219-8** **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](mailto: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.

**52.222-19 CHILD LABOR—COOPERATION WITH AUTHORITIES AND REMEDIES (OCT 2019)**

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

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

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

(3) Mexico, and the anticipated value of the acquisition is $80,317 or more; or

(4) Armenia, Aruba, Australia, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Italy, Japan, Korea, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Montenegro, Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Taiwan, Ukraine, or the United Kingdom and the anticipated value of the acquisition is $180,000 or more.

(b) *Cooperation with Authorities*. To enforce the laws prohibiting the manufacture or importation of products mined, produced, or manufactured by forced or indentured child labor, authorized officials may need to conduct investigations to determine whether forced or indentured child labor was used to mine, produce, or manufacture any product furnished under this contract. If the solicitation includes the provision [52.222-18](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1055635), Certification Regarding Knowledge of Child Labor for Listed End Products, or the equivalent at [52.212-3](https://www.acquisition.gov/content/part-52-solicitation-provisions-and-contract-clauses#i1060550)(i), the Contractor agrees to cooperate fully with authorized officials of the contracting agency, the Department of the Treasury, or the Department of Justice by providing reasonable access to records, documents, persons, or premises upon reasonable request by the authorized officials.

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

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

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

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

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

(d) Remedies.

(1) The Contracting Officer may terminate the contract.

(2) The suspending official may suspend the Contractor in accordance with procedures in FAR [subpart  9.4](https://www.acquisition.gov/content/part-9-contractor-qualifications#i1115147).

(3) The debarring official may debar the Contractor for a period not to exceed 3 years in accordance with the procedures in FAR [subpart  9.4](https://www.acquisition.gov/content/part-9-contractor-qualifications#i1115147).

**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](mailto:help@befree.org).

(iii) A recruitment and wage plan that only permits the use of recruitment companies with trained employees, prohibits charging recruitment fees to the 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)**

***Note (Aug 2018): Special Item Number (SIN) 42-2A product items that are not U.S.-made products or designated country end products as defined in 52.225-5 Trade Agreements must be included in the offeror’s proposal to obtain a Federal Supply Schedule 65IB contract and listed as other end products as required by 52.212-3(g)(5)(ii).* *In accordance with Federal Acquisition Regulation 25.403(c) & 25.103(b)(2), the decision has been made that the Contracting Officer may make an individual non-availability determination pursuant to 1) information provided by the offeror that neither the offered 42-2A product items nor similar or like items are mined, produced, or manufactured in the United States or substantially transformed in the U.S. or a designated country in sufficient quantity to fulfill the requirements, and 2) in light of the requirement set forth in 38 U.S.C. Section 8126(a)(1) that manufacturers shall make available for procurement on the Federal Supply Schedule of the General Services Administration each covered drug of the manufacturer.***

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

“Caribbean Basin country end product”—

(1) Means an article that-

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

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

(ii) Is not excluded from duty-free treatment for Caribbean countries under [19 U.S.C.2703(b)](http://uscode.house.gov/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)

**552.212-72 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:

[The contracting officer should either check the provisions and clauses that apply or delete the provisions and clauses that do not apply from the list. The contracting officer may add the date of the provision or clause if desired for clarity.]

(a) *Provisions.*

(b) *Clauses.*

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

552.238-78 Identification of Products that have Environmental Attributes

**552.238-74 INTRODUCTION OF NEW SUPPLIES/SERVICES (INSS) (MAY 2019, TAILORED)**

(a)   *Definition*.

“Introduction of New Supplies/Services Special Item Number (INSS SIN)” means a new or improved supply or service - within the scope of the Federal Supply Schedule (FSS), but not currently available under any Federal Supply Schedule contract- that provides a new service, function, task, or attribute that may provide a more economical or efficient means for ordering activities to accomplish their missions. It may significantly improve an existing supply or service. It may be a supply or service existing in the commercial market, but not yet introduced to the Federal Government.

(b) Offerors are encouraged to introduce new or improved supplies or services via INSS SIN at any time by clearly identify the INSS SIN item in the offer.

(c) The Contracting Officer has the sole discretion to determine whether a supply or service will be accepted as an INSS SIN item. The Contracting Officer will evaluate and process the offer and may perform a technical review. The INSS SIN provides temporary placement until the Contracting Officer formally categorizes the new supply or service.

(d) If the Contractor has an existing schedule contract, the Government may, at the sole discretion of the Contracting Officer, modify the existing contract to include the INSS SIN item in accordance with 552.238-82, Modifications (Federal Supply Schedules).

**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.

**552.238-78 IDENTIFICATION OF PRODUCTS THAT HAVE ENVIRONMENTAL ATTRIBUTES (MAY 2019)**

(a) Several laws, Executive orders, and Agency directives require Federal buyers to purchase products that are less harmful to the environment, when they are life cycle cost-effective (see FAR Subpart 23.7). The U.S. General Services Administration (GSA) requires contractors to highlight environmental products under Federal Supply Service schedule contracts in various communications media (*e.g.*, publications and electronic formats).

(b) Definitions. As used in this clause—

“Energy-efficient product” means a product that–.

 (1)  Meets Department of Energy and Environmental Protection Agency criteria for use of the ENERGY STAR® trademark label; or

 (2)  Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy's Federal Energy Management Program.

“GSA Advantage!” is an on-line shopping mall and ordering system that provides customers with access to products and services under GSA contracts.

“Other environmental attributes” refers to product characteristics that provide environmental benefits, excluding recovered materials and energy and water efficiency. Several examples of these characteristics are biodegradable, recyclable, reduced pollutants, ozone safe, and low volatile organic compounds (VOCs).

“Post-consumer material” means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Post-consumer material is part of the broader category of “recovered material.” The Environmental Protection Agency (EPA) has developed a list of EPA-designated products in their Comprehensive Procurement Guidelines (CPGs) to provide Federal agencies with purchasing recommendations on specific products in a Recovered Materials Advisory Notice (RMAN). The RMAN contains recommended recovered and post-consumer material content levels for the specific products designated by EPA (40 CFR part 247 and <http://www.epa.gov/cpg/>).

“Recovered materials” means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process (Executive Order 13101 and 42 U.S.C. 6903(19) and <http://www.epa.gov/cpg/>). For paper and paper products, see the definition at FAR 11.301 (42 U.S.C. 6962(h)).

“Remanufactured” means factory rebuilt to original specifications.

“Renewable energy” means energy produced by solar, wind, geothermal, and biomass power.

“Renewable energy technology” means–

(1)  Technologies that use renewable energy to provide light, heat, cooling, or mechanical or electrical energy for use in facilities or other activities; or

(2)  The use of integrated whole-building designs that rely upon renewable energy resources, including passive solar design.

(c)  *Identification Requirements*.

(1)  The offeror must identify products that—

(i)  Are compliant with the recovered and post-consumer material content levels recommended in the Recovered Materials Advisory Notices (RMANs) for EPA-designated products in the CPG program (<http://www.epa.gov/cpg/>);

(ii) Contain recovered materials that either do not meet the recommended levels in the RMANs or are not EPA-designated products in the CPG program (see FAR 23.401 and <http://www.epa.gov/cpg/>);

(iii)  Are energy-efficient, as defined by either ENERGY STAR® and/or FEMP's designated top 25th percentile levels (see ENERGY STAR® at <http://www.energystar.gov/> and FEMP at <http://www.eere.energy.gov/femp/procurement/>);

(iv)  Are water-efficient

(v)  Use renewable energy technology;

(vi)  Are remanufactured; and

(vii)  Have other environmental attributes.

(2)  These identifications must be made in each of the offeror's following mediums:

 (i)  The offer itself.

 (ii) Printed commercial catalogs, brochures, and pricelists.

 (iii)  Online product website.

 (iv)  Electronic data submission for GSA Advantage! submitted via GSA's Schedules Input Program (SIP) software or the Electronic Data Inter-change (EDI). Offerors can use the SIP or EDI methods to indicate environmental and other attributes for each product that are translated into respective icons in GSA Advantage!.

(d) An offeror, in identifying an item with an environmental attribute, must possess evidence or rely on a reasonable basis to substantiate the claim (see 16 CFR part 260, Guides for the Use of Environmental Marketing Claims). The Government will accept an offeror's claim of an item's environmental attribute on the basis of—

(1)  Participation in a Federal agency sponsored program (*e.g.*, the EPA and DOE ENERGY STAR® product labeling program);

(2)  Verification by an independent organization that specializes in certifying such claims; or

(3)  Possession of competent and reliable evidence. For any test, analysis, research, study, or other evidence to be “competent and reliable,” it must have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

**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, NOTES – JAN 2016)**

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

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

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

***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.*
4. *Sales of items awarded under an FSS contract and shipped to the Pharmaceutical Prime Vendor that are ultimately sold to a Federal Government activity.*

**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)**

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

(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. ***NOTE: Drugs subject to Public Law 102-585 may only be deleted from the contract when all product has been exhausted from the contractor’s inventory and the Government supply chain (i.e. the Prime Vendor).***

(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)**

***NOTE: This clause does not apply to orders placed through a Government Prime Vendor.***

(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: This clause does not apply to orders placed through a Government Prime Vendor Program or a Direct-to-Patient Distribution Program.***

(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 shipment in transit in the case of F.O.B. Origin 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 business practice. The Government requires the Contractor's normal 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 Delivery Time (Days ARO)** | **Offeror’s Normal Commercial Delivery Time** | **Proposed Delivery Time to the Government** |
| ALL SINs | 10 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:***

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

***NOTE: This clause does not apply to orders placed through a Government Prime Vendor Program or a Direct-to-Patient Distribution Program.***

(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.

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

***NOTE: This clause does not apply to SINs 42-2a and 42-2b. FSS ordering activities do not have access to any SINs under this schedule through GSA e-BUY (GSA’s on-line Request for Quotation tool).***

(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)**

***NOTE: This clause does not apply to orders placed through a Government Prime Vendor Program.***

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.

**552.238-97 PARTS AND SERVICE (MAY 2019) *Note: This clause applies to overseas delivery only.***

(a)  For equipment under items listed in the schedule of items or services on which offers are submitted, the Contractor represents by submission of this offer that parts and services (including the performing of warranty or guarantee service) are now available from dealers or distributors serving the areas of ultimate overseas destination or that such facilities will be established and will be maintained throughout the contract period. If a new servicing facility is to be established, the facility shall be established no later than the beginning of the contract period.

(b)  Each Contractor shall be fully responsible for the services to be performed by the named servicing facilities, or by such facilities to be established, and fully guarantees performance of such services if the original service proves unsatisfactory.

(c)  Contractors are requested to provide the Ordering Activity, the names and addresses of all supply and service points maintained in the geographic area in which the Contractor will perform. Please indicate opposite each point whether or not a complete stock of repair parts for items offered is carried at that point, and whether or not mechanical service is available.

**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

(e) [552.238-97](https://www.acquisition.gov/content/part-552-solicitation-provisions-and-contract-clauses#id195FF0HJ0KX) Parts and Service

(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 only to orders placed directly with the contractor for overseas delivery, not for orders placed through a Prime Vendor.***

(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 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).

**ITEM 2**

**SMALL BUSINESS SUBCONTRACTING PLAN**

**(Model Outline\* – Template Revised 4/1/2019)**

**\*** *This template is a* ***suggested*** *model for use when formulating a subcontracting plan pursuant to the requirements at FAR 52.219-9(d). While this model plan has been designed to be consistent with FAR 52.219-9, other formats may be acceptable. However, failure to include the essential information as set forth in this model may be cause for either a delay in acceptance or the rejection of an offer where the clause is applicable. Further, the use of this model is not intended to waive other requirements that may be applicable under FAR 52.219-9 or that may appear in the Government’s solicitation. "SUBCONTRACT," as used in 52.219-9,* ***refers to your external company spend****, meaning any agreement (other than one involving an employer-employee relationship) entered into by a federal government prime contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract****.***

**SUBCONTRACTING PLAN PERIOD:** [Enter start date of fiscal year] - [Enter end date of fiscal year]

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

**DATE SUBMITTED:** [Enter date submitted. If plan has been revised, enter revision date]

**NAME OF PLANHOLDER:**

**SUBSIDIARIES INCLUDED:** [Enter "None" or specific names of included subsidiaries]

**ADDRESS:**

**ITEM/SERVICE TYPE**: [Enter product/service type, not contract number, schedule, or SIN]

1. **TYPE OF PLAN**

Select only one of the following plan types (a or b), listing the total estimated dollar value of all planned subcontracting (to all types of business concerns, both **large and small**). Per 13 CFR 125.3(a)(1)(iii), **the following categories should not be included in the total subcontracting spend base in #1, the proposed goals in #2, nor in the categories of spend listed in #3:** internally generated costs such as salaries and wages; employee insurance; other employee benefits; payments for petty cash; depreciation; interest; income taxes; property taxes; lease payments; bank fees; fines, claims, and dues; Original Equipment Manufacturer relationships during warranty periods (negotiated up front with product); utilities such as electricity, water, sewer, and other services purchased from a municipality or solely authorized by the municipality to provide those services in a particular geographical region; and philanthropic contributions. Utility companies may be eligible for additional exclusions unique to their industry, which may be approved by the contracting officer on a case-by-case basis.

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

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

Base Period $       5-Year Option $

Total Contract Value (including options) $

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

1. **Commercial Plan *(select one of the following plan types*):**

**Company-wide *or***  **Division-wide**

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

Total projected sales $       (Subcontracts Represent      % of Total Annual Sales)

State separate dollar and percentage goals, expressed in terms of **percentages of the total available subcontracting dollars** listed in the previous section in #1.

***Commercial plans must complete 2a below with 1-year goals, and individual plans must complete 2b below with two separate 5-year goals. Complete only 2a OR 2b, as applicable. Round percentage goals to one decimal place (X.x%).***

**2a. GOALS FOR COMMERCIAL PLANS (1-Year Goals)**

1. Total estimated dollar value and percent of planned subcontracting with **small businesses (SB)** (including ANCs and Indian tribes), veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged (including ANCs and Indian tribes), and women-owned small business concerns: $      and      %
2. Total estimated dollar value and percent of planned subcontracting with **veteran-owned small businesses (VO)**: $      and      %
3. Total estimated dollar value and percent of planned subcontracting with **service-disabled veteran-owned small businesses (SDVO)** (Note: This is a subset of veteran-owned): $      and      %
4. Total estimated dollar value and percent of planned subcontracting with **small disadvantaged businesses (SDB)** (including ANCs and Indian tribes): $      and      %
5. Total estimated dollar value and percent of planned subcontracting with **women-owned small businesses (WO)**: $      and      %
6. Total estimated dollar value and percent of planned subcontracting **with HUBZone small businesses (HUB)**: $      and      %

**2b. GOALS FOR INDIVIDUAL PLANS (Two, Five-Year Goals)**

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

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

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

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

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

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

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

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

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

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

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

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

**3. PRODUCTS AND/OR SERVICES**

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

**LB:**

**SB:**

**VO:**

**SDVO:**

**SDB:**

**WO:**

**HUB:**

**4. GOAL DEVELOPMENT**

The following method was used in developing the subcontracting goals:

**5. IDENTIFYING POTENTIAL SOURCES**

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

**6. INDIRECT COSTS**

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

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

**7. PROGRAM ADMINISTRATOR**

The following individual will administer the subcontracting program:

NAME:

TITLE:

ADDRESS:

TELEPHONE:

E-MAIL:

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

**8. EQUITABLE OPPORTUNITY**

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

**9. FLOW-DOWN CLAUSE**

The offeror agrees that the FAR clause of this contract entitled “Utilization of Small Business Concerns” (52.219-8) will be included in all subcontracts that offer further subcontracting opportunities, and that the Offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of $700,000 ($1.5 million for construction of any public facility) with further subcontracting possibilities to adopt a subcontracting plan that complies with the requirements of FAR clause 52.219-9 Small Business Subcontracting Plan.

***NOTE: See exceptions listed in FAR 52.219-9(j).***

**10. REPORTING & COOPERATION**

The offeror agrees to

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

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

(iii) After November 30, 2017, include subcontracting data for each order when reporting subcontracting achievements for indefinite-delivery, indefinite-quantity contracts with individual subcontracting plans where the contract is intended for use by multiple agencies;

(iv) Submit the Individual Subcontract Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with paragraph (l) of FAR 52.219-9 using the Electronic Subcontracting Reporting System (eSRS) at [http://www.esrs.gov](http://www.esrs.gov/). The reports shall provide information on subcontract awards to small business concerns (including ANCs and Indian tribes that are not small businesses), veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns (including ANCs and Indian tribes that have not been certified by SBA as small disadvantaged businesses), women-owned small business concerns, and for NASA only, Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with 52.219-9, or as provided in agency regulations;

(v) Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using eSRS;

(vi) Provide its prime contract number, its unique identity identifier, and the e-mail address of the Offeror’s official responsible for acknowledging receipt of or rejecting the ISRs, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their ISRs; and

(vii) Require that each subcontractor with a subcontracting plan provide the prime contract number, its own unique identity identifier, and the e-mail address of the subcontractor’s official responsible for acknowledging receipt of or rejecting the ISRs, to its subcontractors with subcontracting plans.

**11. RECORDKEEPING**

The following is a description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror’s efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

(i) Source lists (e.g., SAM), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.

(ii) Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.

(iii) Records on each subcontract solicitation resulting in an award of more than $150,000 ***(Note:  As of the publication of this template, the threshold of $150,000 has been revised by some agencies via a deviation to either reflect “$250,000” or to reference “the simplified acquisition threshold” rather than referring to a specific dollar amount.)***, indicating—

(A) Whether small business concerns were solicited and, if not, why not;

(B) Whether veteran-owned small business concerns were solicited and, if not, why not;

(C) Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;

(D) Whether HUBZone small business concerns were solicited and, if not, why not;

(E) Whether small disadvantaged business concerns were solicited and, if not, why not;

(F) Whether women-owned small business concerns were solicited and, if not, why not; and

(G) If applicable, the reason award was not made to a small business concern.

(iv) Records of any outreach efforts to contact—

(A) Trade associations;

(B) Business development organizations;

(C) Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, service-disabled veteran-owned, and women-owned small business sources; and

(D) Veterans service organizations.

(v) Records of internal guidance and encouragement provided to buyers through–

(A) Workshops, seminars, training, etc.; and

(B) Monitoring performance to evaluate compliance with the program’s requirements.

(vi) On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

**12 & 13. UTILIZATION OF SMALL BUSINESS CONCERNS USED IN BID/PROPOSAL**

**12.** The offeror agrees to make a good faith effort to acquire articles, equipment, supplies, services, or materials, or obtain the performance of construction work from the small business concerns that it used in preparing the bid or proposal, in the same or greater scope, amount, and quality used in preparing and submitting the bid or proposal. Responding to a request for a quote does not constitute use in preparing a bid or proposal. The Offeror used a small business concern in preparing the bid or proposal if–

(i) The Offeror identifies the small business concern as a subcontractor in the bid or proposal or associated small business subcontracting plan, to furnish certain supplies or perform a portion of the subcontract; or

(ii) The Offeror used the small business concern’s pricing or cost information or technical expertise in preparing the bid or proposal, where there is written evidence of an intent or understanding that the small business concern will be awarded a subcontract for the related work if the Offeror is awarded the contract.

**13.** The Contractor agrees to provide the Contracting Officer with a written explanation if the Contractor fails to acquire articles, equipment, supplies, services or materials or obtain the performance of construction work as described in (12) above. This written explanation must be submitted to the Contracting Officer within 30 days of contract completion.

**14. SUBCONTRACTOR DISCUSSIONS WITH CO**

The Contractor agrees not to prohibit a subcontractor from discussing with the Contracting Officer any material matter pertaining to payment to or utilization of a subcontractor.

**15. PROMPT PAYMENT OF SMALL BUSINESS SUBCONTRACTORS**

The Contractor agrees to pay its small business subcontractors on time and in accordance with the terms and conditions of the underlying subcontract and notify the contracting officer when the prime contractor makes either a reduced or an untimely payment to a small business subcontractor (see FAR 52.242-5).

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

**Typed Name:**       **Title:**

**\**Please note that at this time we cannot accept any form of electronic or digital signatures. We require that your e-mailed plan submission be a scanned copy of a wet signature.***

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

**COMMERCIAL PLANS: SUMMARY OF GOALS**

This page is for ***commercial plans ONLY.***

Entries below should match your responses in #1 and #2a at the beginning of the template.

**Round percentages to one decimal place (X.x%) and dollar figures to the nearest whole dollar**.

**Prior Year Goals Prior Year Current Goals**

**Achievements\***

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

(both large & small businesses)

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

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

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

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

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

**Owned** Dollars$       $       $

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

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

**SDB** Percent of Line 1      %      %      %

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

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

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

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

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