

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS
OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30

1. REQUISITION NUMBER 1000044936		PAGE 1 OF 12	
2. CONTRACT NO. SPE300-16-D-P287	3. AWARD/EFFECTIVE DATE 2016 OCT 02	4. ORDER NUMBER	5. SOLICITATION NUMBER SPE300-16-R-0017
6. SOLICITATION ISSUE DATE 2016 MAY 19			

7. FOR SOLICITATION INFORMATION CALL:	a. NAME	b. TELEPHONE NUMBER (No collect calls)	8. OFFER DUE DATE/ LOCAL TIME

9. ISSUED BY DLA TROOP SUPPORT DIRECTORATE OF SUBSISTENCE 700 ROBBINS AVENUE PHILADELPHIA PA 19111-5096 USA Local Admin: Kalifa Williams PHPHDBC Tel: 215-737-0619 Fax: 215-737-5227 Email: Kalifa.Williams@dla.mil	CODE SPE300	10. THIS ACQUISITION IS <input checked="" type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> HUBZONE SMALL BUSINESS <input type="checkbox"/> SERVICE-DISABLED VETERAN-OWNED SMALL BUSINESS	<input checked="" type="checkbox"/> UNRESTRICTED OR <input type="checkbox"/> SET ASIDE: 100 % FOR: <input type="checkbox"/> WOMEN-OWNED SMALL BUSINESS (WOSB) ELIGIBLE UNDER THE WOMEN-OWNED SMALL BUSINESS PROGRAM <input type="checkbox"/> EDWOSB NAICS: 311991 <input type="checkbox"/> 8 (A) SIZE STANDARD:500
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11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input checked="" type="checkbox"/> SEE SCHEDULE	12. DISCOUNT TERMS Net 30 (Do not Use)	<input type="checkbox"/> 13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700)	13b. RATING
		14. METHOD OF SOLICITATION <input type="checkbox"/> RFQ <input type="checkbox"/> IFB <input checked="" type="checkbox"/> RFP	

15. DELIVER TO SEE SCHEDULE	CODE	16. ADMINISTERED BY SEE BLOCK 9 Criticality: PAS: None	CODE SPE300
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17a. CONTRACTOR/ OFFEROR TULSA FRUIT COMPANY DBA GO FRESH TULSA FRUIT 1691 N 161ST E AVE TULSA OK 74116-4824 USA TELEPHONE NO. 9185831153	CODE 1JNS5	FACILITY CODE	18a. PAYMENT WILL BE MADE BY DEF FIN AND ACCOUNTING SVC BSM P O BOX 182317 COLUMBUS OH 43218-2317 USA	CODE SL4701
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<input type="checkbox"/> 17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER	18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED. <input type="checkbox"/> SEE ADDENDUM
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19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	See Schedule				

25. ACCOUNTING AND APPROPRIATION DATA	26. TOTAL AWARD AMOUNT (For Govt. Use Only) \$45,600,000.00
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<input type="checkbox"/> 27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4, FAR 52.212-3 AND 52.212-5 ARE ATTACHED. ADDENDA	<input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED.
<input type="checkbox"/> 27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4, FAR 52.212-5 IS ATTACHED. ADDENDA	<input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED.

<input type="checkbox"/> 28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED	<input type="checkbox"/> 29. AWARD OF CONTRACT: REF. _____ OFFER DATED 0000-00-00 YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH, HEREIN IS ACCEPTED AS TO ITEMS.
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30a. SIGNATURE OF OFFEROR/CONTRACTOR 	31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER)
30b. NAME AND TITLE OF SIGNER (Type or Print) Gabe Johnson	31b. NAME OF CONTRACTING OFFICER (Type or Print) ANTHONY T. HUGHES
30c. DATE SIGNED 9-27-16	31c. DATE SIGNED 9-27-16

19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT

32a. QUANTITY IN COLUMN 21 HAS BEEN

RECEIVED INSPECTED ACCEPTED, AND CONFORMS TO THE CONTRACT, EXCEPT AS NOTED: _____

32b. SIGNATURE OF AUTHORIZED GOVERNMENT REPRESENTATIVE	32c. DATE	32d. PRINTED NAME AND TITLE OF AUTHORIZED GOVERNMENT REPRESENTATIVE
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32e. MAILING ADDRESS OF AUTHORIZED GOVERNMENT REPRESENTATIVE	32f. TELEPHONE NUMBER OF AUTHORIZED GOVERNMENT REPRESENTATIVE
32g. E-MAIL OF AUTHORIZED GOVERNMENT REPRESENTATIVE	

33. SHIP NUMBER <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	34. VOUCHER NUMBER	35. AMOUNT VERIFIED CORRECT FOR	36. PAYMENT <input type="checkbox"/> COMPLETE <input type="checkbox"/> PARTIAL <input type="checkbox"/> FINAL	37. CHECK NUMBER
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38. S/R ACCOUNT NO.	39. S/R VOUCHER NUMBER	40. PAID BY
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41a. I CERTIFY THIS ACCOUNT IS CORRECT AND PROPER FOR PAYMENT	42a. RECEIVED BY (<i>Print</i>)	
41b. SIGNATURE AND TITLE OF CERTIFYING OFFICER	41c. DATE	
	42b. RECEIVED AT (<i>Location</i>)	
		42c. DATE REC'D (<i>YY/MM/DD</i>)
		42d. TOTAL CONTAINERS

Form**award document okl tx R0017**
SOLICITATION/CONTRACT FORM

The terms and conditions set forth in solicitation SPE300-16-R-0017 are incorporated into subject contract.

The following documents are incorporated into the subject contract. Solicitation SPE300-16-R-0017 dated May 19, 2016 and all amendments issued there under as follows:

Amendment 0001, dated March 23, 2016
Amendment 0002, dated September 9, 2016
Amendment 0003, dated September 9, 2016

PERFORMANCE PERIOD:**Effective Period of the Contract:**

Base Period – October 2, 2016 through October 6, 2018
Option Period 1 – October 7, 2018 through October 3, 2020

Ordering commences on October 3, 2016

ESTIMATED DOLLAR VALUE/GUARANTEED MINIMUM/MAXIMUM

The following chart includes the 24 month estimated dollar value and the 4 year estimated dollar value, along with the guaranteed 10% minimum and 100% maximum. The guaranteed minimum and maximum, although based on estimates, are a firm dollar amount calculated as a percentage of the estimated dollar value; the minimum contract dollar value below constitutes the Government's legal ordering obligation under the contract. The maximum contract dollar value is the legal limit of dollars that can be obligated against this contract.

Oklahoma and Texas Panhandle	2 Years Estimate (Base Period)	4 Years Estimate (Total including an Option Period)	10% Guaranteed Min	100% Max (4 Years)
Group 1 (Troops)	\$2,800,000	\$5,600,000	\$280,000	\$11,200,000
Group 2 (Schools)	\$4,300,000	\$8,600,000	\$430,000	\$17,200,000
Group 3 (Reservations)	\$4,300,000	\$8,600,000	\$430,000	\$17,200,000
Total	\$11,400,000	\$22,800,000	\$1,140,000	\$45,600,000

The total minimum contract dollar value is \$1,140,000.00.
The maximum contract dollar value is \$45,600,000.00.

START-UP PERIOD

The Contractor's startup period will take place prior to the first order. The Contractor shall submit a proposed implementation schedule to the Contracting Officer within fifteen (15) days after award highlighting the steps that will be taken to implement a fully functional distribution account, including all EDI transactions for all customers covered by this solicitation. An additional

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thirty (30) days will be granted for actual implementation. No more than forty-five (45) days after award will be permitted for each contractor to have fully functional distribution accounts in place for all customers.

ORDERING CATALOGS

The following are part of GoFresh's offer and are hereby incorporated as part of subject contract:

Offered delivered price to be utilized for first week of ordering. The Pricing Proposal spreadsheet submitted on September 9, 2016 is attached.

Distribution prices for the Base Period and for each Option Period as follows:

Distribution Price	Troops
Distribution Price (24 month base)	██████
Distribution Price (Option 1)	██████

Distribution Price	Schools
Distribution Price (24 month base)	██████
Distribution Price (Option 1)	██████

Distribution Price	Reservations
Distribution Price (24 month base)	██████
Distribution Price (Option 1)	██████

SUPPLIES OF SERVICES AND PRICES

ITEMS: Full-Line Fresh Fruit and Vegetables

CUSTOMERS: DoD Troop and Non-DoD School and Reservation Customers in the Oklahoma/Texas Panhandle Zone.

FOB TERMS: FOB Destination for all items.

NOTE: Paragraph (d) of the Economic Price Adjustment provision contained in the Solicitation enforces an upward ceiling on any economic price adjustments applicable to the instant Contract. Specifically, the aggregate of contract Delivered Price increases for each line item on the catalog subject to this provision shall not exceed 90 percent (%) above that line item's initial Delivered Price on the awarded catalog. This 90 percent (%) ceiling for each line item is in effect throughout the entire length of the contract period, inclusive of any option period(s). To further illustrate this point, Attachment 1 (Final Pricing) includes a separate column that identifies the 90 percent (%) EPA ceiling for the individual Delivered Prices of each line item on the catalog. This price represents the maximum increase in Delivered Price allowable for the entire 4.5-year length of the Contract. For additional information, see the EPA provision as specified in the Solicitation. That said, please be aware that just because an awardee furnishes a price revision on a weekly basis that falls within the EPA clause's 90 percent (%) ceiling, does not automatically deem that price "fair and reasonable" and thus acceptable. The EPA provision is merely one separate factor that is considered by the Contracting Officer in arriving at his/her final "fair and reasonable" price determinations. Therefore, it is important to note that all other provisions of the Solicitation/Contract must be adhered to in conjunction with the aforementioned EPA provision.

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CATALOG #: Non-DoD customers will order under SPE300-16-D-P287, SPE300-16-D-S287 and SPE300-16-D-R287; GoFresh will invoice in accordance with the customer's orders.

All catalog pricing is valid from Sunday thru Saturday. Catalog updates must be received no later than 12:00 P.M. EST the preceding Wednesday.

The USDA School Customers are required to place orders no later than 72 hours before delivery date.

All pricing will be firm at time of order.

GoFresh will not invoke any additional charges for emergency orders (defined as an order that is placed for same day delivery).

DELIVERIES AND PERFORMANCE

The following are the designated plant locations for the performance of this contract for all contract line items:

Place of Performance

Tulsa Fruit Company, DBA: Go Fresh Produce
1691 North 161st East Avenue
Tulsa, Oklahoma 74116

ATTACHMENTS

ATTACHMENT 1: Schedule of Items, first week's pricing.

CLAUSES

52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (Jun 2016)

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

(1) 52.209-10, Prohibition on Contracting with Inverted Domestic Corporations (Nov 2015)

(2) 52.233-3, Protest After Award (AUG 1996) (31 U.S.C. 3553).

(3) 52.233-4, Applicable Law for Breach of Contract Claim (Oct 2004) (Public Laws 108-77 and 108-78 (19 U.S.C. 3805 note)).

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

[Contracting Officer check as appropriate.]

(1) 52.203-6, Restrictions on Subcontractor Sales to the Government (Sept 2006), with Alternate I (Oct 1995) (41 U.S.C. 4704 and 10 U.S.C. 2402).

(2) 52.203-13, Contractor Code of Business Ethics and Conduct (Oct 2015) (41 U.S.C. 3509).

(3) 52.203-15, Whistleblower Protections under the American Recovery and Reinvestment Act of 2009 (June 2010) (Section 1553 of Pub. L. 111-5). (Applies to contracts funded by the American Recovery and Reinvestment Act of 2009.)

(4) 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards (Oct 2015) (Pub. L. 109-282) (31 U.S.C. 6101 note).

(5) [Reserved].

(6) 52.204-14, Service Contract Reporting Requirements (Jan 2014) (Pub. L. 111-117, section 743 of Div. C).

(7) 52.204-15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts (Jan 2014) (Pub. L. 111-117, section 743 of Div. C).

(8) 52.209-6, Protecting the Government's Interest When Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment. (Oct 2015) (31 U.S.C. 6101 note).

(9) 52.209-9, Updates of Publicly Available Information Regarding Responsibility Matters (Jul 2013) (41 U.S.C. 2313).

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- (10) [Reserved].
 (11)(i) 52.219-3, Notice of HUBZone Set-Aside or Sole-Source Award (Nov 2011) (15 U.S.C. 657a).
 (ii) Alternate I (Nov 2011) of 52.219-3.
 (12)(i) 52.219-4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns (Oct 2014) (if the offeror elects to waive the preference, it shall so indicate in its offer) (15 U.S.C. 657a).
 (ii) Alternate I (JAN 2011) of 52.219-4.
 (13) [Reserved]
 (14)(i) 52.219-6, Notice of Total Small Business Set-Aside (Nov 2011) (15 U.S.C. 644).
 (ii) Alternate I (Nov 2011).
 (iii) Alternate II (Nov 2011).
 (15)(i) 52.219-7, Notice of Partial Small Business Set-Aside (June 2003) (15 U.S.C. 644).
 (ii) Alternate I (Oct 1995) of 52.219-7.
 (iii) Alternate II (Mar 2004) of 52.219-7.
 (16) 52.219-8, Utilization of Small Business Concerns (Oct 2014) (15 U.S.C. 637(d)(2) and (3)).
 (17)(i) 52.219-9, Small Business Subcontracting Plan (Oct 2015) (15 U.S.C. 637(d)(4)).
 (ii) Alternate I (Oct 2001) of 52.219-9.
 (iii) Alternate II (Oct 2001) of 52.219-9.
 (iv) Alternate III (Oct 2015) of 52.219-9.
 (18) 52.219-13, Notice of Set-Aside of Orders (Nov 2011) (15 U.S.C. 644(r)).
 (19) 52.219-14, Limitations on Subcontracting (Nov 2011) (15 U.S.C. 637(a)(14)).
 (20) 52.219-16, Liquidated Damages—Subcontracting Plan (Jan 1999) (15 U.S.C. 637(d)(4)(F)(i)).
 (21) 52.219-27, Notice of Service-Disabled Veteran-Owned Small Business Set-Aside (Nov 2011) (15 U.S.C. 657 f).
 (22) 52.219-28, Post Award Small Business Program Rerepresentation (Jul 2013) (15 U.S.C. 632(a)(2)).
 (23) 52.219-29, Notice of Set-Aside for, or Sole Source Award to, Economically Disadvantaged Women-Owned Small Business Concerns (Dec 2015) (15 U.S.C. 637(m)).
 (24) 52.219-30, Notice of Set-Aside for, or Sole Source Award to, Women-Owned Small Business Concerns Eligible Under the Women-Owned Small Business Program (Dec 2015) (15 U.S.C. 637(m)).
 (25) 52.222-3, Convict Labor (June 2003) (E.O. 11755).
 (26) 52.222-19, Child Labor—Cooperation with Authorities and Remedies (Feb 2016) (E.O. 13126).
 (27) 52.222-21, Prohibition of Segregated Facilities (Apr 2015).
 (28) 52.222-26, Equal Opportunity (Apr 2015) (E.O. 11246).
 (29) 52.222-35, Equal Opportunity for Veterans (Oct 2015) (38 U.S.C. 4212).
 (30) 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C. 793).
 (31) 52.222-37, Employment Reports on Veterans (Feb 2016) (38 U.S.C. 4212).
 (32) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496).
 (33)(i) 52.222-50, Combating Trafficking in Persons (Mar 2015) (22 U.S.C. chapter 78 and E.O. 13627).
 (ii) Alternate I (Mar 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O. 13627).
 (34) 52.222-54, Employment Eligibility Verification (Oct 2015). (Executive Order 12989). (Not applicable to the acquisition of commercially available off-the-shelf items or certain other types of commercial items as prescribed in 22.1803.)
 (35)(i) 52.223-9, Estimate of Percentage of Recovered Material Content for EPA-Designated Items (May 2008) (42 U.S.C. 6962(c)(3)(A)(ii)). (Not applicable to the acquisition of commercially available off-the-shelf items.)
 (ii) Alternate I (May 2008) of 52.223-9 (42 U.S.C. 6962(i)(2)(C)). (Not applicable to the acquisition of commercially available off-the-shelf items.)
 (36) 52.223-11, Ozone-Depleting Substances and High Global Warming Potential Hydrofluorocarbons (Jun 2016) (E.O. 13693).
 (37) 52.223-12, Maintenance, Service, Repair, or Disposal of Refrigeration Equipment and Air Conditioners (Jun 2016) (E.O. 13693).
 (38)(i) 52.223-13, Acquisition of EPEAT®-Registered Imaging Equipment (Jun 2014) (E.O.s 13423 and 13514).
 (ii) Alternate I (Oct 2015) of 52.223-13.
 (39)(i) 52.223-14, Acquisition of EPEAT®-Registered Televisions (Jun 2014) (E.O.s 13423 and 13514).
 (ii) Alternate I (Jun 2014) of 52.223-14.
 (40) 52.223-15, Energy Efficiency in Energy-Consuming Products (Dec 2007) (42 U.S.C. 8259b).
 (41)(i) 52.223-16, Acquisition of EPEAT®-Registered Personal Computer Products (Oct 2015) (E.O.s 13423 and 13514).
 (ii) Alternate I (Jun 2014) of 52.223-16.
 (42) 52.223-18, Encouraging Contractor Policies to Ban Text Messaging While Driving (Aug 2011) (E.O. 13513).
 (43) 52.223-20, Aerosols (Jun 2016) (E.O. 13693).
 (44) 52.223-21, Foams (Jun 2016) (E.O. 13693).
 (45) 52.225-1, Buy American—Supplies (May 2014) (41 U.S.C. chapter 83).
 (46)(i) 52.225-3, Buy American—Free Trade Agreements—Israeli Trade Act (May 2014) (41 U.S.C. chapter 83, 19 U.S.C. 3301 note, 19 U.S.C. 2112 note, 19 U.S.C. 3805 note, 19 U.S.C. 4001 note, Pub. L. 103-182, 108-77, 108-78, 108-286, 108-302, 109-53, 109-169, 109-283, 110-138, 112-41, 112-42, and 112-43).
 (ii) Alternate I (May 2014) of 52.225-3.
 (iii) Alternate II (May 2014) of 52.225-3.
 (iv) Alternate III (May 2014) of 52.225-3.

CONTINUATION SHEET	REFERENCE NO. OF DOCUMENT BEING CONTINUED: SPE300-16-D-P287	PAGE 8 OF 12 PAGES
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___ (47) 52.225-5, Trade Agreements (Feb 2016) (19 U.S.C. 2501, et seq., 19 U.S.C. 3301 note).
 ___X_ (48) 52.225-13, Restrictions on Certain Foreign Purchases (June 2008) (E.O.'s, proclamations, and statutes administered by the Office of Foreign Assets Control of the Department of the Treasury).
 ___ (49) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Jul 2013) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).
 ___ (50) 52.226-4, Notice of Disaster or Emergency Area Set-Aside (Nov 2007) (42 U.S.C. 5150).
 ___ (51) 52.226-5, Restrictions on Subcontracting Outside Disaster or Emergency Area (Nov 2007) (42 U.S.C. 5150).
 ___ (52) 52.232-29, Terms for Financing of Purchases of Commercial Items (Feb 2002) (41 U.S.C. 4505, 10 U.S.C. 2307(f)).
 ___ (53) 52.232-30, Installment Payments for Commercial Items (Oct 1995) (41 U.S.C. 4505, 10 U.S.C. 2307(f)).
 ___X_ (54) 52.232-33, Payment by Electronic Funds Transfer—System for Award Management (Jul 2013) (31 U.S.C. 3332).
 ___ (55) 52.232-34, Payment by Electronic Funds Transfer—Other than System for Award Management (Jul 2013) (31 U.S.C. 3332).
 ___ (56) 52.232-36, Payment by Third Party (May 2014) (31 U.S.C. 3332).
 ___ (57) 52.239-1, Privacy or Security Safeguards (Aug 1996) (5 U.S.C. 552a).
 ___ (58)(i) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631).
 ___ (ii) Alternate I (Apr 2003) of 52.247-64.
 (c) The Contractor shall comply with the FAR clauses in this paragraph (c), applicable to commercial services, that the Contracting Officer has indicated as being incorporated in this contract by reference to implement provisions of law or Executive orders applicable to acquisitions of commercial items:
 [Contracting Officer check as appropriate.]
 ___ (1) 52.222-17, Nondisplacement of Qualified Workers (May 2014)(E.O. 13495).
 ___ (2) 52.222-41, Service Contract Labor Standards (May 2014) (41 U.S.C. chapter 67).
 ___ (3) 52.222-42, Statement of Equivalent Rates for Federal Hires (May 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).
 ___ (4) 52.222-43, Fair Labor Standards Act and Service Contract Labor Standards-Price Adjustment (Multiple Year and Option Contracts) (May 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).
 ___ (5) 52.222-44, Fair Labor Standards Act and Service Contract Labor Standards—Price Adjustment (May 2014) (29 U.S.C. 206 and 41 U.S.C. chapter 67).
 ___ (6) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment—Requirements (May 2014) (41 U.S.C. chapter 67).
 ___ (7) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services—Requirements (May 2014) (41 U.S.C. chapter 67).
 ___ (8) 52.222-55, Minimum Wages Under Executive Order 13658 (Dec 2015).
 ___ (9) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (May 2014) (42 U.S.C. 1792).
 ___ (10) 52.237-11, Accepting and Dispensing of \$1 Coin (Sept 2008) (31 U.S.C. 5112(p)(1)).
 (d) Comptroller General Examination of Record. The Contractor shall comply with the provisions of this paragraph (d) if this contract was awarded using other than sealed bid, is in excess of the simplified acquisition threshold, and does not contain the clause at 52.215-2, Audit and Records—Negotiation.
 (1) The Comptroller General of the United States, or an authorized representative of the Comptroller General, shall have access to and right to examine any of the Contractor's directly pertinent records involving transactions related to this contract.
 (2) The Contractor shall make available at its offices at all reasonable times the records, materials, and other evidence for examination, audit, or reproduction, until 3 years after final payment under this contract or for any shorter period specified in FAR Subpart 4.7, Contractor Records Retention, of the other clauses of this contract. If this contract is completely or partially terminated, the records relating to the work terminated shall be made available for 3 years after any resulting final termination settlement. Records relating to appeals under the disputes clause or to litigation or the settlement of claims arising under or relating to this contract shall be made available until such appeals, litigation, or claims are finally resolved.
 (3) As used in this clause, records include books, documents, accounting procedures and practices, and other data, regardless of type and regardless of form. This does not require the Contractor to create or maintain any record that the Contractor does not maintain in the ordinary course of business or pursuant to a provision of law.
 (e)(1) Notwithstanding the requirements of the clauses in paragraphs (a), (b), (c), and (d) of this clause, the Contractor is not required to flow down any FAR clause, other than those in this paragraph (e)(1) in a subcontract for commercial items. Unless otherwise indicated below, the extent of the flow down shall be as required by the clause—
 (i) 52.203-13, Contractor Code of Business Ethics and Conduct (Oct 2015) (41 U.S.C. 3509).
 (ii) 52.219-8, Utilization of Small Business Concerns (Oct 2014) (15 U.S.C. 637(d)(2) and (3)), in all subcontracts that offer further subcontracting opportunities. If the subcontract (except subcontracts to small business concerns) exceeds \$700,000 (\$1.5 million for construction of any public facility), the subcontractor must include 52.219-8 in lower tier subcontracts that offer subcontracting opportunities.
 (iii) 52.222-17, Nondisplacement of Qualified Workers (May 2014) (E.O. 13495). Flow down required in accordance with paragraph (l) of FAR clause 52.222-17.
 (iv) 52.222-21, Prohibition of Segregated Facilities (Apr 2015)
 (v) 52.222-26, Equal Opportunity (Apr 2015) (E.O. 11246).
 (vi) 52.222-35, Equal Opportunity for Veterans (Oct 2015) (38 U.S.C. 4212).
 (vii) 52.222-36, Equal Opportunity for Workers with Disabilities (Jul 2014) (29 U.S.C. 793).

- (viii) 52.222-37, Employment Reports on Veterans (Feb 2016) (38 U.S.C. 4212)
- (ix) 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec 2010) (E.O. 13496). Flow down required in accordance with paragraph (f) of FAR clause 52.222-40.
- (x) 52.222-41, Service Contract Labor Standards (May 2014) (41 U.S.C. chapter 67).
- (xi)
52.222-50, Combating Trafficking in Persons (Mar 2015) (22 U.S.C. chapter 78 and E.O 13627). Alternate I (Mar 2015) of 52.222-50 (22 U.S.C. chapter 78 and E.O 13627).
- (xii) 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (May 2014) (41 U.S.C. chapter 67).
- (xiii) 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements (May 2014) (41 U.S.C. chapter 67).
- (xiv) 52.222-54, Employment Eligibility Verification (Oct 2015) (E.O. 12989).
- (xv) 52.222-55, Minimum Wages Under Executive Order 13658 (Dec 2015).
- (xvi) 52.225-26, Contractors Performing Private Security Functions Outside the United States (Jul 2013) (Section 862, as amended, of the National Defense Authorization Act for Fiscal Year 2008; 10 U.S.C. 2302 Note).
- (xvii) 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (May 2014) (42 U.S.C. 1792). Flow down required in accordance with paragraph (e) of FAR clause 52.226-6.
- (xviii) 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb 2006) (46 U.S.C. Appx. 1241(b) and 10 U.S.C. 2631). Flow down required in accordance with paragraph (d) of FAR clause 52.247-64.
- (2) While not required, the Contractor may include in its subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations.

Part 12 Clauses

252.204-7012 SAFEGUARDING COVERED DEFENSE INFORMATION AND CYBER INCIDENT REPORTING (DEC 2015) DFARS

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

“Adequate security” means protective measures that are commensurate with the consequences and probability of loss, misuse, or unauthorized access to, or modification of information.

“Compromise” means disclosure of information to unauthorized persons, or a violation of the security policy of a system, in which unauthorized intentional or unintentional disclosure, modification, destruction, or loss of an object, or the copying of information to unauthorized media may have occurred.

“Contractor attributional/proprietary information” means information that identifies the contractor(s), whether directly or indirectly, by the grouping of information that can be traced back to the contractor(s) (e.g., program description, facility locations), personally identifiable information, as well as trade secrets, commercial or financial information, or other commercially sensitive information that is not customarily shared outside of the company.

“Contractor information system” means an information system belonging to, or operated by or for, the Contractor.

“Controlled technical information” means technical information with military or space application that is subject to controls on the access, use, reproduction, modification, performance, display, release, disclosure, or dissemination. Controlled technical information would meet the criteria, if disseminated, for distribution statements B through F using the criteria set forth in DoD Instruction 5230.24, Distribution Statements on Technical Documents. The term does not include information that is lawfully publicly available without restrictions.

“Covered contractor information system” means an information system that is owned, or operated by or for, a contractor and that processes, stores, or transmits covered defense information.

“Covered defense information” means unclassified information that—

(i) Is—

- (A) Provided to the contractor by or on behalf of DoD in connection with the performance of the contract; or
- (B) Collected, developed, received, transmitted, used, or stored by or on behalf of the contractor in support of the performance of the contract; and

(ii) Falls in any of the following categories:

(A) *Controlled technical information.*

(B) *Critical information (operations security).* Specific facts identified through the Operations Security process about friendly intentions, capabilities, and activities vitally needed by adversaries for them to plan and act effectively so as to guarantee failure or unacceptable consequences for friendly mission accomplishment (part of Operations Security process).

(C) *Export control.* Unclassified information concerning certain items, commodities, technology, software, or other information whose export could reasonably be expected to adversely affect the United States national security and nonproliferation objectives. To include dual use items; items identified in export administration regulations, international traffic in arms regulations and munitions list; license applications; and sensitive nuclear technology information.

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(D) Any other information, marked or otherwise identified in the contract, that requires safeguarding or dissemination controls pursuant to and consistent with law, regulations, and Governmentwide policies (e.g., privacy, proprietary business information).

“Cyber incident” means actions taken through the use of computer networks that result in a compromise or an actual or potentially adverse effect on an information system and/or the information residing therein.

“Forensic analysis” means the practice of gathering, retaining, and analyzing computer-related data for investigative purposes in a manner that maintains the integrity of the data.

“Malicious software” means computer software or firmware intended to perform an unauthorized process that will have adverse impact on the confidentiality, integrity, or availability of an information system. This definition includes a virus, worm, Trojan horse, or other code-based entity that infects a host, as well as spyware and some forms of adware.

“Media” means physical devices or writing surfaces including, but is not limited to, magnetic tapes, optical disks, magnetic disks, large-scale integration memory chips, and printouts onto which information is recorded, stored, or printed within an information system.

“Operationally critical support” means supplies or services designated by the Government as critical for airlift, sealift, intermodal transportation services, or logistical support that is essential to the mobilization, deployment, or sustainment of the Armed Forces in a contingency operation.

“Rapid(ly) report(ing)” means within 72 hours of discovery of any cyber incident.

“Technical information” means technical data or computer software, as those terms are defined in the clause at DFARS 252.227-7013, Rights in Technical Data-Non Commercial Items, regardless of whether or not the clause is incorporated in this solicitation or contract. Examples of technical information include research and engineering data, engineering drawings, and associated lists, specifications, standards, process sheets, manuals, technical reports, technical orders, catalog-item identifications, data sets, studies and analyses and related information, and computer software executable code and source code.

(b) *Adequate security.* The Contractor shall provide adequate security for all covered defense information on all covered contractor information systems that support the performance of work under this contract. To provide adequate security, the Contractor shall—

(1) Implement information systems security protections on all covered contractor information systems including, at a minimum—

(i) For covered contractor information systems that are part of an Information Technology (IT) service or system operated on behalf of the Government—

(A) Cloud computing services shall be subject to the security requirements specified in the clause 252.239-7010, Cloud Computing Services, of this contract; and

(B) Any other such IT service or system (i.e., other than cloud computing) shall be subject to the security requirements specified elsewhere in this contract; or

(ii) For covered contractor information systems that are not part of an IT service or system operated on behalf of the Government and therefore are not subject to the security requirement specified at paragraph (b)(1)(i) of this clause—

(A) The security requirements in National Institute of Standards and Technology (NIST) Special Publication (SP) 800-171, “Protecting Controlled Unclassified Information in Nonfederal Information Systems and Organizations,” <http://dx.doi.org/10.6028/NIST.SP.800-171> that is in effect at the time the solicitation is issued or as authorized by the Contracting Officer, as soon as practical, but not later than December 31, 2017. The Contractor shall notify the DoD CIO, via email at osd.dibcsia@mail.mil, within 30 days of contract award, of any security requirements specified by NIST SP 800-171 not implemented at the time of contract award; or

(B) Alternative but equally effective security measures used to compensate for the inability to satisfy a particular requirement and achieve equivalent protection accepted in writing by an authorized representative of the DoD CIO; and

(2) Apply other information systems security measures when the Contractor reasonably determines that information systems security measures, in addition to those identified in paragraph (b)(1) of this clause, may be required to provide adequate security in a dynamic environment based on an assessed risk or vulnerability.

(c) *Cyber incident reporting requirement.*

(1) When the Contractor discovers a cyber incident that affects a covered contractor information system or the covered defense information residing therein, or that affects the contractor’s ability to perform the requirements of the contract that are designated as operationally critical support, the Contractor shall—

(i) Conduct a review for evidence of compromise of covered defense information, including, but not limited to, identifying compromised computers, servers, specific data, and user accounts. This review shall also include analyzing covered contractor information system(s) that were part of the cyber incident, as well as other information systems on the

Contractor's network(s), that may have been accessed as a result of the incident in order to identify compromised covered defense information, or that affect the Contractor's ability to provide operationally critical support; and

(ii) Rapidly report cyber incidents to DoD at <http://dibnet.dod.mil>.

(2) *Cyber incident report.* The cyber incident report shall be treated as information created by or for DoD and shall include, at a minimum, the required elements at <http://dibnet.dod.mil>.

(3) *Medium assurance certificate requirement.* In order to report cyber incidents in accordance with this clause, the Contractor or subcontractor shall have or acquire a DoD-approved medium assurance certificate to report cyber incidents. For information on obtaining a DoD-approved medium assurance certificate, see <http://iase.disa.mil/pki/eca/Pages/index.aspx>.

(d) *Malicious software.* The Contractor or subcontractors that discover and isolate malicious software in connection with a reported cyber incident shall submit the malicious software in accordance with instructions provided by the Contracting Officer.

(e) *Media preservation and protection.* When a Contractor discovers a cyber incident has occurred, the Contractor shall preserve and protect images of all known affected information systems identified in paragraph (c)(1)(i) of this clause and all relevant monitoring/packet capture data for at least 90 days from the submission of the cyber incident report to allow DoD to request the media or decline interest.

(f) *Access to additional information or equipment necessary for forensic analysis.* Upon request by DoD, the Contractor shall provide DoD with access to additional information or equipment that is necessary to conduct a forensic analysis.

(g) *Cyber incident damage assessment activities.* If DoD elects to conduct a damage assessment, the Contracting Officer will request that the Contractor provide all of the damage assessment information gathered in accordance with paragraph (e) of this clause.

(h) *DoD safeguarding and use of contractor attributional/proprietary information.* The Government shall protect against the unauthorized use or release of information obtained from the contractor (or derived from information obtained from the contractor) under this clause that includes contractor attributional/proprietary information, including such information submitted in accordance with paragraph (c). To the maximum extent practicable, the Contractor shall identify and mark attributional/proprietary information. In making an authorized release of such information, the Government will implement appropriate procedures to minimize the contractor attributional/proprietary information that is included in such authorized release, seeking to include only that information that is necessary for the authorized purpose(s) for which the information is being released.

(i) *Use and release of contractor attributional/proprietary information not created by or for DoD.* Information that is obtained from the contractor (or derived from information obtained from the contractor) under this clause that is not created by or for DoD is authorized to be released outside of DoD—

- (1) To entities with missions that may be affected by such information;
- (2) To entities that may be called upon to assist in the diagnosis, detection, or mitigation of cyber incidents;
- (3) To Government entities that conduct counterintelligence or law enforcement investigations;
- (4) For national security purposes, including cyber situational awareness and defense purposes (including with Defense Industrial Base (DIB) participants in the program at 32 CFR part 236); or
- (5) To a support services contractor ("recipient") that is directly supporting Government activities under a contract that includes the clause at 252.204-7009, Limitations on the Use or Disclosure of Third-Party Contractor Reported Cyber Incident Information.

(j) *Use and release of contractor attributional/proprietary information created by or for DoD.* Information that is obtained from the contractor (or derived from information obtained from the contractor) under this clause that is created by or for DoD (including the information submitted pursuant to paragraph (c) of this clause) is authorized to be used and released outside of DoD for purposes and activities authorized by paragraph (i) of this clause, and for any other lawful Government purpose or activity, subject to all applicable statutory, regulatory, and policy based restrictions on the Government's use and release of such information.

(k) The Contractor shall conduct activities under this clause in accordance with applicable laws and regulations on the interception, monitoring, access, use, and disclosure of electronic communications and data.

(l) *Other safeguarding or reporting requirements.* The safeguarding and cyber incident reporting required by this clause in no way abrogates the Contractor's responsibility for other safeguarding or cyber incident reporting pertaining to its unclassified information systems as required by other applicable clauses of this contract, or as a result of other applicable U.S. Government statutory or regulatory requirements.

(m) *Subcontracts.* The Contractor shall—

- (1) Include this clause, including this paragraph (m), in subcontracts, or similar contractual instruments, for operationally critical support, or for which subcontract performance will involve a covered contractor information system, including subcontracts for commercial items, without alteration, except to identify the parties; and
- (2) When this clause is included in a subcontract, require subcontractors to rapidly report cyber incidents directly to DoD at <http://dibnet.dod.mil> and the prime Contractor. This includes providing the incident report number, automatically assigned by DoD, to the prime Contractor (or next higher-tier subcontractor) as soon as practicable.

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(End of clause)

52.211-15 DEFENSE PRIORITY AND ALLOCATION REQUIREMENTS (APR 2008) FAR

252.247-7023 TRANSPORTATION OF SUPPLIES BY SEA (APR 2014) DFARS